SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

|  |  |
| --- | --- |
| ROQUE “ROCKY” DE LA FUENTE, an individual; DR. MARK SEIDENBERG, an individual; MARKHAM ROBINSON, an individual; DR. WILEY DRAKE, an individual; DR. ROBERT ORNELAS, an individual; BERTHA DE LA FUENTE, an individual; all appearing *pro se*, Plaintiffs,v.ALEX PADILLA, Secretary of State for the State of California; and DOE 1 through DOE 60 inclusive,Defendantss. | Case No: TBD**COMPLAINT FOR DECLARATORY INJUNCTIVE RELIEF** (Code of Civ. Proc. § 526) |

NOW COMES Plaintiffs Roque “Rocky” De La Fuente, et al., all appearing *pro se*, seeking injunctive and declaratory relief.

**INTRODUCTION**

1. The Secretary of State for the State of California is tasked with the duty of Chief Elections Officer. The Secretary of State has the duty and responsibility to enforce and abide by California law in conducting elections. Failure to enforce and abide by California law jeopardizes the validity and credibility of California elections. Plaintiffs come before this Court, as interested parties seeking declaratory and injunctive relief preventing the Secretary of State from continuing to violate critical, and relevant California law. California voters are being misled, misinformed, and prevented from the fair enforcement of the very law that they have enacted via State Legislation. Likewise, Plaintiffs have suffered irreparable harm due to the confusing and misleading nature of the ballots, as printed by Defendants. As elector nominees for the American Independent Party of California, and elector nominee for independent candidate Mr. De La Fuente, Plaintiffs have suffered the loss of countless votes.

**PARTIES**

1. Plaintiff, Roque “Rocky” De La Fuente was a presidential candidate in the 2016 general election, who also sought placement on the California ballot. Mr. De La Fuente complied with all the statutory provisions of the California Election Code, to appear as a certified “write-in” candidate, aside his running mate Michael Steinberg, for the November 8, 2016 election. Defendants omitted Mr. De La Fuente from the November 8, 2016 presidential election, citing non-compliance with California Election Code §§ 8650 (requiring 55 pledged electors) and 8651 (required content of elector forms).
2. Plaintiff, Dr. Mark Seidenberg was an American Independent Party of California elector nominee for President and Vice President of the United States in the November 8, 2016 general election. Dr. Seidenberg also serves as the Vice Chairman of the State Central of the Committee American Independent Party of California.
3. Plaintiff, Markham Robinson was an American Independent Party of California elector nominee for President and Vice President of the United States in the November 8, 2016 general election. Mr. Robinson also serves as the Secretary of the State Central of the Committee American Independent Party of California; Chairman of the American Independent Party of the United States (Chairman of the American Independent Party of California State Central Committee's Executive Committee).
4. Plaintiff, Dr. Wiley Drake was an elector nominee for the American Independent Party of California political party that appeared on the California ballot in the November 8, 2016 election. The American Independent Party of California elected Donald J. Trump as their candidate for President of the United States and Michael Pence as their candidate for Vice President of the United States.
5. Plaintiff, Dr. Robert Ornelas was an elector nominee for the American Independent Party of California political party that appeared on the California ballot in the November 8, 2016 election.
6. Plaintiff, Bertha De La Fuente, attempted to serve as one of 55 elector nominee for co-plaintiff Roque “Rocky” De La Fuente in his pursuit of “write-in” candidacy in California for President of the United States. As a result of Defendants’ erroneous exclusion of Mr. De La Fuente from the certified list of “write-in” presidential candidates, Bertha De La Fuente was prevented from serving as Mr. De La Fuente’s elector nominee.
7. Defendant, Alex Padilla is the current Secretary of State of California. In his capacity as Secretary of State, Defendants is California’s Chief Election Officer. Mr. Padilla is tasked with oversight of all California elections, enforcing and applying applicable California law, and certifying election compliance.
8. Plaintiffs do not know the true names and capacities of Defendants sued in this Complaint as Doe 1 through Doe 60, inclusive, and therefore sues these Defendants by fictitious names pursuant to Section 474 of the California Civil Code of Civil Procedure. Plaintiffs will amend this Complaint to allege the true names and capacities of Doe 1 through Doe 60, inclusive, when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants named herein as Doe 1 through Doe 60, inclusive, is responsible in some manner for the occurrence, injury, and other damages alleged in this complaint.

**JURISDICTION & VENUE**

1. This is an action for declaratory and injunctive relief pursuant to California Code of Civil Procedure (hereinafter “CCP”) §§ 526 and 1060 for injury sustained by Plaintiffs when Defendants violated California Elections Code during the November 8, 2016 general election.
2. This Court has jurisdiction to grant injunctive relief on behalf of the Plaintiffs pursuant to CCP § 526.
3. This Court has jurisdiction to grant declaratory relief on behalf of Plaintiffs pursuant to CCP § 1060.
4. Venue is proper in this Court in that the Defendants is headquartered in Sacramento, California. Code of Civ. Proc. § 395.

**STATUTES IN QUESTION- BALLOT PRODUCTION**

1. Plaintiffs hereby realleges and incorporates by reference, as though set forth in full, the allegations in paragraph 1 through 13, inclusive.
2. California Elections Code (hereinafter "CEC") § 13205(b) requires specific language to be included on the ballot in the general election advising voters of their elector selection

(b) In elections when electors of President and Vice President of the United States are to be chosen, there shall be placed upon the ballot, in addition to the instructions to voters as provided in this chapter, an instruction as follows:

“To vote for all of the electors of a party, stamp a cross (+) in the square opposite the names of the presidential and vice presidential candidates of that party.  A cross (+) stamped in the square opposite the name of a party and its presidential and vice presidential candidate, is a vote for all of the electors of that party, but for no other candidates.”

1. CEC § 13200 unequivocally requires that:

Ballots not printed in accordance with this chapter (13200) shall not be cast nor counted at any election.

1. CEC § 7500 identifies the proper name, “American Independent Party of California” of the party for which Plaintiff serves as an elector and applies Part 4 of the California Elections Code to the organization, operation, and function of said party.
2. CEC § 13105(c) identifies the proper way to identify and list corresponding political party names on the general election ballot, in the event that two parties nominate the same candidate(s).

(c) If for a general election any candidate for President of the United States or Vice President of the United States has received the nomination of any additional party or parties, the name(s) shall be printed to the right of the name of the candidate's own party.  Party names of a candidate shall be separated by commas.

1. CEC § 19301(b) requires that the abbreviated use of political party name be “usual or reasonable”.

**STATUTES IN QUESTION – ELECTOR ALLOCATION**

1. CEC § 7300 requires the Republican Party to submit their slate of electors to the Secretary of State by October 1st of the presidential election year. CEC § 7300 further mandates that the Republican slate of electors (55) must include:

Republican nominees for Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, and Secretary of State, the Republican nominees for United States Senator at the last two United States senatorial elections, the Assembly Republican leader, the Senate Republican leader, all elected officers of the Republican State Central Committee, the National Committeeman and National Committeewoman, the President of the Republican County Central Committee Chairmen's Association, and the chairperson or president of each Republican volunteer organization officially recognized by the Republican State Central Committee

CEC § 7300 also reiterates Article II, Section 1, Clause 2 of the United States Constitution in prohibiting any “person holding an office of trust or profit of the United States” from acting as an elector.

