



### **Jurisdiction and Venue**

2. This Court has original jurisdiction over this case under Article III of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3).

3. This suit is authorized by 42 U.S.C. § 1983.

4. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in the Northern District of Georgia under 28 U.S.C. § 1391(b) and in the Atlanta Division under Local Rule 3.1.

### **Parties**

6. Plaintiff Roque De La Fuente is a United States citizen and a resident of the State of Florida. He was an independent candidate for President of the United States in the 2016 general election, and his name appeared on the general-election ballot in more than 20 states.

7. De La Fuente intends to be a candidate for President again in 2020, and he expects to seek ballot access in Georgia as an independent or political-body candidate.

8. Defendant Brian P. Kemp is the Secretary of State of the State of Georgia (hereinafter, the “Secretary”). He is the chief election official of the State of Georgia. He is charged by statute with enforcing Georgia’s deadline for independent presidential candidates to file their slate of presidential electors and with examining nominating petitions submitted by independent presidential

candidates to determine whether a petition contains a sufficient number of valid signatures. At all relevant times, the Secretary exercised his authority under color of state law within the meaning of 42 U.S.C. § 1983. He is sued in his official capacity only.

### **Factual Background**

9. In order to appear on Georgia's general-election ballot, an independent presidential candidate must file a notice-of-candidacy form identifying his or her slate of presidential electors "no later than 12:00 Noon on the Friday after the fourth Monday in June." O.C.G.A. § 21-2-132(d)(1) (2015). In 2016, that deadline was Friday, July 1. In 2020, that deadline will be Friday, June 26.

10. Once submitted, Georgia law does not permit an independent presidential candidate to replace those initial presidential electors before the election.

11. Georgia does not print the name of presidential electors on its general election ballot.

12. Georgia law also requires independent presidential candidates to file a nominating petition containing a sufficient number of valid signatures "no later than 12:00 Noon on the second Tuesday in July immediately prior to the election."

O.C.G.A. § 21-2-132(e) (2015). In 2016, that deadline was Tuesday, July 12. In 2020, that deadline will be Tuesday, July 14.

13. Under Georgia law, a signature on a nominating petition is valid and must be counted if it matches the signature on file of a duly qualified and registered voter who is eligible to vote for the office to be filled.

14. Voters who are registered but inactive are eligible to sign a petition and to have their signatures counted.

15. Because of a court order in *Green Party of Ga. v. Kemp*, No. 1:12-CV-1822-RMS, 2016 WL 1057022, at \*26 (N.D. Ga. Mar. 17, 2016), the number of valid signatures required on the nominating petition in 2016 was 7,500.

16. Plaintiff Roque “Rocky” De La Fuente mounted a petition drive in Georgia and submitted petitions containing approximately 15,000 signatures to the Defendant, Georgia Secretary of State Brian P. Kemp, on July 12, 2016. He also submitted his slate of presidential electors on the same day.

17. The Secretary accepted De La Fuente’s petitions but rejected his slate of electors as untimely.

18. The Secretary delegated the task of validating signatures to county election officials in each Georgia county in which a voter signed the Plaintiff’s nomination petition by sending a duplicate of the petition to each such official

along with a one-page letter asking them to use certain codes on the petition when verifying signatures to indicate why a particular signature was deemed invalid.

19. The Secretary provided no instructions on how to go about the verification process, nor any guidance on what the law requires for a signature to be considered valid.

20. The absence of instruction from the Secretary led to a crazy-quilt of inconsistent approaches throughout the counties.

21. For instance, some of the Secretary's delegees failed to count the signatures of inactive voters as valid.

22. Some of the Secretary's delegees failed to count the signatures of voters who had moved since they registered to vote and failed to treat the signature as a change-of-address notice.

23. Some of the Secretary's delegees failed to use the voter's date of birth appearing on the petition to identify the voter and to validate the voter's signature.

24. Some of the Secretary's delegees failed to count signatures of voters who had submitted valid voter registration applications to the Secretary's delegees prior to the date the eligible voter recorded their signature on De La Fuente's petition.

25. Even in the face of the obviously different methodologies and yield rates among his delegees, the Secretary did nothing to ensure that his delegees had,

in fact, examined the petition signatures in accordance with the law and to the extent necessary to determine their validity under both federal and Georgia law.

26. On Monday, August 29, 2016, the Secretary of State notified De La Fuente that his petition to appear on the ballot in Georgia was denied because the total number of verified signatures was only 2,964.

27. The review process yielded a signature validation rate of just around 20%—well below industry norms of 65% or more—despite the fact that De La Fuente had used professional, experienced petition circulators.

28. The Secretary's haphazard and error-prone validation process resulted in thousands of signatures being improperly rejected.

29. Had the Secretary of State and his delegees examined the petition in accordance with the law and to the extent necessary to determine their validity, the Defendant would likely have found that De La Fuente's petition contained a sufficient number of valid signatures.

### **Claim One**

30. Georgia's deadline for independent presidential candidates to file their slate of presidential electors burdens De La Fuente's right to associate for the advancement of political beliefs and is not justified by a sufficiently-weighty state interest.

31. Georgia's deadline for independent presidential candidates to file their slate of presidential electors violates rights guaranteed to De La Fuente by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983.

### **Claim Two**

32. The Secretary of State's process for validating signatures on nominating petitions for independent presidential candidates burdens De La Fuente's right to associate for the advancement of political beliefs and is not justified by a sufficiently-weighty state interest.

33. The Secretary of State's process for validating signatures on nominating petitions for independent presidential candidates violates rights guaranteed to De La Fuente by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983.

34. The Secretary of State's process for validating signatures on nominating petitions for independent presidential candidates violates Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507.

### **Relief**

35. A real and actual controversy exists between the parties.

36. De La Fuente has no adequate remedy at law other than this action for declaratory and equitable relief.

37. De La Fuente is suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

WHEREFORE, De La Fuente respectfully prays that this Court:

- (1) assume original jurisdiction over this case;
- (2) enter a declaratory judgment that Georgia's deadline for independent presidential candidates to file their slate of presidential electors violates rights guaranteed to De La Fuente by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983;
- (3) enter a declaratory judgment that the Secretary of State's process for validating signatures on nominating petitions for independent presidential candidates violates rights guaranteed to De La Fuente by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983;
- (4) enter a declaratory judgment that the Secretary of State's process for validating signatures on nominating petitions for independent presidential candidates violates Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507;



- (5) enjoin the Secretary of State from enforcing Georgia's deadline for independent presidential candidates to file their slate of presidential electors in future elections;
- (6) enjoin the Secretary of State from failing to adopt adequate standards, practices, and procedures to ensure that the process for validating signatures on nominating petitions for independent presidential candidates complies with the Constitution and the National Voter Registration Act;
- (7) award De La Fuente nominal damages;
- (8) award De La Fuente the costs of this action together with his reasonable attorneys' fees under 42 U.S.C. § 1988 and 52 U.S.C. § 20510; and
- (9) retain jurisdiction of this action and grant De La Fuente any further relief which may in the discretion of the Court be necessary and proper.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_, 2017, I electronically filed the foregoing First Amended Complaint with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Bryan L. Sells: bryan@bryansellslaw.com  
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