

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

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

Plaintiffs,

v.

CASE NO. 4:16cv26-RH/CAS

DEMOCRATIC PARTY OF FLORIDA
and KEN DETZNER, Secretary of
State of Florida,

Defendants.

ORDER DISMISSING THE COMPLAINT AS MOOT

The plaintiffs filed this ballot-access case prior to the March 15, 2016, Florida presidential primary election. The plaintiffs challenged the decision to include on the Democratic ballot only three candidates: Hillary Clinton, Martin O’Malley, and Bernie Sanders. The election has passed. This order dismisses the complaint as moot but gives the plaintiffs leave to amend.

The complaint alleges that Roque “Rocky” De La Fuente Guerra is a candidate for the Democratic Party’s nomination for President. The plaintiffs are

Mr. De La Fuente and seven voters. The complaint alleges that Florida's method for determining who will be on the party's primary ballot is unconstitutional. The complaint names two defendants: the Democratic Party of Florida and the Florida Secretary of State.

The plaintiffs moved for a preliminary injunction compelling the Secretary of State to put Mr. De La Fuente on the ballot. As a prerequisite to a preliminary injunction, a plaintiff must establish a substantial likelihood of success on the merits, that the plaintiff will suffer irreparable injury if the injunction does not issue, that the threatened injury outweighs whatever damage the proposed injunction may cause a defendant, and that the injunction will not be adverse to the public interest. *See, e.g., Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc).

The order of January 23, 2016, denied a preliminary injunction, concluding that the plaintiffs had failed to establish a substantial likelihood—or any likelihood at all—that they would prevail on the merits. And they had not established that a preliminary injunction would serve the public interest.

The explanation was this. A state may limit ballot access to avoid voter confusion. *See, e.g., Lubin v. Panish*, 415 U.S. 709, 715-16 (1974). When insubstantial candidates are added to a ballot, the rights of voters are compromised,

not enhanced. *Id.* The plaintiffs tendered no evidence that Mr. De La Fuente had any support at all beyond the seven voters who are plaintiffs in this action. In the absence of evidence, the plaintiffs could not prevail. The January 23 order said the plaintiffs could renew their motion for a preliminary injunction if they could present evidence that Mr. De La Fuente was a substantial candidate, but the plaintiffs did not do so.

The plaintiffs moved to reconsider the January 23 order. The motion was denied on February 6. The plaintiffs did not appeal. The March 15 primary went forward without Mr. De La Fuente on the ballot.

The challenge to the 2016 primary is plainly moot. Indeed, the entire case is probably moot as well. Perhaps recognizing this, the plaintiffs have not responded to two motions to dismiss or to the Secretary of State's suggestion of mootness. The Local Rules required the plaintiffs to respond long ago to the motions to dismiss.

The plaintiffs have not alleged that any candidate with substantial support will be excluded from the primary ballot in 2020 or any later election year. And it seems unlikely the plaintiffs will be able to do so. In the absence of a factual basis for any such claim, this entire action is moot. This order grants leave to file an amended complaint, but the plaintiffs should not do so unless they can allege, consistently with Federal Rule of Civil Procedure 11, that there is a substantial

likelihood that a candidate with substantial support will be excluded from a future ballot. *See, e.g., City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 111 (1983) (holding that a person who had been subjected to a chokehold in the past had no standing to seek injunctive relief against the city’s practice of using chokeholds because there was not a “sufficient likelihood that he will again be wronged in a similar way”); *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1346 (11th Cir. 1999).

For these reasons,

IT IS ORDERED:

1. The complaint is dismissed as moot.
2. The motions to dismiss the complaint on grounds other than mootness, ECF Nos. 16 and 18, are denied as moot.
3. The plaintiffs may file an amended complaint by May 9, 2016.
4. If the plaintiffs do not file an amended complaint by that date, the clerk must enter judgment stating, “This case is dismissed as moot,” and must close the file.

SO ORDERED on April 18, 2016.

s/Robert L. Hinkle
United States District Judge