No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Sedfrey M. Linsangan,

Petitioner,

vs.

Alice M. Taijeron; et al.,

Respondents.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Sedfrey M. Linsangan
P.O. Box 23128
Barrigada, Guam 96921
Telephone: (671) 929-1616
E-Mail: guampacific@gmail.com

I. QUESTIONS PRESENTED

1. Is there anything else that I need to suffer or injure in order to qualify for the standing issue?

2. How could I live the quality of life that I desire if I cannot pursue my happiness in serving the people because Guam laws substantially burdened me and other people to run for office?

3. Did the court misinterpret the First Amendment of the Constitution the way it is written by creating a policy or requirement on grievances and Section 2 of Article III Constitution?

4. Am I not exempted for the three (3) elements of standing since Guam laws took away some of my constitutional rights and deprived me of my rights and privileges and therefore should not be a law?

II. Table of Contents

III. Petition for Writ of Certiorari

Petioner respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit.

IV. Opinions Below

The opinion of the United States Court of Appeals appears at Appendix A to the petition.

The opinion of the United States District Court appears at appendix B to the petition.

The Report and Recommendation of the magistrate Judge of the United States District Court of Guam appears at Appendix C to the petition.

V. Jurisdiction

The date on which the United States Court of Appeals decided my case was on August 24, 2020. A timely petition for rehearing en banc was denied by the United States Court of appeals on September 29, 2020 and a copy of the *Order Denying Rehearing en banc* appears at Appendix D. The jurisdiction of this court is invoked under 28 US. C. Section 1254 (1).

VI. List of Parties

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this

petition is as follows:

1. Alice M. Taijeron
2. Jadeen Tuncap
3. G. Patrick Civille
4. Joseph P. Mafnas
5. Joaquin P. Perez
6. Michael J. Perez
7. Benny Pinaula

VII. Related Cases and Table of Authorities cited by Magistrate Judge Manibusan

1. *Maya v. Center Corp.*, 658 F.3d 1060, 1068 (9th Circuit 2011) (quoting Warth v. Seldin, 422 U.S. 490, 501 (1975) "When determining Article III standing the court must accept as true and all material allegations of the complaint and construe the complaint in favor the of the complaining party. Decreased quality of Life is an injury in fact sufficient to support standing.

2. *Somers v. Apple, Inc.,* 729 F3d. 953, 959 (9th Cir. 2013) "A defendant is entitled to dismissal under Rule 12 (b) (6) when a complaint fails to state a cognizable legal theory or alleges insufficient facts under a cognizable legal theory.

3. *N. Star Int'l v. Ariz. Corp.,* Comm'n 720 F.2d 578, 571 (9th Cir. 1963) "The Ninth Circuit has explained that the purpose of a Rule 12 (b) 96) motion is to test a complaints legal sufficiency.

4. Federal Rules of Civil Procedure, Rule 8(a) "Generally, the plaintiff's burden at this state is light since Rule 8(a) requires only that a complaint shall contain ... a short and plain statement of the claim showing the pleader is entitled to relief.

5. *Sprewell v. Golden State Warriers*, 266 F.3d 979, 988 (9th Cir. 2001) "All allegation of material fact are taken as true and construed in the light most favorable to the non moving party"

6. *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1. (9th Cir. 1985); See also, *Butler v. Long,* 752 F. 3d 1177, 1180 (9th Cir. 2014) "The Court has an obligation, especially in civil rights actions to construe pro se pleading liberally and gives the pro se plaintiff the benefit of any doubt.

7. Supplemental Authorities and established cases cited in Report and Recommendation (Appendix C)

VIII. Constitutional and Statutory Provisions Involved

1. First Amendment

The right of the people to petition the government for a redress of grievances.

2. Ninth Amendment

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

3. Fourteenth Amendment, Fifth Amendment

No state shall make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

4. Fifteenth Amendment

The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

5. Section 1983 of Title 42 USC.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's

judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

6. Subsection (a) of Section 15404 of Chapter 15 of 3 GCA. Conduct of Primary Elections.

(a) *I Maga 'låhen Guåhan and Segundu Na Maga 'låhi* team receiving a plurality of votes cast for a partisan nomination shall be the party nominees for the general election. No *I Maga 'låhen Guåhan and Segundu Na Maga 'låhi* team running in the independent column shall be eligible for general election ballot placement unless such team receives a minimum twenty percent (20%) of the total combined votes cast for the winning teams seeking partisan nomination.

7. Section 1422 of Title 48 Organic Act of Guam

"The Governor of Guam together with the Lt. Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam". The Governor and lt. governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices.

8. Section 1421b(n) Bill of Rights of Title 48 Organic Act of Guam

"No discrimination shall be made in Guam against any person or account of race, language, or religion, nor shall the equal protection of the laws be denied".

9. Section 1421b. Bill of Rights (a) Title 48 USC Organic Act of Guam. "Right of the people to petition the government for a redress of their grievances".

10. Section 1421b. (e) Bill of Rights Title 48 USC Organic Act of Guam "No person shall be deprived of life, liberty, or property without due process of law"

11. Section 1423a. Scope of Legislative Authority. "The legislative power of Guam shall extend to all rightful subjects of legislation not in consistent with the provisions of this chapter and the laws of the United States applicable to Guam.

12. Section 1421b: (u) of Title 48 Organic Act of Guam. The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been preciously extended to that Territory and shall have the same force and effect there as in the United States or in any State of the United States article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

All laws enacted by Congress with respect to Guam and all laws enacted by the territorial legislature of Guam which are inconsistent with the provisions of this subsection are repealed to the extent of such inconsistency.

13. Section 1423K. Right of Petition. Any person in Guam shall have the unrestricted right of petition.

IX. Other

Amended Complaint filed on June 21, 2018. (Appendix E)

I am very respectfully requesting that the court to please review the transcript of records on oral arguments dated January 9, 2020 because it will justify my case on all issues. The 40 pages limit prevented me to include the transcript of records.

X. Statement of the Case

In May 2017, I attended the Guam Election meeting. I informed them that I want to run for Governor but finding a running mate in the primary election and excessive nominating petition is but denying me substantially to run for Governor. I also complained about the unequal treatment on nominating petition because other positions does not require one. I also raised the issue that mayoral candidate does not require a running mate in Primary election.

