No. 18-___

IN THE

Supreme Court of the United States

DR. JULIUS J. LARRY III,

Appellant,

v.

STATE OF ARKANSAS, *et al.*,

Respondents.

On Appeal from the United States District Court for the Eastern District of Arkansas Western Division – Three Judge Panel

JURISDICTIONAL STATEMENT

JULIUS J. LARRY III
Appellant Pro Se
2615 West 12th Street
Little Rock, Arkansas 72202
(832) 384-6908
dr.juliusjlarry@yahoo.com

October 3, 2018

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTIONS PRESENTED

In the Court below, the three-judge panel denied both of Appellant's motions to amend the complaint as futile and ruled that he lacked standing to bring a Section 2 violation of the Voting Rights Act and lacked standing to bring an Equal Protection claim because he did not reside in the congressional district being challenged, although he alleged personal injury as an aggrieved person.

The questions presented are:

1. Whether the district court erred in denying Appellant's first Motion for Leave to Amend Original Complaint and Obtain Class Counsel (Dkt #16) and Appellant's second Motion for Leave to File First Amended Original Complaint Challenging the Constitutionality of the Apportionment of Congressional Districts in the State of Arkansas (Dkt #36)?

2. Whether the district court erred in holding that Appellant lacked standing to bring a § 2 Voting Rights Act claim because he did not reside in the congressional district being challenged but in an adjacent and contiguous district where he alleged personal injury as an "aggrieved person" caused by the unlawful conduct of Appellees in the First Congressional District that harmed him in the Second Congressional District?

3. Whether the district court erred in ruling that Appellant lacked standing to bring an Equal Protection claim under *U.S. v. Hays*?

PARTIES TO THE PROCEEDING

The following were parties in the court below:

Plaintiffs:

Dr. Julius J. Larry III, Annie Mabel Abrams, Reverend Reginald J. Hampton, Martha Dixon, Dorothy Jefferson and Shirley Larry

Appellant is Dr. Julius J. Larry III

Appellees are the State of Arkansas; Asa Hutchinson; Leslie Rutledge; Mark Martin; and the Arkansas Legislature

Defendants:

State of Arkansas

Asa Hutchinson, Governor of State of Arkansas

Leslie Rutledge, Attorney General of Arkansas

Mark Martin, Secretary of State of Arkansas

Arkansas Legislature, (135 Members)

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	vi
JURISDICTIONAL STATEMENT	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
INTRODUCTION	2
STATEMENT OF THE CASE	2
I. THE PANEL ERRED IN DENYING APPELLANT'S MOTIONS FOR LEAVE TO AMEND ORIGINAL COMPLAINT	3
A. Legal Standard Applicable to Motion for Leave to Amend	3
1. Futility	7
2. Defendant's Did Not Meet Their Burden Of Proof Of Futility	8
3. Amendment As A Matter of Course	10
4. Procedural Confusion	14
5. Plaintiff Larry Has Article III Standing Due To "INJURY-IN-FACT" and "EXPECTED EFFECTS" – See *Dep't of Commerce v. US House of Representatives*	17

TABLE OF CONTENTS—Continued

Page

6. Expected Effects of Continuing Unlawful Conduct in Congressional District 1 21

7. Appellant Larry Had Standing Under the First Amendment 24

8. Majority-Minority Coalition Districts 25

CRUCIAL NEW EVIDENCE 25

9. Court Below Construed *U.S. v. Hays* Too Narrowly 26

CONCLUSION 31

APPENDIX

APPENDIX A: ORDER, U.S. District Court for the Eastern District of Arkansas (August 3, 2018) 1a

APPENDIX B: JUDGMENT, U.S. District Court for the Eastern District of Arkansas (August 3, 2018) 21a

APPENDIX C: NOTICE OF APPEAL, U.S. District Court for the Eastern District of Arkansas (August 20, 2018) 22a

APPENDIX D: ORDER, U.S. District Court for the Eastern District of Arkansas (April 23, 2018) 25a

APPENDIX E: MOTION FOR RECONSIDERATION AND APPOINTMENT OF A SPECIAL MASTER, U.S. District Court for the Eastern District of Arkansas (August 13, 2018) 34a

TABLE OF CONTENTS—Continued

	Page
APPENDIX F: Proposed New 1st CD Map.....	90a
APPENDIX G: ORDER, U.S. District Court for the Eastern District of Arkansas (April 23, 2018).....	92a
APPENDIX H: U.S. Const. amend XIV	102a
APPENDIX I: Voting Rights Act of 1965, Sec. 2.....	104a

TABLE OF AUTHORITIES

CASES Page(s)

Baker v. Carr,
369 U.S. 186 (1962) 22, 30

Barnett v. City of Chicago,
No. 92-C-1693, 1996 WL 34432
(N.D. Ill. Jan. 29, 1996) 27

Broward Citizens for Fair Districts v. Broward Cty.,
No. 12-60317-CIV, 2012 WL 1110053
(S.D. Fla. Apr. 3, 2012) 27

City of Belle Glade,
178 F.3d 1175 (11th Cir. 1999) 25

Comm. for a Fair and Balanced Map v. Ill. Bd. of Elections,
No. 1:11-CV-5065, 2011 WL 5185567
(N.D. Ill. Nov. 1, 2011) 27-28

Dep't of Commerce v. U.S. House of Representatives,
525 U.S. 316 (1999) 17, 20, 21, 22, 23, 29

Enterline v. Pocono Med. Ctr.,
751 F. Supp. 2d 782 (M.D. Pa. 2008) 24, 25

Foman v. Davis,
372 U.S.178 (1962) 7

Gill v. Whitford,
585 U.S. ___ (2018) 30

Hall v. Virginia,
276 F. Supp. 2d 528 (E.D. Va. 2003) 28

TABLE OF AUTHORITIES—Continued

Page(s)

Harding v. Cty. of Dallas, Texas,
No. 3:15-CV-0131-D, 2018 WL 1157166
(N.D. Tex. Mar. 5, 2018) 27

In re Drasin,
No. ELH-13-1140, 2013 WL 3866777
(D. Md. 2013) 25

League of United Latin Am. Citizens v. Perry,
548 U.S. 399 (2006) 14

Luna v. City of Kern,
291 F. Supp. 3d 1088 (E.D. Cal. 2018) 20, 27

McVicker v. King,
266 F.R.D. 92 (W.D. Pa. 2010) 24

Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville,
508 U.S. 656 (1993) 28

Old Person v. Brown,
182 F. Supp. 2d 1002 (D. Mont. 2002) 28

Parker v. Ohio,
263 F. Supp. 2d 1100 (S.D. Ohio 2003),
aff'd, 540 U.S. 1013 (2003) 18, 30

