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October 3, 2018

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *De La Fuente v. State of California*, Case No. 17-56668

Dear Ms. Dwyer:

Defendant California Secretary of State Alex Padilla submits the following response to the September 20, 2018, letter of Plaintiff Roque De La Fuente in the above-entitled matter.

The officially unpublished case of *Graveline v. Johnson*, __ Fed. Appx. __, 2018 WL 4240050 (6th Cir. Sept. 6, 2018), cited by De La Fuente in his letter, considers the constitutionality of the signature-gathering requirements for independent candidates for Michigan Attorney General to obtain placements on Michigan general election ballots. The *Graveline* Court majority concluded that the timing of Michigan's requirements unfairly disadvantages such independent candidates, because the deadline for submitting signatures is well before the deadline for the major political parties to select their nominees for that same office, and thus is well before the time when the electorate would be energized for that election contest and potentially inclined to sign independent candidates' petitions. *Id.* at *4.

That crucial aspect of the *Graveline* case is not present in the *De La Fuente* case. The 2016 California presidential primary election occurred on June 7, 2016, and the deadline for a California independent presidential candidate to submit supportive voters' signatures was more than two months later, on August 12, 2016, when the voters would have had enough information to know whether they wanted alternative choices to the major parties' candidates. Independent presidential candidates in California thus do not suffer the timing disadvantage that drives the opinion in *Graveline*. (Moreover, California has recently moved the month for future primary elections even earlier, to March, without changing the deadlines for signature gathering for independent presidential candidates.)

In addition, the *Graveline* Court minority persuasively criticizes the majority opinion for not taking into account the size of the voter pool from which potential petitioner signers could be

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drawn, commenting expressly that the majority opinion's reasoning would not make sense in California. 2018 WL 4240050 at *7, n.3.

(The text of the body of this letter is 309 words.)

Sincerely,

/s/ Jonathan M. Eisenberg

JONATHAN M. EISENBERG
Deputy Attorney General

For XAVIER BECERRA
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