I explained to them that in the United States, it is not mandatory to run for governor with a Lt. Governor team in the primary election. Even in Presidential election, running mate is not needed in the primary election.

The Legal counsel advised me to see U.S. Congress regarding my grievances. I exhausted all avenues by seeing the Legislature five (5) times and Speaker of the Legislature to repeal the law that requires running mate but all in vain.

I have no resort but to file a lawsuit and represent myself since five (5) lawyers that I talked to will not take the case.

The case was filed on November 30, 2017 against the Guam Election Commission pursuant to Section 1983, Title 42 U.S.C. Motion to Dismiss was filed on December 21, 2017. On June 18, the Chief Judge granted the Motion to Dismiss but permitted me to file an amended complaint to name the appropriate section 1983 parties and allege facts that establish my claims are ripe upon the Report and Recommendation of the Magistrate Judge. Chief judge adopted in full the Report and Recommendation of the Magistrate Judge.

I filed an Amended Complaint to satisfy all the issues of the Chief Judge and Magistrate Judge on June 21, 2018.

Petitioner is a U.S. citizen, a U.S. Veteran and classified as Serviced Disabled Veteran, Small Business Owned. Primary and General Election are financed by taxpayers of Guam not by Republican and Democratic Parties. I have standing because I am a taxpayer that financed the Guam election. I have standing because Guam law substantially burdened me to run for Governor. I have standing because I cannot vote for my preferred Lt. Governor candidate in the primary election. I have standing even I do not run for office because of First Amendment and Bill of Rights of the people to petition the government for a redress of grievances. The grievances is not defined as particularized or concrete. But I suffered particularized and concrete injuries and my other grievances falls under general grievances. I have standing because the Guam law ran a foul or in contravention of my constitutional

rights, federal laws and Bill of Rights. It adversely affects the quality of life and happiness that I would like to pursue. It took the court two (2) years and two (2) months to decide on my case for lack of standing. My intention to run is dignified since I went to the proper channels to raised my concerns. I also moved for Preliminary Injunction so that I can run in the primary election. Petitioner is a former elected Guam Education Policy Board Member and passionate to serve the people of Guam, in a larger capacity as Governor. I believe Guam laws constitute invidious discrimination that provokes resentment and envy and should not be a law.

The Commissioners are acting under the color of Guam law Section 15404 of 3 GCA that deprives me of my rights, privileges secured by the Constitution and laws of the United States of America. Their actions in implementing the Guam law injured me to run for office. If the court will rule in my favor, then I can run for Governor in the primary election. All the candidates except one had hard time finding a running mate. Some end up teaming with candidates that lost in the Senatorial election. They cannot find a running mate that is incumbent or running mate that they desired because those will not run with them. But that should not be case, they have no choice but to get anybody so they can run for Governor. In 1990's, Jeff Pleadwell had to come up with his wife as running mate so he can run for Governor.

XI. Reasons for Granting the Petition

This case is not only about me, but to others that are similarly situated. It constitutes a national importance because it will establish a bad precedent that will discourage people and pro se filers to petition the government for redress of grievances

or file a lawsuit against the government.

The First Amendment and the rest of the constitution should be interpreted the way it is written. The Court should not make policy and amendment to the constitution because it would suppress the people's rights.

If the petition for Writ is not granted, it will not restore the rule of law and will not preserve the constitutional democracy. The right of the people to petition the government of their grievances will not be exercised by many.

Public officials such as Governor position manages the taxpayers and federal funds.

That is why it is imperative that there should be no law that substantially deny, burden, invidiously discriminate, and deprive citizens privileges to run for office.

The United States Court of Appeals has entered a decision in conflict with the decisions of the same Appeals Court and another U.S. State Court of Appeals on Pro Se filers.

The right to petition was shortchanged by limiting the grievances of the citizens to particularized and concrete grievance or injury. This is contrary to the

First Amendment language that should cover all types of grievances and fundamental principle of the constitution of Life, Liberty and Pursuit of Happiness.

The Constitution and law should not be restricted but expanded to carry out the Principle and Preamble of the Constitution.

XII. Conclusion

For the foregoing reasons, I am very respectfully requesting that this Court issue a Writ of Certiorari to review the judgment of U.S. Court of Appeals for the Ninth Circuit.

Dated this 27 day of October, 2020.

Respectfully submitted,

Sedfrey M. Linsangan
Pro Se, Petitioner
P.O. Box 23128
Barrigada, Guam 96921
Telephone: (671) 929-1616
E-Mail: guampacific@gmail.com

Appendix A

NOT FOR PUBLICATION

FILED

AUG 24 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEDFREY M. LINSANGAN, Plaintiff-Appellant, v. ALICE M. TAIJERON; et al., Defendants-Appellees.	No. 20-15103 D.C. No. 1:17-cv-00128 MEMORANDUM*

Appeal from the United States District Court
for the District of Guam
Frances Tydingco-Gatewood, Chief District Judge, Presiding

Submitted August 4, 2020**
San Francisco, California

Before: THOMAS, Chief Judge, and HAWKINS and McKEOWN, Circuit Judges.

Sedfrey Linsangan appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action because he lacked standing. We have jurisdiction under 28

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1291. We review de novo, *Whitmore v. Fed. Election Comm'n,* 68 F.3d 1212, 1214 (9th Cir.1996), and we affirm.

"The 'irreducible constitutional minimum of standing' contains three parts: (1) injury in fact; (2) causation; and (3) likelihood that the injury will be redressed by a favorable decision." *Am. Civil Liberties Union of Nev. v. Lomax*, 471 F.3d 1010, 1015 (9th Cir. 2006) (citation omitted).

The district court properly dismissed Linsangan's action for lack of standing because Linsangan's allegations of harm are not particularized or imminent. *See Lujan v. Defs. of Wildlife,* 504 U.S. 555, 560 (1992). A plaintiff "must show that he has suffered, or will imminently suffer, a concrete and particularized injury to a judicially cognizable interest." *Davis v. Guam*, 785 F.3d 1311, 1314 (9th Cir. 2015) (internal quotation marks and citation omitted). Linsangan's allegation that "he would like to run for Governor" but cannot under the current statutory limitations does not state an imminent harm. *See Lujan,* 504 U.S. at 564 ("an 'inten[t]'...is simply not enough"); *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 656 (9th Cir. 2002) ("The mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy within the meaning of Article III." (quotation marks and citation omitted)). The remaining alleged injuries are not particularized to his situation; rather, they are generalized grievances. *See Carroll v. Nakatani*, 342 F.3d 934, 940 (9th Cir. 2003)

(holding that a "generalized grievance against allegedly illegal government conduct" is insufficient to confer standing).

AFFIRMED.

Appendix B

THE DISTRICT COURT OF GUAM

SEDFREY M. LINSANGAN,
Plaintiff,

vs.

ALICE M. TAIJERON, JADEEN L. TUNCAP, G. PATRICK CIVILLE, JOSEPH P. MAFNAS, JOAQUIN P. PEREZ, MICHAEL J. PEREZ, and BENNY A. PINAULA,
Defendants.

CIVIL CASE NO. 17-00128

ORDER RE MOTION TO DISMISS, REPORT & RECOMMENDATION, AND OBJECTIONS

Before the Court are Defendants' motion to dismiss (ECF No. 41) the Amended Complaint ("Compl.") (ECF No. 33), the U.S. Magistrate Judge's report and recommendation on said motion (ECF No. 48), and the parties' respective objections thereto (ECF Nos. 49, 51, 52). For the reasons stated below, the Court concludes that Plaintiff lacks standing to pursue his claims and, alternatively, that Plaintiff's claims are not ripe for adjudication. The Court also concludes that further amendment of the complaint would be futile. Accordingly, the Court dismisses the Amended Complaint without leave to amend. In light of this ruling, the parties' other objections to the Report & Recommendation are moot and are therefore not considered.

I. BACKGROUND

The Guam Election Commission ("GEC") held a meeting in May 2017, at which Plaintiff told the members of the commission that he would like to run for Governor of Guam. Compl. at 4. Plaintiff was informed that Guam law, 3 G.C.A. § 15404(a), requires gubernatorial candidates to have a running mate in order to be placed on the ballot in the primary election. *Id.* Plaintiff challenged this provision, as well as the requirement that nominating petitions for the positions

of governor and lieutenant governor bear the signatures of 500 qualified electors, 3 G.C.A. § 15205, which Plaintiff contends is excessive. Compl. at 4. Members of the Guam election commission informed Plaintiff that the commission is "just following the law" and that he "would have to see the Legislature" to obtain redress regarding the challenged provisions. *Id.*

Plaintiff did not obtain a gubernatorial candidate packet or submit an application, but instead filed the present lawsuit, challenging the provisions noted above. Plaintiff seeks an order declaring the GEC's conduct of the primary election "unconstitutional, unorganic, undemocratic, and a deprivation of the rights of US citizens." *Id.* at 5. Plaintiff also requests that the Court "order [the GEC] to accept and certify all the Governor and Lt. Governor candidates even without a running mate in the primary election," *id.*, and lower the number of petition signatures required from 500 to 50, *id.* at 6.

On July 12, 2018, Defendants filed a motion to dismiss, arguing that Plaintiff lacks standing to bring the present claims and that the operative complaint fails to state a claim upon which relief can be granted. *See* ECF No. 41. The Magistrate Judge issued a Report & Recommendation on April 12, 2019, recommending that Defendant's motion be denied insofar as it seeks dismissal for lack of standing, but that the motion be granted with leave to amend insofar as it seeks dismissal for failure to state a claim. *See* ECF No. 48. Defendants objected to the Report & Recommendation's finding that Plaintiff has standing and its recommendation that leave to amend should be granted. *See* ECF No. 52. Plaintiff objected to the Report & Recommendation's finding that the operative complaint fails to state a claim upon which relief can be granted. *See* ECF Nos. 49, 51. Plaintiff also filed a request for a hearing on the matter, *see* ECF No. 50, which the Court granted, *see* ECF No. 53. The hearing was held on January 9, 2020. *See* ECF No. 56.

II. LEGAL STANDARD

The Magistrates Act requires the court to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). In conducting such review, the court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*

"To satisfy the standing requirements imposed by the 'case' or 'controversy' provision of Article III, [Plaintiff] must show that he has suffered, or will imminently suffer, a concrete and particularized injury to a judicially cognizable interest." *Davis v. Guam*, 785 F.3d 1311, 1314 (9th Cir. 2015) (internal quotations, citations omitted). "That injury must be fairly traceable to the challenged action of the defendants, and it must appear likely that the injury would be prevented or redressed by a favorable decision." *Id.* The standing issues raised by Defendants could, in many ways, be characterized as questions of ripeness. "Sorting out where standing ends and ripeness begins is not an easy task." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000). Indeed, "[t]he constitutional component of the ripeness inquiry is often treated under the rubric of standing and, in many cases, ripeness coincides squarely with standing's injury in fact prong." *Id.*

In addition to its constitutional component, the ripeness inquiry also contains a prudential component. *Id.* "In evaluating the prudential aspects of ripeness, [the Court's] analysis is guided by two overarching considerations: 'the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *Id.* at 1141 (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)).

III. DISCUSSION

Defendants object to the Magistrate Judge's finding that Plaintiff has suffered or will imminently suffer a particularized and concrete injury sufficient to confer standing. ECF No. 52 ("Defs.' Objections") at 3. Plaintiff alleges that "Defendants[']' actions deprived [him] of [his] right to run for Governor." Compl. at 4. Defendants, on the other hand, contend that they "did not and could not deny his candidacy" because he "did not obtain or submit a gubernatorial candidate packet or application." Defs.' Objections at 3. As noted above, "in measuring whether the litigant has asserted an injury that is real and concrete rather than speculative and hypothetical, the ripeness inquiry merges almost completely with standing." *Thomas*, 220 F.3d at 1139.

A. Constitutional Inquiry

In order to have standing to assert his claims, Plaintiff must allege facts establishing a past, present, or imminent concrete injury, fairly traceable to the challenged conduct of Defendants, that is likely to be redressed or prevented by a favorable decision by the Court. Reading the complaint liberally, in light of Plaintiff's pro se status, the Court finds that Plaintiff has sufficiently alleged that he wishes to appear as a candidate for governor in the primary election and that one or more defendants informed Plaintiff of the existence of certain provisions of law that apply to those seeking such placement on the ballot. The Court concludes, however, that these allegations—in the absence of any allegations that Defendants denied an application by Plaintiff on the basis of those provisions—are not sufficient to establish standing to challenge those provisions of law.

