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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO

12
13 **ROQUE "ROCKY" DE LA FUENTE,**

14 Plaintiff,

15 v.

16 **ALEX PADILLA, in his official capacity as**
17 **the Secretary of State of the State of**
18 **California,**

19 Defendant.

2:16-cv-02877-JAM-GGH

**DEFENDANT CALIFORNIA
SECRETARY OF STATE ALEX
PADILLA'S POST-HEARING BRIEF
REGARDING STANDING ISSUES AND
APPROPRIATENESS OF INJUNCTIVE
RELIEF**

Dept: 6
Judge: Honorable John A. Mendez
Trial Date: None Set
Action Filed: 12/7/2016

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U.S. Constitution

Art. II, § 1, Cl. 2 *passim*

14th Am. *passim*

INTRODUCTION

Plaintiff Roque “Rocky” De La Fuente (“De La Fuente”) has sued Defendant Alex Padilla, California Secretary of State (the “Secretary”), regarding alleged constitutional violations in the administration of the 2016 California General Election for President of the United States. De La Fuente’s first amended complaint, filed February 2, 2017, makes two claims. *First*, De La Fuente alleges that for the 2016 California General Election ballot the Secretary improperly enforced against committed presidential electors for De La Fuente as a write-in candidate for President of the United States additional administrative requirements beyond what is allowed by the Elector Qualification Clause, Article II, Section 1, Clause 2, of the U.S. Constitution (the “Elector Qualification Clause”). *Second*, De La Fuente alleges that the Secretary selectively enforced California’s requirements for certifying the above-mentioned electors, thus violating De La Fuente’s right to equal protection of the laws, under the Fourteenth Amendment of the U.S. Constitution.

At the hearing in this case on May 2, 2017, the Court express concern about whether De La Fuente has standing to bring those claims, and whether the Court would be able to grant equitable relief to address any associated alleged injury. The Court then requested the present filing to be filed by today.

The Court’s concerns are well-founded. De La Fuente has not satisfied any of the three *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), requirements for standing—(1) an injury in fact, (2) a causal connection between the injury and the conduct complained, and (3) that the injury will likely be redressed by a favorable decision. *First*, De La Fuente’s allegations regarding his intended 2020 presidential run are not sufficient to establish a concrete, particularized injury that is actual or imminent. And, *second*, even if De La Fuente has adequately allege an injury, that injury cannot be traced back to the Secretary’s conduct in administering California’s statutory requirements for write-in candidates’ putative presidential electors in the 2016 General Election. *Third*, the equitable relief requested in the first amended complaint is not specific enough to lead to the redress of any such alleged injury. Accordingly, the entire first amended complaint should be dismissed.

LEGAL STANDARD

To satisfy the U.S. Constitution's Article III case-or-controversy requirement, a plaintiff have suffered a constitutionally cognizable injury-in-fact. *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1093 (9th Cir. 2003). "To establish standing, a plaintiff must demonstrate (1) that he[/she/it] suffered an injury in fact, *i.e.*, an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) that there is a causal connection between the injury and the conduct complained of, such that the injury is fairly traceable to the challenged action of the defendant; and (3) that the injury will likely be redressed by a favorable decision." *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013) (citing *Lujan*, 504 U.S. at 560-561).

In considering whether to dismiss a case for lack of standing, "the trial court must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Stevens v. Harper*, 213 F.R.D. 358, 370 (E.D. Cal. 2002) (quoting *Warth v. Seldin*, 422 U.S. 490 (1975)). An injury in fact must be pled in sufficient detail to allow the court to determine what specific injury has occurred, whether it will continue in the future, and whether the injury may be remedied by equitable relief. When considering the sufficiency of standing allegations, "the court is not obliged to accept allegations of future injury which are overly generalized, conclusory, or speculative." *Stevens*, 213 F.R.D. at 370. Alleging an injury that other people might encounter in the future is also not sufficient to establish standing. *Id.* Instead, "[c]ourts require a plaintiff to have a 'personal stake' in the outcome of a case 'to warrant [the] invocation of federal-court jurisdiction and to justify the exercise of the court's remedial powers on [the plaintiff's] behalf.'" *Joyner v. Mefford*, 706 F.2d 1523, 1526 (9th Cir. 1983) (citing *Warth*, 422 U.S. at 498).

ARGUMENT

The allegations in De La Fuente's amended complaint are not sufficient to establish standing under the three-pronged test in *Lujan v. Defenders of Wildlife*. *First*, De La Fuente has not alleged that a concrete, particularized injury is actual or imminent. In fact, De La Fuente's allegations regarding the 2020 presidential election are speculative at best. *Second*, De La Fuente

has not alleged that any injury resulted directly from, or is fairly traceable to, the Secretary's largely ministerial actions of administering California's procedures for certifying would-be electors for write-in presidential candidates. *Third*, the first amended complaint's prayer for relief, which would result in a vague injunction requiring the Secretary to enforce the California Elections Code without violating the Elector Qualification Clause or the Equal Protection Clause, would not redress any injury that De La Fuente has suffered or will suffer in the future. As such, the first amended complaint should be dismissed in its entirety.

I. DE LA FUENTE HAS NOT SUFFICIENTLY ALLEGED AN INJURY-IN-FACT

A. De La Fuente's Allegations Do Not Establish a Concrete, Particularized Injury for Any Claim Averred

For an injury to be particularized, it "must affect the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, __ U.S. __, __, 136 S. Ct. 1540, 1547 (2016). To be concrete, the "injury must be '*de facto*'; that is, it must actually exist." *Id.* "[T]he 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." *Lujan*, 504 U.S. at 563.

Though De La Fuente amended his complaint to add allegations regarding his intention to run for President again in the 2020 election, those allegations are still insufficient to establish an injury will actually occur and will affect De La Fuente personally. De La Fuente has not sufficiently pleaded, and surely could not sufficiently plead, that the Secretary's future administration of California's requirements for write-in presidential candidates' would-be electors in the 2020 election will actually inflict any injury at all, much less that the administration will affect De La Fuente in "a personal and individual way." In fact, the allegations in the first amended complaint do not establish that De La Fuente will even avail himself of the write-in-candidate procedures during the 2020 presidential election. He alleges that "he intends to seek the 2020 Democratic Party nomination for President of the United States" and that "in the event he does not secure the 2020 Democratic Party nomination for President of the United States, he will run as an independent and/or write-in candidate for President of the United States in the 2020 general election." First Am. Compl., ¶¶ 5-6. In the event that De La Fuente wins the Democratic

1 Party nomination in 2020, he will not need to rely on California's write-in-candidate procedures.
 2 Likewise, if De La Fuente does not win the Democratic Party nomination in 2020, and instead
 3 secures a place on the general-election ballot as an independent candidate by submitting a
 4 nominating petition with the required number of voter signatures, he still will not avail himself of
 5 the write-in-candidate procedures.¹ In either of these scenarios, De La Fuente himself would not
 6 be effected by the Secretary's administration of the California Elections Code provisions
 7 challenged here, meaning that it is at best speculative that De La Fuente would have standing to
 8 challenge those laws.

9 **B. De La Fuente's Allegations Do Not Establish An Actual, Imminent Injury**

10 Standing also requires that the alleged injury be actual and imminent; "[t]o establish
 11 jurisdiction, the plaintiff must clearly allege specific facts establishing an imminent risk of
 12 substantial and irreparable harm." *Stevens*, 213 F.R.D. at 370 (citing *Whitmore v. Arkansas*, 495
 13 U.S. 149, 155 (1990)). De La Fuente has not done so in this case. With the 2020 presidential
 14 election still over three years away, any injury that De La Fuente might face at that time is not
 15 imminent. In fact, as shown above, the allegations regarding De La Fuente's intended 2020
 16 presidential bid do not show that the supposed injury will ever occur. De La Fuente may secure
 17 the Democratic Party nomination for President in 2020, or may run as an independent candidate.
 18 Because these various options for obtaining a place on the ballot mean that De La Fuente may not
 19 actually use the write-in-candidates procedures at all, he has failed to allege that the Secretary's
 20 administration of those laws will cause him any injury in the future. Those allegations are
 21 hypothetical and conjectural and cannot establish that there is an actual or imminent injury.

