No. 18-433

In The
Supreme Court of the United States

DR. JULIUS J. LARRY III,

Appellant,

v.

STATE OF ARKANSAS, HONORABLE MARK MARTIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR THE STATE OF ARKANSAS, ET AL.,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Arkansas Western (Little Rock) Division – Three-Judge Panel

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APPELLEE SECRETARY OF STATE'S MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

The district court denied *pro se* Appellant's motion for leave to file an amended complaint. The district court also dismissed Appellant's Equal Protection claim without prejudice, and his Voting Rights Act Section 2 claim without prejudice, both for lack of standing.

1. Did the district court correctly conclude that a *pro se* Appellant cannot amend his complaint where he sought to represent other plaintiffs and made insufficient factual allegations concerning claims challenging the racial composition of a U.S. Congressional District in Arkansas?

2. Did Appellant lack standing to challenge the racial composition of a congressional district where he did not live?

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MOTION TO DISMISS OR AFFIRM

The Court should dismiss Appellant's appeal for lack of standing, and in the alternative, affirm the district court's Orders and Judgment.

Plaintiff-Appellant Dr. Larry is a resident of the Second Congressional District. He challenges, *pro se*, the racial composition of the First Congressional District. Appellant lacks standing, and as a result, the Court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

In the alternative, the Court should affirm the district court's rulings.

STATUTORY PROVISIONS INVOLVED

A.C.A. § 7-2-102. First Congressional District.

(a) The First Congressional District shall be composed of:

> **(1)** The counties of Arkansas, Baxter, Chicot, Clay, Cleburne, Craighead, Crittenden, Cross, Desha, Fulton, Greene, Independence, Izard, Jackson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Prairie, Poinsett, Randolph, St. Francis, Sharp, Stone, and Woodruff;
>
> **(2)** The following voting districts of Jefferson County as they existed on January 1, 2011:

(A) 19 (Dunnington) voting district;

(B) P15 (Dudley Lake) voting district;

(C) 25 (Old River) voting district;

(D) 57 (Villemont) voting district;

(E) P91 (Roberts) voting district;

(F) P851 (Humphrey) voting district; and

(G) P862 (Humphrey) voting district; and

(3) The voting districts and voting precincts of Searcy County as they existed on January 1, 2011, that are not listed under § 7-2-104(a)(4).

(b) The qualified electors residing in the counties and portion of Jefferson County and Searcy County listed under subsection (a) of this section shall elect one (1) member of the House of Representatives of the United States.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS LOCAL RULE 5.5(e) – PLEADINGS AND FILINGS

* * *

(e) A party who moves to amend a pleading shall attach a copy of the amendment to the motion. The motion must contain a concise statement setting out what exactly is being amended in the new pleading – e.g. added defendant X, adding a claim for X, corrected

spelling. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference. The party amending shall file the original of the amended pleading within seven (7) days of the entry of the order granting leave to amend unless otherwise ordered by the Court. The requirements for amending pleadings set forth in this subsection of Rule 5.5 shall not apply to parties proceeding *pro se*.

STATEMENT OF THE CASE

Dr. Julius Larry filed his Complaint and request for a three-judge panel on February 9, 2018. The Complaint challenged the racial composition of the First Congressional District in the State of Arkansas. Dr. Larry filed *pro se* in his individual capacity, and as the publisher of a newspaper, and "on behalf of all other similarly situated African Americans residing in the Southeast quadrant of Arkansas."

The District Court promptly entered an Order requesting supplemental briefing on the issue of whether a three-judge panel was required.

On April 23, 2018, the District Court granted defendants' motions to dismiss in part. The court ruled that Dr. Larry lacked standing to bring his Equal Protection claims challenging the racial composition of the First Congressional District after Arkansas' 2011

re-apportionment, because Appellant Larry lived in the Second Congressional District and not the First. Thus, the District Court lacked jurisdiction to hear those claims. In accordance with *Shapiro v. McManus*, 136 S.Ct. 450, 454 (2015), the court dismissed these claims.

The District Court held in abeyance the remaining parts of the motions to dismiss for consideration by a three-judge panel, reserving for that panel the determination of Dr. Larry's standing pursuant to Section 2 of the Voting Rights Act based on the same facts.

Dr. Larry moved for leave to file his First Amended Original Complaint on June 1, 2018. The three-judge panel's August 3 Order denied his Motion to Amend because he could not represent other plaintiffs and because the amendment would be futile as it would not withstand a motion to dismiss. The panel subsequently held that Dr. Larry did not have standing to bring a claim under Section 2 of the Voting Rights Act of 1965 (51 U.S.C. § 10301(b)), where he did not live in the First Congressional District, the racial composition of which he challenged. The District Court dismissed his original complaint without prejudice and entered judgment accordingly.

Dr. Larry filed a Motion for Reconsideration and Appointment of a Special Master on August 13, 2018. Appellant Dr. Larry then filed his Notice of Appeal to the Supreme Court on August 20, 2018. This case was filed on October 3 in the Supreme Court. On October 12, 2018, the three-judge panel denied Dr. Larry's

Motion for Reconsideration, and entered an Order and Amended Judgment accordingly.

ARGUMENT

Plaintiff-Appellant is a former attorney, appealing *pro se* the District Court's Orders, and Judgment, dismissing this case without prejudice. This case concerns the racial composition of the electorate in the First Congressional District in the State of Arkansas. Appellant lives in the Second Congressional District in Arkansas. Appellant cannot represent others, as he is no longer a licensed attorney. Appellant lacked standing. Appellant's attempts to amend his initial Complaint were unavailing. The attempted amendments were futile under the circumstances. The District Court's Orders and Judgment should be affirmed. The appeal should be dismissed.

Appellant made claims pursuant to the Equal Protection Clause of the 14th Amendment, and Section 2 of the Voting Rights Act, 51 U.S.C. § 10301(b). He found a draft map on the internet, purporting to show how a "majority minority coalition" district could be created in the First Congressional District. Appellant's Brief at 12; Appx. 47a, 50a. He challenges the current map, Ark. Code Ann. § 7-2-102, alleging violations of the Equal Protection Clause of the 14th Amendment, and Section 2 of the Voting Rights Act, as amended. The U.S. District Court ultimately concluded that

Appellant lacked standing to pursue both claims given the facts as alleged in the Complaint.

A single Judge dismissed Appellant's Equal Protection claims for lack of standing. Appx. 25a, 92a (same Order). The District Court for all subsequent matters comprised a three-judge panel. The panel entered final judgment on August 3, 2018. Appx. 21a. Appellant filed a timely Motion to Reconsider on August 13, Appx. 34a, and additionally filed a Notice of Appeal on August 20, 2018, Appx. 22a, while the post-judgment motion was pending. Appellant filed his Jurisdictional Statement with this Court on October 3, 2018. It is from these proceedings that this appeal arises. The District Court panel later entered an Order and Amended Judgment on October 12, 2018, pursuant to Rule 60(b), denying further relief.

Appellant's appeal of the August 3 Judgment is timely filed. *See FirsTier Mortg. Co. v. Investors Mortg. Ins.*, 498 U.S. 269, 276 (1991). Appellant does not challenge the District Court's October 12 Order denying the Motion for Reconsideration pursuant to Rule 60(b) and the October 12 Amended Judgment. Neither has been included in his Appendix. Appellee Secretary objects to any consideration of the October 12 Order and Amended Judgment as they are not part of the Jurisdictional Statement, nor are those issues on appeal. *Manrique v. U.S.*, 137 S.Ct. 1266, 1273 (2017); Fed. R. App. P. 4(a)(4).

The October 12 Amended Judgment indicates that the current appeal does not concern the final judgment

in this matter. The Court does not have jurisdiction over cases in which "due to the passage of time or a change in circumstances, the issues presented . . . will no longer be 'live.'" *Arkansas AFL-CIO v. F.C.C.*, 11 F.3d 1430, 1435 (8th Cir. 1993) (*en banc*). This suggests that the instant appeal is moot. *Id.*

A single district court judge concluded that Appellant could not represent others in this litigation based upon prevailing Circuit precedent. Appx. 31a (*citing Jones ex rel. Jones v. Correctional Medical Servs., Inc.*, 401 F.3d 950, 952 (8th Cir. 2005)). Further, the District Court judge concluded that "this type of defect cannot be amended or cured" by a request to amend the Complaint. Appx. 32a. The three-judge panel later reviewed the earlier reliance on *Jones*. Appx. 3a, 18a. The panel declined to revisit the single judge's determination that Appellant could not represent others – including members of a putative class of litigants, as set forth in *Jones*. Appx. 18a.

Because "[a]n order which dismisses a complaint without expressly dismissing the action is [generally] not . . . an appealable order," a plaintiff generally may not appeal the dismissal of his complaint without prejudice. *Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066 (4th Cir. 1993) (alterations in original) (internal quotation marks omitted) (*quoting Ruby v. Sec'y of the U.S. Navy*, 365 F.2d 385, 387 (9th Cir. 1966)). However, a district court's dismissal of a plaintiff's complaint without prejudice will not bar the plaintiff's appeal when "the grounds for dismissal clearly indicate that 'no amendment [to the complaint]

could cure the defects in the plaintiff's case.'" *Id.* at 1067 (*quoting Coniston Corp. v. Vill. of Hoffman Estates*, 844 F.2d 461, 463 (7th Cir. 1988)).