Perez v. Abbot,
267 F. Supp. 3d 750 (W.D. Tex. 2017) 20, 27

Perry-Bey v. City of Norfolk, Va.,
678 F. Supp. 2d 348 (E.D. Va. 2009) 28

Pope v. Cty. of Albany,
No. 1:11-cv-0736, 2014 WL 316703
(N.D.N.Y. Jan. 28, 2014) 27

TABLE OF AUTHORITIES—Continued

Page(s)

Reynolds v. Sims,
377 U.S. 533 (1964) 30

Rogers v. Lodge,
458 U.S. 613 (1982) 17

Shapiro v. McManus,
136 S. Ct. 450 (2015) 10

Sioux Falls Cable Television v. South Dakota, 838 F.2d 249 (8th Cir. 1988) 17, 29

Thornburg v. Gingles,
478 U.S. 30 (1986) 8, 10, 13, 14, 25, 26

U.S. v. Hays,
515 U.S. 737 (1995) 18, 23, 24, 26, 27, 28, 30

Woolsey v. Marion Labs., Inc.,
934 F.2d 1453 (10th Cir. 1991) 3

CONSTITUTION

U.S. Const. art. III 18, 20, 21, 22, 24

U.S. Const. amend. I 24

U.S. Const. amend. XIV 1, 2, 17, 18, 23, 29, 30

U.S. Const. amend. XV 2, 17, 18, 23, 29, 30

STATUTES

28 U.S.C. § 1253 1

28 U.S.C. § 2284 *et seq.* 5

52 U.S.C. § 10301(a) 1, 2, 10, 11, 12, 17, 18, 21, 23, 24, 27, 28, 30

TABLE OF AUTHORITIES—Continued

Page(s)

52 U.S.C. § 10302(a) 17, 29
52 U.S.C. § 10302(b) 17

RULES

Fed. R. Civ. P. 8(b) 6
Fed. R. Civ. P. 8(b)(6) 7
Fed. R. Civ. P. 8(c) 7
Fed R. Civ. P. 11 9
Fed. R. Civ. P. 12 4
Fed. R. Civ. P. 12(b) 3, 5, 10, 26
Fed. R. Civ. P. 12(b)(1) 11
Fed. R. Civ. P. 12(b)(6) 7, 9
Fed. R. Civ. P. 12(e) 3
Fed. R. Civ. P. 12(f) 3
Fed. R. Civ. P. 15 11
Fed. R. Civ. P. 15(a)(1) 3
Fed. R. Civ. P. 15(a)(1)(A) 3
Fed. R. Civ. P. 15(a)(1)(B) 3
Fed. R. Civ. P. 15(a)(2) 3
Fed. R. Civ. P. 26 ..... 15, 16
Fed. R. Civ. P. 26(a) 5, 15
Local Rule 5.5 9
Local Rule 5.5(e) 8, 9

JURISDICTIONAL STATEMENT

Appellant, Dr. Julius J. Larry III respectfully submits this jurisdictional statement regarding his appeal of a judgment from a three-judge panel of the U.S. District Court for the Eastern District of Arkansas and orders denying motions to amend the complaint and holding that Appellant lacked standing to bring a § 2 violation of the Voting Rights Act because he did not reside in the First Congressional District which was being challenged but resided in the Second Congressional District adjacent to the First Congressional District although he was personally injured by Appellees' unlawful conduct in the First Congressional District.

OPINIONS BELOW

The opinion of the three-judge court of the Eastern District of Arkansas is not reported. The Motion for Reconsideration and Appointment of a Special Master had not been ruled on by the Court at the time of submission of this Jurisdictional Statement. (See J.S. App. E).

JURISDICTION

Appellant filed notice of appeal on August 20, 2018. See J.S. App C. This Court has jurisdiction under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This appeal involves Section 2 of the Voting Rights Act, reproduced at J.S. App. H and the 14th Amendment to the US Constitution, reproduced at J.S. App. I.

INTRODUCTION

On February 9, 2018, Appellant, Dr. Julius J. Larry III filed an original complaint challenging Arkansas' 2011 congressional redistricting Plan (the "2011 Plan") (Dkt. No. 1). In his original complaint, Dr. Larry alleged that the defendant, Arkansas Legislature's 2011 Plan racially gerrymandered the Arkansas First Congressional District in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and diluted African American votes in violation of § 2 of the Voting Rights Act of 1965. In his proposed First Amended Complaint, he purported to add new named-Plaintiffs and add Class Counsel. The Court below denied the motion. In his Supplemental Request for Three-Judge Panel, (Dkt #23), he challenged the unconstitutionality of the apportionment of the Second Congressional District where he resides. The Court below did not make a ruling on the effect of the Supplemental complaint, although defendants-Appellees filed responses in opposition. (Dkt # 24).

The three-judge panel dismissed the case without prejudice due to lack of standing and the proposed amendment would be futile. (Dkt # 46) (See J.S. App. A).

STATEMENT OF THE CASE

The three-judge panel erred in denying Appellant's motions for leave to amend his original complaint and in ruling that he lacked standing to bring a § 2 violation of the Voting Rights Act and Equal Protection claims.

I. THE PANEL ERRED IN DENYING APPELLANT'S MOTIONS FOR LEAVE TO AMEND ORIGINAL COMPLAINT

A. Legal Standard Applicable to Motion for Leave to Amend

Federal Rule of Civil Procedure 15(a)(1) allows one amendment of a complaint as a matter of course within 21 days after service of the complaint, (Fed. R. Civ. P. 15(a)(1)(A)) or 21 days after receiving service of an answer or motion to dismiss under Rule 12(b), (e), or (f), whichever is earlier. (Fed. R. Civ. P 15(a)(1)(B)). Subsequent amendments are allowed "only with the opposing party's written consent or the court's leave". (Fed. R. Civ. P 15(a)(2)). The court is instructed to "freely give leave when justice so requires". "Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment". *Woolsey v. Marion Labs., Inc.*, 934 F.2d 1453, 1462 (10th Cir. 1991).

Appellees, as the parties asserting "futility of amendment", had the burden of establishing futility. Appellant Larry asserts that 'futility' is an affirmative defense and was never plead in any answer to Plaintiffs Original Complaint or Supplemental Complaint, by any defendant. Nor did any defendant-Appellee file an answer or responsive pleading admitting or denying any of the facts set out in Plaintiffs Original Complaint or Supplemental Complaint. Defendant-Appellees effectively waived all of their affirmative defenses because a Rule 12(b) motion is not a "responsive pleading" to a complaint. The Court was requested to enter a judgment of default against all

defendants who failed to answer pursuant to the duly-promulgated Federal Rules of Civil Procedure, which was set out in his motion for reconsideration. (Dkt # 48) (See J.S. App. F).

