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Civil Rights • International Law • Antitrust • Election Law • Complex Litigation

September 20, 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 Rule 28(j) Citation to
Supplemental Authority: *Graveline v. Johnson, et al.*, Case No.
12354 (E.D. Mich. August 27, 2018), Slip Opinion Attached.**

Dear Clerk:

Graveline v. Johnson, preliminarily enjoining Michigan’s ballot access requirement that independent candidates collect 30,000 signatures as probably unconstitutional in combination with other restrictions, supports Appellant’s showing that California’s challenged statutes are unconstitutional and the lower court erred granting Appellees’ summary judgment motion.

Michigan requires independent candidates to collect 30,000 valid signatures within 180 days and filed 110 days before the election. Slip Op. at 4. In contrast, California required independent presidential candidates in 2016 to collect 178,039 valid signatures within 105 days. Appellant’s Br. at 1,3-5. Adjusting for California’s larger population (3.95952 times Michigan) California’s signature requirement towers 59,253 larger than Michigan while requiring collection in 75 fewer days than Michigan.

Applying the *Anderson-Burdock* framework, the court found Michigan’s restrictions severely impaired protected speech and applied strict scrutiny. Slip Op. at 8-16; Appellant’s Br. at 17,40-41. The court found the “combined effect” of Michigan’s regulations unconstitutional burdened speech. Slip Op. at 12-14; Appellant’s Br. at 18-23. The court relied on *Storer* and this Court’s decision in *Nader v. Brewer*, that historical exclusion of independent candidates is instructive of the “real impact” of ballot restrictions. Slip Op. at 12-14,16; Appellant’s Br. at 30-33. No independent candidate appeared on

Michigan's ballot since 1988, similar to California's exclusion since 1992. Burdens falling unequally on independent candidates impair constitutionally protected associational choices and independent candidates are important for voter choice. Slip Op. at 15-17; Appellant's Br. at 15-20,28-29.

The court rejected the same generalized interests advanced by Appellees as lacking precision and restrictions not narrowly tailored to meet those interests. Slip Op. at 19-22; Appellant's Br. at 22-23. Unlike the court below, the Michigan court accepted Winger's testimony, noting its acceptance in 10 states and adopted Winger's 5,000 signature requirement as more narrowly advancing legitimate interests. Slip Op. at 10,23-25.

This case further establishes that when multiple courts have relied on Winger's testimony, a jury could reasonably credit Winger's testimony in finding California's signature and collection restrictions unconstitutionally excessive and the lower court's snarky refusal to credit Winger's testimony in support of Plaintiff-Appellant's claims on Defendants-Appellees' summary judgment motion is, itself, reversible error. Appellant's Br. at 3,7-12,14-15,22-25,28-29,31-37.

Respectfully submitted,

/s/ Paul Rossi

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Attachment

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 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 20, 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 20, 2018

/s/ Paul Rossi
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