

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

ROQUE “ROCKY” DE LA  
FUENTE GUERRA, *et al.*,

*Plaintiffs,*

v.

Case No. 4:16-cv-00026-RH-CAS

FLORIDA DEMOCRATIC PARTY and  
the FLORIDA SECRETARY  
OF STATE,

*Defendants.*

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**DEFENDANTS’ JOINT REPORT OF RULE 26 INITIAL CONFERENCE**

Pursuant to paragraph (2)(a) of the Court’s Initial Scheduling Order (DE 19), counsel for the parties met on March 14, 2016, and discussed the matters set forth in that order. Upon agreement during the conference, and in accordance with this court’s instructions in paragraph (2)(a) of the Initial Scheduling Report (DE 19), counsel for plaintiffs was to initiate the filing of the report by providing a draft to all parties so that appropriate edits could be made and a timely Joint Report could be filed. Unfortunately, no draft was provided and efforts to contact plaintiffs’ counsel have proven unsuccessful. As a result, and to ensure timely compliance with this court’s Initial Scheduling Order, defendants now jointly file this report and ask the Court to approve the schedule outlined below:

1. Magistrate Jurisdiction: The parties have conferred regarding their willingness to consent to magistrate judge jurisdiction.

2. Nature & Basis of Claims and Defenses:

Defendant Florida Secretary of State's position: the plaintiffs' complaint focuses entirely on the actions taken by defendant Florida Democratic Party in the implementation of internal party rules relating to ballot access. The plaintiffs make no effort to describe any conduct or threatened conduct on the part of the Secretary in enforcement of these rules nor do they challenge any part of the Florida Election Code that the Secretary is responsible for enforcing. The Eleventh Amendment bars precisely this type of action. The complaint against the Secretary should be dismissed. *See also* Florida Secretary of State's Motion to Dismiss and Incorporated Memorandum of Law. DE 18. Further, the Florida Secretary of State suggests that this matter is now moot with respect to him. *See* Florida Secretary of State's Suggestion of Mootness. DE 21.

Defendant Florida Democratic Party's position: The Florida Democratic Party's ("FDP") position is set forth in detail in its motion to dismiss and its response to the plaintiff's motion for temporary injunction. In summary, the FDP asserts that the issue is now moot, that the plaintiff has not followed the procedures set forth by the FDP for appearing on the presidential primary ballot, that there is no action under color of law to invoke Section 1983 and plaintiff has both failed to exhaust his

administrative remedies and failed to state a cause of action for reasons detailed in the motion to dismiss.

Plaintiffs' position:

3. Settlement and Mediation: The parties do not consider settlement to be a possibility at this time. The parties do not believe mediation will be helpful in resolving this case given the nature of the claims and remedy sought.

4. Joinders and Amendments: The parties do not anticipate filing joinders or amendments, but in any event, the parties agree to file any such pleadings by the deadline set forth in this court's Initial Scheduling Order.

5. Discovery Plan: The Secretary believes that discovery related to standing, as well as to other claims made by the plaintiffs, may be necessary to the extent plaintiffs do not stipulate as to the Secretary's lack of involvement in the circumstances alleged in the complaint and to the lack of nexus between the plaintiffs' claimed harm and any action or anticipated action by the Secretary. To the extent there is discovery, the parties agree to complete discovery as expeditiously as possible to ensure resolution of the case consistent with the deadlines set forth in this court's Initial Scheduling Order.

6. Electronic and Computer-based Discovery: The parties do not anticipate requesting or producing information from electronic or computer-based media.

7. Proposed Trial Date: The parties anticipate being ready for trial by **March 2017**.

8. Schedule of Pre-Trial Matters: Pursuant to paragraph (5) of this Court's Initial Scheduling Order, the parties request approval from the court for the following pre-trial deadlines, if necessary:

- November 1, 2016 – Deadline for the Parties to file with the Court an agreed upon record, if appropriate. This record would include a compilation of all undisputed factual material necessary for the Court to decide the case on summary judgment.
- January 2, 2017 – Deadline for the parties to file summary judgment motions and supporting memoranda of law.
- January 22, 2016 – Deadline for the parties to file responses to the motions for summary judgment and supporting memoranda of law.
- February 11, 2016 – Deadline for the parties to file replies in support of their motions for summary judgment.
- First Available Date After February 20, 2017 – Hearing on the summary judgment motions.

9. Other Matters: The Secretary believes this case is now moot as to him due to the occurrence of Florida's presidential preference primary on March 15, 2016. *See* Florida Secretary of State's Suggestion of Mootness. DE 21. *See also* § 103.101(1), Fla. Stat.

The parties further agree to abide by the Court's initial Scheduling Order except as proposed herein.

WHEREFORE the parties ask the Court to accept this report, and approve the proposed schedule and procedures detailed herein.

*[Signature block on next page]*

Respectfully submitted,

/s/ David A. Fugett

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, pursuant to N.D. Fla. Loc. R. 5.1(F), each party on whom this motion is to be served is represented by an attorney who will be served through this Court's CM/ECF system upon filing on this 28th day of March, 2016.

*/s/ David A. Fugett* \_\_\_\_\_

ATTORNEY