

**IN THE COMMONWEALTH COURT
OF THE COMMONWEALTH OF PENNSYLVANIA**

ROQUE “ROCKY” DE LA FUENTE	:	
	:	
PLAINTIFF,	:	CIVIL ACTION
	:	
v.	:	No. _____
	:	
PEDRO A. CORTÉS, in his official capacity	:	
as the Secretary of the Commonwealth of	:	
Pennsylvania; and JONATHAN MARKS,	:	
in his official capacity as Commissioner,	:	
of the Bureau of Commissions, Elections and	:	
Legislation	:	
	:	
DEFENDANTS.	:	

COMPLAINT FOR EMERGENCY MANDAMUS & INJUNCTIVE RELIEF

1. Plaintiff, ROQUE “ROCKY” DE LA FUENTE (hereinafter either “Roque De La Fuente” or “Mr. De La Fuente”), by and through his undersigned legal counsel, file this civil action for emergency prospective equitable relief against defendants, PEDRO A. CORTES, in his official capacity as the Secretary of the Commonwealth of Pennsylvania and JONATHAN MARKS in his official capacity as Commissioner of the Bureau of Commissions, Elections and Legislation, requesting emergency mandamus, preliminary and permanent injunctions and declaratory relief prohibiting defendant from enforcing 25 P.S. § 2911(e)(5) to the extent that either the statute or defendants’ improper interpretation of the challenged statute prohibits plaintiff’s as an independent

political body candidate for President of the United States access to the Commonwealth's general election ballot.

NATURE OF THE COMPLAINT

2. This is an action to enforce state law statutory rights guaranteed to plaintiff under 25 P.S. §§ 2911 of the Pennsylvania Election Code and prohibiting defendants from applying 25 P.S. § 2911(e)(5) to political body candidates for President and Vice-President of the United States.

3. Plaintiff also seeks emergency injunctive relief prohibiting defendants, through the doctrine of equitable estoppel, from requiring independent political body candidates for President of the United States to submit more than the 5,000 valid signatures required by the decision of Judge Stengel in *Constitution Party of Pennsylvania v. Cortes* and which defendants have publicly stated apply to all political body candidates.

4. Plaintiff asks this Court for emergency mandamus relief ordering defendants to immediately accept plaintiff's nomination papers for President and Vice-President of the United States for the Commonwealth's 2016 general election ballot.

5. All of plaintiffs' allegations are based upon information and belief.

JURISDICTION

6. Jurisdiction lies in this Court under 42 C.S. § 764(2) providing that the Commonwealth Court shall have exclusive original jurisdiction over all matters arising in the Office of the Secretary of the Commonwealth relating to Statewide Office, except nomination and election contests within the jurisdiction of another tribunal.

PARTIES

7. Plaintiff, Roque De La Fuente, is an independent political body candidate for President of the United States in the 2016 general election. Plaintiff is a resident of the State of Florida residing at 625 West Winter Park Street, Orlando, Florida.

8. Defendant Pedro Cortes is Secretary of the Commonwealth of Pennsylvania. Defendant Cortes is the Commonwealth's chief election official and has ultimate authority over the enforcement of the Pennsylvania Election Code and, more specifically, the challenged provision codified at 25 P.S. § 2911(e)(5). Plaintiff asserts his claims against defendant Cortes in his official capacity only. Defendant Cortes' address is 2601 North 3rd Street, Harrisburg, PA 17110.

9. Defendant Jonathan M. Marks is Commissioner of the Pennsylvania Bureau of Commissions, Elections and Legislation. Commissioner Marks is in charge of reviewing and accepting nomination papers for independent and political

body candidates seeking access to the Commonwealth's 2016 presidential ballot. Commissioner Marks' business address is 210 N. Office Building, Harrisburg, Pennsylvania, 17120.

FACTUAL ALLEGATIONS

10. Plaintiff is an independent political body candidate for the Office of President of the United States in the 2016 general election.