Rule 12, FRCP, Rule 12, FRCP, Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

> **(a) Time To Serve A Responsive Pleading.**
>
> (1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:
>
> (A) A defendant must serve an answer:
>
> (i) Within 21 days after being served with the summons and complaint; or . . . .
>
> (4) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:
>
> (A) If the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or
>
> (B) If the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

In the case at bar, the Complaint, Request for Three Judge Panel and Temporary Restraining Order was filed on 02/09/2018 and summons were issued. Dkt # 1. On 02/26/2018, the State defendants filed motions

to dismiss for lack of jurisdiction. Dkt #7. On 02/28/2018, Executed Summons were returned. Dkt #s 9, 10, 11 and 12. On 03/02/2018, defendant Mark Martin, Secretary of State, filed his Motion to Dismiss. Dkt #13. On 03/05/2018, defendant Jeremy Gillam, House Speaker, filed a motion to dismiss for lack of jurisdiction. Dkt # 18.

On 03/15/2018, Appellant's Supplemental Request for Three Judge Panel to Challenge Unconstitutionality of Apportionment of Second Congressional District of Arkansas Pursuant to 28 U.S.C. § 2284 *et seq*. was filed. Dkt. #23. On 04/23/2018, the Court entered its Order granting in part and denying in part Dr. Larry's request for a three-judge panel; granting 1, 15, 18, defendants' motions to dismiss to the extent defendants seek to dismiss Dr. Larry's equal protection racial-gerrymandering claim for lack of standing; . . . Dkt #30.

Counting 14 days from the Court's Order granting in part and denying in part, defendants' motions to dismiss, defendants' responsive pleading was due on or about May 8, 2018. The Court's Docket Sheet from the District Clerk's Office does not show any responsive pleadings filed by any of the State defendants on or about May 8, 2018. In fact, the first docket entry after 05/04/2018 is 05/14/2018, Dkt #35 – Plaintiffs First Supplemental Disclosures Pursuant to FRCP 26(a).

Likewise, on 05/21/2018, Summons were issued for service on the 135 individual members of defendant, Arkansas Legislature, as their counsel did not accept service for them and challenged service as defective in his 12(b) motion. Service of Summons and Complaint was made on the members of the Arkansas Legislature, the real party in interest. On 06/01/2018, Motion

for Leave to File First Amended Original Complaint Challenging the Constitutionality of the Apportionment of Congressional Districts in the State of Arkansas and First Amended Original Complaint was filed. Dkt #36. On 06/14/2018, the State defendants filed Response[s] in Opposition to Amend/Correct Complaint. Dkt. #s 38, 39, and 40.

No other Docket entry shows where any of the State defendants or defendant members of the Arkansas Legislature ever filed a responsive pleading as required by the Federal Rules of Civil Procedure. Individual defendants (Arkansas Legislature) were required to file a responsive pleading before the end of June 2018. No such responsive pleading appears on the Court's Docket.

Rule 8, FRCP, entitled, General Rules of Pleading-8(b) states in pertinent part:

> **(b) Defenses; Admissions and Denials**
>
> (1) In General. In responding to a pleading, a party must:
>
> (A) State in short and plain terms its defenses to each claim asserted against it; and
>
> (B) Admit or deny the allegations asserted against it by an opposing party
>
> 8(b)(6) – Effect of Failing to Deny.

An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied.

If a responsive pleading is not required, an allegation is considered denied or avoided.

Rule 8(c) covers **Affirmative Defenses**. Appellant Larry asserts that the defense of "futility" is an affirmative defense in the nature of avoidance and should have been affirmatively plead in defendants' responsive pleading or answer to the Original Complaint and/or Supplemental Complaint. None of the defendant-Appellees filed a responsive pleading at all and the Panel should have stricken all of their defenses as waived and all of Appellant Larry's allegations contained in the Original and Supplemental Complaints should be deemed admitted, pursuant to Rule 8(b)(6).

1. Futility

A proposed amendment is futile if the amended claim would be subject to dismissal. In determining whether a proposed amendment should be denied as futile, the Court must analyze a proposed amendment as if it were before the Court on a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). In doing so, the Court must accept as true all well-pleaded factual allegations and view them in the light most favorable to the pleading party. The Court must then look to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief. The issue in resolving a motion to dismiss on the grounds that the complaint fails to state a claim is "not whether the plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims". As this Court has stated, "if the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test the claim on the merits". *Foman v. Davis*, 372 U.S.178, 182 (1962).

2. Defendants Did Not Meet Their Burden Of Proof Of Futility

(a) Defendant-Appellees presented no evidence to support their affirmative defense of "futility". Defendants-Appellees, State of Arkansas, Asa Hutchinson, Leslie Rutledge, Jeremey Gillam, and the Arkansas Legislature argued that "(1) the proposed amendment would be futile as his proposed map is a racial gerrymander and (2) lacks the compactness required by *Thornburg v. Gingles*, . . .". Defendant Mark Martin argued that "Plaintiff violated the Local Rule 5.5(e) and (2) the proposed amendment is futile". He presented no evidence whatsoever regarding how he believed the amendment would be futile.

The Court below stated: "In an effort to excuse his failure to comply with the Local Rule, Dr. Larry argues that the "form" of his motion is not controlling because the proffered Amended Complaint was attached as a part of the motion for leave to amend". (p. 4 – Opinion). In part II. **Discussion**, the Court stated: "The Court also determines that the proposed amendment does not comport with the Local Rules and is futile:" (p. 5 – Opinion).

(b) Defendant Martin and his attorneys are solely responsible for misleading the Court below to this erroneous conclusion. Appellant Larry was not aware that Local Rule 5.5(e) applied to pro se litigants. So, in 20-20 hindsight, he read Local Rule 5.5(e). The very last sentence of 5.5(e) states: **"The requirements for amending pleadings set forth in this subsection of Rule 5.5 shall not apply to parties proceeding pro se"**. Appellant Larry admits that he was aware that federal district courts had local rules. However, in the Southern District of Texas, the local rules only apply to licensed attorneys practicing before those

courts and not to pro se litigants. Counsel for defendant Martin was well aware that Local Rule 5.5 did not apply to Plaintiff Larry. Indeed, all of the defendants repeatedly argued to the Court that Plaintiff Larry is "pro se".

Appellant Larry admitted that he is pro se, but Appellees falsely accused him of trying to represent other people as their lawyer. The Court below ruled that he is proceeding pro se. Yet, defendant Martin and his counsel, in violation of Rule 11, advanced a frivolous claim (Dr. Larry violated Local Rule 5.5(e) and persuaded the Panel to agree with them. Relying on the representations made to the Court by defendant Martin, through his attorney, that Plaintiff Larry had indeed violated Local Rule 5.5(e), the Court ruled that such violation had indeed occurred and that Appellant Larry was making an excuse for his noncompliance with Local Rule 5.5(e), when the truth is that local rule 5.5 did not even apply to pro se parties, such as Appellant Larry.

