SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - April 28, 2022

EVENT DATE: 04/29/2022 EVENT TIME: 10:30:00 AM DEPT.: C-64

JUDICIAL OFFICER: John S. Meyer

CASE NO.: 37-2021-00053551-CU-WM-CTL

CASE TITLE: COTTON VS STATE OF CALIFORNIA [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Demurrer / Motion to Strike
CAUSAL DOCUMENT/DATE FILED:

TENTATIVE RULING

Respondents State of California and Rob Bonta's demurrer to Petitioner Darry Cotton's petition for writ of mandate and complaint for injunctive relief is **SUSTAINED WITH LEAVE TO AMEND**.

Respondents' unopposed request for judicial notice of (1) the California Secretary of State's 2016 Complete Statement of the Vote, (2) the Official Voter Information Guide or "Ballot Pamphlet", and (3) Senate Bill 94 is granted.

A writ may only be issued "upon the verified petition of the party beneficially interested." (Code Civ. Proc., § 1086.) Cotton's petition was not verified. Nor does Cotton adequately allege that he is beneficially interested.

"As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator. To have standing, a party must be beneficially interested in the controversy; that is, he or she must have some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical." (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 814.)

"When a party asserts a statute is unconstitutional, standing is not established merely because the party has been impacted by the statutory scheme to which the assertedly unconstitutional statute belongs. Instead, the courts have stated that at a minimum, standing means a party much show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant. . . . It is incumbent upon a party to an action or proceeding who assails a law invoked in the course thereof to show that the provisions of the statute thus assailed are applicable to him and that he is injuriously affected thereby. . . . [A] party does not have standing to raise hypothetical constitutional infirmities of a statute when the statute, as applied to the party, does not occasion any injury to the party." (*San Diego NORML*, *supra*, 165 Cal.App.4th at p. 814.)

Cotton alleges that Proposition 64 (the Adult Use of Marijuana Act) and Senate Bill 94 (Medical and Adult Use Cannabis Regulation and Safety Act) are preempted by the Controlled Substances Act (21

U.S.C., §§ 801–904) and the supremacy clause (U.S. Const., art. VI). However, as currently pled, the petition essentially raises a purely hypothetical challenge to the validity of state law. Cotton never alleges that he personally manufacturers, cultivates, distributes, or uses cannabis for any purpose, medically or recreationally. Nor does Cotton adequately allege how either law has caused him injury. Cotton makes a conclusory reference to "financial, physical, and emotional harm" and purported violations of his "First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment protections," but he does not detail these purported harms nor sufficiently connect them to the laws he is challenging. Cotton also alleges that the state laws somehow forced him "to violate federal law as defined within the Controlled Substance Act," but neither Proposition 64 nor Senate Bill 94 requires the use of cannabis. Cotton alleges that Respondents implied the passage of SB 94 would immunize state licensees from federal prosecution, but he never alleges that he was confused about the legality of cannabis use under state/federal law and acted in a way he otherwise would not have acted had he not been confused.

It is unnecessary to reach the merits of Respondents' other arguments. Cotton's failure to allege standing is dispositive. The demurrer is therefore sustained.

"Our Supreme Court has observed that where plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment." (*Eghtesad v. State Farm General Ins. Co.* (2020) 51 Cal.App.5th 406, 412.) The Court will grant 20 days leave to amend.