The Court notes that this case is significantly different from *Davis v. Guam*, 785 F.3d 1311 (9th Cir. 2015), where the plaintiff was found to have standing to stage a facial challenge to a law restricting his access to a particular voter registry. In *Davis*, the plaintiff "tried to register with the Decolonization Registry, but the application was rejected" because of the challenged provision of law. *Id.* at 1314. The Ninth Circuit found that the rejection of Davis's application constituted sufficient injury to confer standing. Here, Plaintiff attempts to challenge the provisions at issue without first submitting an application and receiving a rejection from the GEC. However, "[t]he mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy within the meaning of Article III." *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 656 (9th Cir. 2002). Plaintiff's allegation that he "would like to run for Governor" is simply not enough to establish an "imminent" injury to Plaintiff resulting from the challenged provisions of law. *Cf. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992) ("[T]he affiants' profession of an 'inten[t]' to return to the places they had visited before—where they will presumably, this time, be deprived of the opportunity to observe animals of the endangered species—is simply not enough. Such 'some day' intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will

be—do not support a finding of the 'actual or imminent' injury that our cases require.") (emphasis in original).

Even if Plaintiff had alleged plans to run for Governor specific enough to establish the imminent submission of an application, his alleged injury would still be too speculative. The harm alleged by Plaintiff assumes not only that Plaintiff's application will in fact be submitted without listing a running mate and without the requisite number of signatures, but also that the basis for any rejection of the application by the GEC will be one or both of these reasons, rather than a failure to timely file the application, a failure to properly fill out the application, or a failure to meet any other criterion for placement on the primary ballot. The complaint essentially asks the court to presume that Plaintiff's hypothetical application will not only be filed, but that the GEC will have no basis for rejecting the application other than the legal provisions he seeks to challenge.

The fact that Plaintiff has neither filed an application with nor received a rejection from the GEC also raises serious redressability concerns. For example, Plaintiff requests that the Court order the GEC to lower the number of petition signatures required to run for Governor from 500 to 50. If the GEC had rejected a petition in support of Plaintiff's candidacy that contained 50 signatures, then it would be clear that the relief requested by Plaintiff would effectively remedy his exclusion from the primary ballot.[1] As the case is currently presented to the Court, however, the ability of Plaintiff's requested relief to remedy his exclusion from the primary ballot depends on Plaintiff's ability to obtain at least 50 signatures in support of his candidacy for Governor. The efficacy of the relief sought therefore depends on the actions of third parties that the Court has no power to control.

The Court accordingly finds that the complaint fails to allege facts establishing an imminent, concrete injury that is likely to be prevented or redressed by a favorable court decision and that his claims are therefore constitutionally unripe.

[1] This, again, assumes that the GEC would have no other valid basis for excluding Plaintiff from the ballot.

B. Prudential Inquiry

Even if the Court were to find that Plaintiff has "present[ed] a ripe case or controversy in the constitutional sense," the Court would nonetheless "decline to exercise jurisdiction under the prudential component of the ripeness doctrine." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1141 (9th Cir. 2000). "In evaluating the prudential aspects of ripeness, [the Court's] analysis is guided by two overarching considerations: 'the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *Id.* (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)).

1. Fitness for Judicial Resolution

Although Plaintiff's challenges to the statutory provisions at issue are facial challenges—which makes the issues more amenable to early judicial resolution than an as-applied challenge—the court nonetheless concludes that Plaintiff's challenges are more appropriately adjudicated in the context of a specific application for candidacy. "Determination of the scope and constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function." *Renne v. Geary*, 501 U.S. 312, 323 (1991). Accordingly, the Supreme Court has cautioned against zealously proceeding to "resolv[e] the facial constitutionality of [a statute] without first addressing its application to a particular set of facts." *Id.* This is because "[a] concrete factual situation is necessary to delineate the boundaries of what conduct the government may or may not regulate." *Thomas*, 220 F.3d at 1141.

For example, here, Plaintiff does not dispute that the Government may permissibly require *some* number of voter signatures in support of a candidate before placing that candidate on the primary ballot; he simply argues that the requirement of 500 signatures is too burdensome to be permissible. However, under the current posture of this case, there is no record to indicate how many signatures Plaintiff was able to obtain and with what effort, so the Court is essentially being asked to determine, in the abstract, the level of burden imposed by a 500-signature requirement. "This case is a classic one for invoking the maxim that [the Court] do[es] not decide constitutional questions in a vacuum." *Thomas*, 220 F.3d at 1141.

Other considerations also counsel in favor of deciding Plaintiff's challenge in the context of a specific application for candidacy. If Plaintiff were to file a gubernatorial application without a running mate and without the requisite number of signatures, upholding one of the challenged provisions would be sufficient to uphold the rejection of Plaintiff's application, and would therefore render moot any challenge to the other provision. In the present context, however, without knowing which of the two challenged provisions Plaintiff might be able to meet, the Court would have no choice but to consider each in turn, even if it upheld the first provision considered and even though that provision, as a practical matter, might be dispositive of Plaintiff's ability to obtain placement on the primary ballot. Such gratuitous constitutional rulings are to be avoided wherever possible, and a concrete factual scenario is necessary to ensure that the Court does not unnecessarily pass on the constitutionality of both provisions.

2. Hardship of Withholding Court Consideration

The Court further notes that the hardship of withholding court consideration until a concrete factual scenario arises is relatively small. First, "[t]he acts necessary to make plaintiff['s] injury ... materialize are almost entirely within plaintiff['s] own control." *San Diego County Gun Rights v. Reno*, 98 F.3d 1121, 1127 (9th Cir. 1996). Second, unlike in the context of a criminal statute, where "[t]he alternative to compliance ... would risk serious criminal and civil penalties," *Abbott Laboratories v. Gardner*, 387 U.S. 136, 153 (1967), the consequences of proceeding without a ruling from this Court are relatively low, even in the event the challenged provisions are ultimately upheld. Although Plaintiff will have wasted whatever time was spent filling out and submitting an application for candidacy, he will otherwise be in the same position as he would be were the provisions upheld without his first submitting an application. The Court therefore finds that withholding Court consideration will impose little hardship on the parties.

IV. CONCLUSION

Whether framed as an issue of imminent, redressable injury in fact or as a matter of prudential ripeness, the court concludes that Plaintiff's challenge—in the absence of any application for candidacy rejected by the GEC—is premature, his alleged injury too remote and speculative. Accordingly, the Court rejects the Report & Recommendation's finding that Plaintiff

has standing and **DISMISSES** the action, both for lack of jurisdiction and alternatively on prudential ripeness grounds. Because the facts forming the basis for this decision are undisputed, the Court **DENIES LEAVE TO AMEND** as futile. In light of this ruling, the Court has no occasion to consider the merits of Plaintiff's case and therefore **OVERRULES AS MOOT** Plaintiff's objections to the proposed finding that the Amended Complaint fails to state a claim and Defendants' objections to the proposed finding that leave to amend should be granted as to Plaintiff's equal protection claim.

SO ORDERED

/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Jan 14, 2020

Appendix C

DISTRICT COURT OF GUAM

SEDFREY M. LINSANGAN, Plaintiff, vs. ALICE M. TAIJERON, JADEEN L. TUNCAP, G. PATRICK CIVILLE, JOSEPH P. MAFNAS, JOAQUIN P. PEREZ, MICHAEL J. PEREZ and BENNY A. PINAULA, Defendants.	CIVIL CASE NO. 17-00128 **REPORT & RECOMMENDATION** to Deny in Part and Grant in Part Defendants' Motion to Dismiss (ECF No. 41)

Before the court is the Defendants' Motion to Dismiss the Amended Complaint. *See* ECF No. 41. Neither party requested the court schedule the motion for oral argument, and having read the motion and related filings, the court, in the exercise of its discretion, finds that oral argument is unnecessary.

NATURE OF PLAINTIFF'S ACTION

On November 30, 2017, the Plaintiff filed suit against the Guam Election Commission ("GEC") pursuant to 42 U.S.C. § 1983. *See* Compl. at ¶II, ECF No. 1. The Complaint asserted that the GEC violated the Plaintiff's Fourteenth Amendment right and "various provisions of the Bill of Rights contained within the Organic Act of Guam of 1950. Section 1421b(u), Section 1421b(n), Section 1423d, Section 1421b(h)." *Id.* at ¶II.B.

According to the Complaint, the Plaintiff attended a GEC meeting in May 2017. *Id.* at ¶¶III.A and B. At said meeting, the Plaintiff claims he was informed by the Commissioners and legal counsel that he could not run for Governor if he did not have a team or running mate because

Guam law (3 GUAM CODE ANN. §15404(a)) required that gubernatorial candidates have a running mate in the primary election. *Id.* at ¶II.D. He asserted that the Chairwoman said "they are just following the law" and was told he "would have to see the Legislature." *Id.* at ¶III.A. The Plaintiff also challenged the number of signatures required on the nominating petitions. *Id.* He contended that the requirement was "excessive" and unfair since candidates for other elected offices (such as the Office of the Public Auditor, the Attorney General of Guam and the Consolidated Commission on Utilities) were not required to have nominating petitions. *Id.*

On December 21, 2017, the GEC filed a Motion to Dismiss the Complaint. *See* ECF No. 4. The Plaintiff opposed the motion, but on June 18, 2018, the Chief Judge granted the Motion to Dismiss but permitted the Plaintiff to file an amended complaint to name the appropriate Section 1983 parties and allege facts which establish that his claims are ripe. *See* Order, ECF No. 31.

On June 21, 2018, the Plaintiff filed an Amended Complaint. *See* ECF No. 33. The Amended Complaint is essentially identical to the original Complaint except that (1) the seven members comprising the Guam Election Commission were named as the Defendants, and (2) additional language was handwritten at the end of ¶¶ II.D[1] and V.[2] Among other relief and just as he requested in the original Complaint, the Plaintiff asks the court to order the Defendants to accept and certify all Governor and Lt. Governor candidates even without a running mate in the primary election and to reduce the signatures required on the nominating petitions for said candidates. *Id.* at ¶V.

LEGAL STANDARDS

The Defendants' Motion to Dismiss is brought pursuant to Rule 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure, arguing that the court lacks subject matter jurisdiction because the Plaintiff has failed to demonstrate his standing and that the Amended Complaint fails to state

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[1] The additional language handwritten by the Plaintiff was "I informed them that I would like to run for Governor. Defendants[']actions deprived me of my right to run for Governor." Am. Compl. at ¶ II.D.

[2] The added language the Plaintiff wrote was "I pray that the court grant all the relief I'm requesting so that me [sic] and other people could run for elected offices." Am. Compl. at ¶ V.

a claim upon which relief can be granted.

Article III of the Constitution limits federal court jurisdiction to actual "cases" and "controversies." *See* U.S. Const. art. III § 1. To "satisfy the standing requirements imposed by the 'case' or 'controversy' provision of Article III," a plaintiff must show that he has suffered, or will imminently suffer, a "concrete and particularized" injury to a "judicially cognizable interest." *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The plaintiff's injury must be "fairly traceable to the challenged action of the defendant[s]," and it must appear likely that the injury would be prevented or redressed by a favorable decision. *Id.* When determining Article III standing the court must "accept as true all material allegations of the complaint" and "construe the complaint in favor of the complaining party." *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

A defendant is entitled to dismissal under Rule 12(b)(6) when a complaint fails to state a cognizable legal theory or alleges insufficient facts under a cognizable legal theory. *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). The Ninth Circuit has explained that the purpose of a Rule 12(b)(6) motion is to test a complaint's legal sufficiency. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 571 (9th Cir. 1963). Generally, the plaintiff's burden at this stage is light since Rule 8(a) requires only that a complaint "shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). "All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). The court may dismiss based on lack of cognizable legal theory or on the absence of facts that would support a cognizable theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). And, while the plaintiff's burden is light, it is not nonexistent – the complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007) (internal quotation marks omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570) (internal quotation marks omitted). A claim

is facially plausible if "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (citing *Twombly*, 550 U.S. at 556). The court must "draw on its judicial experience and common sense" to determine the plausibility of a claim given the specific context of each case. *Id.* at 679.