22 **1. With Respect to the Elector Qualification Clause Claim**

23 Even if De La Fuente had not alleged that running as a write-in presidential candidate is
 24 only a contingency plan should his other plans fail, it would still be speculative to assume that the

25
 26 ¹ In a separate, ongoing lawsuit in the U.S. District Court, Central District of California,
 27 De La Fuente challenges California's requirement that independent presidential candidates
 28 seeking ballot placement on a general-election ballot must gather signatures from registered
 voters in a number equal to 1 percent of the eligible registered voters in the previous general
 election. *De La Fuente v. Padilla*, No. 2:16-cv-03242-MWF-GJS (C.D. Cal. 2016).

1 same alleged issue with verifying the identities and addresses of De La Fuente's proposed
 2 electors will happen again. De La Fuente alleges that he "will timely file a slate of 55 presidential
 3 electors . . . comprised entirely of individuals recruited by plaintiff in 2016 and included on
 4 plaintiff's slate of 57 presidential electors that defendant refused to certify for the 2016
 5 presidential election." First Am. Complaint, ¶ 19. However, it is inherently unknowable that De
 6 La Fuente could have the same 57 people serve as potential electors (55 being the number
 7 required to become a certified write-in candidate) agree to serve in such positions in 2020. Illness
 8 or death might get in the way. Some people may move out of state or decide to support a
 9 different party or candidate in 2020. Therefore, it is, at best, conjecture to assume that De La
 10 Fuente will encounter the same issues with his proposed presidential electors in 2020 as De La
 11 Fuente allegedly faced in 2016.

12 **2. With Respect to the Equal Protection Clause Claim**

13 With regard to De La Fuente's equal-protection claim, he alleges that "[a]s a direct and
 14 proximate result of defendant's selective enforcement of California and federal law, defendant
 15 refused to tabulate any write-in votes cast for plaintiff for President of the United States in the
 16 2016 California general election." First Am. Compl. at ¶ 4. The basis for this claim is that the
 17 Secretary allegedly certified another presidential candidate's would-be elector who held an
 18 "office of trust or profit" under federal law, in violation of the Elector Qualification Clause. But
 19 that information is irrelevant to the reasons behind or meaning of the Secretary's rejection of
 20 several of De La Fuente's would-be presidential electors based on failure to comply with
 21 California Elections Code section 201. For one thing, De La Fuente has not alleged, nor could he
 22 truthfully allege, that he was similarly situated to the other candidate. Second, De La Fuente
 23 cannot show that the alleged mistreatment that he suffered was caused by or revealed by the
 24 alleged better treatment of the other candidate. Therefore, De La Fuente's standing problem
 25 bedevils the equal-protection claim here, as well.

26 Furthermore, De La Fuente's allegations regarding an injury suffered in the 2016 election
 27 hardly demonstrate that a similar injury will occur in 2020. "Past exposure to illegal conduct
 28 does not in itself show a present case or controversy regarding injunctive relief . . . if

1 unaccompanied by any continuing present adverse effects.” *Lujan*, 504 U.S. at 564 (citing *City of*
 2 *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). De La Fuente has alleged no such continuing
 3 effects here. There is a long chain of merely possible events, all of which must occur for the
 4 alleged 2016 harm to be inflicted again in 2020. Only *if* in 2020 De La Fuente again runs as a
 5 write-in candidate for President, and *if* De La Fuente’s proposed slate of electors again includes
 6 the same people whose voter registrations *still* cannot be verified based on the information
 7 submitted, and (for purposes of the equal-protection claim) *if* the Secretary again certifies one or
 8 more of another presidential candidate’s proposed electors despite alleged non-compliance with
 9 relevant election rules, *then* De La Fuente *might* suffer the same injury in 2020 that he allegedly
 10 suffered in 2016. Obviously, that scenario is simply too speculative to support standing in this
 11 case.

