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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 RALPH WHITE,

12 Plaintiff,

13 v.

14 CHRISTIAN CLEGG, in his official
15 capacity as Interim City Clerk for the City
16 of Stockton; CITY OF STOCKTON, a
17 municipal corporation; MELINDA
18 DRUBOFF, in her official capacity as
19 Registrar of Voters for the County of San
20 Joaquin; ALEX PADILLA, in his official
21 capacity as the Secretary of State for
22 California,

23 Defendants.
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No. 2:19-cv-913-JAM-EFB PS

FINDINGS AND RECOMMENDATIONS

21 This case was before the court on July 31, 2019, for hearing on defendants' motions to
22 dismiss plaintiff's complaint for lack of subject matter jurisdiction and for failure to state a claim
23 pursuant to Federal Rules of Civil Procedure ("Rule") 12(b)(1) and 12(b)(6).¹ ECF Nos. 8, 10,
24 13. For the reasons stated on the record, and as detailed further below, this action is moot and,
25 consequently, must be dismissed.
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¹ This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1).

1 I. Background

2 According to plaintiff's complaint, in February 2019, defendant City of Stockton ("City")
3 passed an ordinance that requires property owners to pay delinquent water utility bills incurred by
4 the property owners' tenants. Compl. (ECF No. 1) ¶ 8. Under the ordinance, the failure to pay
5 such bills may result in penalties and a lien on the property. *Id.* Plaintiff claims that the
6 ordinance is improper because some areas of the City receive water from California Water
7 Service, a private company. Plaintiff does not dispute that the City may impose penalties for
8 collecting debts it is owed, but he believes it is improper for the City to place liens on property for
9 the purpose of collecting a debt owed to a private entity; i.e., California Water Service.

10 Plaintiff, who owns a substantial number of rental properties in the City that receive water
11 from California Water Service, wants "to have this ordinance repealed by a vote of the people
12" *Id.* ¶¶ 8, 10. To have the issue placed on the ballot, plaintiff claims that he must collect
13 signatures from at least ten percent of the City's registered voters. *Id.* ¶ 10. He contends that
14 completing this task is "difficult, if not impossible" because defendants have failed to maintain a
15 program for removal of ineligible voters residing within the City from California's voter
16 registration roll as required by the National Voter Registration Act of 1993 ("NVRA"). *Id.* ¶¶ 1,
17 10. He claims that he is "personally aware of a significant number of registered voters" that are
18 ineligible to vote within the jurisdiction of the City due to incarceration, moving to another
19 location, or passing away. *Id.* ¶ 10. Such personal knowledge is based on his receipt of absentee
20 ballots and other voter information mailed to individuals who no longer reside at his rental units,
21 as well as from "canvass[ing] areas to obtain the requisite number of registered voter signatures"
22 to place a separate matter on a ballot in 2018. *Id.*

23 Plaintiff seeks declaratory relief declaring that defendants Christian Clegg, the Interim
24 City Clerk for the City of Stockton; the City; Melinda Dubroff, the Registrar of Voters for the
25 County of San Joaquin; and Alex Padilla, the Secretary of State for the State of California,
26 violated Section 8(a)(4) of the NVRA. He also seeks an injunction requiring (1) defendants to
27 comply with the NVRA by conducting "a purge of the voter lists affecting the City of Stockton"
28 and (2) precluding the City from enforcement of the ordinance until plaintiff has "the opportunity

1 to submit proper documentation for eligible voters in the City of Stockton for a meaningful
2 attempt to repeal the . . . Ordinance through the initiative process” *Id.* at 7-8.

3 Defendants move to dismiss plaintiff complaint for lack of subject matter jurisdiction and failure
4 to state a claim pursuant to Rules 12(b)(1) and (12(b)(6). ECF Nos. 8, 10, 13.