Jones is a sufficient basis upon which to affirm the panel in this matter. Appellant does not challenge the District Court's reliance on *Jones*, nor cite it in his Brief for any purpose. *Jones* adopted the reasoning of the Arkansas Supreme Court in *Davenport v. Lee*, 348 Ark. 148, 72 S.W.2d 85, 94 (2002):

> In light of our duty to ensure that parties are represented by people knowledgeable and trained in the law, we cannot say that the unauthorized practice of law simply results in an amendable defect. Where a party not licensed to practice law in this state attempts to represent the interests of others by submitting himself or herself to the jurisdiction of a court, those actions such as the filing of pleadings, are rendered a nullity.
>
> . . . [B]ecause the original complaint, as a nullity never existed, . . . an amended complaint cannot relate back to something that never existed, nor can a nonexistent complaint be corrected.

Jones, 401 F.3d 950, 952 (*citing cases*). In other words, the District Court's citation to *Jones* indicates that no amendment can cure the defects in Appellant's case, giving this Court jurisdiction to hear this appeal. *Domino Sugar Corp.*, *id.*

Affirmance – or dismissal – based upon *Jones* would also help the Court to avoid unnecessary

adjudication of constitutional issues in its decision in this case. *U.S. v. Nat'l Treasury Empl. Union*, 513 U.S. 454 (1995) (*citing Ashwander v. TVA*, 297 U.S. 288, 346-47 (1936) (Brandeis, J., concurring)).

The single judge's April 23 Order initially denied Appellant's claims under the Equal Protection Clause of the 14th Amendment for lack of standing. Appx. 25a and 92a (same Order). This is a straightforward application of this Court's precedent. *U.S. v. Hays*, 515 U.S. 737, 746 (1995); Fed. R. Civ. P. 12(b)(1). Appellant's Complaint challenged the racial composition of the First Congressional District in Arkansas, while Appellant admittedly lives in the Second Congressional District in this State. Appellant does not now challenge this application of *Hays* to his Complaint; he challenges only the "extension" of *Hays* to his claims under Section 2 of the Voting Rights Act. Appellant's Brief at 26-30. He concedes that *Hays* bars his Equal Protection claims. Brief at 23, 28-29; Appx. 53a.

The single judge did not resolve all of the allegations in the pending Motions to Dismiss on April 23, however, only those claims concerning Rule 12(b)(1) of the Federal Rules of Civil Procedure. Contrary to the assertions of Appellant, and consistent with an earlier scheduling Order requesting separate briefing on whether a three-judge panel was required, the single district judge stated that she was "holding under advisement all other arguments raised by the parties regarding other bases under Federal Rules of Civil Procedure 12(b)(4), (5), and (6) upon which to dismiss Dr. Larry's claims." Appx. 27a. As the single judge said,

she would "convene a three-judge panel to adjudge Dr. Larry's remaining § 2 vote-dilution claim, including determining the issue of whether Dr. Larry has standing to bring such a claim." Appx. 33a.

A three-judge panel of the District Court dismissed the Complaint without prejudice, concluding that Plaintiff could not represent others in a class-action suit. Appx. 1a, 3a (*citing Jones*). Appellant admitted that he attempted to represent himself, individually, and as a "class representative" in a class action. Appx. 52a. The panel further concluded that Plaintiff could not amend his Complaint, seeking to represent others, based upon clearly-established Eighth Circuit precedent concerning *pro se* litigants. Appx. 1a (citing *Jones*). Going the extra step, the panel further concluded that Plaintiff's proposed Amended Complaint, even if allowed, would be a futile exercise, since Plaintiff cannot truthfully allege that he can create a minority-majority Congressional District in the State of Arkansas. Appx. 8a-12a. Consequently, the panel dismissed his claims under Section 2 of the Voting Rights Act for lack of standing. Appx. 12a-19a.

Appellant's Section 2 allegations were wholly unsubstantiated. Plaintiff's "new evidence" was an alleged expert witness working on computer models. Appx. 35a-36a. But no expert witness Affidavit or Report was ever presented to the District Court. Appx. 48a ("not yet due").

Plaintiff's "evidence" of "admissions" by Defendants is disputed entirely. Appellee Secretary vigorously

disputes receiving the Request for Admissions anytime before August 13, 2018, and said so in three Affidavits attached to its Response to the Motion for Reconsideration. Appellee Secretary also denied the Requests for Admissions, a copy of which is attached hereto. SOS Appx. 1.

