**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF VIRGINIA**

**ROQUE “ROCKY” DE LA FUENTE :**

**: CIVIL ACTION**

**Plaintiff, :**

**: No.\_\_\_\_\_\_\_\_\_\_\_**

**v. :**

**:**

**JAMES B. ALCORN, in his official capacity as :**

**a member of the Virginia Board of Elections; :**

**CLARA BELLE WHEELER, in her official :**

**capacity as a member of the Virginia Board :**

**of Election; SINGLETON B. McCALLISTER, :**

**in his official capacity as a member of the :**

**Virginia Board of Elections;**

**: *Filed Pro Se***

**Defendant. :**

**COMPLAINT FOR MANDAMUS, INJUNCTIVE & DECLARATORY RELIEF**

1. Plaintiff, ROQUE “ROCKY” DE LA FUENTE (hereinafter either “Roque De La Fuente” or “Mr. De La Fuente” ), files this civil action for emergency mandamus and prospective equitable relief against defendants, JAMES B. ALCORN, CLARA BELLE WHEELER and SINGLETON B. MCCALLISTER, in their official capacity as members of the Virginia Board of Elections, requesting emergency mandamus, permanent injunctions and declaratory relief prohibiting defendants, in violation of the Supremacy Clause of the United States Constitution and the First and Fourteenth Amendments to the United States Constitution, from requiring the collection of social security numbers for presidential electors and requesting social security numbers from signers of election petitions. Plaintiff also requests preliminary and permanent injunctive and declaratory relief holding that §§ 24.2-506 and 24.2-543 of the Code of Virginia violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution by denying any meaningful opportunity to appeal a “Notice of Deficiency” issued by the Virginia Department of Elections, alleging that election petitions contain an insufficient number of valid signatures to the Virginia Board of Election to the extent it requires independent candidates for the Office of President of the United States to review and provide an itemized list of thousands of signatures improperly invalidated by the Virginia Department of Elections and evidence in support of validity to the Virginia Board of Elections within one (1) business day after the filing of a notice of appeal of the “Notice of Deficiency” to the Virginia Board of Elections.

**NATURE OF THE COMPLAINT**

2. This is an action to enforce rights guaranteed to plaintiff under the Supremacy Clause and the First and Fourteenth Amendments to the United States Constitution.

3. The United States Congress is the sole legislative authority permitted to authorize, with the consent of the President of the United States, the collection of federal Social Security Numbers (hereinafter “SSNs”).

4. Congress has not authorized or mandated States to collect SSNs from candidates for presidential elector or prospective signers of election petitions.

5. Defendants, are not authorized under federal law to require the collection of SSNs from presidential electors or authorized to attempt to collect SSNs for signers of election petitions.

6. Defendants, in derogation of the Supremacy Clause of the United States Constitution, require presidential electors to provide SSNs as a condition precedent to being nominated as a presidential elector in the Commonwealth of Virginia.

7. Defendants, in derogation of the Supremacy Clause of the United States Constitution, request SSNs from signers of election petitions seeking to plaintiff’s name on the Virginia’s 2016 general election ballot as a candidate for President of the United States.

8. The requirement to collect SSNs from prospective presidential electors imposes a severe burden on plaintiff’s ability to: (a) identify; (b) secure the commitment from a prospective presidential elector to be nominated as a presidential elector; and (c) timely circulate and secure the required number of valid signatures on nominating petitions for plaintiff’s slate of presidential electors.

9. The “optional” request to collect SSNs from prospective signers of nominating petitions impairs “core political speech” protected under the First and Fourteenth Amendments to the United States Constitution, because many prospective signers of nominating petitions for plaintiff’s slate of Virginia presidential electors refuse to sign a petition that, on its face, request SSNs to be recorded because SSNs are a vital personal record that must be kept confidential as a bulwark against potential identity theft.

10. Defendants, in derogation of basis precepts of the due process of law in violation of rights guaranteed to plaintiff under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, require plaintiff within one (1) business day after the filing of a notice of appeal of a “Notice of Deficiency” to: (a) review thousands of election petition signatures improperly invalidated by the Virginia Department of Elections; (b) itemized and report to the Virginia Board of Elections all improperly invalidated petition signatures; and (c) provide evidence of signature validity to the Virginia Board of Elections – all as a condition precedent to receiving a hearing from the Virginia Board of Elections on plaintiff’s appeal of a “Notice of Deficiency”.

11. This is a civil rights action brought pursuant to 42 U.S.C. § 1983, seeking emergency prospective equitable relief for emergency mandamus, injunctive and declaratory relief that the defendants’ challenged nominating petitions requirements and the lack of a meaningful appeal of a “Notice of Deficiency” impair rights guaranteed to plaintiff under the Supremacy Clause and First and Fourteenth Amendments to the United States Constitution.

12. Plaintiff asks this Court for emergency mandamus relief ordering defendants to place plaintiff’s name on the 2016 Virginia general ballot for the Office of President of the United States for the election of plaintiff’s slate of presidential electors to the 2016 Electoral College.

13. Plaintiff also requests that this Court enter permanent injunctive relief enjoining defendants from collecting SSNs from presidential electors and signers of presidential nominating petitions in the Commonwealth of Virginia.

14. Plaintiff also requests that this Court declare that defendants’ enforcement of the challenged provisions of §§ 24.2-506 and 24.2-543 of the Code of Virginia mandating that evidence in an appeal of a “Notice of Deficiency” must be filed within one (1) business day after appeal of a “Notice of Deficiency” is lodged with the Virginia Board of Elections.

15. Plaintiff also requests that this Court enter declaratory relief declaring that the collection of SSNs from presidential electors and signers of presidential nominating petitions in the Commonwealth of Virginia violates the Supremacy Clause of the United States Constitution.

16. Plaintiff also requests that this Court enter declaratory relief declaring that the collection of SSNs from presidential electors and signers of presidential nominating petitions in the Commonwealth of Virginia violates “core political speech” under the First and Fourteenth Amendments to the United States Constitution.

17. Plaintiff also requests that this Court enter declaratory relief that the challenged provisions of §§ 24.2-506 and 24.2-543 of the Code of Virginia mandating that evidence in an appeal of a “Notice of Deficiency” must be filed within one (1) business day after appeal of a “Notice of Deficiency” is lodged with the Virginia Board of Elections violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

18. All of plaintiffs’ foregoing allegations are based upon information and belief.

**JURISDICTION**

19. 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.

20. 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 Supremacy Clause of the United States Constitution and the First and Fourteenth Amendments to the United States Constitution.

**VENUE**

21. Venue is proper in the United States District Court for the Eastern District of Virginia under 28 U.S.C. § 1391 as defendants exercises their authority within the Eastern District of Virginia and maintain their offices within this district and all of the operative acts or omissions have or will occur in this district.

**PARTIES**

22. Plaintiff, Roque De La Fuente, is an independent candidate for President of the United States in the 2016 general election. Plaintiff is a resident of the State of Florida residing at 625 West Winter Park Street, Orlando, Florida.

23. Defendant, James B. Alcorn, is a member of the Virginia Board of Elections. Defendant, as a member of the Virginia Board of Elections is charged with the enforcement of all election laws within the Commonwealth of Virginia. Defendant, as a member of the Virginia Board of Elections is charged with enforcement of the challenged provisions of §§ 24.2-506 and 24.2-543 of the Code of Virginia mandating that all evidence in an appeal of a “Notice of Deficiency” be lodged with the Virginia Board of Elections within one (1) day after an appeal of a “Notice of Deficiency”. election laws. Defendant’s place of business is located at 1100 Bank Street, 1st Floor, Richmond, VA 23219.

24. Defendant, Clara Belle Wheeler, is a member of the Virginia Board of Elections. Defendant, as a member of the Virginia Board of Elections is charged with the enforcement of all election laws within the Commonwealth of Virginia. Defendant, as a member of the Virginia Board of Elections is charged with enforcement of the challenged provisions of §§ 24.2-506 and 24.2-543 of the Code of Virginia mandating that all evidence in an appeal of a “Notice of Deficiency” be lodged with the Virginia Board of Elections within one (1) day after an appeal of a “Notice of Deficiency”. election laws. Defendant’s place of business is located at 1100 Bank Street, 1st Floor, Richmond, VA 23219.

25. Defendant, Singleton B. McAllister, is a member of the Virginia Board of Elections. Defendant, as a member of the Virginia Board of Elections is charged with the enforcement of all election laws within the Commonwealth of Virginia. Defendant, as a member of the Virginia Board of Elections is charged with enforcement of the challenged provisions of §§ 24.2-506 and 24.2-543 of the Code of Virginia mandating that all evidence in an appeal of a “Notice of Deficiency” be lodged with the Virginia Board of Elections within one (1) day after an appeal of a “Notice of Deficiency”. election laws. Defendant’s place of business is located at 1100 Bank Street, 1st Floor, Richmond, VA 23219.

**FACTUAL ALLEGATIONS**

26. Plaintiff is an independent candidate for the office of President of the United States in the 2016 general election.

27. The Commonwealth of Virginia requires independent candidates for the office of President of the United States to submit to the Virginia Department of Elections 5,000 valid signatures of registered Virginia voters, recorded on nominating petitions promulgated by defendants in order to appear on the Commonwealth’s 2016 general election ballot to elect the candidate’s slate of presidential electors to the Electoral College.

28. Defendants require that presidential electors disclose their SSNs as a condition precedent to being nominated as a presidential elector and before nomination petitions could be circulated on their behalf.

29. No federal law either mandates or authorize defendants to collect, or seek to collect, SSNs from either presidential electors or signers of election petitions of the kind promulgated and mandated to be used by defendants for independent candidates seeking to place their name on Virginia’s general election ballot.

30. Prospective presidential electors committed to casting their vote for plaintiff for President of the United States in the 2016 Electoral College refused to disclose their SSNs forcing plaintiff to continually to seek new prospective presidential electors.

31. As a direct and proximate result of defendants’ requirement that presidential electors disclose their SSNs, plaintiff was not able to circulate nominating petitions for the office of President of the United States for the full period of time permitted under Virginia law.

32. As a direct and proximate result of defendants’ requirement that presidential electors disclose their SSNs, plaintiff was prevented from gathering additional valid signatures on nominating petitions seeking to place plaintiff’s name on Virginia’s 2016 general election ballot for the office of President of the United States.

33. Nomination petitions promulgated by defendants expressly provide for the collection of SSNs from signers of nominating petitions.

34. Otherwise willing signers of plaintiff’s nominating petitions refused to sign the petition when they saw the column seeking the disclosure of their SSN.

35. Otherwise willing signers of plaintiff’s nomination petitions refused to sign plaintiff’s nomination petition for the office of President of the United States and openly expressed concern that disclosure of their SSN might be used to unlawfully compromise their identity.

36. As a direct and proximate result of defendants’ inclusion of a column for the collection of SSNs from willing signers of plaintiff’s nominating petitions, plaintiff lost otherwise potentially valid signatures.

37. Defendants’ inclusion of a column seeking the disclosure of SSNs from prospective election petition petitions impaired “core political speech”.

38. Agents for plaintiff timely filed nominating petitions with the Virginia Department of Elections for plaintiff’s slate of presidential electors comprising 1,122 petition pages containing 6,990 signatures.

39. On August 31, 2016, the Virginia Department of Elections filed a “Notice of Deficiency” certified that plaintiff had timely filed nominating petitions comprising 1,122 petition pages containing 6,990 signatures, of which 1,437 had already been certified as valid and alleging that plaintiff did not submit the required 5,000 valid signatures necessary to place plaintiff’s name on Virginia’s 2016 general election ballot.

40. On September 7, 2016, the Virginia Department of Elections filed an amended “Notice of Deficiency” alleging that plaintiff had only submitted 4,433 signatures, of which only 2,557 were valid.

41. Plaintiff, in fact, submitted 6,990 signatures.

42. The Virginia Department of Elections either destroyed, lost, or otherwise negligently handled plaintiff’s petition pages containing at least 2,557 signatures.

43. The amended “Notice of Deficiency” alleged that 811 signatures were classified by the Virginia Department of Elections as “Cannot Identify.”

44. The amended “Notice of Deficiency” alleged that 152 signatures were classified by the Virginia Department of Elections as “Illegible.”

45. Sections 24.2-506 and 24.2-543 of the Code of Virginia provide that an appeal of a “Notice of Deficiency” must be filed within 5 days.

46. On Friday, September 9, 2016, plaintiff timely filed an appeal of the Virginia Department of Elections’ amended “Notice of Deficiency” to the Virginia Board of Elections.

47. On Monday, September 12, 2016, plaintiff noticed the Virginia Board of Elections of the evidence and legal arguments in support of plaintiff’s appeal of the amended “Notice of Appeal.”

48. Plaintiff specifically filed with the Virginia Board of Elections that plaintiff’s appeal was based on: (a) the lost and un-reviewed 2,557 signatures submitted to the Virginia Department of Elections; (b) all 811 signatures classified by the Virginia Department of Elections as “Cannot Identify” and (c) all 152 signatures classified by the Virginia Department of Elections as “Illegible.”

49. Plaintiff’s legal argument an evidence submitted to the Virginia Board of Elections included a sufficient number of signatures invalided by the Virginia Department of Elections, in addition to the 2,285 signatures certified as valid, to meet the 5,000 valid signature requirement required to place plaintiff’s name on the 2016 Virginia general elections ballot for the office of President of the United States.

50. On the same day, Monday, September 12, 2016, without any hearing, defendants rejected plaintiff’s appeal of the Virginia Department of Elections amended “Notice of Deficiency.”

51. One business day to review, record and establish evidence of the validity of thousands of signatures fails to provide any meaningful opportunity to appeal a “Notice of Deficiency” to the Virginia Board of Elections.

52. Failure of defendants to provide any hearing before rejecting plaintiff’s appeal of the “Notice of Deficiency” for failing to provide evidence that cannot be generated within the time period allowed by §§ 24.2-506 and 24.2-543 of the Code of Virginia constitutes an absolute denial of due process of law in clear violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

53. Defendants’ enforcement of §§ 24.2-506 and 24.2-543 is the direct and proximate cause of plaintiff’s exclusion from the 2016 Virginia general election ballot for the office of President of the United States.

54. Plaintiff has no other adequate remedy at law.

**COUNT I**

**(Defendants’ Violation of the Supremacy Clause of the United States Constitution)**

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

56. The Supremacy Clause prohibits the States from acting in any manner in violation of federal law.

57. Federal law is the sole authority upon which SSNs may be authorized or mandated to be collected by federal, state and/or private entities.

58. No federal law either mandates or authorizes the States to collect SSNs as a condition precedent to permit individual access to the Commonwealth’s general election ballot for presidential elector.

59. No federal law either mandates or authorizes the States to attempt to collect SSNs from prospective signers of election petitions of the kind promulgated by defendants and required to be used by plaintiff to collect the required number of signatures to place his name on Virginia’s 2016 general election ballot.

60. Defendants’ required collection of SSNs from presidential electors caused otherwise willing presidential electors to decline to be nominated as part of plaintiff’s slate of presidential electors.

61. Plaintiff’s need to search for other willing presidential electors delayed the circulation of plaintiff’s election petition to place his name on Virginia’s 2016 general election ballot.

62. Defendants’ attempt to collect SSNs from otherwise willing signers of plaintiff’s election petition caused them to refuse to sign plaintiff’s nominating petition, resulting in the loss of otherwise valid political speech.

63. Defendants’ conduct is the direct and proximate result of the violation of plaintiff’s rights under the Supremacy Clause of the United States Constitution.

64. Accordingly, defendants’ collection and attempted collection of SSNs from presidential electors and signers of election petitions is a violation of the Supremacy Clause of the United States Constitution for which plaintiff demands adequate equitable remedy.

**COUNT II**

**(Defendants’ As-Applied Impairment of Rights Guaranteed Under the First and Fourteenth Amendments to the United States Constitution)**

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

66. Defendants’ required collection of SSNs from prospective presidential electors impaired, as a direct and proximate result of the delay cause to the circulation on plaintiff’s election petitions, the ability to collect “core political speech” as a direct and proximate result of defendants’ conduct.

67. Accordingly, defendants’ conduct, as applied to the collection of SSNs from presidential electors, impaired rights guaranteed to plaintiff under the First and Fourteenth Amendments to the United States Constitution for which plaintiff demands adequate equitable remedy.

**COUNT III**

**(Defendants’ As-Applied Impairment of Rights Guaranteed Under the First and Fourteenth Amendments to the United States Constitution)**

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

69. Defendants’ attempt to collect SSNs from signers of plaintiff’s nominating petitions is the direct and proximate cause of otherwise willing signers of plaintiff’s election petitions to refusal to disclose their SSNs and causing them to refuse to record their names on an election petition that, on its face, provided for the collection of their SSN.

70. Accordingly, defendants’ conduct, as applied to the attempted collection of SSNs from otherwise willing signers of plaintiff’s Virginia nominating petitions for the office of President of the United States, impaired rights guaranteed to plaintiff under the First and Fourteenth Amendments to the United States Constitution for which plaintiff demands adequate equitable remedy.

**COUNT IV**

**(Defendants’ Enforcement of §§ 24.2-506 and 24.2-543 of the Code of Virginia Denies Due Process of Law In Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution)**

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

72. The one (1) day time period provided by the challenged provisions of the Code of Virginia to review and produce evidence to defendants of the validity of thousands of signatures recorded on plaintiff’s Virginia nominating petitions and deemed invalid by the Virginia Department of Elections, is an effective bar to any meaningful appeal to the Virginia Board of Elections of the “Notice of Appeal” issued by the Virginia Department of Elections.

73. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires defendants provide a meaningful opportunity to appeal any decision of the Virginia Department of Elections determination that signatures recorded on election petitions are invalid.

74. Defendants’ enforcement of §§ 24.2-506 and 24.2-543 of the Code of Virginia and summary rejection without any hearing of plaintiff’s appeal of the Virginia Department of Elections amended “Notice of Deficiency” constitutes a complete denial of due process of law.

75. Accordingly, defendants’ enforcement of §§ 24.2-506 and 24.2-543 of the Code of Virginia is the direct and proximate result of the denial to plaintiff of due process of law mandated under the Fourteenth Amendments to the United States Constitution for which plaintiff demands adequate equitable remedy.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

a. Enter emergency mandamus relief ordering defendants to place plaintiff’s name on Virginia’s 2016 general election ballot for the office of President of the United States;

b. Permanently enjoin defendants from mandating the collection of SSNs from prospective presidential electors;

c. Permanently enjoin defendants from attempting to collect SSNs from prospective signers of election petitions;

d. Declare defendants’ collection of SSNs from presidential electors unconstitutional;

e. Declare defendants’ attempted collection of SSNs from prospective willing signers of election petitions unconstitutional;

f. Declare §§ 24.2-506 and 24.2-543 of the Code of Virginia unconstitutional in violation of the Fourteenth Amendment to the United States Constitution.

g. Award plaintiff the cost of this action together with their reasonable attorneys’ fees and expenses pursuant to 42 U.S.C. §1988; and,

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

Respectfully submitted,

Dated: September 20, 2016 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Roque “Rocky” De La Fuente

Acting in his own capacity *pro se*