

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2018

FOR THE NINTH CIRCUIT

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

FREDERIC C. SCHULTZ,

No. 17-56852

Plaintiff-Appellant,

D.C. No. 3:17-cv-00097-WQH-  
KSC

v.

JOHN G. ROBERTS, Jr., Chief Justice of  
the United States; DONALD J. TRUMP,

MEMORANDUM\*

Defendants-Appellees.

Appeal from the United States District Court  
for the Southern District of California  
William Q. Hayes, District Judge, Presiding

Submitted October 22, 2018\*\*

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Frederic C. Schultz appeals pro se from the district court's judgment dismissing his action alleging that the 2016 presidential election violated his constitutional rights. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal for failure to state a claim under Federal Rule of

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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).

Civil Procedure 12(b)(6). *Thompson v. Paul*, 547 F.3d 1055, 1058 (9th Cir. 2008).

We affirm.

The district court properly dismissed Schultz’s action because Schultz failed to allege facts sufficient to state a plausible constitutional claim arising from the election of President Trump by the electoral college. *See* U.S. Const. amend. XII (providing for election of the president by electoral college); *Gray v. Sanders*, 372 U.S. 368, 380 (1963) (“The only weighing of votes sanctioned by the Constitution concerns matters of representation, such as . . . the use of the electoral college in the choice of a President.”).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**