1. Article II, Section 1, Clause 2 of the United States Constitution states:

Each state shall appoint in such a manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

**COUNT 1**

**Declaratory and Injunctive Relief**

1. Defendant, Secretary of State for the State of California, serves as the state’s Chief Elections Officer and is responsible for enforcing, upholding, and certifying compliance with the applicable California law, as defined by the state legislature.[[1]](#footnote-1)
2. Defendants violated CEC § 13205(b) when they willfully permitted 57 of 58 California counties to omit advisory and informative language from the ballot. This critical and statutorily required information advises the California voter about selection and allocation of candidate electors.
3. Defendants acknowledge that compliance with the CEC § 13205(b) is mandatory as evidenced by Sacramento County ballot observance and implementation of the language required by CEC 13205(b) on the November 8, 2016 general election ballot.
4. CEC § 13105(c) requires that the name(s) of the nominating political party for President and Vice President of the United States “shall be printed to the right of the name of the candidate’s own party”; when the same candidates are nominated by a second political party, they are to be separated by a comma.
5. CEC § 19301(b) allows for the abbreviated use of a political party’s name on a ballot, and requires that it be “usual or reasonable”
6. Defendants violated CEC §§ 13105(c) and 19301(b) when they permitted California counties to print the November 8, 2016 general election ballot with an innaccurate inappropriate, and non-representative abbreviation of the American Independent Party of California ("AI") and, upon belief that, Defendants failed to properly seperate "Rep", from "AI" with the prescribed comma.
7. Defendant Padilla willfully and/or negligently failed to enforce CEC § 7300 when he accepted the Republican slate of electors after the October 1st deadline.
8. Defendant Padilla willfully and/or negligently failed to enforce CEC § 7300 when he certified the Republican slate of electors despite their failure to include the statutorily required officers.
9. Defendant Padilla willfully and/or negligently failed to enforce Article II, Section 1, Clause 2 of the United States Constitution and CEC § 7300 when he certified the Republican slate of electors despite the inclusion of Mr. Arun Bhumitra, a statutorily prohibited elector. Mr. Arun Bhumitra is an advisor to the United States Department of Commerce, International Trade Administration and therefore holds an "office of trust under the United States", in violation of the prohibitive language of Article II, Section 1, Clause 2.
10. In summary, Defendants have willfully and/or negligently failed to enforce statutory regulations, as dictated by state legislature, regarding the certification of electors. Defendants violated California Election Code §§ 7300, 7500, 13105(c), 13205(b), 19301(b), and Article II, Section 1, Clause 2 of the United States Constitution in the printing of the November 8, 2016 general election ballots .
11. The Draconian remedy for ballots not printed in accordance with chapter 13200 of the California Election Code requires that the ballots "shall not be cast nor counted in any election". In the interest of harmonizing California’s statutory scheme, the Defendant Secretary of State and those that hold the position in the future, must be instructed to abide by the statutes as dictated by state legislature, lest he (they) jeopardize the validity and credibility of elections to come.

**WHEREFORE**, Plaintiffs ask that the Court enter judgment:

1. Declaring that Defendants violated California Election Code in his preparation and/or verification of the November 8, 2016 general election ballot;
2. Declaring that Defendants violated California Election Code in his certification of the Republican slate of electors because it was not submitted before the deadline and because the slate included/excluded electors adverse to controlling statute;
3. Issue an injunction ordering the Secretary of State to comply with California law as it relates to his duties as Chief Elections Officer.

This \_\_\_ day of December, 2016.

Respectfully Submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff, Roque “Rocky” De La Fuente Plaintiff, Bertha De La Fuente

5440 Morehouse Dr.. Ste 54 13744 Vernazza Court

San Diego, CA 92121 San Diego, CA 92130

Email: Roque@Roque2016.com Email: Bertuchi@gmail.com

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff, Dr. Mark Seidenberg Plaintiff, Markham Robinson

23405 Via San Miguel 476 Deodara St.

Aliso Viejo, CA 92656 Vacaville, CA 95688

Email: hakohen3@yahoo.com Email: markyavelli@gmail.com

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff, Dr. Robert Ornelas Plaintiff, Dr. Wiley Drake

1691 S. Heritage Cir. 6671 Longfellow Drive

Anaheim, CA 92804 Buena Park, CA 90620

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. <http://www.sos.ca.gov/administration/about-agency/>, last visited on November 22, 2016. See also California Government Code §§ 12159, 12165. [↑](#footnote-ref-1)