

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ROQUE “ROCKY” DE LA FUENTE
GUERRA,

Plaintiff,

v.

Case No. 4:16-cv-00196-RH-CAS

STATE OF FLORIDA and
FLORIDA SECRETARY OF STATE,

Defendants.

FLORIDA SECRETARY OF STATE’S ANSWER

The Florida Secretary of State hereby answers the complaint filed in this case (DE 1) and denies that the plaintiff is entitled to any relief.

ADMISSIONS AND DENIALS

Pursuant to Fed. R. Civ. P. 8(b), the Secretary responds to the specific allegations contained in the numbered paragraphs of the complaint as follows:¹

¹For convenience and ease of reference only, the Secretary uses the section headings used in the complaint.

Jurisdiction and Venue

1. Admitted that the complaint purports to be a section 1983 action. Denied that the plaintiff is entitled to any relief. Otherwise denied.
2. There is no case or controversy between the Secretary and the plaintiff. The plaintiff also does not have standing to bring this action. This Court therefore lacks subject matter jurisdiction, and the allegation in this paragraph is denied.
3. Without knowledge and denied.
4. Admitted that Secretary Detzner presently is the Florida Secretary of State. Otherwise, denied.
5. The allegation in this paragraph is not directed to the Secretary and does not require a response from him.

Elections Statutes in Question

6. The statutory provision cited in this paragraph speaks for itself. Denied that the plaintiff cited and/or quoted the statute accurately. Otherwise, denied.
7. Denied as phrased.
8. The allegations in this paragraph are not directed to the Secretary and do not require a response from him.
9. Denied.

Constitutional Provisions

10. The constitutional provision cited in this paragraph speaks for itself; otherwise denied.

11. The constitutional provision cited in this paragraph speaks for itself; otherwise denied.

12. This paragraph was omitted from the complaint and does not require a response.

13. This paragraph was omitted from the complaint and does not require a response.

14. This paragraph was omitted from the complaint and does not require a response.

15. The constitutional provision cited in this paragraph speaks for itself; otherwise denied.

16. The constitutional provision cited in this paragraph speaks for itself; otherwise denied.

Count 1

17. The statute cited in this paragraph speaks for itself; otherwise denied.

18. Denied.

DEFENSES

Pursuant to Fed. R. Civ. P. 8(b) and (c), the Secretary asserts the following defenses:

1. The plaintiff fails to state a claim for which relief could be granted.
2. The plaintiff lacks standing to sue the Secretary because the Secretary has not engaged in any conduct, or threatened any conduct, that might cause the plaintiff harm. There also is no case or controversy between the plaintiff and the Secretary. This Court lacks subject matter jurisdiction.
3. The plaintiff lacks standing for another reason. He asks for declaratory and injunctive relief relative to a statutory provision directed towards presidential candidates with no party affiliation. While the plaintiff intimates that he may now have no party affiliation (by alleging that he “meets all the statutory requirements to place his name on the ballot except for the petition requirements of FS 103.021(3)”), he fails to specifically allege that he in fact has no party affiliation. This omission may not be an oversight. The plaintiff separately filed suit in this Court on January 15, 2016, in which he claimed to be “a candidate for President, *a registered Democratic voter*, an Hispanic, and has selected the *Democratic Party* as the political party with whom he chooses to seek the nomination for President.” *Guerra, et al., v. Florida Secretary of State, et al.*, No. 4:16-cv-00026-RH-CAS (N.D. Fla. 2016), DE 1 at 2 (emphasis supplied). The plaintiff’s earlier case was dismissed as

moot less than a month ago, on April 19, 2016. *Id.*, DE 23. The plaintiff fails to address his earlier allegations, made in this Court in a separate suit, that militate against a factual basis for standing in this case.

5. The plaintiff fails to allege any factual basis to support a claim of attorney fees against the Secretary, and the plaintiff is otherwise not entitled to an award of attorney fees.

WHEREFORE, the Secretary prays that the Court dismiss the complaint filed against him and enter judgment in his favor.

/s/ Ashley E. Davis

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to N.D. Fla. Loc. R. 5.1(F), each party on whom this answer is to be served is represented by an attorney who will be served through this Court's CM/ECF system upon filing on this 17th day of May, 2016.

/s/ Ashley E. Davis
ATTORNEY