

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANTHONY L. VIOLA,

Plaintiff,

vs.

**Case No.: 2:16-cv-1036
JUDGE GEORGE C. SMITH
Magistrate Judge Kemp**

DANIEL J. KASARIS,

Defendant.

ORDER

On February 24, 2017, the United States Magistrate Judge issued a *Report and Recommendation* recommending that Defendant's Motion to Dismiss be granted, Plaintiff's Motion for Injunctive Relief be denied, and that the case be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. (See *Report and Recommendation*, Doc. 17). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Plaintiff's Objections to the *Report and Recommendation*. (See Doc. 18). Defendant has responded in opposition. (Doc. 21). The Court will consider the matter *de novo*. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff raises multiple objections to the Magistrate Judge's *Report and Recommendation*, most of which are based on his argument that Defendant Kasaris is currently a prosecuting attorney with the Cuyahoga County Prosecutor's Office. However, as set forth in detail in the record, Mr. Kasaris left the prosecutor's office in August 2013 and he joined the

Ohio Attorney General's Office. Despite Plaintiff submitting a Linked In profile, this is not sufficient evidence and the Court agrees with the reasoning and conclusions of the Magistrate Judge in the Report and Recommendation that Defendant was not a prosecutor when he sent the letter in question to Plaintiff, it was not on any official stationary, nor signed as any official capacity. Rather, Defendant was merely acting as a private citizen concerned for his family.

The Magistrate Judge concluded, and the Court agrees, that Plaintiff's Complaint fails to state a claim under the First Amendment or § 1983 because he has not sufficiently alleged any state action. Therefore, for the reasons stated in the *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit and are hereby **OVERRULED**.

The *Report and Recommendation*, ECF No. 17, is **ADOPTED** and **AFFIRMED**. Plaintiff's Complaint is hereby **DISMISSED** for failure to state a claim. Further, Plaintiff's Motion to Amend his Complaint (Doc. 19) is **DENIED AS MOOT**. Plaintiff's proposed addition to his Complaint does not change the fact that he has failed to allege a state action sufficient to maintain his claims against Defendant Kasaris.

The Clerk shall remove Documents 2, 6, 17, 18, and 19 from the Court's pending motions list. The Clerk shall terminate this case.

IT IS SO ORDERED.

/s/ George C. Smith

GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT