



ARKANSAS SECRETARY OF STATE

MARK MARTIN

September 2, 2016

Mr. James C. Linger
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Sent via email only

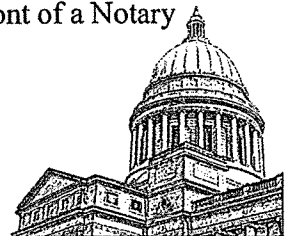
Re: August 30, 2016 letter
Roque "Rocky" De La Fuente
Candidate for President of the United States – Democratic Party (Nov. 6, 2015)
Candidate for President of the United States – Independent (August 1, 2016)
2016 General Election Ballot – State of Arkansas

Dear Mr. Linger:

Thank you for your letter of August 30, 2016, concerning Mr. De La Fuente. Your letter responds to a letter from Leslie Bellamy, the Director of Elections at the Arkansas Secretary of State's Office. You ask for reconsideration of the August 9 denial of Mr. De La Fuente's attempt at filing an Independent Candidate Petition for President of the United States of America in the State of Arkansas for the 2016 General Election Ballot. Your letter is treated as an informal appeal of the August 9 denial. *See Ark. Code Ann. § 25-15-208(b)*. For the reasons discussed below, your appeal is dismissed. The decision to prohibit Mr. De La Fuente from appearing on the November 8, 2016, General Election Ballot in the State of Arkansas is final with this letter for the reasons set forth herein. This letter amends and supplements Ms. Bellamy's letter of August 9, 2016.

Mr. De Law Fuente timely filed to run for President of the United States on or about November 6, 2015 for the November 8, 2016, General Election in the State of Arkansas. In his filing, Mr. De La Fuente filed as a candidate for the Democratic Party of Arkansas. He appeared on the March 1, 2016, Primary Election Ballot as a Candidate for President of the United States and received 1,684 votes out of 221,020 in the Democratic Primary. In his filing receipt, Mr. De La Fuente certified that he had completed all necessary requirements to file as a candidate for the Office of President of the United States in the Democratic Preferential Primary Election to be held on Tuesday, March 1, 2016.

On or about August 1, 2016, Mr. De La Fuente filed an Affidavit of Eligibility, stating that he lived in Orlando, Florida. This document was sworn under oath and verified in front of a Notary



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Public. Mr. De La Fuente also filed a Political Practices Pledge on August 1, stating that he lived in Orlando, Florida.

In conjunction with his filing, Mr. De La Fuente indicated that he would be running on a ticket with, and would file a list of Presidential Electors with, Mr. Michael Steinberg, as his Vice-President. Mr. Steinberg filed an Affidavit of Eligibility, indicating that he lived in Tampa, Florida. This document was sworn under oath and verified in front of a Notary Public. Mr. Steinberg also filed a Political Practices Pledge on August 1, stating that he lived in Tampa, Florida.

Ms. Bellamy stated that Mr. De La Fuente was prohibited from appearing on the ballot as an Independent Candidate, because he had already filed for, and run as, a Democratic Candidate for President of the United States in the State of Arkansas during the March 1, 2016, Preferential Primary. This is true, but is not the only basis to sustain the decision that Mr. De La Fuente shall not appear on the General Election Ballot in the State of Arkansas in 2016.

In addition, Mr. De La Fuente's and Mr. Steinberg's potential candidacies violate the U.S. Constitution. U.S. Const. Am. 12. The Constitution prohibits persons from the same state from being elected as President and Vice-President in the same General Election. The August 1 filing violates this provision of the Constitution. U.S. Const. Am. 12.

In addition, there is at least one other substantive legal basis to deny Mr. De La Fuente access to the General Election Ballot in the State of Arkansas on November 8, 2016. "In cases of circumstances or procedures which may arise in connection with any primary election for which there is no provision of this act governing the circumstances or procedures, they shall be governed by the general election laws of this state or by party rules if there is no applicable general election law." Ark. Code Ann. § 7-7-201(d). It appears, in particular, that Section 9.08 of the Rules of the Democratic Party of Arkansas prohibit any candidate for office as a Democratic Candidate from running for that same office as an Independent Candidate. Consequently, the Independent Candidate filing is prohibited by law.

There are also procedural reasons to deny Mr. De La Fuente access to the General Election Ballot in the State of Arkansas on November 8, 2016. Ms. Bellamy timely wrote her letter on August 9. No protest was heard. Subsequently, on August 25, 2016, the Elections Division certified to all seventy-five County Boards of Election Commissioners the names of all of the

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candidates who should appear on the ballot. Mr. De La Fuente's name was not included; nor was Mr. Steinberg's name included. Ballot draw took place in all seventy-five counties on or before August 29, 2016. Consequently, the Office no longer has the power to change the names submitted; it is outside of the Office's jurisdiction, and relief would need to be sought from all seventy-five (75) County Boards of Election Commissioners. Unfortunately, electronic media is being prepared, paper ballots are being prepared, and the election begins shortly with UOCAVA ballot delivery required on September 23, 2016.

As a formal matter, please be advised that the Office will raise a defense of failure to include necessary parties unless all seventy-five (75) County Boards of Election Commissioners are named as co-defendants in any suit that may be brought. In addition, the Office believes that all Presidential candidates currently scheduled to be on the General Election ballot for 2016 in the State of Arkansas are also necessary parties to any potential suit. Finally, it appears that the Democratic Party of Arkansas is a necessary party to any suit that may be filed.

Your request for relief must be denied. The informal appeal is dismissed. Arkansas law provides for a remedy in Pulaski County Circuit Court from any adverse decision; Mr. De La Fuente has not previously availed himself of this avenue of relief and it may be too late to do so now, given his nearly three-week delay in sending the August 30 letter.

If you have further questions or concerns, please put them in writing to Ms. Bellamy. Send a copy to me, and please send a copy to the Legal Division, so that the General Counsel and his staff can have the opportunity to review it in a timely manner.

Thank you for your courtesies, and the courtesies that the staff has indicated you and your clients have always paid the Office.

With best regards,



Mark Martin
Secretary of State

MM:AJK/bgl