11. Plaintiff is a registered and enrolled member of the Florida Democratic Party.

12. Plaintiff sought the 2016 nomination of the Democratic Party for President of the United States.

13. Plaintiff's name was on the Pennsylvania primary election ballot for the sole purpose of electing delegates to the Democratic National Convention who would support his nomination by the Democratic Party for the office of President of the United States.

14. In *Constitution Party of Pennsylvania v. Cortes*, No. 12-2726, (E.D. Pa. June 30, 2016) Judge Stengel issued an Order lowering the number of signatures that certain political body candidates for statewide office need to submit to gain access to the Commonwealth's general election ballot to 5,000 valid signatures.

15. Defendants published on the Commonwealth's website that Judge Stengel's Order lowering the number of signatures that certain political body candidates for statewide office need to submit to the Secretary of the Commonwealth to gain access to the Commonwealth's general election ballot to 5,000 valid signatures would be applied to all political body candidates.

16. Specifically, defendants published on the Commonwealth's website that:

"The signature requirements have been updated as a result of a federal district court order that established new signature requirements for nomination papers filed by statewide candidates from the Constitution Party, the Green Party and the Libertarian Party. See Order, *Constitution Party v. Cortes*, No. 12-2726, Doc. No. 97 (E.D. Pa. June 30, 2016). Because having different nomination requirements for different political bodies raises equal protection concerns under both the Federal and State Constitutions, and because other political bodies would likely be able to obtain relief similar to that already afforded to the Constitution Party plaintiffs, the Secretary of the Commonwealth has decided to apply the new signature requirements to all nomination papers submitted by statewide political body candidates. However, notwithstanding the decision of the Secretary of the Commonwealth to apply the lower signature requirement to all nomination papers for all political bodies for statewide candidates, it remains possible that individual qualified electors may file objections to nomination papers in court on the basis that the federal court order does not expressly apply to statewide political body candidates other than the three political bodies who brought the litigation. In the event that objections to a nomination paper were filed by a qualified elector, the court would determine on its own authority whether to enforce the signature requirement imposed by section 951(b)."

17. Plaintiff was entitled and did in fact rely on defendants' representation that the 5,000 valid signature requirement would be applied to his candidacy for President of the United States as the candidate of the American Delta Party.

18. Defendants, under the principal of equitable estoppel, are estopped from now seeking to impose on plaintiff, as they attempted to argue to Judge Jones in the federal litigation pending in the Middle District of Pennsylvania, No. 16-cv-01696, a signature requirement in excess of 5,000 valid signatures.

19. On or about August 1, 2016, plaintiff's agents timely filed with defendants, pursuant to 25 P.S. § 2911 (a) – (e), nomination papers containing over 5,000 valid signatures of qualified electors of the Commonwealth of Pennsylvania naming plaintiff as a candidate for President of the United States, and a slate of presidential electors pledged to cast their vote for plaintiff if elected to the Electoral College to be included on the Commonwealth's 2016 general election ballot.

20. Based on information and belief, defendants' rejected plaintiff's nomination papers for President of the United States, citing the fact that plaintiff had appeared on the Commonwealth's 2016 Democratic presidential preference primary electing delegates to the Democratic National Convention and extending enforcement of 25 P.S. § 2911(e)(5) to primary elections for the election of internal party offices.

21. On or about August 8, 2016, plaintiff sent a Demand Letter to defendant Cortes demanding that defendant reverse his office's decision to reject plaintiff's nomination papers.

22. In response to plaintiff's Demand Letter, defendant Cortes refused to reverse the decision of his office to reject plaintiff's nomination papers.

23. On August 18, 2016 plaintiff filed an action in the United States District Court for the Middle District of Pennsylvania, case number 1:16-cv-01696 (Judge Jones), alleging that defendants' enforcement of 25 P.S. § 2911(e)(5) violated the Qualifications Clause of Article II, Section 1 of the United States Constitution and state law claims that defendants' enforcement of 25 P.S. § 2911(e)(5) was in violation of the statutory provision.

24. Defendants in this action argued that Judge Jones should abstain from deciding the federal constitutional issues in favor of a state court determination as to whether 25 P.S. § 2911(e)(5) applies in the context of a presidential election where delegates are elected to a national party nominating convention.

25. After a status conference and full briefing, Judge Jones issued an Order on September 14, 2016 abstaining from deciding the federal constitutional issues in favor of a state court adjudication of the applicability of 25 P.S. § 2911(e)(5) to candidates for President of the United States. *See*, Order, dated September 14, 2016 (Document #15).

26. Defendants lack the statutory authority under 25 P.S. §§ 2911(e)(5) to reject plaintiff's nomination papers.

27. Under the express terms of 25 P.S. §2911(e)(5), defendants' challenged interpretation of the statute does not authorize defendants to disqualify plaintiff for the Commonwealth's 2016 general election ballot for President, by rejecting his nomination papers, for the sole reason that his name appeared on the 2016 Democratic presidential primary for the election of party political offices which are private political positions and not public offices.

28. Plaintiff has no other adequate remedy at law.

COUNT I

(Defendants' Interpretation and Enforcement of 25 P.S. § 2911(e)(5), As Applied to Political Body Candidates for President and Vice-President of the United States, Is Not Authorized by the Pennsylvania Election Code)

29. Plaintiff reasserts each preceding allegation as if set forth fully herein.

30. Defendants' lack authority under 25 P.S. § 2911(e)(5) to disqualify plaintiff from the Commonwealth's general election ballot for President of the United States for the sole reason that he appeared on the 2016 Democratic presidential preference primary electing party delegates to the Democratic National Convention.

31. Accordingly, defendants' disqualification of plaintiff from the Commonwealth's general election ballot violates 25 P.S. § 2911(e)(5) of the Pennsylvania Election Code for which plaintiff hereby requests relief.

COUNT II
(Equitable Estoppel)

32. Plaintiff reasserts each preceding allegation as if set forth fully herein.

33. Defendants publicly represented and plaintiff relied on defendants' public representations that the 5,000 valid signature requirement for nomination papers for statewide office in the 2016 general election applied to plaintiff's candidacy for President of the United States as an independent political body candidate.

34. Accordingly, defendants are equitably estopped from imposing any signature requirement on his nomination papers in excess of the 5,000 valid signatures established under Judge Stengel's Order of June 30, 2016.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

a. Enter emergency mandamus relief ordering defendants to accept plaintiff's nomination papers within one (1) business days after entry by this Court of a Writ of Mandamus;

b. Enter a preliminary injunction, enjoining defendants from enforcing 25 P.S. §§ 2911(e)(5) against plaintiff;

c. Permanently enjoin defendants from enforcing 25 P.S. §§ 2911(e)(5) against political body candidates for President and Vice-President of the United States;

d. Enter a preliminary injunction enjoining and estopping defendants from imposing any signature requirement on nomination papers for political bodies in excess of the 5,000 valid signatures for statewide office established in Judge Stengel's Order of June 30, 2016; and,

e. Retain jurisdiction of this action and grant plaintiff such other relief which may in the determination of this Honorable Court to be necessary and proper.

Respectfully submitted,

Dated: September 16, 2016

Paul A. Rossi, Esq.
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VERIFICATION

Pursuant to the requirements of 52 Pa. Code § 1001.36, I, Paul A. Rossi, Esq., as the undersigned legal counsel for plaintiff hereby states that the facts above set forth are true and correct, or are true and correct to the best of my knowledge and belief, and that I expect to be able to prove the same at a hearing in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: September 16, 2016

Paul A. Rossi, Esq.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on September 16, 2016, he personally caused to be served upon defendants a true and correct copy of the foregoing Complaint via personal service at the following address:

Secretary of the Commonwealth Cortes
401 North Street
Harrisburg, PA 17120

Commissioner Marks
401 North Street
Harrisburg, PA 17120

Respectfully submitted,

Dated: September 16, 2016

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