

Morgan J.C. Scudi (SBN 147942)
5440 Morehouse Dr. Suite 4400
Phone: (858)-558-1001
Fax: (858) 558-1122
Lucas@rdlfg.com
Attorney for Plaintiff
Roque "Rocky" De la Fuente

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROQUE "ROCKY" DE LA FUENTE,

Plaintiff,

v.

ALEX PADILLA, in his official capacity as
the Secretary of State of the State of
California

Defendant.

CASE NO: TBD

COMPLAINT FOR:

1) Injunctive and Declaratory Relief

JURY TRIAL REQUESTED

PLAINTIFF'S COMPLAINT

1. Plaintiff, ROQUE "ROCKY" DE LA FUENTE (hereinafter either "Roque De La Fuente" or "Mr. De La Fuente"), by and through his undersigned legal counsel, file this civil action for prospective equitable relief against defendant, ALEX PADILLA, in his official capacity as the Secretary of State for the State of California, requesting permanent injunctive relief enjoining defendant from certifying California's 2016 election results without including write-in votes cast for plaintiff for President of the United States by the voters of California.

1 2. Plaintiff alleges that defendant intentionally, and with an illegitimate
2 animus, selectively refused to certify plaintiff's slate of 57 presidential electors for
3 his write-in campaign for President of the United States in California's 2016
4 general election while defendant certified the Republican slate of 55 presidential
5 electors which included a candidate for presidential elector who was
6 constitutionally disqualified to serve as a presidential elector under Article II,
7 Section 1, Clause 2 of the United States Constitution and candidates for presidential
8 elector from other candidates for President of the United States whose address did
9 not match an address recorded on a California voter registration application.
10 Defendant's selective enforcement of the laws governing the certification of
11 presidential electors against plaintiff violated rights guaranteed to plaintiff under
12 the Equal Protection Clause of the Fourteenth Amendment to the United States
13 Constitution.

14 3. As a direct and proximate result of defendant's selective enforcement
15 of California and federal law, defendant continues to refuse to tabulate any write-in
16 vote cast for plaintiff for President of the United States in the 2016 California
17 general election.

18 4. Plaintiff respectfully requests that this Court enjoin defendant from
19 certifying the results of the 2016 California general election for the office of
20 President of the United States.
21
22
23
24
25
26
27
28

JURISDICTION

5. Jurisdiction lies in this Court under 28 U.S.C. § 1331, providing that district courts shall have original jurisdiction of all civil actions arising under the Constitution of the United States.

6. Moreover, jurisdiction lies under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a), the jurisdictional counterpart of 42 U.S.C. § 1983 as plaintiff alleges violation of rights guaranteed to him under the Fourteenth Amendment to the United States Constitution.

VENUE

7. Venue is proper in the United States District Court for the Eastern District of California under 28 U.S.C. § 1391 as defendant exercises his authority within the Eastern District of California, maintains an office within this district and all of the operative acts or omissions have or will occur in this district.

PARTIES

8. Plaintiff, Roque De La Fuente, is a registered member of the Democratic Party in the State of Florida and was an independent candidate for President of the United States in the 2016 general election. Plaintiff is a natural-born citizen of the United States of Mexican-American heritage. Plaintiff is a resident of the State of Florida residing at 625 West Winter Park Street, Orlando, Florida.

9. Defendant, Alex Padilla, is the California Secretary of State. Defendant is a registered member of the Democratic Party and publicly endorsed Hillary Clinton for President of the United States. Defendant is the supervisor and chief election official for the State of California and charged with enforcement of California's election laws. Specifically, defendant is charged with enforcement of federal and state laws governing the filing and certification of candidates for presidential electors to be elected in the general election. Defendant's place of business is located at 1500 11th Street, Sacramento, CA 95814.

FACTUAL ALLEGATIONS

10. Plaintiff is a registered Democrat and was an independent candidate for the office of President of the United States in the 2016 general election.

11. Plaintiff has announced that he intends to be a candidate for the 2020 Democratic Party nomination for President of the United States.

12. Plaintiff has also announced that in the event he does not secure the 2020 Democratic nomination for President of the United States, he will be an independent candidate for President of the United States in the 2020 general election.

13. Prior to plaintiff's independent campaign for President of the United States, plaintiff was a candidate on the California Democratic Presidential primary election ballot for seeking the 2016 nomination of the Democratic National

1 Convention for President of the United States opposing eventual nominee Hillary
2 Clinton.

3
4 14. Plaintiff appeared as a candidate for the office of President of the
5 United States on the general election ballots in twenty (20) states and ran as a write-
6 in candidate in states where he did not qualify to have his name appear directly on
7 the general election ballot.
8

9 15. The California Election Code requires that candidates for the Office of
10 President of the United States timely file a slate of 55 qualified presidential electors
11 in order to appear on the general election ballot or, in the case of write-in
12 candidates, to have vote cast for them to be tabulated and included in the official
13 election results.
14

15
16 16. The California Election Code requires that defendant must review and
17 certify slates of presidential electors.
18

19 17. Section 7300 of the California Election Code requires major political
20 parties to file their slate of presidential electors for the 2016 general election on or
21 before October 1, 2016.
22

23 18. The California Republican Party is a major political party and filed
24 their slate of 55 presidential electors for the 2016 general election on October 3,
25 2016.
26

27 19. One of the 55 presidential electors filed by the California Republican
28 Party held an "Office of Trust" with the federal government as was disqualified to

1 serve as a presidential elector.