5 II. Discussion

6 Although defendants move to dismiss on jurisdictional grounds of standing, it is clear that
7 there is also a fundamental threshold barrier to suit based on mootness. As addressed above, the
8 foundational predicate for this lawsuit is plaintiff’s contention that the City’s ordinance
9 improperly permits it to place liens on property for debts owed to a private third-party. Plaintiff
10 confirmed that at the hearing. *See also* ECF No. 1 ¶ 8 (“While WHITE does not argue the
11 CITY’s ability to lien an owner’s property for a water bill from a water utility department owned
12 by the CITY, he takes issue with CITY’s ability to so lien on behalf of a private utility.”). But as
13 discussed at the hearing, all parties (plaintiff and the City) agree that a plain reading of the
14 ordinance shows that it does not apply to delinquent bills for water supplied by California Water
15 Service, a private company. Rather, it only applies to the bills for water supplied by the City.

16 Stockton City Ordinance No. 2019-02-05-1703 states, in relevant part, that “in areas in
17 which the City provides water service it shall be mandatory for all owners, or occupants or
18 persons in possession, charge or control of all dwellings, buildings, places and premises in the
19 City that are connected to the City’s water system to subscribe to and pay for water services
20 provided to their respective property by the City.” ECF No. 18-1 at 7 (§13.04.015)². It further
21 provides that where “any bill for a *City water service account* remains unpaid 25 days after the
22 billing date,” a penalty of 10 percent of the delinquent amount will be imposed. *Id.*
23 (§ 13.04.060(A) (emphasis added)). Significantly, with respect to liens the ordinance provides
24 that “[i]f the account holder is the record owner of the property *receiving City water services* . . .
25 water service charges and penalties may become a lien against the lot or parcel of land against

26 ² Defendants City and Christian Clegg’s request for judicial notice of the Stockton City
27 Ordinance No. 2019-02-05-1403 is granted. ECF No. 18-1; *see Wood v. City of San Diego*, 2010
28 WL 2382335, at *5 (S.D. Cal. June 10, 2010) (“Municipal Code sections may be judicially
noticed . . .”).

1 which the charges were imposed if such charges remain delinquent for a period of 60 days or
2 more” after notice is provided. *Id.* at 8 (§ 13.04.070) (emphasis added).

3 Thus, for a lien to be placed on real property due to a delinquent water bill, the water
4 services for the property must be supplied by the City. The ordinance does not, as the complaint
5 alleges, contain language purporting to permit the City to impose a lien on property for failure to
6 pay a debt owed to a private entity. Moreover, the City confirmed at the hearing and in its reply
7 brief that it agrees that the ordinance does not grant any such authority. Rather, counsel for the
8 City conceded at the hearing that the ordinance in question does not permit a lien on property for
9 debts owed to private parties. Counsel further explained that the ordinance was enacted to
10 provide the City with a better mechanism for collecting delinquent fees the City is owed for
11 utility services it has provided.

12 Accordingly, as there is currently no case or controversy before the court, the action is
13 moot. *See Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9th Cir. 2001) (case loses its
14 quality as a “present, live controversy” and becomes moot when there can be no effective relief);
15 *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003) (“Mootness is a jurisdictional issue, and
16 federal courts have no jurisdiction to hear a case that is moot, that is, where no live controversy
17 exists.”).³

18 III. Conclusion

19 Accordingly, it is hereby RECOMMENDED that:

- 20 1. This action be dismissed as moot;

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22 ³ Additionally, dismissal is appropriate for lack of standing. Plaintiff’s sole claim is
23 predicated on defendants’ alleged failure to comply with the NVRA’s requirement that a program
24 be maintained to remove the names of ineligible votes from the official voter registration list.
25 ECF No. 1; see 52 U.S.C. §§ 20510(b) and 20507(a)(4). He claims that due to defendants’ failure
26 to maintain such a program, he is unable collect the necessary voter signatures to place a repeal
27 referendum on the ballot. ECF No. 1 ¶¶ 1, 10. Plaintiff, however, does not allege that he has
28 taken any action towards having a repeal referendum placed on the ballot (*see generally* ECF No.
1), and he concedes that he has not attempted to collect the requisite signatures (ECF No. 17 at 4).
Any claim that he is prevented from doing so is wholly speculative. Consequently, he fails to
establish that he has suffered any injury traceable to defendants’ alleged failure to maintain an
accurate voter registration roll and he therefore has failed to establish Article III standing. *See*
Bennett v. Spear, 520 U.S. 154, 162 (1997).

2. Defendants' motions to dismiss (ECF No. 8, 10, 13) be denied as moot; and

3. The Clerk be directed to close the case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED: August 1, 2019.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE