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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

ROQUE ROCKY DE LA FUENTE,,  
Plaintiff,  
vs.

ALEX PADILLA,

Case No: 2:19-cv-01659-MCE-DB

Consolidated With Related Cases:  
2:19-cv-01477-MCE-DB  
2:19-cv-01501-MCE-DB  
2:19-cv-01506-MCE-DB  
2:19-cv-01507-MCE-DB

**PLAINTIFF DE LA FUENTE'S REPLY  
BRIEF IN OPPOSITION TO STATE  
DEFENDANTS' OMNIBUS OPPOSITION  
TO MOTIONS FOR PRELIMINARY  
INJUNCTION**

Hearing Date: Sept. 19, 2019  
Hearing Time: 10:00 a.m.  
Location: Courtroom 7  
Judge: Hon. Morrison C. England, Jr.

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1 **I. ARGUMENT**

2 A. Challenged Act is Unconstitutional as an Additional Qualification

3 One of the (many) fallacies Defendant seeks to advance in his brief in opposition to  
4 Plaintiff's motion for preliminary injunction is that Plaintiff's refusal to comply with the  
5 challenged Act is limited to simply not wanting to release his federal tax returns which are  
6 available for release to Defendant without implicating any other meaningful impairment to  
7 Plaintiff's speech. The fallacy of Defendant's central premise is betrayed by three years' worth  
8 of hysterical effort by Defendant and the left-wing establishment – including most Members of  
9 the California Legislature – to label everything that President Trump has done since announcing  
10 his candidacy for the office of President of the United States to be nefarious. The challenged Act  
11 is part of that ongoing effort to attack the President and anyone who does not fall into line with  
12 this new Left-Wing orthodoxy. Included within this new Left-Wing orthodoxy is the  
13 conspiratorial notion, without any supporting evidence, that the President's refusal to release his  
14 federal tax returns in 2016 amounts to some evidence that President Trump is hiding evidence of  
15 some deeper wrong-doing. The Left has summarily announced that the failure of President  
16 Trump to release his federal income tax returns is wrong and the challenged Act is meant to  
17 force all presidential candidates to concede and conform to their view that the failure of a  
18 presidential candidate to release their tax returns is so awful that they are not worthy of holding  
19 the office of President of the United States, sufficient to be barred from the California primary  
20 ballot and to impair any such candidate from contesting for their party's national nomination and  
21 that, therefore, the current President is illegitimate for his failure to release his tax returns in  
22 2016.

1 While Plaintiff diverges from many of the political and policy decisions made by the  
2 current President, which is why he is seeking the 2020 Republican Party nomination, he does not  
3 wish to be affiliated with the political agenda of the left-wing and the Democratic Party that the  
4 public is entitled to the release of any and all personal, private and confidential information from  
5 any presidential candidate and that any such refusal should be read as an indicator of an  
6 underlying unfitness to hold public office. Plaintiff believes that this new form of political terror,  
7 rooted in radical left-wing political correctness, must be stopped, it is dangerous to our  
8 representative democracy, and that compliance with the Act is tantamount to capitulation to this  
9 emerging threat to the proper functioning of our government. Furthermore, Plaintiff's  
10 compliance with the challenged Act will only serve to artificially bolster the argument of  
11 President Trump's enemies that only President Trump refused to release his tax returns, which in  
12 turn, will only serve to amplify the unfounded conspiracy theories that President Trump will not  
13 release his federal tax returns because he must be hiding some sort of financial impropriety or  
14 other nefarious conduct rendering him unfit to hold office and that his election in 2016 was  
15 illegitimate..

16 Accordingly, the challenged Act is precisely akin to loyalty oaths for political candidates  
17 which Defendant acknowledges in his brief have been held unconstitutional as additional  
18 qualifications and the type of restriction that has the "likely effect of handicapping an otherwise  
19 qualified class of candidates." *Schaefer v. Townsend*, 215 F.3d 1031, 1035 (9<sup>th</sup> Cir. 2000) (citing  
20 *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 828 (1995); Def. Br. at p. 7-8. Plaintiff is  
21 simply not free to comply with the Act because Plaintiff's compliance with the Act is directly  
22 counter with Plaintiff's political beliefs that the attacks on President's Trump's decision to not  
23 release his federal tax returns in 2016 are wrong, that the left-wing orthodoxy that the public is  
24 PLAINTIFF DE LA FUENTE'S REPLY BRIEF IN OPPOSITION TO STATE DEFENDANTS' OMNIBUS  
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1 entitled to any and all private and confidential information concerning presidential candidates is  
2 harmful to our form of government and that the underlying warfare of political correctness  
3 advanced by the political left-wing in forcing the release of any confidential information that  
4 they deem necessary as a condition precedent to seek political office is dangerous to the proper  
5 functioning of our democratic processes and must be stopped.  
6

7 Accordingly, the challenged Act imposes an additional qualification in violation of the  
8 Presidential Qualifications Clause and Plaintiff is likely to succeed on the merits of his claim and  
9 Plaintiff's motion for a preliminary injunction should be granted.  
10

11 B. Challenged Act is Unconstitutional Compelled Speech in Violation of the First  
12 and Fourteenth Amendments to the United States Constitution

13 Consistent with the foregoing, Defendant's argument that the challenged Act does not  
14 implicate unconstitutional compelled speech because compliance with the Act does not implicate  
15 a particular viewpoint is pure sophistry. *See Rumsfeld v. Forum for Academic & Institutional*  
16 *Rights (FAIR), Inc.*, 547 U.S. 47, 63-66 (2006). Defendant and his political party, have made the  
17 release of federal tax returns by presidential candidates a political battle and part of a broader  
18 tactical campaign to either remove or delegitimize the election of the current President.  
19 Defendant's argument also stinks of obvious hypocrisy from a Democrat whose political party  
20 has consistently argued that the President's effort to build a border wall and enforce immigration  
21 law adopted by Republican and Democratic administrations is somehow racist.<sup>1</sup> If the act of  
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23

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26 <sup>1</sup> Plaintiff De La Fuente does not agree with the current President on the details of immigration  
27 policy or the building of the border wall, however, Plaintiff has never argued that efforts to  
28 channel immigration through legal mechanisms implicates a racist policy as the Democrats have  
been braying for the past three years.

1 building a border wall implicates a viewpoint of racism to Democrats, then it cannot be argued  
2 by Defendant that compliance with the challenged Act as fealty to the left-wing's new mantra  
3 and warfare against the President on the need for presidential candidates to release private and  
4 confidential information does not also implicate a forced adoption or acquiescence of a particular  
5 point of view advance by Defendant and the Democratic Party.  
6

7 Defendant's further argument that the challenged Act is viewpoint neutral because the  
8 information contained on federal income tax returns are already provided to federal taxing  
9 authorities free from any expressive viewpoint is clearly wrong and myopic because Defendant's  
10 argument ignores the fact that these confidential tax returns – which were never meant to be  
11 made public under any virtually any circumstances – are now subject to release against the  
12 backdrop of a highly partisan debate about both the President and the probity of forcing political  
13 candidates to release private and confidential information to the public as a condition precedent  
14 to being able to seek the national nomination for president and to contest for delegates in  
15 California of their chosen political party. Def. Br. at pp. 22-23. Plaintiff agrees that the filing of  
16 a tax return is viewpoint neutral. Plaintiff, however, argues that the commandeering of his tax  
17 returns and releasing them to the public under the challenged Act as part of an ongoing political  
18 battle between the President and his political opponents forces a candidate to choose sides, either  
19 comply with the Act and capitulate with the political narrative that presidential candidates must  
20 release private and confidential information to the public and that the President was wrong to not  
21 do so in the 2016 presidential contest or oppose the creep of political correctness, advanced by  
22 the left-wing opponents of President Trump, into the mechanics of how we select our national  
23 leaders and refuse to comply with the challenged Act.  
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1 The challenged Act imposes an unconstitutional forced speech by forcing presidential  
2 candidates to communicate that they agree with the need for presidential candidates to release  
3 private and confidential information as a condition precedent to seeking the office of President of  
4 the United States and that failure to do so implies a flawed candidate as the Democrats continue  
5 to argue in their national effort to delegitimize the election of President Trump in 2016. As  
6 Defendant has acknowledged in his brief, the Supreme Court has reasoned that “a ceremony so  
7 touching on matters of opinion and political attitude may [not] be imposed upon the individual  
8 by official authority under powers committed to any political organization under our  
9 Constitution.” *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 636 (1943). Here  
10 the ceremony challenged in *West Virginia Board of Education* is cognate with the challenged  
11 Act’s requirement that presidential candidates produce confidential federal tax returns for  
12 publication which in 2019 is rife with political messaging both against the conduct of the sitting  
13 president and the probity of requiring political candidates in all future elections to conform with  
14 the political norms advanced by the emerging radical Left in American politics. Accordingly,  
15 the challenged Act requires and regulates conduct “that communicates a message or that has an  
16 expressive element” in violation of the First Amendment’s prohibition against compelled speech.  
17 *See, Interpipe Contracting, Inc v. Becerra*, 898 F.3d 879, 895 (9<sup>th</sup> Cir. 2018), *cert denied* 139  
18 S.Ct. 2744 (2019). In *Cook v. Gralike*, 531 U.S. 510, the Supreme Court upheld the 8<sup>th</sup> Circuit’s  
19 ruling that found a provision in the Missouri Constitution which required that the statement  
20 “DECLINED TO PLEDGE SUPPORT FOR TERM LIMITS” be printed on all primary and  
21 general election ballots next to the name of any candidate who refused to pledge to support term  
22 limits if elected to office was unconstitutional compelled speech because it sought to “dictate  
23 electoral outcomes.” *Cook*, 531 U.S. 515, 526. In the instant action, the penalty is worse than  
24 PLAINTIFF DE LA FUENTE’S REPLY BRIEF IN OPPOSITION TO STATE DEFENDANTS’ OMNIBUS  
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1 the Supreme Court was confronted with in *Cook*, because under the challenged Act, if Plaintiff  
2 does not support and acquiesce in the forced disclosure of private and confidential information as  
3 part of a heated partisan political battle against a sitting president, the penalty is not just that  
4 California will seek to impair the candidate's electoral outcome, it will 100% foreclose any  
5 opportunity for Plaintiff to compete within his/her own party's presidential nomination contest  
6 for California delegates unless he publicly participates and gives tacit approval in the mechanism  
7 California has chosen to both wage political war on the President and advance the political  
8 agenda that Plaintiff does not support to force public disclosure of private and confidential  
9 information as a condition precedent to seeking certain political offices by giving the opposition  
10 additional propaganda that every candidate except President Trump released their tax returns  
11 giving additional credence to the bogus "so what is the President hiding" argument advanced by  
12 the enemies of the Republican Party.

13  
14  
15 Therefore, Plaintiff De La Fuente's compelled speech claim is likely to succeed on the  
16 merits and the requested injunction should be granted.

17  
18 C. California Has a Reduced Interest in Regulating Presidential Elections and No  
19 Interest in the Presidential Nominating Process

20 In *Anderson v. Celebrezze*, 460 U.S. 780 (1983) the United States Supreme Court  
21 explained that:

22 [I]n the context of a Presidential election, state-imposed restrictions implicate a  
23 uniquely important national interest. For the President and the Vice President of the  
24 United States are the only elected officials who represent all the voters in the Nation.  
25 Moreover, the impact of the votes cast in each State is affected by the votes cast for  
26 the various candidates in other States. Thus, in a Presidential election, a State's  
27 enforcement of more stringent ballot access requirements...has an impact beyond its  
own borders. Similarly, the State has a less important interest in regulating  
Presidential elections than state-wide or local elections, because the outcome of the  
former will be largely determined by voters beyond the State's boundaries....The

1 pervasive national interest in the selection of candidates for national office, and this  
2 national interest is greater than any interest of an individual State.

3 *Anderson* 460 U.S. at 794-95. While Plaintiff disagrees that the challenged Act is a ballot access  
4 requirement because it does not seek to prevent ballot clutter (i.e., through the collection of a  
5 certain number of valid signatures or the payment of a filing fee) or to regulate the orderly  
6 mechanics of the election process (requirements for candidates to file documents showing their  
7 name for the ballot, their address, proper qualification to hold the office they seek to contest,  
8 election day poll requirements and restrictions), the Supreme Court's warning against State  
9 interference in presidential elections has strong currency in this litigation.  
10

11 Defendant attempts to dismiss that the Supreme Court's limit on State restrictions on  
12 presidential elections does not apply to presidential primary elections because the primary  
13 election (unlike the general election) is decided within the confines of California is, again, pure  
14 sophistry. *See* Def. Br. at pp. 11, 21-22. Contrary to Defendant's attempt to distinguish  
15 *Anderson* from the instant litigation, a party primary election contest is part of a nationwide  
16 process of selecting delegates and alternate delegates to the national party nominating  
17 conventions. To suggest that California's primary election contest is not part of a larger national  
18 contest to secure a majority of a party's delegates to secure the presidential nomination is to  
19 suggest the silly notion that because the election of California's Electoral College in the general  
20 election is decided within the boundary of California that the presidential general election is also  
21 decided within California is both flatly ridiculous and contrary to the Supreme Court's  
22 understanding of the conduct of presidential elections.  
23  
24

25  
26 More directly, the United States Supreme Court has ruled that the States **have no interest**  
27 **in the presidential nominating process**. *Cousins v. Wigoda*, 419 U.S. 477 (1975). Accordingly,

1 the Supreme Court has expressly stated that the State of California has no interest, not simply the  
2 reduced interest articulated in *Anderson*, in the regulation of the California G.O.P's. delegate  
3 selection process in the 2020 primary election (beyond, of course the normal ballot access  
4 requirements to prevent ballot clutter and to ensure an order primary election process).

5  
6 Defendant cites to its interest in an informed electorate in general elections in support of  
7 the challenged Act as a means to argue it is not an unconstitutional additional qualification. But  
8 under *Cousins*, California has no state interest at the stage of the presidential nominating process.  
9 Accordingly, Defendant's argument that the challenged Act is not an unconstitutional additional  
10 qualification fails as a valid exercise of any articulated state interest in the selection of delegates  
11 to the 2020 Republican National Convention.  
12

13 Accordingly, the challenged Act is an unconstitutional additional qualification and  
14 Plaintiff is likely to succeed on the merits of his claims and Plaintiff's requested preliminary  
15 injunction should be granted.  
16

17 D. The Challenged Act Violates 26 U.S.C. § 6103

18 Plaintiff De La Fuente argues that the challenged Act violates federal law, 26 U.S.C. §  
19 6103, and is, therefore invalid. 26 U.S.C. § 6103 provides every instance in which federal  
20 income tax returns can be made available and never provides that State actors may publicly  
21 release federal income tax returns to the public. In fact, as explained in Plaintiff's brief in  
22 support, the federal statute expressly prohibits any state official from public release of federal  
23 income tax returns which the challenged Act commands be done. Clearly, therefore, the  
24 challenged Act "stands as an obstacle to the accomplishment and execution of the full purposes  
25 and objectives of Congress" satisfying even doctrines of conflict preemption, as 26 U.S.C. §  
26 6103 prohibits the public disclosure of federal income tax returns by federal and state authorities,  
27  
28 PLAINTIFF DE LA FUENTE'S REPLY BRIEF IN OPPOSITION TO STATE DEFENDANTS' OMNIBUS  
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1 except as expressly provided under the 26 U.S.C. § 6103. *See, McClellan v. I-Flow Corp.*, 776  
2 F.3d 1035, 1040 (9<sup>th</sup> Cir. 2015). Defendant attempts to save the challenged Act by arguing that  
3 the forced disclosure of Plaintiff's federal income tax returns is "voluntary" which is not  
4 prohibited under 26 U.S.C. § 6103. A command to a presidential candidate, who is contesting a  
5 national election, where no other state compels the release of federal income tax returns for  
6 public release, to produce federal income tax returns which are guaranteed to be confidential  
7 under federal law, or be precluded from the primary election in the largest state within the Union,  
8 is not a voluntary choice...it is a compelled release of federal income tax returns for public  
9 dissemination by state officials which directly conflicts with 26 U.S.C. § 6103(a).

10  
11  
12 Defendant's citation to *Lomont v. Summers*, 135 F.Supp. 2d 23, 24 (D.D.C. 2001) is  
13 misplaced and does not control the adjudication of Plaintiff's claims because an individual  
14 decision to engage in the local commerce of specified firearms, triggering a local requirement to  
15 produce tax return information is different in kind and magnitude from the issue in this litigation.  
16 First, the tax returns produced in *Lomont* were not subject to public disclosure and the *Lomont*  
17 Court never ruled on the broad public disclosure of the tax returns required to be produced in  
18 *Lomont* in violation of 26 U.S.C. § 6103(a) which is the issue in this litigation. The choice to  
19 engage in local commercial activity which requires the voluntary production of tax returns for  
20 limited review by a local official is not the same factual situation of a presidential candidate  
21 engaged in a national election, advancing a political agenda protected under the First  
22 Amendment and confronted with a single state's intent to compel national candidates to produce  
23 their federal income tax returns to be published on the internet as a condition precedent to being  
24 allowed to compete for party delegates in nation's largest state. Forcing national presidential  
25 candidates, engaged in core political speech protected under the First Amendment and who have  
26 PLAINTIFF DE LA FUENTE'S REPLY BRIEF IN OPPOSITION TO STATE DEFENDANTS' OMNIBUS  
27 OPPOSITION TO MOTIONS FOR PRELIMINARY INJUNCTION - 12  
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1 spent millions of dollars contesting a national party nominating contest, free from forced federal  
2 income tax disclosures, to acquiesce in order to contest the primary in the largest state is not a  
3 “voluntary” release of federal tax returns free from the restrictions of federal law under 26 U.S.C.  
4 § 6103, it is coercion prohibited under federal law. Similarly, Defendant improperly cites to  
5 *United States v. Sheriff, City of N.Y.*, 330 F.2d 100, 101 (2d Cir. 1964), which upheld the  
6 requirement to disclosure tax returns to a grand jury, a factual situation free from the public  
7 disclosure requirement under the challenged Act. The Court in *Sheriff* did not consider the broad  
8 public disclosure required under the challenged Act in this litigation, because all evidence  
9 produced to a grand jury is sealed. Accordingly, *Sheriff* is also clearly distinguishable for all the  
10 same reasons that *Lomont* is distinguishable from this case.  
11  
12

13 Accordingly, the challenged Act is in direct contravention of 26 U.S.C. § 6013 and is  
14 invalid under the Supremacy Clause of the United States Constitution and Plaintiff is likely to  
15 succeed on the merits of his claims and the requested preliminary injunction should be granted.  
16

17 E. Presidential Tax Return Disclosure Not Universal

18 One of the underlying mantras of Defendant and supporters of the challenged Act is that  
19 President Trump broke with a longstanding “tradition and refused to release his tax returns” in  
20 2016 which triggered passage of the challenged Act by the California Legislature. Def. Br. at p.  
21 3. Defendant correctly advances the argument that the challenged law applies with equal force to  
22 all six recognized California political parties the: American Independent Party, the Democratic  
23 Party, the Green Party, the Libertarian Party, the Peace and Freedom Party, and the Republican  
24 Party. However, Defendant’s never provide any evidence that the presidential nominees of the  
25 American Independent Party,, the Green Party, the Libertarian Party or the Peace and Freedom  
26 Party released their federal income tax returns to the public. In fact, what Plaintiff’s legal  
27 PLAINTIFF DE LA FUENTE’S REPLY BRIEF IN OPPOSITION TO STATE DEFENDANTS’ OMNIBUS  
28 OPPOSITION TO MOTIONS FOR PRELIMINARY INJUNCTION - 13

counsel can glean from available on-line presidential tax return archives is that only Jill Stein of the Green Party, in addition to Republican and Democratic candidates, except President Ford, have adhered to the “longstanding tradition” cited as the rational to prevent President Trump from replicating his tax return decision in 2020. Certainly 5 years’ worth of returns is not the absolute standard as Jill Stein released returns for 1 tax year and Republican presidential candidates John McCain and Mitt Romney only released 2 years’ of tax returns each.

## **II. CONCLUSION**

Accordingly, for all the foregoing stated reasons and the reasons more fully set forth in “Plaintiff’s Brief in Support of Plaintiff’s Motion for Emergency Preliminary Injunction” Plaintiff’s motion for a preliminary injunction should be granted.

Respectfully submitted,

Dated: September 12, 2019

**s/ Paul A. Rossi**

Paul A. Rossi (PA Bar I.D. #84947)

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## **CERTIFICATE OF SERVICE**

Plaintiff, by and through his undersigned legal counsel, hereby certifies that a true and correct copy of the foregoing document has been served on this date on opposing counsel via the Court’s CM/ECF system.

Dated: September 12, 2019

**s/ Paul A. Rossi**

Paul A. Rossi