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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Michael T. Rossides,

Plaintiff,

vs.

Alberto Gonzales,

Defendant.

No. CV-03-2527-PHX-NVW

ORDER

Pending before the court is Defendant's Motion to Dismiss (Doc. #27), Plaintiff's Responsive Memorandum Opposing Motion to Dismiss (Doc. #30), and Defendant's Reply (Doc. #31). By order dated December 9, 2004, the court dismissed Plaintiff's original Complaint for lack of jurisdiction, and granted Plaintiff leave to amend. Plaintiff filed a timely Amended Complaint that Defendant now moves to dismiss on the same grounds asserted against the original Complaint.

Defendant maintains that this action must be dismissed because Plaintiff lacks standing. Plaintiff's Amended Complaint failed to cure the standing problems noted in detail in the court's previous order. Plaintiff has still not established a credible threat of prosecution against him, as is necessary for standing under any applicable theory of jurisdiction. See *Wash. Mercantile Ass'n v. Williams*, 733 F.2d 687, 688 (9th Cir. 1984) (holding that the plaintiff must establish a "genuine threat of imminent prosecution" when the alleged injury

1 is fear of prosecution); *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154-55 (9th Cir. 2000) (requiring
2 a credible threat of prosecution for standing under the so-called hold-your-tongue-and-
3 challenge now standard); see also *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d
4 1134, 1139 (9th Cir. 2000) (en banc) (explaining that a fear of prosecution is credible if the
5 plaintiff has a concrete plan to engage in proscribed conduct and has been the recipient of
6 a specific threat of prosecution under a statute that has historically been enforced). While
7 Plaintiff has solidified the details of his plan, he has not alleged a specific threat of
8 prosecution. The fact that the conduct in which he hopes to engage is proscribed by statute,
9 as Plaintiff admits, does not establish "an actual and well-founded fear that the law be
10 enforced against [him]." See *Babbitt v. United Farm Workers Int'l Union*, 442 U.S. 289, 298
11 (1979). Plaintiff's fear of prosecution is purely speculative and insufficient to establish
12 standing as a matter of law. See *id.*

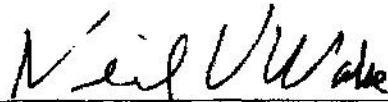
13 Standing could also hinge on whether the allegedly proscribed conduct is "arguably
14 affected with a constitutional interest." *Id.* If a plaintiff seeks pre-enforcement adjudication
15 of a claim that is arguably affected with a constitutional interest, and for which he is likely
16 to be prosecuted, the court can recognize standing to prevent plaintiff from suffering the
17 consequences of his alleged constitutional acts. *LSO*, 205 F.3d at 1154-55. This theory
18 allows the court to glance at the merits of Plaintiff's claim that he has a constitutional right
19 to operate a commercial gambling enterprise.

20 Assuming Plaintiff's proposed business would violate 18 U.S.C. §§ 1084, 1952, or
21 1953 – an assumption that is not hard to make – it could clearly be regulated without
22 violating Plaintiff's First Amendment rights. Placing bets in a commercial setting is
23 obviously outside the ambient of speech protected by the Constitution, even if the bets are
24 made on matters of public interest. Plaintiff's Amended Complaint simply fails to raise a
25 colorable claim of constitutional right that would warrant pre-enforcement adjudication to
26 avoid burdening Plaintiff with an enforcement action. Thus, Plaintiff fails to meet the
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1 requirements for this alternate theory of standing. For the reasons stated above and in the
2 December 9, 2004 order, the court finds that Plaintiff lacks standing to bring this action.

3 IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss (Doc. #27) is
4 granted. Plaintiff's Amended Complaint is dismissed for lack of jurisdiction. The Clerk is
5 directed to terminate this case.

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7 DATED this 25th day of May, 2005.

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10 Neil V. Wake
11 United States District Judge
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