2 20. Accordingly, the California Republican Party failed to timely file a
3 slate of 55 qualified presidential electors and should not have been qualified by
4 defendant to have their 55 presidential electors appear on the California general
5 election ballot.
6

7
8 21. Despite the constitutional defect, defendant certified the California
9 Republican Party's slate of 55 presidential electors.

10 22. Section 8652 of the California Election Code requires write-in
11 candidates for the Office of President of the United States to file a slate of 55
12 presidential electors on or before October 25, 2016 (i.e., 14 days prior to the date
13 set for the general election).
14

15 23. Plaintiff filed a slate of 57 presidential electors with defendant on
16 October 10, 2016 at the San Diego Elections office.
17

18 24. At the time plaintiff's slate of presidential electors was filed, elections
19 staff checked the signatures of all 57 presidential electors and confirmed that the
20 filing would be sent to defendant's office in Sacramento, California.
21

22 25. Plaintiff was notified on October 25, 2016 that his slate of presidential
23 electors was not certified by defendant solely because defendant could not match
24 the address recorded for seven of plaintiff's electors with the address they recorded
25 on their voter registration applications.
26

27
28 26. Numerous presidential electors filed by other political parties were

1 either not registered voters of the State of California or were not even residents of
2 the State of California.

3
4 27. Accordingly, defendant intentionally refused to apply the same
5 standard for the certification of presidential electors that he applied to plaintiff's
6 slate of 57 presidential electors to any other slate of presidential electors filed by
7 any other candidate for the office of President of the United States for the 2016
8 general election.
9

10 28. No provision of the California Election Code requires presidential
11 electors to record an address identical to an address recorded on a voter registration
12 application.
13

14 29. Plaintiff alleges defendant's failure to certify plaintiff's slate of
15 presidential electors is the direct and proximate result of defendant's political
16 animus against plaintiff for his prior opposition to the nomination of Hillary Clinton
17 by the Democratic Party for President of the United States and his continued
18 opposition to the election of Hillary Clinton as President of the United States and
19 the fear that plaintiff would dilute Hillary Clinton's vote with Hispanic voters.
20
21

22 30. Defendant's selective enforcement of the laws governing the
23 certification of presidential electors against plaintiff based on defendant's partisan
24 animus against plaintiff is a violation of plaintiff's rights under the Equal Protection
25 Clause of the Fourteenth Amendment to the United States Constitution.
26
27

28 31. Defendant continues to refuse to count ballots cast for plaintiff in

1 California's 2016 general election.

2 32. Plaintiff has no other adequate remedy at law.

3
4 **COUNT I**
5 **(EQUAL PROTECTION)**

6 33. Plaintiff reasserts each preceding allegation as if set forth fully herein.

7
8 34. Plaintiff is entitled to equal application of the laws governing the
9 certification of presidential electors in the State of California.

10 35. Defendant selectively enforced laws governing the certification and
11 qualification of presidential electors against plaintiff's slate of presidential electors
12 for plaintiff's California write-in campaign for President of the United States.

13
14 36. Defendant's enforcement of the laws governing the certification and
15 qualification of presidential electors against plaintiff and not the California
16 Republican Party is the direct and proximate result of defendants partisan political
17 animus against plaintiff and his effort to protect and augment Hillary Clinton's vote
18 totals in California.
19

20
21 37. Accordingly, defendant's selective enforcement of the laws governing
22 the certification and qualification of presidential electors against plaintiff, and not
23 the California Republican Party or any other slate of presidential electors filed in
24 support of any other candidate for President of the United States in the 2016 general
25 election, and defendant's continued refusal to count write-in votes cast for plaintiff
26 for President of the United States in California's general election is in violation of
27
28

1 rights guaranteed to plaintiff under the Equal Protection Clause of the Fourteenth
2 Amendment to the United States Constitution for which plaintiff demands
3 immediate relief.
4

5
6 **REQUEST FOR RELIEF**
7

8 WHEREFORE, Plaintiff respectfully requests that this Court:

9 a. Enter a permanent injunctive relief against defendant enjoining
10 defendant from certifying California's 2016 general election results without
11 tabulating and including all write-in votes cast for plaintiff for President of the
12 United States in the State of California;
13

14 b. Enter a declaration that defendant's conduct violated rights guaranteed
15 to plaintiff under the Equal Protection Clause of the Fourteenth Amendment to the
16 United States Constitution.
17

18 c. Award plaintiff the cost of this action together with their reasonable
19 attorneys' fees and expenses pursuant to 42 U.S.C. §1988; and,
20

21 d. Retain jurisdiction of this action and grant plaintiff such other relief
22 which may in the determination of this Honorable Court to be necessary and proper.
23

24
25
26 //

27 //
28

1 Dated: December 6, 2016

2
3
4 Respectfully submitted,

5
6 /s/ Morgan J.C. Scudi

7 MORGAN J.C. SCUDI, ESQUIRE
8 **ATTORNEY FOR PLAINTIFF**
9 CA Bar # 147942
10 Scudi & Ayers, LLP
11 5440 Morehouse Dr. Ste. 4400
12 San Diego, CA 92121
13 (619) 558-1001
14 Email: Lucas@RDLFG.com

/s/ Paul A. Rossi

PAUL A. ROSSI, ESQUIRE
Seeking Admission Pro Hac Vice
ATTORNEY FOR PLAINTIFF
PA Attorney ID # 84947
IMPG Advocates, Inc.
873 East Baltimore Pike
Suite #705
Kennett Square, PA 19348
(717) 961-8978
Email: Paul-Rossi@comcast.net