Plaintiff Larry believes that Rule 11 should apply to officers of the court, like defendant Martin's counsel, who practice before the Court below. Candor and honesty should be the sine qua non of federal practice. Defendants' attorneys should be duly sanctioned as a deterrent to other lawyers who may try to emulate government lawyers in chicanery before the Court in the future.

(c) Plaintiff Larry posits that when the Court analyzes the claim of futility from the point of view of a Rule 12(b)(6) motion, it is clear that defendants' futility assertion must fail. When the facts are viewed in the light most favorable to Plaintiff Larry, a motion to dismiss would not be granted because the complaints and affidavits attached to the original

complaint, supplemental complaint and amendment state a cause of action – minority vote dilution in violation of Section 2 of the Voting Rights Act. These facts are unrefuted by any evidence adduced by defendants and presented to the Court below.

(d) Furthermore, defendants failed to answer the Requests for Admissions and the same are deemed admitted. (See Exhibit B – First Request for Admissions to Defendants). Defendants have admitted all of the *Gingles* test, Senate Factors and a Section 2 violation of the Voting Rights Act and should be estopped from asserting any other position. Defendants have attempted to make an end-run around and circumvent the holding in *Shapiro v. McManus*, 136 S. Ct. 450 (2015), while tacitly claiming Plaintiff's complaint is constitutionally insubstantial; essentially fictitious; wholly insubstantial; obviously frivolous; and obviously without merit. Defendants have not proven "futility", an affirmative defense not plead in any responsive pleading or answer to Plaintiff's complaint.

3. Amendment As a Matter of Course

The Court's Docket is the best evidence of the dates when summons were issued to the individual members of defendant Arkansas Legislature, after defendants' counsel complained about defective service in his 12(b) motion. Appellant Larry served the 135 defendant members of the Arkansas Legislature on 5/21/2018. Dkt# (it is blank) and returned proof of service on June 1, 2018. Dkt. #37.

"A party may amend its pleadings once as matter of course within 21 days after the service of the complaint". Appellant Larry asserts that he filed his amended complaint on June 1, 2018, within 21 days

after he served the individual members of defendant Arkansas Legislature, the real parties in interest, who are responsible for the Section 2 violation of the Voting Rights Act. Dkt # 36. Therefore, the other subparts of Rule 15 are inapplicable to the instant facts. It should be noted that defendants had 21 days after being served with the summons and complaint to file an answer, admitting or denying each and every paragraph set out in Plaintiff Larry's original complaint. The record shows that none of the defendants filed an answer or responsive pleading in this case in accordance with the Federal Rules of Civil Procedure. The Court below decided defendants' Rule 12(b)(1) motions challenging the Court's jurisdiction and the case was not dismissed for lack of jurisdiction, as defendants had urged. However, a Rule 12(b)(1) motion is not a responsive pleading to the original complaint. Defendants never filed an answer to the original complaint. Plaintiff could not find any caselaw where a 12(b)(1) motion negated the necessity of filing a proper and timely responsive pleading or answer in accordance with the Federal Rules of Civil Procedure.

The Court also stated the following: "Accordingly, Dr. Larry's ability to amend as of right expired before his most recent attempt to amend". Plaintiff Larry apprises the Court that he previously filed a motion for leave to amend to add new parties and class counsel and to correct any defects of which defendants complained. However, the Court denied that motion to amend. So, the present motion to amend is a misnomer and should be Plaintiff Larry's Second Motion for Leave to File First Amended Original Complaint Challenging the Constitutionality of the Apportionment of Congressional Districts in the State of Arkansas and First Amended Original Complaint. Substantial justice has not been done.

Defendants argued that "the proposed map is a racial gerrymander and is not geographically compact because it stretches from the southwest-corner of Arkansas to the north-east corner of Arkansas with many fingerlings". Plaintiff Larry admits that race – was considered in his drawing of the proposed new CD 1. And, he asserts that in complying with Section 2 of the Voting Rights Act, states may consider race because it is a compelling State interest to comply with Section 2 of the Voting Rights Act. However, "compactness" is not about how far a majority-minority district "stretches, geographically", as defendants assert. But, defendants should not be heard to complain about the geographical extent of congressional districts in Arkansas. The 1st CD extends from the Missouri border to the Louisiana border, containing 30 counties (almost half of the state's 75 counties) and the two communities of interest in the present 1st CD are diabolically opposed. The affluent NE in Jonesboro versus the Poster Children of Poverty in the Arkansas Delta (SE) do not have the same interests and should not be in the same congressional district.

The Court below is correct that Appellant Larry never asserted that an all-Black majority congressional district could be drawn. He asserted that a majority-minority coalition district, as set out in the proposed computer-generated drawing, is the only majority-minority district that can be drawn where minorities will make up more than 50% of the CV AP. Appellant Larry filed a Motion for the Appointment of a Special Master to refine the boundaries because most courts have no expertise and it is not the job of the Court to redraw congressional boundaries for recalcitrant legislatures. After a Special Master is appointed, Dr. Rogelio Saenz can give the Court the evidence proving that a majority-minority coalition

district can be drawn wherein the minorities in that district will have the opportunity to elect the candidate of their choice, such as Chintan Desai, the Democrat running for Congress in the 1st CD. This is the new evidence Appellant Larry is presenting herein. It is a work-in-progress. Dr. Saenz is waiting on defendant Martin, Secretary of State, to provide data at the precinct level for analysis and such data is not on defendant Martin's website, as he alleged in answers to his Interrogatories.

Appellant Larry communicated with Dr. Saenz, who submitted his preliminary work. His expert report is not yet due. With an MVAP/CVAP of 60, surely Plaintiffs could elect the candidate of their choice. However, appointment of a Special Master is imperative to refine the boundaries so that definitive data may be completed to prove "compactness". The first ***Gingles*** condition refers to the compactness of the minority population, not to the compactness of the contested district, as defendants argued. It is undisputed and unrefuted by any evidence adduced before the Court below that the minority population in the Arkansas Delta is compact. They live in close-knit communities, in poverty together, across the southern border of Arkansas and east along the Mississippi River. However, if there is a genuine dispute about this material fact, witnesses who live in the Arkansas Delta should be given the opportunity to tell their story in court about compactness, while the Special Master perfects the boundaries according to the traditional districting principles such as maintaining communities of interest and traditional boundaries. Minorities have always lived on the fringes of the state of Arkansas in every respect – including disenfranchisement today. Interestingly, when the Court looks at some of the oddly-shaped districts, where many are

gerrymandered, the map of Louisiana is almost a mirror-image of Arkansas. This is because slaves were running from slavery in Louisiana by running north-by-north-east to the Mississippi River, while slaves running from slavery in Arkansas ran south-by-south-east to the Mississippi River, where they live today – in poverty. This Court has seen, reviewed and apparently approved, many oddly-shaped districts. It is not the shape of the proposed district that is controlling for the *Gingles* "compactness" test. It is the compactness of the minority population that is controlling.

With respect to compactness, the court did not use any test scores of recognized measures of compactness, but accepted defendant-Appellees' bare allegations unsupported by any evidence. The "perimeter-to-area" score, which compares the relative length of the perimeter of a district to its area, and the "smallest circle" score, which compares the ratio of space in the district to the space in the smallest circle that could encompass the district," are the "two standard measures of compactness." *League of United Latin Am. Citizens v. Perry (LULAC)*, 548 U.S. 399, 455 n.2 (2006) (Stevens, J., concurring in part, dissenting in part).

4. Procedural Confusion

Appellant Larry takes full responsibility for the procedural confusion involving the attorneys representing "key witnesses-turned Named Plaintiffs". Appellant Larry believed that a motion for leave to amend and add new Plaintiffs and class counsel was the proper procedural vehicle to ask the Court below to allow him to add new Plaintiffs and inform the Court that they were bringing their own lawyers. However, the Court denied the motion for leave to amend and add class counsel. So, everyone was in

limbo about the status of the putative named-Plaintiffs and their attorneys. Ostensibly, the motion was denied in part because the Court observed that no lawyers had signed on as of that date. By what authority would they have to sign on if their clients are not joined in as named Plaintiffs? So, Appellant Larry tried to apprise the Court below another way through filing a Supplemental Request for a Three Judge – Panel that he believed would be added to the Original Complaint and the same Panel hear all of the redistricting matters rather than filing separate lawsuits challenging each congressional district. This was best for judicial economy. No ruling was made regarding the supplemental request.

Finally, the attorneys signed a pleading indicating their appearance although there was no Order granted allowing their clients into the lawsuit as named-Plaintiffs. These new named-Plaintiffs were key witnesses that were set out in the Rule 26(a) Disclosures. Defendants were fully aware of the names, addresses, and proffered testimony of each of them. Appellant Larry timely supplemented his Rule 26 Disclosures as new information became available. (Dkt # 35, 44). Defendants were in no way prejudiced by key witnesses becoming named-Plaintiffs and bringing lawyers licensed in Arkansas. Appellant Larry personally visited with Mr. Gene McKissic at his law offices in Pine Bluff, AR. He affirmed that he represents Mrs. Shirley Diane Larry and Mrs. Dorothy Jefferson, whom are both African American females who reside in Helena, Phillips County, AR in CD 1 and are registered voters and vote Democratic. Appellant Larry met personally with Mr. Jimmy Morris, who affirmed that he represents Mrs. Annie Abrams and Mrs. Martha Dixon, both African American females, registered voters. Both were disclosed to defendants,

including the subject-matter of their testimony. Plaintiff Larry spoke with Mr. Q. Byrum Hurst by telephone and he affirmed that he represents Rev. Reginald J. Hampton and that he believed that he had already entered an appearance and that he would check his files. Rev. Hampton was disclosed in the Rule 26 Disclosures. So, defendants cannot be heard to complain of surprise or prejudice by these key witnesses becoming named-Plaintiffs.

The gravamen of the situation is that there was no Order given by the Court below or signal that the key witnesses were granted permission by the Court below to become named-Plaintiffs and bring their own attorneys, who are licensed to practice law in Arkansas. Contrary to defendants' numerous assertions, Plaintiff Larry never intended or "tried to represent other people". He represented himself individually and held himself out as a "Class Representative" in a Class Action because he believes that all congressional redistricting cases should proceed as class actions for judicial economy. An Order allowing the putative named-Plaintiffs to become parties to the litigation would also have cured any standing problem because Mrs. Shirley Diane Larry and Mrs. Dorothy Jefferson reside in the 1st Congressional District, although Appellant Dr. Larry resides in the adjacent 2nd Congressional District. Both Mrs. Larry and Mrs. Jefferson are represented by counsel. However, the court below, in an abuse of discretion, refused to allow an amendment to cure any defects in pleadings; add plaintiffs and add attorneys.

5. Plaintiff Larry Has Article III Standing Due To "INJURY-IN-FACT" and "EXPECTED EFFECTS" – See *Dep't of Commerce v. US House of Representatives*

Section 2 of the Voting Rights Act prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgment of the right of any citizen . . . to vote on account of race or color." 52 U.S.C. § 10301(a). (See J.S. App. I). Intentional vote dilution through the drawing of district lines violates both § 2 of the Voting Rights Act and the Fourteenth Amendment, see *Rogers v. Lodge*, 458 U.S. 613, 617 (1982), and § 2 of the Voting Rights Act also forbids facially neutral districting that has the effect of diluting minority votes. 15 U.S.C. § 10302(b).

The Voting Rights Act creates a private cause of action permitting plaintiffs to file suit if they are an "aggrieved person." 52 U.S.C. § 10302(a). A party who fulfills the injury-in-fact prong of the constitutional standing requirements generally is a "person aggrieved" and therefore fulfills the statutory standing requirement. *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 328-29 (1999) (Congress' use of "any person aggrieved" in the Census Act "eliminated any prudential concerns in [that] case"); *Sioux Falls Cable Television v. South Dakota*, 838 F.2d 249, 252 (8th Cir. 1988) (phrase "any person aggrieved" is "ordinarily sufficient to confer standing on any party satisfying the constitutional requirements"). If a plaintiff satisfies the constitutional standing requirements for a vote dilution claim under the Voting Rights Act, that plaintiff also satisfies the constitutional standing requirements for a vote dilution claim under the Fourteenth and Fifteenth

Amendments. *Parker v. Ohio*, 263 F. Supp. 2d 1100, 1107 (S.D. Ohio 2003) (Graham, J., concurring), *aff'd*, 540 U.S. 1013 (2003) (noting that same standing rules applicable to Fourteenth Amendment election case should apply to claims under § 2 of Voting Rights Act "which was enacted to enforce the guarantees of the Fourteenth and Fifteenth Amendments").

Appellant Larry is an "aggrieved person" within the meaning of Section 2 of Voting Rights Act and has been and is continuing to be personally injured by the defendants-Appellees' conduct in the 1st CD that adversely injures him in CD 2, (See Affidavit of Dr. Larry) as set out below. As an "aggrieved person" under Section 2 of the Voting Rights Act, he should be allowed to prove injury-in-fact and may also establish Article III standing on the basis of the "expected effects" of continuing unlawful conduct by defendants in CD 1 and CD 2. The Court below made no ruling on Plaintiff Larry's Supplemental Complaint that added the 2nd Congressional District to the Original Complaint. Appellant Larry resides in the 2nd CD and any question of standing would be moot. Defendants have not challenged Plaintiff Larry's standing in the 2nd CD. Their opposition was to standing in the 4th CD. No motion to strike the Supplemental Complaint was ever filed by any defendant. Although this Court has not definitively decided the issue of plaintiffs living in the challenged district in order to bring a Section 2 claim under the Voting Rights Act, by analogy the Panel applied the results from Equal Protection claims, to Section 2 Voting Rights Act claims, citing *Hays*. However, Plaintiff Larry shows that the defendant Arkansas Legislature's unconstitutional conduct in creating the gerrymandered 1st CD with 30 counties, forced the adjacent, 2nd CD to have only 8 counties. Plaintiff Larry lives in Pulaski County, the

only one of the 8 counties that votes Democratic. If he votes for Democratic candidates of his choice, he is guaranteed to lose 7 to 1 in every election. This representational harm is continuing for as long as he lives in Pulaski County and Pulaski County is in the current 2nd Congressional District.

Every African American and minority residing in Pulaski County has been politically-castrated, disenfranchised and injured-in-fact by defendants' gerrymandering of the 1st CD. All of their votes are a nullity in CD 2. Appellant Larry's votes are a nullity in Pulaski County in CD 2. (See Plaintiff Larry's Affidavit). Fracking, the fracturing of Pulaski County and Jefferson County into the 1st, 2nd and 4th CDs is the main culprit in the injury to Appellant Larry, directly caused by defendants' unlawful conduct in CD 1. Plaintiff Larry is more injured personally than all of the minorities in the 1st CD because they have a remedy at law, the new CD 1 presented to the Court below. But, he has no legal remedy in 2nd CD living in Pulaski County due to its racial and political gerrymander and the only likely redress is to adopt Plaintiffs' new CD 1 map. Every time Appellant Larry votes for a Democrat in the 2nd CD, it is a foregone conclusion that his vote has been wasted and nullified. Since the 2nd CD is an absolute gerrymander with no legal remedy, Appellant Larry's representational harm is continuing unabated for as long as he resides in CD 2. The "cause and effect phenomenon" in CD 1, which has its adverse effects in CD 2, is simple to understand. Jesus taught in parables to keep it simple. Common sense is good, also. "If a river is located physically on land in CD 1, where 'A' lives and that river floods across the imaginary district boundary and destroys B's home which is adjacent in CD 2, it is easy to see that B has been injured-in-fact

by circumstances occurring in CD 1". Let's say that A and B are neighbors and A's house is on the property line of CD 1 and B's house is next door across the imaginary district line in CD 2. A's house catches on fire and the wind blows the fire west and B's house burns to the ground. It is easy to see how B has been injured-in-fact by the cross-border activity of the fire at A's house in CD 1. "A"'s farm is located in CD 1 and "B"'s farm is located in CD 2, adjacent to each other and only the imaginary congressional district line separates their properties. "A" drills an oil well on his farm close to the district property line and slant drills and captures oil from under "B"'s farm in CD 2. Has "B" been injured-in-fact by activity originating across the boundary line? This cause and effect is true in assessing injury-in-fact in vote dilution cases because the harm in a vote dilution case is the result of the entire map, not the configuration of a particular district. *Luna v. City of Kern*, 291 F. Supp. 3d 1088, 1122 n. 14 (E.D. Cal. 2018). See also, *Perez v. Abbott*. However, *Dep't of Commerce v. US House of Representatives*, 525 U.S. 328 (1999) is most instructive on the principle of how actions in one county may cause an injury-in-fact in another county for Article III standing purposes. In fact, this case involved the potential harm of intrastate vote dilution effecting voters in nine counties and residents of 13 states. As an aggrieved person, Appellant Larry has Article III standing because the personal injury (injury-in-fact) is directly traceable to the unlawful conduct of defendants in CD 1. His injury can only be redressed by removing Pulaski County from CD 2 and placing it in the new CD 1 proposed by Plaintiffs.

6. Expected Effects of Continuing Unlawful Conduct in Congressional District 1

The same is true with election results in CD 2. The current Black CVAP in CD 2 is 118,760 and the white CV AP in CD 2 is 411,612. The current Black CVAP in CD 1 is 120,673 and white CVAP is 458.133. Therefore, Appellant Larry's representational harm is not conjectural or hypothetical, but real. This data, taken from Dr. Saenz' partial analysis, (Ex. A) shows that as long as Appellant Larry resides in CD 2, he will be a loser when it comes to electing a candidate of his choice. His injury-in-fact is capable of repetition yet evading review if he has no standing to challenge his condition of vote submergence. The only solution is to move Pulaski County from the 2nd CD and place it in the new CD 1 as Appellant Larry proposed. And, Appellant Larry has standing by way of personal injury, to make a challenge under Section 2 of the Voting Rights Act as an "aggrieved person" because the practical effect of the unconstitutional Section 2 violation in CD 1 has injured him in CD 2. It is a virtual certainty that he will continue to be personally injured by defendants-Appellees' unlawful conduct as long as he resides in CD 2 as presently drawn. He has Article III standing on the basis of the expected effects of the continuing unlawful conduct by defendants-Appellees in CD 1 that will continue to injure him in CD 2 in futuro.

Appellant Larry urges this Court to analogize *Dept of Commerce v. US House of Representatives*, 525 U.S. 316 (1999), with the case at bar. For purposes of Article III standing, the harm and injury-in-fact can cross state lines. The case involved the predicted harm of "intrastate vote dilution". The first law suit was filed in the Eastern District of Virginia by four

counties and residents of 13 states. The second suit was filed by the U.S. House of Representatives in the District Court for the District of Columbia. Each of the courts held that the plaintiffs satisfied the requirements for Article III standing. In that case, "the appellees submitted an affidavit that demonstrated that it is a virtual certainty that Indiana, where appellee Hosfmeister resides, will lose a House seat under the proposed census 2000 plan. That loss undoubtedly satisfies the injury-in-fact requirement for standing, since Indiana residents' votes will be diluted by the loss of a Representative." See, also *Baker v. Carr*, 369 U.S. 186, 208 (1962)("one person one vote"). This Court in *Dep't of Commerce* stated that: "Appellees have demonstrated that voters in 9 counties, including several of the appellees, are substantially likely to suffer intrastate vote dilution as a result of the Bureau's plan".

If a harm originating in Washington, DC could cause intrastate harm in Indiana and other states and harm voters in nine (9) counties such that the residents have Article III standing because of injury-in-fact, certainly Appellant Larry has Article III standing when the harm to him originates next door in CD 1 and its harmful effect is causing personal injury to Appellant Larry in CD 2. (See Appellant Larry's Affidavit – Harm – Ex. D). Appellant Larry has attached the Affidavit of Mrs. Annie Abrams (Ex. E) for the concrete conclusion that no African American running for Congress from the 2nd Congressional District has ever won (State Senator Joyce Elliott's matter is the example of white bloc voting in CD 2) and will never win under the present districting plan.

In fact, in the most recent Democratic primary in the 2nd CD, Appellant Larry's candidate of choice,

Jonathan Dunkley, Black Democrat, lost, as predicted. Appellant Larry wasted his vote and was personally injured by defendant-Appellees' unlawful conduct in CD 1 that forced Pulaski County into CD 2. It is not speculation, but Appellant Larry's prediction, that no minority will ever be elected to the US Congress from CD 2 as long as the present burden is in place caused by defendants. It is with virtual certainty that Appellant Larry's personal injury due to racial animus will continue in CD 2 as long as he lives there, and he expects that his candidates of choice will lose every Congressional election in CD 2 from now on, thereby insuring that Democracy is effectively nullified for him in CD 2 and all other similarly situated minorities in CD 2 and CD 1.

Although *Hays'* requirement that a plaintiff must reside in the district being challenged for Equal Protection purposes, the same cannot be true for Section 2 violations of the Voting Rights Act. *Dep't of Commerce* makes it clear that an "aggrieved person" may have standing to challenge an action arising in another jurisdiction if he may be injured-in-fact by such action that is caused by the defendants' unlawful conduct and the relief he seeks will remedy the problem. The purpose of compliance with Section 2 of the Voting Rights Act has special significance different from the Equal Protection claims of the 14th and 15th Amendments in voting rights cases.

If residency in the district was required of the plaintiffs in *Dep't of Commerce*, every plaintiff would have to have been a resident of Washington, DC. For purposes of Section 2 of the Voting Rights Act, the better reasoned position is that the plaintiff show "injury-in-fact" directly connected to defendants' alleged unlawful conduct or prove the harm caused

on the basis of "expected effects" is traceable to defendants' unlawful conduct. It should not matter where the harm originated but where its harmful effects are manifested that cause injury-in-fact. Therefore, the *Hays* residency requirement in Equal Protection claims should not apply to Section 2 Voting Rights Act claims brought by "aggrieved persons" who show injury-in-fact for Article III standing or have standing on the basis of "expected effects" of the unlawful conduct of defendants-Appellees.

7. Appellant Larry Had Standing Under the First Amendment

As Publisher of the Little Rock Sun Community Newspaper, Appellant Larry had standing under the First Amendment to speak on behalf of others harmed in the 2nd CD who might not be able to ask the court for relief against defendant-Appellees' unconstitutional vote dilution in CD 1 and CD 2. The Little Rock Sun Community Newspaper, owned by Little Rock Sun Times, LLC has state-wide distribution and over 500,000 readers. First Amendment standing doctrine is more permissive with respect to third parties. Courts have held that entities such as newspapers, internet service providers, and website hosts have standing under jus tertii to assert the First Amendment rights of their readers and posters. See, e.g., *McVicker v. King*, 266 F.R.D. 92, 95-96 (W.D. Pa. 2010); *Enterline v. Pocono Med. Ctr.*, 751 F. Supp. 2d 782, 786 (M.D. Pa. 2008). A newspaper has standing to assert the rights of anonymous commentators because those individuals "face practical obstacles to asserting their own First Amendment rights," and the newspaper has a real interest in zealously arguing the issue because of its "desire to maintain the trust of its readers and online commentators." *Enterline*, 751 F.

Supp. 2d at 785-86. Moreover, a newspaper can itself display injury-in-fact because revelation of posters' identities could "compromise the vitality of the newspaper's online forums." *Id.* This Court has recognized that a blog administrator can, like a newspaper, assert standing on behalf of anonymous online posters. See *In re Drasin*, No. ELH-13-1140, 2013 WL 3866777, at *2 n.3 (D. Md. 2013) (citing *Enterline*, 751 F. Supp. 2d at 786).

The Little Rock Sun Community Newspaper has suffered injury-in-fact by the unlawful conduct of vote dilution in CD 1 and CD 2 caused by the chilling effect the unlawful conduct has had on silencing the voices and votes of the Sun's minority reader-victims who reside in CD 2. Their votes are a nullity, so why vote for a congressperson when their preferred candidate, a Democrat can never win with 7 to 1 odds against him.

8. Majority-Minority Coalition Districts

CRUCIAL NEW EVIDENCE

The Panel erred is ruling that, "because Dr. Larry's proposed amended complaint fails to satisfy the first *Gingles* precondition at the pleading stage, this Court concludes that the proposed amendment would be futile". (Dkt. No. 36). The purpose of the first *Gingles* precondition is to prove that a solution is possible, not necessarily to present the ultimate solution to the problem. *Gingles*, 478 U.S. at 50 n. 17; cf. *City of Belle Glade*, 178 F.3d 1175, 1199 (11th Cir. 1999) ("We have repeatedly construed the first *Gingles* factor as requiring a plaintiff to demonstrate the existence of a proper remedy.").

Plaintiffs' expert, Dr. Rogelio Saenz has expended great time and effort working on data that he has had to collect from other sources because defendant

Martin, Secretary of State failed to provide the requested information in discovery. A summation of defendant Martin's answers is that everything is on his website. Short of a motion to compel, defendant Martin has refused to provide the precinct level data for analysis. However, subject to those limitations, Dr. Saenz sent in his work-in-progress that he was working on before he learned of the dismissal. He stated that he was awaiting the appointment of the Special Master to define the actual boundaries so that he could complete the correct CVAP for the computer-generated majority-minority coalition district – the only one that can be drawn. Attached is what he has completed so far. (**See Exhibit A – Total Population and Citizen Voting Age Population (CVAP) for Selected Race/Ethnic Groups by Existing Congressional Districts and Proposed 1st Congressional District**).

When the Court considers this new evidence along with the entire record considering the Senate Factors and totality of the circumstances, the *Gingles* test has been met and the lawsuit should not have been dismissed under a 12(b) standard when the factual allegations and affidavits are considered in the light most favorable to Appellant Larry.

9. Court Below Construed *U.S. v. Hays* Too Narrowly

The Court below dismissed Appellant Larry's equal protection racial gerrymandering claim because, under *Hays*, a plaintiff residing outside of a district which is the subject of a racial gerrymandering claim does not have a sufficient "injury-in-fact" to challenge that legislation, absent specific evidence that the plaintiff was personally subjected to racial classification. *U.S. v. Hays*, 515 U.S. 737, 746 (1995). Whether

the *Hays* rule applies to vote dilution claims under § 2 had not been decided by this Court and was an open question: "No circuit has developed a framework for a Section 2 standing inquiry." *Harding v. Cty. of Dallas, Texas*, No. 3:15-CV-0131-D, 2018 WL 1157166, at *5 (N.D. Tex. Mar. 5, 2018) (quoting *Pope v. Cty. of Albany*, No. 1:11-cv-0736, 2014 WL 316703, at *5 n. 13 (N.D.N.Y. Jan. 28, 2014)). Some district courts have not applied the *Hays* rule to resolve the issue of standing in the context of a § 2 vote dilution claim. *Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1122 n. 14 (E.D. Cal. 2018) (finding that an out-of-district plaintiff had standing to bring a § 2 vote dilution claim because the harm in a vote dilution case is the result of the entire map, not the configuration of a particular district); *Perez v. Abbot*, 267 F. Supp. 3d 750, 774 (W.D. Tex. 2017) ("[P]laintiffs who reside in a reasonably compact area that could support an additional minority opportunity district have standing to pursue § 2 claims, even if they currently reside in an opportunity district."); *Barnett v. City of Chicago*, No. 92-C-1693, 1996 WL 34432, at *4 (N.D. Ill. Jan. 29, 1996) (concluding the requirements of § 2 standing were satisfied where "[p]laintiffs allege that many of their class members live in white majority wards which could be redrawn into majority African American wards.").

Other district courts have adopted or approved of an approach to standing that requires a plaintiff to live in the district where vote dilution occurs to bring a § 2 vote dilution claim. *Broward Citizens for Fair Districts v. Broward Cty.*, No. 12-60317-CIV, 2012 WL 1110053, at *3 (S.D. Fla. Apr. 3, 2012) (determining individual plaintiff lacked standing to bring a § 2 vote dilution claim where he did not reside in the district that was allegedly packed); *Comm. for a Fair and Balanced*

Map v. Ill. Bd. of Elections, No. 1:11-CV-5065, 2011 WL 5185567, at *1 n. 1 (N.D. Ill. Nov. 1, 2011) ("[A § 2] vote dilution plaintiff must show that he or she (1) is registered to vote and resides in the district where the discriminatory dilution occurred; and (2) is a member of the minority group whose voting strength was diluted."); *Hall v. Virginia*, 276 F. Supp. 2d 528, 531 (E.D. Va. 2003) (finding that plaintiff did not have standing under § 2 to challenge vote dilution in a congressional district where the plaintiff did not live); *Old Person v. Brown*, 182 F. Supp. 2d 1002, 1006 (D. Mont. 2002) (holding that plaintiffs had "standing to assert their vote dilution claims in the . . . Districts in which they reside."); see *Perry-Bey v. City of Norfolk, Va.*, 678 F. Supp. 2d 348, 364 (E.D. Va. 2009) (finding that plaintiff must live in a minority-ward to have standing to assert that addition of a mayor elected at-large to the city council diluted the power of minority-ward representatives). These courts applied standing requirements that mirror those applied in equal protection racial gerrymandering cases: a plaintiff generally must live within the boundaries of the challenged district to bring a racial gerrymandering claim. See *Hays*, 515 U.S. at 744-46.

In *Hays*, the Supreme Court reasoned that: Where a plaintiff resides in a racially gerrymandered district, however, the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing to challenge the legislature's action, cf. *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656 (1993). Voters in such districts may suffer the special representational harms racial classifications can cause in the voting context. On the other hand, where a plaintiff does not live in such a district, he or she does not suffer those special harms,

and any inference that the plaintiff has personally been subjected to a racial classification would not be justified absent specific evidence tending to support that inference. Unless such evidence is present, that plaintiff would be asserting only a generalized grievance against governmental conduct of which he or she does not approve.

In the case at bar, Appellant has demonstrated injury-in-fact suffered by him through intra-district harm that originated in CD 1 and adversely affected him in CD 2 adjoining CD 1 where defendants-Appellees' unlawful conduct caused special harm in CD 2. But for the Panel's refusal to allow Appellant Larry to amend his complaint, this appeal would not have been necessary because there would not have been a standing issue.

The Voting Rights Act creates a private cause of action permitting plaintiffs to file suit if they are an "aggrieved person." 15 U.S.C. § 10302(a). A party who fulfills the injury-in-fact prong of the constitutional standing requirements generally is a "person aggrieved" and therefore fulfills the statutory standing requirement. *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 328-29 (1999) (Congress' use of "any person aggrieved" in the Census Act "eliminated any prudential concerns in [that] case"); *Sioux Falls Cable Television v. South Dakota*, 838 F.2d 249, 252 (8th Cir. 1988) (phrase "any person aggrieved" is "ordinarily sufficient to confer standing on any party satisfying the constitutional requirements"). If a plaintiff satisfies the constitutional standing requirements for a vote dilution claim under the Voting Rights Act, that plaintiff also satisfies the constitutional standing requirements for a vote dilution claim under the Fourteenth and Fifteenth

Amendments. *Parker v. Ohio*, 263 F. Supp. 2d 1100, 1107 (S.D. Ohio 2003) (Graham, J., concurring), *aff'd*, 540 U.S. 1013 (2003) (noting that same standing rules applicable to Fourteenth Amendment election case should apply to claims under § 2 of Voting Rights Act "which was enacted to enforce the guarantees of the Fourteenth and Fifteenth Amendments").

The court below construed the holding in *Hays* too narrowly and should have allowed Appellant Larry to prove injury-in-fact as an aggrieved person within the meaning of Section 2 of the Voting Rights Act. It is true that he lives in a gerrymandered district (CD 2) which is "cracked" such that his preferred candidate will never win. The holdings in *Baker* and *Reynolds* were expressly premised on the understanding that the injuries giving rise to those claims were "individual and personal in nature," *Reynolds v. Sims*, 377 U.S. 533, 561 (1964), because the claims were brought by voters who alleged "facts showing disadvantage to themselves as individuals," *Baker*, 369 U. S., at 206. In *Gill v. Whitford*, 585 U.S. ____ (2018) this Court remanded the case to the District Court so that "the plaintiffs may have an opportunity to prove concrete and particularized injuries using evidence that would tend to demonstrate a burden on their individual votes". Appellant Larry should be given the same opportunity since he was denied the right to amend his original complaint.

CONCLUSION

For all the foregoing reasons, Appellant Larry respectfully requests the Court to vacate the judgment of the three-judge panel and remand the case with instructions, and for such other relief, at law and in equity, such that Justice prevails.

Respectfully submitted,

JULIUS J. LARRY III
Appellant Pro Se
2615 West 12th Street
Little Rock, Arkansas 72202
(832) 384-6908
dr.juliusjlarry@yahoo.com

October 3, 2018