



De La Fuente an email for the first time advising Plaintiff that the Defendant would not include Plaintiff De La Fuente's name on the 2016 ballot in Alabama for the Office of President of the United States because Plaintiff's name appeared on the 2016 primary election ballot in Alabama as a Democratic Party candidate for the office of President of the United States and that, therefore, it was Defendant's position that §17-9-3(b) (Alabama's "sore loser" provision) prohibits Plaintiff from having his name appear on the general election ballot in Alabama as an Independent candidate for President of the United States.

On September 1, 2016, through counsel, Plaintiff wrote to Defendant's staff member, objecting to Defendant's position and seeking to resolve the matter.

On September 2, 2016, the Defendant, through a different staff member, wrote again, rejecting the objection and confirming that the Defendant will not allow Plaintiff's name to be placed on the 2016 general election ballot in Alabama for the office of United States President, based on the reason provided for the first time on August 29, 2016.

Plaintiffs herein seek a declaratory judgment that the application of Alabama's "sore loser" provision to a candidate for the office of President of the United States violates Article II, Sec. 1, Cl. 5 of the United States Constitution (the "Qualifications Clause") and the Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution. Plaintiffs also seek immediate injunctive relief, including a preliminary and permanent injunction prohibiting Defendant from applying this statutory provision to Plaintiff De La

Fuente and requiring Defendant to certify Plaintiff De La Fuente's name for placement on the 2016 general election ballot for the office of President of the United States.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question). Plaintiffs bring this action under 42 U.S.C. § 1983. Plaintiffs also seek relief authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

2. This Court is an appropriate venue for this action pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

3. Plaintiff Roque "Rocky" De La Fuente, in an adult resident-citizen of Florida. He is an independent candidate for President of the United States in the 2016 general election. He meets all constitutional qualifications to run as a candidate for President of the United States and to serve in that office.

4. Plaintiff Adanys Clerch is an adult resident-citizen of Jefferson County, Alabama. She is a qualified and registered Alabama voter and an elector for Plaintiff De La Fuente. She and her husband helped organize and signed signature petitions for Plaintiff De La Fuente's access to the ballot in Alabama in the Democratic Party primary for U.S. President in the 2016 election cycle and for placement on the general election ballot in Alabama as an independent candidate for that office on the 2016 general election ballot. She and her husband cast their

votes for Plaintiff De La Fuente in the 2016 Democratic Party primary election in Alabama. They wish to cast their vote as Alabama voters for Plaintiff De La Fuente in the 2016 general election for U.S. President and wish to have his name on the general election ballot so that other like-minded Alabama voters will see him as a choice on Alabama's 2016 general election ballot for U.S. President as well.

5. Defendant John H. Merrill is, upon information and belief, an adult resident-citizen of Montgomery, Alabama. He is the Secretary of State for the State of Alabama, and as such, is charged with the general administration of the election laws and specific duties under such laws which are relevant to the issues in this lawsuit.

### **FACTS**

6. Plaintiff De La Fuente duly qualified to have his name placed on the 2016 Democratic Party primary election ballot in Alabama for the office of U.S. President and his name appeared on that ballot for that office. He did not win the Democratic Party nomination in Alabama for the office of U.S. President.

7. Plaintiff De La Fuente, with the support of Plaintiff Clerch and other qualified Alabama voters who wish to cast their vote for United States President in the 2016 election for Plaintiff De La Fuente and who seek to have his name appear on the general election ballot in Alabama for that office, after the expenditure of considerable financial resources, time, and effort, timely submitted, by Alabama's August 18, 2016 deadline a sufficient number of valid signatures and fulfilled all

other requirements imposed by Alabama law for his placement on the 2016 general election ballot in Alabama as an independent candidate for the office of United States President.

8. On or about August 25, 2016, the Defendant determined and publicly announced that Plaintiff De La Fuente had duly met the requirements for placement on the 2016 general election ballot in Alabama as an independent candidate for the office of President of the United States and would be placed on that ballot in that capacity.

9. Prior to and on August 25, 2016, when the Defendant made and announced the determination in the foregoing Paragraph, Defendant was well aware that Plaintiff De La Fuente's name had appeared on the 2016 Alabama Democratic Party primary election ballot for the office of President of the United States and, in fact, Defendant was charged with the printing and administrative of that primary election ballot and the general election ballot for the 2016 election cycle in Alabama.

10. Nevertheless, at the end of the day on August 29, 2016, an "Elections Analyst," acting as an agent of Defendant Merrill, sent an email to Plaintiff De La Fuente, advising him for the first time that the Defendant would not place Plaintiff De La Fuente's name on the 2016 Alabama general election ballot for the office of United States President because Plaintiff De La Fuente's name had appeared on the 2016 primary election ballot in Alabama as a candidate for the office of United States President and, according to this email, §17-9-3 of the Code of Alabama

(1975) prohibits, *inter alia*, the printing on the general election ballot in Alabama of the name of any independent candidate for any office when that independent candidate ran for such office as a candidate for a political party in a primary election during that election year.

11. On September 1, 2016, through his counsel, James C. Linger, Esquire, Plaintiff De La Fuente wrote to Defendant, through Defendant's "Elections Analyst" in response to the August 29, 2016 email, protesting the decision announced in the August 29, 2016 email and asking Defendant to immediately reconsider the decision and the erroneous application of §17-9-3 of the Code of Alabama (1975), and to agree to place Plaintiff De La Fuente's name on the 2016 general election ballot in Alabama, as previously announced by the Defendant.

12. On September 2, 2016, Defendant Merrill, through his Director of Elections, wrote to attorney Linger advising him that, based on §17-9-3(b), Code of Alabama (1975) and other related provisions of Alabama statutory law which, according to the Director of Elections, make clear that §17-9-3(b) applies to candidates for the office of United States President, Defendant Merrill could not and would not certify the placement of Plaintiff De La Fuente's name on the general election ballot in Alabama as an independent candidate for the office of President of the United States.

13. Section 17-9-3(b), Code of Alabama (1975) provides in pertinent part as follows:

“(b) ... The judge of probate may not print on the ballot the name of any independent candidate who was a candidate in the primary election of that year.”

was a candidate for the nomination of a different political party in the primary election of that year.”

14. Section 17-13-101, Code of Alabama (1975) provides as follows:

“The provisions of Section 17-9-3 and this chapter shall apply to presidential preference primaries held under the provisions of this article unless clearly inconsistent herewith or inappropriate for the conduct of a presidential preference primary. Any political party holding a presidential preference primary may promulgate rules for the conduct of such primary not inconsistent with the provisions of this article.”

15. Notwithstanding the indisputable facts that Plaintiff De La Fuente meets all legally mandated qualifications to stand as a candidate for the office of President of the United States and timely met procedural requirements in Alabama for the placement of his name on the 2016 general election ballot as an independent candidate for the office of President of the United States, Defendant Merrill has refused and continues to refuse to certify Plaintiff De La Fuente’s name for placement on the 2016 general election ballot in Alabama as an independent candidate for the office of President of the United States solely based on the Defendant’s understanding and application of Alabama’s statutory law which adds the additional qualification requirement embodied in §17-9-3(b), Code of Alabama (1975) to the effect that in order to be a independent candidate in Alabama for President of the United States, a candidate cannot be someone whose name previously appeared on a party’s primary election ballot for the office of President of the United States in the election year at issue.

16. The Qualifications Clause of the United States Constitution, set forth in

Article II, Section 1, Clause 5, establishes the exclusive list of qualifications for a person to be eligible to run for election in this country as a candidate for the Office of President of the United States. It provides as follows:

“No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.”

17. The State of Alabama has no lawful authority to impose additional qualifications on a candidate for the office of President of the United States beyond those qualifications set forth in the Qualifications Clause of the United States Constitution.

18. By refusing to certify Plaintiff De La Fuente’s name on the 2016 general election ballot in Alabama as an independent candidate for President of the United States, based on §17-9-3(b) and related statutory provisions, Alabama law and/or the Defendant’s application of the same impermissibly and unconstitutionally violates the Qualifications Clause of Article II, Section 1 of the United States Constitution and Plaintiffs’ rights under the same and under the First and Fourteenth Amendments to the United States Constitution.

19. The election of a President of the United States implicates a uniquely important national interest and votes for that office are interrelated with votes for the office by voters in other states around the country, such that the State of Alabama has a lesser interest and lesser rights in regulating elections for the office of President of the United States than it has in regulating its own state and local

elections.

20. The State of Alabama has selectively, arbitrarily, and capriciously applied §17-9-3 to bar Plaintiff De La Fuente's placement on the general election ballot in Alabama as an independent candidate for the office of President and has knowingly refrained from applying this statutory provision in similar circumstances in the past.

21. For example, in 1992, notwithstanding the existence of the same statutory provision at the time, the State of Alabama placed Lyndon LaRouche's name on the general election ballot in Alabama as an independent candidate for United States President, even though his name had appeared on the Democratic Party's primary election ballot for United States President in Alabama earlier that same year and he had lost the party's primary election that year for that office.

22. Indeed, no presidential candidate ever had been kept off a general election ballot as a minor party or independent candidate, on ground that he or she had run and lost in a major party presidential primary, until 2012, when such a candidate was kept off the ballot in one state, but with the proviso that he was still free to run in the general election as an independent candidate for President.

23. Presidential candidates who were on the ballot in a presidential primary and then were placed on the general election ballot in that same state and same year as the candidate of a different party or as an independent, in states across the country with "sore loser" provisions like that codified in §17-9-3(b), Code of Alabama (1975), have included candidates as diverse as Theodore Roosevelt in 1912,

Robert LaFollette in 1924, Jacob Coxey in 1932, Douglas MacArthur in 1952, Eugene McCarthy in 1968, John B. Anderson in 1980, Lyndon LaRouche in 1984, 1988, and 1992, David Duke in 1988, Lenora Fulani in 1992, Ron Paul in 2008, Roseanne Barr in 2012, and Gary Johnson in 2012.

24. In addition to the reasons that §17-9-3(b), Code of Alabama (1975), is unconstitutional as applied to Plaintiffs and to presidential candidates and their voters and supporters in general, Defendant's application of the statute is erroneous as well because the true candidates in presidential primaries are candidates for Delegate to a national presidential convention, whereas the true candidates on the general election ballot in November are candidates for Presidential Elector. Candidates for Delegate and candidates for Presidential Elector are not the same individuals. Therefore, no individual is running in both a presidential primary and on the general election ballot for President. Presidential candidates' names appear on the general election ballots not in their role as candidates, but as markers for competing slates of presidential elector candidates.

25. Plaintiff Clerch seeks to vote for Plaintiff De La Fuente as an independent candidate for President of the United States on the general election ballot in Alabama in 2016 and in the future and to associate with others to support his candidacy.

26. Plaintiff De La Fuente's candidacy as an independent candidate is the vehicle by which Plaintiff De La Fuente seeks election through the 2016 Alabama general election ballot and through which both Plaintiffs seek to exercise their

rights to political participation, to advocate their agenda for political purposes, and to put forward their political beliefs and points of view, as well as those of Plaintiff De La Fuente's constituents, and it is the vehicle by which he and other electors seek his access to the ballot in Alabama for the 2016 general election and in the future.

27. Plaintiff De La Fuente has been precluded from gaining access to the ballot for the 2016 general election and Plaintiffs De La Fuente and Clerch have been precluded from the opportunity to have Plaintiff De La Fuente on the ballot as an independent candidate to cast their vote for because of the Alabama's law at issue in this Complaint and the Defendant's erroneous application of the same to Presidential candidates.

28. The Alabama statutes at issue if allowed to remain as currently written and as applied to Plaintiffs, will prevent Plaintiff De La Fuente from gaining access to the ballot in Alabama for the general election for the office of President of the United States and will prevent Plaintiff Clerch from being able to cast her vote in Alabama for Plaintiff De La Fuente as an independent candidate.

29. Alabama's rejection of Plaintiff De La Fuente's efforts to get on the Alabama general election ballot for President of the United States has caused and will cause tremendous harm to his candidacy will continue to cause irreparable harm if allowed to stand and not immediately reversed.

30. The Alabama statutes at issue serve no compelling state interest and no constitutionally permissible state interest at all, are excessively burdensome and

discriminatory, and are unconstitutional as applied to the Plaintiffs and their supporters.

31. Defendant has at all times relevant to this action acted under color of state law.

32. Defendant's actions under color of law have deprived and will continue to deprive Plaintiffs of their fundamental constitutional rights, and unless declared unconstitutional and enjoined, will continue to inflict continuing and irreparable injury to the Plaintiffs and will continue to run a foul of the United States Constitution.

33. Defendant's application of the §17-9-3(b) to presidential candidates in general and to Plaintiff De La Fuente specifically causes and will continue to cause irreparable injury to Plaintiffs' fundamental constitutional rights for which there is no adequate remedy at law. Plaintiffs are likely to succeed on the merits in this action, and both balance of harm and the public interest favor granting an injunction as hereinbelow requested.

#### **CAUSE OF ACTION (42 U.S.C. § 1983)**

34. Section 17-9-3(b), Code of Alabama (1975), and related statutory provisions on which the Defendant relies in this case, as applied to these Plaintiffs violate Plaintiffs' rights to free speech and association guaranteed to them by the First and Fourteenth Amendments to the United States Constitution.

35. Section 17-9-3(b), Code of Alabama (1975), and related statutory provisions on which the Defendant relies in this case, as applied to these Plaintiffs violate

Plaintiffs' right to cast their votes effectively and to advance their political beliefs as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

36. Such provisions of Alabama law as applied to these Plaintiffs violate Plaintiffs' rights to equal protection of the laws guaranteed under the Fourteenth Amendment to the United States Constitution.

37. Such provisions of Alabama law as applied to these Plaintiffs violate the Qualifications Clause, set forth in Article II, Section 1 of the United States Constitution.

### **CLAIM FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. Enter a judgment declaring the Alabama state law provisions at issue to be violative of the Qualifications Clause of Article II, Section 1 of the United States Constitution and violative of the First and Fourteenth Amendments to the United States Constitution and otherwise unconstitutional as applied to these Plaintiffs and to candidates for the office of President of the United States and their supporters and voters;
2. Issue a preliminary and permanent injunction prohibiting the Defendant, his agents, employees, and other persons in concert with him from enforcing the state statutes at issue to prevent Plaintiff De La Fuente from gaining access to the ballot as an independent candidate for President of the United States for the 2016

general election ballot in Alabama and to deny Plaintiffs the right to vote for Plaintiff De La Fuente as an independent candidate for President of the United States on that general election ballot in Alabama;

3. Issue a preliminary and permanent injunction requiring the Defendant to take all necessary and appropriate steps to certify Plaintiff De La Fuente as an independent candidate for President of the United States to be placed on the general election ballot in Alabama for the 2016 general election;

5. Give this case expedited treatment on this Honorable Court's docket to permit Plaintiffs to effectively campaign and to permit Plaintiff De La Fuente to actively participate as an independent candidate in for President of the United States;

6. Award Plaintiffs reasonable attorney's fees and costs of this action;

7. Grant Plaintiffs such other and further relief as this Court deems just and equitable.

Respectfully Submitted.

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/s/ David I. Schoen  
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