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September 30, 2018

Via CM/ECF Electronic Filing System

Molly C. Dwyer, Clerk of the Court
United States Court of Appeals for the Ninth Circuit

Re: ***Roque "Rocky" De La Fuente v. Padilla et al.*, Case No. 17-56668**
Appellant Roque De La Fuente's Second Rule 28(j) Citation to Supplemental Authority:
***Graveline v. Johnson, et al.*, Case No. 18-1992 (6th Cir. September 6, 2018),**
Slip Opinion Attached

Dear Clerk:

The Sixth Circuit's rejection of Defendants-Appellants' appeal of the district court's refusal to stay its preliminary injunction of Michigan's requirement that independent candidates collect 30,000 signatures within 180 days supports Appellant's showing that California's challenged statutes are unconstitutional and the lower court erred granting Appellees' summary judgment motion. Michigan requires just 1% of prior vote collected in 180 days in contrast to California's more onerous 1% of all registered voters collected in just 105 days. Slip Op. at 7; Appellant's Br. at 1,3-5.

The Sixth Circuit preliminarily joins the Third and Eleventh Circuits affirming judgments that excessive signature requirements in combination with other ballot access rules which historically block independent candidates from the ballot are unconstitutional. Affirming the lower court's judgment will trigger a severe circuit split.

Applying the *Anderson-Burdick* framework, the Sixth Circuit ruled the district court did not abuse its discretion ruling that Plaintiffs are likely to succeed on the merits that Michigan's requirement that independent candidates collect 30,000 signatures in 180 days to access the ballot imposed a severe burden on independent candidates and

unconstitutional where no independent candidate had qualified for the ballot since the challenged laws went into effect in 1988. Slip Op. at 6-10; Appellant's Br. at 15-20,28-33. Citing *Storer v. Brown*, the Court explained that: "the fact that no independent candidate for statewide office has appeared on the ballot in thirty years indicates that a reasonably diligent candidate could not meet the signature requirements." Slip. Op. at 9-10. While *Anderson-Burdick* requires the articulation of "precise" interests, the Court found Michigan's laws were not narrowly drawn to protect the "generalized" interests of election integrity, preventing voter confusion and frivolous candidates. Slip Op. at 6,11; Appellant's Br. at 22-23.

Citing *Anderson* and the Eleventh Circuit's *Green Party of Georgia v. Kemp*, the Court explained higher signature requirements upheld under *Jenness v. Fortson*, applied "a less stringent framework than that required by *Anderson* and *Burdick*." Slip Op. at 9-10. The Court found the district court's 5,000 signature remedy (supported by Richard Winger's expert testimony) "within its equitable discretion." Slip Op. at 12-13; Appellant's Br. at 10,23-25.

Respectfully submitted,

/s/ *Paul Rossi*
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Attachment

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2018, I electronically filed the foregoing citation to supplemental authority with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit through the appellate CM/ECF system.

I further certify that all participants in this appeal are registered CM/ECF users and that service will be automatically accomplished on all participants via this Court's appellate CM/ECF system.

Dated: September 30, 2018

/s/ Paul Rossi
Paul A. Rossi, Esquire
Counsel for Plaintiff-Appellant

CERTIFICATION

I hereby certify that the foregoing citation to supplemental authority complies with the word-count limitation of Local Rule of Appellant Procedure 28(j). The body of the foregoing document contains 350 words based on the word-count function of Microsoft Word.

Dated: September 30, 2018

/s/ Paul Rossi
Paul A. Rossi, Esquire
Counsel for Plaintiff-Appellant