

XAVIER BECERRA, State Bar No. 118517
Attorney General of California
STEPAN A. HAYTAYAN, State Bar No. 205457
Supervising Deputy Attorney General
AMIE L. MEDLEY, State Bar No. 266586
Deputy Attorney General
JONATHAN M. EISENBERG, State Bar No. 184162
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-6505
Fax: (213) 897-5775
E-mail: Jonathan.Eisenberg@doj.ca.gov
*Attorneys for Alex Padilla,
California Secretary of State*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO

ROQUE "ROCKY" DE LA FUENTE,

Plaintiff,

v.

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

Defendant.

2:16-cv-02877-JAM-GGH

**DEFENDANT CALIFORNIA
SECRETARY OF STATE ALEX
PADILLA'S RESPONSIVE 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

Defendant Alex Padilla, California Secretary of State (the "Secretary"), submits the following response to the May 9, 2017, filing herein of Plaintiff Roque "Rocky" De La Fuente ("De La Fuente") regarding his standing to pursue claims of two federal constitutional violations in the Secretary's administration of the 2016 California General Election for President of the United States.

The Secretary understands and acknowledges that De La Fuente is abandoning his claim herein under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Therefore, the Secretary will not address that claim further. Instead, the Secretary will discuss De

1 La Fuente's sole remaining claim, made under the Elector Qualification Clause (art. II, § 1, cl. 2)
2 of the Constitution, which claim De La Fuente lacks standing to pursue, and which claim is also
3 untenable as a matter of law.

4 Under the Elector Qualification Clause, each U.S. state, as directed by its legislature, has
5 the power to appoint the state's electors for President of the United States. "The Federal
6 Constitution . . . leaves it to the state Legislature to define the method of effecting the object" of
7 choosing the presidential electors from that state. *Walker v. United States*, 93 F.2d 383, 388 (8th
8 Cir. 1937) (citing *McPherson v. Blacker*, 146 U.S. 1, 10 (1892) (holding that the state's power in
9 this area is exclusive)). In facilitating this process, the state legislature is potentially limited by its
10 state's constitution, but not by the Elector Qualification Clause, other than the latter's exclusion
11 of a potential elector who holds a federal office of trust of profit. *Bush v. Palm Beach Cnty.*
12 *Canvassing Bd.*, 531 U.S. 70, 76 (2000).

13 That law as applied to the facts of this case establishes that De La Fuente lacks standing to
14 bring a claim against the Secretary for alleged violation of the Elector Qualification Clause. As
15 just shown, the California Legislature has the power to establish the process for appointing
16 presidential electors and to define the Secretary's role in that process. The only possible area for
17 De La Fuente to attack using the Elector Qualification Clause would involve the rule forbidding a
18 presidential elector to hold a federal office of trust or profit. But since De La Fuente has
19 voluntarily abandoned his equal-protection claim making such factual allegations, there is no
20 longer (and could not truthfully be) any allegation that there has been a violation of that rule.
21 With the lone potential area of Elector Qualification Clause attack abandoned, De La Fuente has
22 no (and could not truthfully articulate a) coherent allegation of any violation of that part of the
23 Constitution. Obviously, and per the three-part standing test stated in *Lujan v. Defenders of*
24 *Wildlife*, 504 U.S. 555 (1992), De La Fuente cannot have suffered an injury-in-fact from alleged
25 conduct that does not violate that law. And even if, somehow, there was a cognizable injury-in-
26 fact, it could not be fairly traceable back to misconduct by the Secretary, because there is no such
27 misconduct, as there has been no violation of the law. It follows further that there can be no
28 lawful remedy for alleged conduct of the Secretary that did not violate that law. In sum, all three

1 parts of the basic *Lujan* standing test resolve against De La Fuente and in favor of the Secretary.
2 Finally, there are no additional, prudential considerations weighing in favor of De La Fuente
3 and against the Secretary.

4 This Court should dismiss De La Fuente's Elector Qualification Clause claim, which is
5 the only remaining claim, meaning that the whole case should be dismissed.

6 Dated: May 16, 2017

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
AMIE L. MEDLEY
Deputy Attorney General

10 /s/ Jonathan M. Eisenberg
11 JONATHAN M. EISENBERG
12 Deputy Attorney General
13 Attorneys for Alex Padilla,
14 California Secretary of State
15
16
17
18
19
20
21
22
23
24
25
26
27
28