As stated in the District Court's August 3 Order, Plaintiff's ability to amend his Complaint as a matter of course expired prior to his attempt to amend, per Fed. R. Civ. P. 15. Appx. 6a. Seeking leave to amend was mandatory. *Sherman v. Winco Fireworks*, 532 F.3d 709, 715 (8th Cir. 2008); Appx. 6a-7a. The panel could also deny leave to amend if there were a compelling reason to deny, such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to non-moving parties, or futility of the amendment. *Id.*; Fed. R. Civ. P. 15(a)(2)*; Foman v. Davis*, 371 U.S. 178, 182 (1962). The panel could deny a Motion to Amend based on futility and not being able to withstand a motion to dismiss. *Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1065 (8th Cir. 2005); *see also Zutz v. Nelson*, 601 F.3d 842, 850 (8th Cir. 2010).

In this case, the panel also denied Appellant's Motion to Amend based on futility of the proposed amendment. Even construing the Complaint – and the proposed amendment – in the light most favorable to him, Appellant failed to meet the "*Gingles* Preconditions" necessary to establish a Section 2 claim. *Thornburg v. Gingles*, 478 U.S. 30 (1986). The preconditions necessary to pursue a claim for a Section 2 violation include:

1. The racial group is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The racial district is politically cohesive; and
3. The majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.

Bone Shirt v. Hazeltine, 461 F.3d 1011, 1018 (8th Cir. 2006). Appellant did not meet, and cannot now meet the first *Gingles* precondition to suit. Only if all three preconditions are satisfied will the district court then consider the totality of the circumstances. *Bartlett v. Strickland*, 556 U.S. 1, 11-12 (2009).

Plaintiff-Appellant did not allege that he could propose a majority-minority district – even in his proposed amendment. A proposed minority needs to make up more than 50 percent of the voting-age population in the relevant geographic area in order to state a claim. *Cottier v. City of Martin*, 604 F.3d 553, 571 (8th Cir. 2010). The first *Gingles* condition also concerns, *inter alia*, the compactness of the minority population. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006).

Appellant failed to allege in his Complaint, and in his proposed Amended Complaint, that the minority population in Arkansas is sufficiently compact to win a majority of votes in any redrawn district. Appellant also failed to allege in his Complaint, and in his proposed Amended Complaint, that the minority

population is sufficiently numerous to win a majority of votes in any redrawn district.

Appellant admitted that he could not propose this. ". . . . Plaintiff Larry never asserted that an all-Black majority congressional district could be drawn." Appx. 47a. Appellant's purportedly "new" data shows the opposite, even in his own proposed First Congressional District. Appx. 61a. Appellant was correct then and has not overcome this admission.

As Appellee Secretary twice briefed, and as the District Court quoted in its Order on August 3: "In setting out the first requirements for § 2 claims, the *Gingles* Court explained that '[u]nless the minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice.'" *Bartlett v. Strickland*, 556 U.S. 1, 15 (2009) (plurality opinion) (alteration in original) (*quoting Thornburg v. Gingles*, 478 U.S. 30, 50 n.17 (1986)). The purpose of the first *Gingles* requirement is "'to establish that the minority has the potential to elect a representative of its own choice in some single-member district.'" *Id.* (*quoting Growe v. Emison*, 507 U.S. 25, 40 (1993)). In the absence of "such a showing, 'there neither has been a wrong nor can be a remedy.'" *Id.* (*quoting Growe*, 507 U.S. at 41). Appellant's Section 2 claims failed on the record before the District Court.

Appellant's Exhibit A, Appx. 61a, does not overcome the problems set forth by the panel on August 3. Appx. 1a. The District Court noted Plaintiff-Appellant's

lack of specificity as to whether the percentages shown in Plaintiff's map related to the voting population, total population, or another metric. Appx. 10a. Neither did Plaintiff at any time allege that African Americans would make up a majority of the effective voting age population in his proposed district. Appx. 10a. He still does not make that allegation. (Appx. 84a, Larry Affidavit asks Court to adopt "the only majority-minority coalition map.")

Appellant's proposed amendment did not cure – or attempt to cure – other problems with his initial Complaint. The panel found that Appellant's proposed Amended Complaint failed to allege facts sufficient to satisfy the compactness requirement. Appx. 11a-12a. Appellant's proposed districts divided multiple counties, and tended to support the idea that there isn't a compact minority in Arkansas. Appx. 12a.

Appellant failed to satisfy the first *Gingles* requirement. Consequently, his proposed Amended Complaint would be futile. Futility of a claim is a valid reason to deny a Motion to Amend a complaint. *United States ex rel. Raynor v. Nat'l Rural Utils. Coop. Fin., Corp.*, 690 F.3d 951, 958 (8th Cir. 2012); *Foman*, *id*.