The court has an obligation, especially in civil rights actions, to construe *pro se* pleading liberally and gives the *pro se* plaintiff the benefit of any doubt. *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th cir. 1985); *see also Butler v. Long*, 752 F.3d 1177, 1180 (9th Cir. 2014). However, the court's liberal interpretation of a *pro se* complaint may not supply essential elements of the claim that were not pled. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Generally, if a court dismisses a pro se complaint it should "grant leave to amend . . . unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

DISCUSSION

The motion seeks dismissal of the instant action on various grounds, including (1) that the Plaintiff lacks standing, (2) that the Amended Complaint fails to state a claim upon which relief can be granted and (3) the Defendants are not "persons" under Section 1983. The court will address each of these arguments below.

1. Whether the Plaintiff has established standing

The Defendants challenge the Plaintiff's standing to bring the instant action. The Defendants argue that although the Amended Complaint now states that the Plaintiff informed the Defendants that he "would like to run for Governor," Am. Compl. at ¶ II.D, ECF No. 33, "the desire to do an act does not equate to performing the act or actually carrying through with it." Defs.' Mot. Dismiss at 5,[3] ECF No. 41. The Defendants further contend that the Plaintiff did not take the steps necessary to run as a gubernatorial candidate during the last primary election since he failed to pick up a candidate packet and submit the necessary forms before June 26, 2018. *Id.* The Defendants

[3] Page citations to the pending Motion to Dismiss refer to the page number printed at the bottom of each page, not the page number on the CM/ECF-generated footer.

assert that "there was never any follow-through to show that [the Plaintiff] actually intended to run for office" and the "new statement in the Amended Complaint . . . is still not clear and unequivocal evidence of his intent to run for office." *Id.* at 5-6.

The court disagrees with the Defendants. "Article III of the Constitution requires that a plaintiff have standing before a case may be adjudicated." *Covington v. Jefferson Cty.*, 358 F.3d 626, 637 (9th cir. 2004). Standing requires that a plaintiff show (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent; (2) that the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Id.* at 637-38 (footnote, citation and internal quotation marks omitted).

As noted above, the court must construe the pleadings of the Plaintiff, a *pro se* filer, liberally and in his favor. Taking the factual allegations as true and reading them in the light most favorable to the Plaintiff, he has standing in this matter. The Amended Complaint states that the Plaintiff "would like to run for Governor" but the Defendants' "actions deprived [him] of [his] right to run for Governor." Am. Compl. at ¶ II.D, ECF No. 33. He requests that the court grant him relief "so that [he] and other people could run for elected offices." *Id.* at 6. Reading the Plaintiff's handwritten statements liberally, the court finds that the Amended Complaint establishes that (1) the Plaintiff wanted to run as a gubernatorial candidate, (2) he was told by the Defendants that he needed a running mate, and (3) his access to the primary election ballot was blocked as a result. His alleged injury is concrete and particularized, not hypothetical as the Defendants claim, and is traceable to the challenged actions of the Defendants.

The Defendants next argue that the Plaintiff has not established standing because his alleged injury is not likely to be redressed by a favorable court decision. The Defendants assert that they were "merely carrying out and enforcing the election laws set in place by [the] U.S. Congress and Guam's Legislature." Defs.' Mot. Dismiss at 6, ECF No. 41. The Defendants contend that even if the court were to rule in the Plaintiff's favor after trial, the court cannot direct the Defendants to change Guam's election laws or force them to break the laws. *Id.* The Defendants argue that any ruling by the court will not provide the Plaintiff with substantial and meaningful relief unless the

United States and the Government of Guam are named as Defendants.

The court again disagrees with the Defendants. The Plaintiff's alleged injury can be redressed by a favorable court decision. As the Plaintiff notes in his Opposition and the Defendants themselves concede, this court "has the authority to find laws unconstitutional when they run afoul of the provisions and protections of the Constitution. Defs.' Reply Br. at 6, ECF No. 43. If the court were to strike down the provisions of Guam law that the Plaintiff challenges, then certainly the Plaintiff will receive meaningful relief because he will no longer be required to have a running mate to run for as a gubernatorial candidate in the primary election, nor will he be required to obtain the minimum 500 signatures on the nominating petition.

Therefore, insofar as the Defendants' Motion to Dismiss seeks dismissal of the instant action for lack of standing, the court recommends the Chief Judge deny the motion.

2. Whether the Amended Complaint states a claim upon which relief can be granted

Liberally construed, the Amended Complaint appears to assert that the Defendants have restricted the Plaintiff's access to be placed on the primary election ballot because (1) he was told he could not run for governor if he did not have a running mate and (2) he is required to obtain 500 signatures on the nominating petition, but the Plaintiff asserts this is "excessive." The court will address these claims separately.

A. Requirement for running mate

It is not clear to the court whether the Plaintiff's Section 1983 claim is premised on a potential violation of the Fourteenth Amendment Due Process Clause or the Equal Protection Clause so the court will address both in its analysis.

"To state a substantive due process claim, the plaintiff must show as a threshold matter that a state actor deprived [him] of a constitutionally protected life, liberty or property interest." *Shanks v. Dressel,* 540 F.3d. 1082, 1087 (9th Cir. 2008). The Plaintiff asserts that the Defendants' reliance on Guam law (3 GUAM CODE ANN. §15404(a)) prohibited him from running for office.

Despite the Plaintiff's claims, there is no "fundamental right to run for public office," *Lindsay v. Brown,* 750 F.3d 1061, 1064 (9th Cir. 2014) (quoting *NAACP v. Jones,* 131 F.3d 1317, 1324 (9th Cir. 1997)), nor is there a cognizable liberty interest in pursuing or obtaining an elected

position. *Snowden v. Hughes*, 321 U.S. 1, 7 (1944) ("More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause . . . . [W]e reaffirm it now."). Accordingly, to the extent that the Plaintiff's Section 1983 claim is premised on a due process violation in relation to his disqualification from candidacy because of the lack of a running mate, the court recommends that said claim be dismissed without leave to amend since he has not stated a legally cognizable claim under the Due Process Clause of the Fourteenth Amendment.

The court next discusses whether the requirement to have a running mate in order to run for governor in the primary election violates the Equal Protection Clause. The Supreme Court has explained that "'[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441,445 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352 (1918)).

An equal protection claim may be established in two ways. First, a plaintiff may show that the defendant intentionally discriminated against the plaintiff on the basis of the plaintiff's membership in a protected class, such as race. *See e.g., Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005); *Lee v. City of L.A.*, 250 F.3d 668, 686 (9th Cir.2001). Alternatively, an equal protection claim may be established if the plaintiff alleges that: "(1) he is a member of an identifiable class; (2) he was intentionally treated differently from others similarly situated; and (3) there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

Here, the Plaintiff does not allege that he is a member of a protected class, nor does he allege that he is a member of an identifiable class. And, as noted by the Defendants, the bare conclusory assertions in the Amended Complaint, without any other factual allegations, does not establish that the Defendants intentionally discriminated against the Plaintiff or treated him differently from others who sought to run for governor without a running mate. There simply is no allegation of purposeful discrimination on the part of the Defendants. Accordingly, the court recommends that

to the extent that the Plaintiff asserts an equal protection claim, that said claim be dismissed without prejudice. The court recommends the Chief Judge allow the Plaintiff to file a second amended complaint to cure the deficiencies noted above since it is not absolutely clear that the amendment would not be futile.

B. Requirement for 500 signatures on nominating petition

Plaintiff appears to claim that the signature requirement is a violation of his equal protection rights under the Fourteenth Amendment. Unfortunately, this claim suffers several of the same deficiencies identified above with regard to the Plaintiff's purported equal protection claim in relation to the need for a running mate. The Amended Complaint does not allege that the Plaintiff is a member of a protected class or a member of an identifiable class. The Amended Complaint also contains no allegation of purposeful discrimination on the part of the Defendants against the Plaintiff in requiring that he obtain 500 signatures. Finally, although the Amended Complaint asserts that this requirement is "excessive," the Plaintiff fails to include any relevant facts or legal authority to support his conclusion that 500 signatures is excessive or whether he even attempted to comply with the requirement. The fact that California or other states may require less signatures on a nominating petition or that candidates for other political offices on Guam, such as senators or mayors, need less signatures on the nominating petitions does not, standing alone, establish that the government of Guam has no rational basis for the difference in treatment.

As the Supreme Court has recognized, some state regulation that affects political parties serves a compelling interest in protecting "the integrity of the electoral process." *Rosario v. Rockefeller*, 410 U.S. 752, 761. "[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). Thus, a state may restrict access to the ballot. *See Bullock v. Carter*, 405 U.S. 134, 145 (1972) (a state "has a legitimate interest in regulating the number of candidates on the ballot"). The Court has upheld a requirement that independent candidates be required to present nominating petitions that demonstrate "a significant modicum of [electoral] support." *Jenness v. Fortson*, 403 U.S. 431, 442 (1971).

Despite the Supreme Court's rulings, the court believes it is premature to conclude that the Plaintiff can not assert additional facts to cure the deficiencies identified by the court. Accordingly, the court recommends that this claim be dismissed with leave to amend.

3. Whether Defendants are "persons" under Section 1983

Finally, the Defendants argue that the action should be dismissed because the Defendants are not "persons" under 42 U.S.C. § 1983. Defs.' Mot. Dismiss at 11, ECF No. 41. Specifically, the Defendants cite to the case of *Ngirangas v. Sanchez*, 495 U.S. 182 (1990). There, the Supreme Court held that "neither the Territory of Guam nor its officers acting in their official capacities are 'persons' under § 1983." *Id.* at 192.

Despite the *Ngirangas* holding, the Ninth Circuit in *Guam Society of Obstetricians & Gynaecologists v. Ada* held that a Guam officer sued in his official capacity is a "person" within the meaning of Section 1983 when sued for prospective relief. 962 F.2d 1366, 1370 (9th Cir. 1992). The Ninth Circuit reaffirmed this holding in *Paeste v. Government of Guam*, 798 F.3d 1228, 1237 (9th Cir. 2015). The Ninth Circuit distinguished *Ngirangas* by noting that the plaintiffs in that case were suing Guam and several Guam officials in their official capacities for damages. In *Ada* and *Paeste*, however, the plaintiffs were seeking prospective injunctive relief.

In this case, the Plaintiff seeks declaratory and injunctive relief. Based on *Ada* and *Paeste*, the Defendants in their official capacities are "persons" within the meaning of Section 1983. Accordingly, insofar as the Defendants' Motion to Dismiss seeks dismissal of the instant action because the Defendants are not "persons" under Section 1983, the court recommends the Chief Judge deny the motion.[4]

CONCLUSION

Based on the above, the court recommends that the Chief Judge grant in part and deny in part the Motion to Dismiss. The motion should be denied in part because the Plaintiff has demonstrated standing to challenge the election laws at issue here and because the Defendants are persons within the meaning of Section 1983 for purposes of the declaratory and injunctive relief

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[4] To the extent that the Amended Complaint seeks an award of damages against the Defendants, then such relief is barred by *Ngirangas*.

sought by the Plaintiff. As to whether the Amended Complaint should be dismissed because it fails to state a claim upon which relief can be granted, the court recommends the Chief Judge grant the motion in part and deny it in part as follows: (1) dismiss with prejudice the Plaintiff's claim of a violation of the Due Process Clause of the Fourteenth Amendment and (2) dismiss without prejudice the Plaintiff's claims that the Defendants violated his Equal Protection Clause rights under the Fourteenth Amendment.

IT IS SO RECOMMENDED.

/s/ Joaquin V.E. Manibusan, Jr.
U.S. Magistrate Judge
Dated: Apr 12, 2019

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).

Appendix D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 29 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SEDFREY M. LINSANGAN, Plaintiff-Appellant, v. ALICE M. TAIJERON; et al., Defendants-Appellees.	No. 20-15103 D.C. No. 1:17-cv-00128 District of Guam, Agana ORDER

Before: THOMAS, Chief Judge, and HAWKINS and McKEOWN, Circuit Judges.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

Appendix E

UNITED STATES DISTRICT COURT

for the

_____ District of Guam

_____ Division

Case No. 17-00128
(to be filled in by the Clerk's Office)

Sedfrey M Linsangan (Pro Se)
Plaintiff(s)
(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Alice M Taijeron, Jadeen L Tuncap, G. Patrick Civille, Joseph P Mafnas, Joaquin P. Perez, Michael J. Perez, Benny A. Pinaula
Defendant(s)
(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Jury Trial: *(check one)* ☐ Yes ☑ No

Amended Complaint

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

Appendix E

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name: Sedfrey M. Linsangan
Address: P. O. Box 23128 Barrigada
City: Guam State: 96921 Zip Code
County:
Telephone Number: 929-1616,649-6997-8-4
E-Mail Address:

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name: Alice M. Taijeron
Job or Title *(if known)*: Chairperson, Guam Election Commission
Address: 414 West Soledad Avenue Suite 200 2nd Floor Hagatna Guam 96910
City: Hagatna State: Guam Zip Code: 96910
County:
Telephone Number:
E-Mail Address *(if known)*:

☐ Individual capacity ☑ Official capacity

Defendant No. 2

Name: Jadeen L. Tuncap
Job or Title *(if known)*: Vice-Chairperson, Guam Election
Address: 414 West Soledad Avenue Suite 200 2nd Floor Hagatna Guam 96910
City: Hagatna State: Guam Zip Code: 96910
County:
Telephone Number:
E-Mail Address *(if known)*:

☐ Individual capacity ☑ Official capacity

Defendant No. 3

Name: G. Patrick Civille
Job or Title *(if known)*: Member, Guam Election Commission, 2nd Floor GCIC Bldg
Address: Hagatna 96910
City *State* *Zip Code*
County:
Telephone Number:
E-Mail Address:

☐ Individual capacity ☐ Official capacity

Defendant No. 4, 5, 6, 7,

Name: Joseph P. Mafnas, Joaquin P. Perez, Michael J. Perez, Benny A Pinaula
Job or Title *(if known)*: Members, Guam Election Commission, 2nd Floor GCIC
Address: Bldg Hagatna Guam 96910
City *State* *Zip Code*
County:
Telephone Number:
E-Mail Address:

☐ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply)*:

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is are being violated by state or local officials?

Fourteenth Amendment to the United States Constitution, various provisions of the Bill of Rights contained within the Organic Act of Guam of 1950. Section 1421b(u), Section 1421b(n), Section 1423d, Section 1421b(h).

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is are being violated by federal officials?

D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Guam Election Commission is enforcing subsection (a) of § 15404 of Ch15 of 3GCA. It mandates that gubernatorial candidates need to have a running mate in the primary election. The Commissioners and legal counsel informed me that I cannot run for Governor if I don't have a team or running mate. They are also requiring all candidates to seek nominating petitions that are too excessive. They are also practicing inequality issues by not requiring candidates running for other elected offices such as OPA, AG, and CCU offices to seek nominating petitions. I informed them that I would like to run for Governor. Defendants actions deprived me of my right to run for Governor

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

III Statement of Claim

A. Where did the events giving rise to your claim(s) occur?

Guam Election Commission meeting held May 2017. I raised my issues in the public participation. Executive director and the rest of the Commission were present. The Chairwoman told me they are just following the law. They asserted their position of the requirements of running mate and nominating petition, and that I would have to see the Legislature.

B. What date and approximate time did the events giving rise to your claim(s) occur?

Events occurred in the past elections and up to present, when I attended the Guam Election Commission meeting held on May 2017 around 7:00 pm.

C. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*

My claim is that they are denying me of my constitutional, organic, and US rights. They are also practicing inequality on nominating petition requirements that are also excessive. The Guam Election Commission Legal Counsel told me that I have to go to Congress for my concerns. At the Guam Election Commission meeting, I reasoned out that Section 1422 of the Organic Act of Guam does not mandate that the Gubernatorial candidate is required to have a running mate/team in the primary election. Section 1422 is referring to the general election. Since it is specified in the provision that the Governor of Guam together with the Lt. Governor shall be elected by a majority of votes cast by the people who are qualified to vote for members of the Legislature of Guam. In the primary election, candidates are not yet elected as Governor and Lt. Governor. They are voted to represent their party in the general election by plurality or most votes not by majority.

Section 1422 also specifies that the Governor and Lt. Governor shall be chosen jointly by the casting by each voter of a single vote applicable to both offices. This provision will be satisfied since the candidates for Governor and Lt. Governor that received the most votes in the primary election can team up for the general election.

In California and all other US states, Governor and Lt. Governor can run separately and are voted as such. In the presidential primary election, the candidates do not need a running mate until the general election. Guam should follow that system otherwise Guam will be in violation.

IV Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I want the court to declare the current conduct of primary election for Governor and Lt. Governor unconstitutional, unorganic, undemocratic, and a deprivation of rights of US citizens.

I want the court to order Guam Election Commission to accept and certify all the Governor and Lt. Governor candidates even without a running mate in the primary election. GEC allows Mayoral candidates to run separately, but not gubernatorial.

I want the court to order Guam Election Commission to accept and certify the Governor and Lt. Governor candidates if they have a team or running mate, but they will be voted separately in the primary election. Each voter will cast a single vote applicable to one office only in the primary election for all candidates with or without a running mate.

I want the court to allow or authorize the winning candidates for Governor of each party to select his running mate in case the winning Lt. Governor candidate of each party declines to team up or if something should happen to him by an act of God.

I want the court to reduce the nominating petition requirement for candidates. The current law mandates 500 for Governor and Lt. Governor, 250 for Senator, 100 for Mayor and Vice Mayor. This practice is excessive and a violation of the Bill of Rights. In California, only 65 nominating petitions is needed for Gubernatorial candidates. California has 39.6 million in population while

Guam is only 174,000.

I want the court to order Guam Election Commission to practice equality for all candidates. OPA, AG, CCU candidates should also seek nominating petitions. Right now, they are not required to seek any.

I want the court to order Guam Election Commission to require a fair, impartial nominating petition to all (50 for Governor, Lt. Governor, and Congress, 30 for Senator, OPA, AG, 25 for Mayor and Vice Mayor, 10 for CCU Board Member).

I want the court to award costs, fees, and expenses, as authorized by all provisions of law.

I want the court to expedite the trial in January 2018 since my pleading sets out a claim for relief that does not require a responsive pleading.

I pray that the court grant all the relief Im requesting so that me and other people could run for elected offices.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case–related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 6/21/18

Signature of Plaintiff _____

Printed Name of Plaintiff Sedfrey M Limsangan

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Address _____

_____ _____ _____
City *State* *Zip Code*

Telephone Number _____

E-mail Address _____