12 A separate problem is that standing may not be based on an assumption that a government
 13 official will misinterpret the law or refuse to comply with it. “[I]n determining whether there is a
 14 continuing threat to the [plaintiffs’] interests, we must assume the Secretary will interpret the law
 15 correctly and obey it.” *Martinez v. Wilson*, 32 F.3d 1415, 1419 (9th Cir. 1994). De La Fuente’s
 16 Equal Protection Clause claim posits that the Secretary, “acting on an illegitimate animus,
 17 intentionally imposed requirements on the certification of plaintiff’s 2016 slate of presidential
 18 electors which defendant selectively chose not to enforce against slates of presidential elector[s]
 19 filed by other candidates in 2016.” First Am. Complaint, ¶ 3. The Secretary’s alleged
 20 “illegitimate animus” is described as “political animus against plaintiff for his prior opposition to
 21 the nomination of Hillary Clinton by the Democratic Party for President of the United States and
 22 his continued opposition to the election of Hillary Clinton as President of the United States and
 23 the fear that plaintiff would dilute Hillary Clinton’s vote with Hispanic voters.” First Am.
 24 Compl., ¶ 36. It would be speculative to assume that these very specific alleged circumstances
 25 from 2016 (taken as true for purposes of this motion) will be repeated in 2020; De La Fuente has
 26 provided no reason that would convert such speculation to likelihood or to certainty the
 27 Secretary’s intentional violation of De La Fuente’s equal-protection rights in the next presidential
 28 election. *See Gest v. Bradbury*, 443 F.3d 1177, 1182 (9th Cir. 2006) (“[T]he possibility that the

1 Secretary of State will, in the future, apply unwritten rules . . . is hypothetical and too speculative
2 to confer standing”).

3 In sum, De La Fuente has not sufficiently pleaded that he faces an actual, imminent injury
4 in connection with his intended 2020 presidential campaign.

5 **II. DE LA FUENTE HAS NOT ALLEGED AN INJURY FAIRLY TRACEABLE TO THE**
6 **SECRETARY’S CONDUCT**

7 **A. With Respect to the Elector Qualification Claus Claim**

8 As explained above, De La Fuente has not sufficiently pleaded an injury in fact. Thus, it
9 follows that De La Fuente also has not alleged any injury that may fairly be traced back to the
10 Secretary’s administration of California Elections Code section 201, governing write-in
11 presidential candidates, in the 2016 election. De La Fuente alleges in his first amended complaint
12 that during the 2016 presidential election “defendant enforced and continues to enforce additional
13 qualifications beyond those set forth for presidential electors in the Elector Qualification Clause.”
14 First Am. Compl., ¶ 2. However, the only “additional qualification” alleged in the first amended
15 complaint appears to be the “requirement” that “presidential electors [must] record an address
16 identical to an address recorded on a voter registration application.” First Am. Compl., ¶ 34. The
17 problem for De La Fuente, for the purpose of establishing standing and on the merits, is that the
18 “additional requirement” is no such thing. The California Legislature has reasonably determined
19 that to serve as a presidential elector for a political party or candidate, a person must be a
20 registered voter. Cal. Elec. Code § 201. (Under the U.S. Constitution, the California Legislature
21 is entitled to adopt this requirement; as De La Fuente acknowledges later in the first amended
22 complaint, “[t]he Elector Qualification Clause vests in the state legislature . . . the manner of
23 appointment of presidential electors.” First Am. Compl., ¶ 35.) Enforcing this requirement by
24 confirming electors’ voter registration information is not adding a qualification; failing to enforce
25 the requirement, by not checking that information, would be to disregard the California
26 Legislature’s commands. De La Fuente has nothing to complain of here, and thus no standing to
27 challenge administration of the election rules.

1 **B. With Respect to the Equal Protection Clause Claim**

2 As discussed above, De La Fuente's equal-protection claim does not complain that the same
 3 law was enforced against him in his presidential run but not against another similarly situated
 4 presidential candidate. Instead, De La Fuente contrasts the Secretary's administration of
 5 California Elections Code section 201 to De La Fuente, to deny him write-in-candidate status,
 6 with the Secretary's alleged *refusal to enforce* a *different* statute in connection with a *partisan*
 7 candidate's slate of proposed electors (one of whom allegedly held an "office of trust or profit" in
 8 violation of federal law, and, therefore, should have been disqualified as a proposed elector).
 9 There is no congruity.

10 But even were De La Fuente's claim about administration of the same law with respect to
 11 the two similarly situated candidates, the consequences for De La Fuente would remain the same.
 12 De La Fuente's slate of electors would not have been certified, regardless of whether one of the
 13 other presidential candidate's proposed electors should not have been but was approved. Any
 14 injury that De La Fuente suffered as a result from being excluded from the certified list of write-
 15 in presidential candidates did not stem from the Secretary's alleged selective enforcement of the
 16 laws. De La Fuente's alleged harm of not having his write-in votes counted is not traceable to the
 17 Secretary's allegedly selective or differential enforcement of the law.

18 **III. DE LA FUENTE HAS NOT REQUESTED RELIEF THAT WOULD REDRESS ANY INJURY**

19 To remedy De La Fuente's alleged (and uncertain) injury under the Elector Qualifications
 20 Clause, De La Fuente asks that the Court "[e]nter injunctive relief against defendant enjoining
 21 defendant from enforcing additional qualifications for presidential electors beyond those set forth
 22 and permitted under Article II, Section 1, Clause 2 of the United States Constitution." First Am.
 23 Compl. at 9. This request for relief is flawed for failing to specify what alleged additional
 24 qualification the Secretary should be enjoined from enforcing. Similarly, to remedy the alleged
 25 Equal Protection Clause violation, De La Fuente asks the Court to "[e]nter permanent injunctive
 26 relief enjoining defendant from enforcing the laws governing the qualifications and certification
 27 of presidential electors in California in violation of rights guaranteed under the Equal Protection
 28 Clause of the Fourteenth Amendment to the United States Constitution." First Am. Compl. at 9.

1 This requested relief is also very broad, and does not specify the constitutional violation that must
2 be avoided.

3 Therefore, even assuming that the first amended complaint does allege an injury-in-fact
4 traceable to the Secretary's conduct, the broad injunctive relief that De La Fuente requests is not
5 appropriate. "[T]he mere fact that a court has found that a defendant has committed an act in
6 violation of a statute does not justify an injunction broadly to obey the statute . . ." *N.L.R.B. v.*
7 *Express Pub. Co.*, 312 U.S. 426, 435 (1941). As a matter of law, it must be assumed that the
8 Secretary, the public official charged with enforcing California's Elections Code, will do so in
9 such a way that will *not* violate rights guaranteed by the U.S. Constitution. *Martinez*, 32 F.3d at
10 1419. De La Fuente's prayer for relief is plainly inadequate.

11 Indeed, the deficient requested relief would do nothing more than require the Secretary to
12 follow the law. But "[b]lanket injunctions to obey the law are disfavored." *Metro-Goldwyn-*
13 *Mayer Studios, Inc. v. Grosker, Ltd.*, 518 F.Supp.2d 1197, 1226 (C.D. Cal. 2007). "When
14 injunctive relief is sought against a state agency or official, such relief must be no broader than
15 necessary to remedy the constitutional violation." *Barnes v. Healy*, 980 F.2d 572, 576 (9th Cir.
16 1992). A broad injunction of the kind requested here would not provide the Secretary with any
17 specific guidance regarding what conduct violated De La Fuente's constitutional rights in 2016
18 (assuming that there was any violation) or how to adjust his future administration of California's
19 election laws to avoid similar violations in the future.

20 This Court has discretion to craft whatever injunctive relief is deems appropriate, despite
21 the deficient relief requested in the complaint. *Trafficschool.com, Inc. v. Edriver Inc.*, 653 F.3d
22 820, 829 (9th Cir. 2013) ("The scope of an injunction is within the broad discretion of the district
23 court"); *Metro-Goldwyn-Mayer Studios, Inc.*, 518 F. Supp. 2d at 1208-14. However, De La
24 Fuente's first amended complaint does not provide enough details about the alleged injury, and
25 the likelihood that it will be repeated, to allow this Court to do so.

26 Because De La Fuente has failed to sufficiently allege any injury that may be redressed
27 through specific injunctive relief, the first amended complaint should be dismissed.

28

1 **CONCLUSION**

2 The allegations and requested relief in De La Fuente's first amended complaint are
3 speculative and non-specific. De La Fuente has not sufficiently pleaded an injury-in-fact that is
4 traceable to the Secretary's conduct, or that can be redressed by equitable relief. Accordingly, the
5 Court should dismiss the first amended complaint in its entirety.

6 Dated: May 9, 2017

7 Respectfully Submitted,
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