Meeting the *Gingles* preconditions is necessary to establish an injury for Article III standing. Appellant lacked standing because he did not allege initially, and admitted that he could not claim in his amendment, that his proposed minority district would have a majority black population.

Appellant resides in the Second Congressional District, yet his Complaint and proposed amendments regarded the composition of the First Congressional District. In determining that the Plaintiff did not have standing, the District Court used standing requirements similar to those applied in equal protection gerrymandering cases, which is that Plaintiffs must reside in the district they challenge. As this Court said last term:

> To the extent the plaintiffs' alleged harm is the dilution of their votes, that injury is district specific. An individual voter . . . is placed in a single district. He votes for a single representative. The boundaries of the district, and the composition of its voters, determine whether and to what extent a particular voter is packed or cracked. This "disadvantage to [the voter] as [an] individual[ ]," *Baker [v. Carr*, 369 U.S. 186, 206 (1962)], therefore results from the boundaries of the particular district in which he resides. And a plaintiff's remedy must be "limited to the inadequacy that produced [his] injury in fact." *Lewis v. Casey*, 518 U.S. 343, 357 (1996). In this case the remedy that is proper and sufficient lies in the revision of the boundaries of the individual's own district.

Gill v. Whitford, 138 S.Ct. 1916 (2018) (slip op., at 18) (When the alleged harm is vote dilution, the injury is district specific. A plaintiff must live in such a district, and prove it, to maintain standing.) (partisan gerrymandering); *see also U.S. v. Hays*, 515 U.S. 737, 744-45.

The *Gill* Court was more explicit:

> A plaintiff who complains of gerrymandering, but does not live in a gerrymandered district, 'assert[s] only a generalized grievance against governmental conduct of which he or she does not approve.' [*Hays,*] at 745. Plaintiffs who complain of racial gerrymandering in their State cannot sue to invalidate the whole State's legislative districting map; such complaints must proceed 'district by district.' *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. ___, ___ (2015) (slip op., at 6).

Gill, *id.* (slip op., at 19).

As the panel previously set forth, Plaintiff does not meet the first precondition of Section 2 analysis; he has not shown the racial group is sufficiently large and geographically compact to constitute a majority in a single-member district. Plaintiff does not have an injury, and lacks Article III standing; the District Court correctly determined that it lacked subject-matter jurisdiction.

Standing is a matter of jurisdiction. *Constitution Party of South Dakota v. Nelson*, 639 F.3d 417, 420 (8th Cir. 2011). Under Article III of the United States Constitution, federal courts may only adjudicate actual cases or controversies. *Id. (citing cases).* It is the Article III standing requirement that enforces this case-or-controversy requirement. *Id.* To satisfy the "irreducible constitutional minimum" of Article III standing, each Plaintiff must establish that he or she has suffered an "injury in fact" that is "concrete and

particularized" and "actual or imminent, not conjectural or hypothetical"; that there is "a causal connection between the injury and the conduct complained of"; and that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* (*citing Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.E.2d 351 (1992)). Appellant was unable to meet the standing requirement, as a result of his own residence in the wrong District, even in his proposed Amended Complaint.

Pro se Plaintiffs are required to abide by the Federal Rules of Civil Procedure. *Lindstedt v. City of Granby*, 238 F.3d 933, 937 (8th Cir. 2000); *Harmon Autoglass Intellectual Prop., LLC v. Leiferman*, 428 B.R. 850, 854 (B.A.P. 8th Cir. 2010). *Pro se* litigants are required to allege sufficient facts in their complaints to support a claim. *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 246 (3d Cir. 2013). Dismissal for lack of standing was appropriate where Appellant could not state sufficient facts in his complaint and proposed amendments in this case. Fed. R. Civ. P. 12(b)(1), (6).

Appellant's proposed Amended Complaint sought to add more plaintiffs, despite the fact that Larry is representing himself *pro se*, and does not claim to be an attorney licensed in the State of Arkansas (nor in federal district court). *Pro se* Plaintiffs cannot represent others. *See Stewart v. Hall*, 129 S.W.2d 238 (Ark. 1939). Appellant's attempt to represent others is unauthorized practice of law and results in a nullity. *Jones ex rel. Jones v. Correctional Medical Services*, 401 F.3d

950, 952 (*see also Henson v. Cradduck*, 2017 Ark. 317 (2017)); Restatement (Third) of the Law Governing Lawyers § 4 cmt. D (2000) ("in general, however, a person appearing *pro se* cannot represent any other person or entity . . . "). As the Eighth Circuit has said, an appointment of an attorney at this point cannot cure the complaint of its original defect. *Jones,* 401 F.3d at 952; *Davenport v. Lee*, 348 Ark. 148, 155 (complaint was a nullity due to absence of counsel and unauthorized practice of law).

U.S. District Court Local Rule 5.5(e) did play a role, contrary to Appellant's assertions. As Appellant admits: "the attorneys signed" the Motion to Amend, Brief at 15. The District Court likewise acknowledged that the "motion for leave to amend is signed by two attorneys . . . neither of [whom] has entered an appearance on behalf of Dr. Larry in this litigation." Appx. 18a. Those attorneys apparently represented other potential named plaintiffs, and so were bound by Rule 5.5(e) (mistyped into the Appendix as Rule 55) to attach to the Motion to Amend a copy of the proposed Amended Complaint. It is undisputed that no formal Amended Complaint was attached to the Motion to Amend, notwithstanding that two licensed attorneys did sign the Motion itself. Appellee Secretary pointed out the problem, given the uncertainty of who represented whom, but also explicitly gave the caveat to the District Court that Rule 5.5(e) did not apply if Mr. Larry were going to proceed *pro se.* There was no harm to Appellant. Fed. R. Civ. P. 61.

The District Court correctly denied the Motion to Amend because the purported amended pleading would be futile, and would not withstand a motion to dismiss. *Brunt v. Service Employees Int'l Union*, 284 F.3d 715, 720 (7th Cir. 2002); *Walton v. Mental Health Ass'n*, 168 F.3d 661, 665 (3d Cir. 1999); *Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1065 (8th Cir. 2005). Appellant conceded that "no majority-Black district can be drawn in Arkansas." Appx. 47a. In other words, the putative Plaintiff(s) conceded that they cannot meet the first precondition for a claim under Section 2 of the Voting Rights Act, 51 U.S.C. § 10301(b): "The minority group must be 'sufficiently large and geographically compact to constitute a majority in a single-member district. . . .'" *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). In a Section 2 case, "only when a party has established the *Gingles* requirements does a court proceed to analyze whether a violation has occurred based on the totality of the circumstances." *Bartlett v. Strickland*, 556 U.S. 1, 11 (2009) (plurality opinion).

But "[n]othing in § 2 grants special protection to a minority group's right to form political coalitions. '[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground.'" *Id.* at 15 (second alteration in original) (*quoting Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)). "Section 2 [also] *does not* impose on those who draw election districts a duty to give minority voters *the most potential, or the best potential*, to elect a candidate. . . ." *Id.* (emphasis added). It "does not guarantee

minority voters an electoral advantage." *Id.* at 20. This Court has "rejected the proposition . . . that § 2 entitles minority groups to the *maximum* possible voting strength." *Id.* at 15-16 (emphasis added); *see also id.* at 23 ("When we address the mandate of § 2, . . . we must note it is not concerned with maximizing minority voting strength, *De Grandy*, 512 U.S. at 1022; and, as a statutory matter, § 2 does not mandate creating or preserving crossover districts."). According to the Court:

> [R]eading § 2 to define dilution as any failure to maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose. One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast.

Id. at 16 (alteration in original) (*quoting De Grandy*, 512 U.S. at 1016-17).

This Court has held that Section 2 does not require the creation of "influence districts" where a minority group can influence the outcome of an election even if its preferred candidate cannot be elected. *Bartlett*, *id.* at 13 (*citing League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 445 (2006)). The *Bartlett* plurality also held that "crossover districts" do not satisfy the *Gingles* requirement that the minority population be large enough and yet sufficiently geographically compact to constitute a majority in a single-member district because minorities in crossover

districts make up less than 50 percent of the voting-age population. *Id.* at 12-20.

Article III of the U.S. Constitution restricts federal courts to the resolution of cases and controversies. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). That restriction requires that the party invoking federal jurisdiction, Larry, have standing – the "personal interest that must exist at the commencement of the litigation." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000) (internal quotation marks omitted). Appellant never alleged sufficient facts to meet the Article III requirements for standing. Larry's admissions that the racial harm was purportedly in the First Congressional District, Appx. 35a; that there is no case law support for creation of a "majority minority coalition district," Appx. 37a; and that no "all-Black majority congressional district could be drawn in Arkansas," Appx. 47a, show that he did not personally suffer harm in his district of residence, the Second Congressional District.

The requirement that a claimant have "standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "[S]tanding is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Contrary to the assertions of Larry, "a plaintiff must demonstrate standing for each claim he seeks to press" and "for each form of relief that is sought." *DaimlerChrysler v. Cuno*, 547 U.S. 332, 352 (2006) (internal citations omitted).

Larry's claims as a voter likewise were not concrete. "A 'concrete' injury must be '*de facto*'; that is, it must actually exist. When we have used the adjective 'concrete,' we have meant to convey the usual meaning of the term – 'real,' and not 'abstract.'" *Spokeo v. Robins*, 136 S.Ct. 1540, 1548 (2016) (citations omitted).

Appellant's new assertion that he has standing under the First Amendment is unavailing. This allegation is not addressed anywhere by the District Court because Appellant failed to raise the issue in the District Court. Arguments raised for the first time on appeal are waived. *Allen v. City of Chicago*, 865 F.3d 936, 943 (7th Cir. 2017).

In this "era of frequent litigation," the Court has made clear that "courts must be more careful to insist on the formal rules of standing, not less so." *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011). This Court should affirm the District Court or dismiss the appeal as lacking any merit where Appellant lacks standing.

CONCLUSION

The Court should dismiss Appellant's action. The Court lacks subject-matter jurisdiction over the claims. Appellant lacks standing to pursue his claims, and lacks standing as a *pro se* litigant to represent others. In the alternative, the Court should affirm the three-judge District Court's Order and Judgment.

For the foregoing reasons, Appellee's Motion to Dismiss or Affirm should be granted.

Respectfully submitted,

HONORABLE MARK MARTIN
In his Official Capacity as
Secretary of State for the State of Arkansas
Defendant-Appellee

By:

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November 5, 2018

**IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF ARKANSAS
WESTERN (LITTLE ROCK) DIVISION**

Dr. JULIUS J. LARRY III PLAINTIFF

VS. NO. 4:18-CV-116-KGB

**STATE OF ARKANSAS;
HONORABLE ASA HUTCHINSON,
In his Official Capacity as
Governor of the State of Arkansas;
HONORABLE LESLIE RUTLEDGE,
in her Official Capacity as
Attorney General of the
State of Arkansas; HONORABLE
MARK MARTIN, in his
official capacity as Arkansas
Secretary of State DEFENDANTS**

DEFENDANT ARKANSAS SECRETARY OF STATE'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS TO DEFENDANTS

Defendant Secretary was not served, and did not receive Plaintiff's First Request for Admissions to Defendants until August 13, 2018.

1. **Request for Admission 1: The defendant, Arkansas Legislature approved the present congressional district map in 2011.**

   RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection:

Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving the objections, DENIED; Arkansas General Assembly passed Acts 1241 and 1242 of 2011.

2. **Request for Admission 2: No African American has ever been elected to the US Congress from the First Congressional District of Arkansas since Arkansas became a State.**

   RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving the objections, DENIED; for lack of sufficient information and belief. Secretary of State does not keep Election statistics based upon race.

3. **Request for Admission 3: No African American has ever been elected to the**

US Congress from the Second Congressional District of Arkansas since Arkansas became a State.

RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving the objections, DENIED; for lack of sufficient information and belief. Secretary of State does not keep Election statistics based upon race.

4. **Request for Admission 4: No African American has ever been elected to the US Congress from the Third Congressional District of Arkansas since Arkansas became a State.**

   RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for

his Requests for Admissions, as issue has not been joined. Without waiving the objections, DENIED; for lack of sufficient information and belief. Secretary of State does not keep Election statistics based upon race.

5. **Request for Admission 5: No African American has ever been elected to the US Congress from the Fourth Congressional District of Arkansas since Arkansas became a State.**

   RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving the objections, DENIED; for lack of sufficient information and belief. Secretary of State does not keep Election statistics based upon race.

6. **Request for Admission 6: Part of Jefferson County is in the First Congressional District while the other part is in the Fourth Congressional District.**

   RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as

Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; states a legal conclusion; Acts 1241 and 1242 of 2011 say what they say and speak for themselves.

7. **Request for Admission 7: The First Congressional District contains 30 counties presently.**

   RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; states a legal conclusion; Acts 1241 and 1242 of 2011 say what they say and speak for themselves; misstates the facts.

8. **Request for Admission 8: Presently, the First Congressional District covers approximately one-third of the State of Arkansas.**

RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; states a legal conclusion; Acts 1241 and 1242 of 2011 say what they say and speak for themselves; assertion is vague, unclear, and inadequately defined.

9. **Request for Admission 9: Presently, the First Congressional District contains nearly one-third of the counties of Arkansas.**

RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; states a legal conclusion; Acts 1241 and 1242 of 2011 say what they say and speak for

themselves; assertion is vague, unclear, and inadequately defined.

10. **Request for Admission 10: A majority of African Americans in Arkansas live in the Southeastern quadrant of the State of Arkansas.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; lack of sufficient information and belief. Defendant Secretary of State does not keep records of racial population counts by "quadrant."

11. **Request for Admission 11: A majority-minority district can be created to include Union; Ashley; Chicot; Drew; Lincoln; Jefferson; Pulaski; Desha; Arkansas; Phillips; Monroe; Lee; St. Francis; Crittenden; and Cross counties.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of

Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence.

12. **Request for Admission 12: The State of Arkansas has a long history of racial discrimination against minorities, including African Americans.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence.

13. **Request for Admission 13: In 1859, the Arkansas General Assembly at Little Rock passed a new law making Blacks slaves in Arkansas.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of

State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; lack of sufficient information and belief. Defendant Secretary of State is not the legal research assistant for Plaintiff who failed to identify the Act or Statute in issue.

14. **Request for Admission 14: in 1859, the State of Arkansas ran its free Black citizens out of the state.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence.

15. **Request for Admission 15: After the State of Arkansas ran its free Black citizens**

out of the state in 1859, the state confiscated the land owned by the free Blacks it ran out, including Caulder's Bluff at Fort Smith, Arkansas (owned by Peter Caulder).

RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence.

16. **Request for Admission 16: Defendant Arkansas Legislature passed restrictive voter identification laws.**

RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not

been joined. Without waiving objections; DENIED.

17. **Request for Admission 17: Statistics show that African Americans in Arkansas tend to vote Democratic as their preferred candidate.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Seeks opinion without a factual foundation. Assumes facts not in evidence.

18. **Request for Admission 18: After the 2010 US census, Pulaski County is the only county in the 2nd Congressional District to vote Democratic.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court

lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence. Fails to specify what types of elections and offices sought.

19. **Request for Admission 19: in statewide elections, voting has historically been along racial lines.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

20. **Request for Admission 20: Minority vote dilution is still occurring in the First Congressional District.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection:

Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

21. **Request for Admission 21: Present system is impeding minority opportunities to participate fully in the political process.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

22. **Request for Admission 22: The only reason no African American has ever been elected to Congress from the First Congressional District is minority vote dilution.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

23. **Request for Admission 23: A majority-minority congressional district will cure the ongoing discriminatory effects.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff

lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; seeks a legal conclusion on the ultimate issue. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

24. **Request for Admission 24: A significant number of African Americans in Arkansas usually vote for the same candidate, such as Joyce Elliott.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; lack of sufficient information and belief. Defendant Secretary of State does not keep Election records based upon race of voters. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

25. **Request for Admission 25: Pulaski County, in the Second Congressional District is submerged under the electoral control of whites in the seven other**

counties contained in the 2nd Congressional District.

RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED. Defendant Secretary of State does not keep records of racial population counts. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

26. **Request for Admission 26: African Americans and whites in Arkansas differ in the extent to which they support competing candidates.**

RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not

been joined. Without waiving objections, DENIED; lack of sufficient information and belief. Defendant Secretary of State does not keep Election records based upon race. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

27. **Request for Admission 27: African Americans in Arkansas have been unable to elect their preferred candidate to Congress in the face of white opposition presently.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; lack of sufficient information and belief. Defendant Secretary of State does not keep Election records based upon race. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

28. **Request for Admission 28: White bloc voting continues to defeat minority-preferred candidates.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of

State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; lack of sufficient information and belief. Defendant Secretary of State does not keep Election records based upon race. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

29. **Request for Admission 29: White cross-over voting is insignificant because whites generally do not support African Americans for US Congress from Arkansas.**

RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; lack of sufficient information and belief. Defendant Secretary of State does not

keep Election records based upon race. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

30. **Request for Admission 30: Defendants have no legitimate explanation why no African American has ever been elected to Congress from Arkansas since Arkansas became a state.**

    RESPONSE: Objection: Requests for Admissions not delivered to Defendant Secretary of State by mail on May 3, 2018. Objection: Requests for Admissions first delivered as Exhibit to Motion to Reconsider in violation of Local Rule 33.1 ("Requests for Admissions will not be combined with other discovery material or documents.") Objection: The Court lacks subject matter jurisdiction. Plaintiff lacks standing. Plaintiff lacks a legal basis for his Requests for Admissions, as issue has not been joined. Without waiving objections, DENIED; lack of sufficient information and belief. Defendant Secretary of State does not keep Election records based upon race. Assumes facts not in evidence. Seeks opinion testimony without factual foundation.

Respectfully submitted this 24th day of August, 2018,

HONORABLE MARK MARTIN
ARKANSAS SECRETARY OF STATE
In his Official Capacity, Defendant

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CERTIFICATE OF SERVICE

I do hereby certify that on this 24th day of August, 2018, I have served the foregoing via first class mail to the Attorney General and the Assistant Attorney

General who has entered his appearance, and via certified and first class mail to the following:

Dr. Julius J. Larry III
2615 W.12th Street
Little Rock, AR 72202

/s/ AJ Kelly
A.J. Kelly