


FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 02 2018

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**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
MARK MARTIN'S MOTION TO DISMISS**

COMES NOW, Defendant, Honorable Mark Martin, (“Defendant Secretary”), in his official capacity as Arkansas Secretary of State, and for his Motion to Dismiss, states that:

1. Defendant Secretary states that Plaintiff lacks standing to pursue the claims alleged in the Complaint, as he states in his affidavit attached to the Complaint that he lives in Pulaski County, i.e., a part of the Second Congressional District (Ark. Code Ann. § 7-2-103), and consequently, the Court lacks subject matter jurisdiction over Defendant Secretary, in any

capacity, where the Complaint challenges the composition of the First Congressional District (see Ark. Code Ann. § 7-2-102). Consequently, the Complaint should be dismissed for lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

2. Defendant Secretary states that Plaintiff fails to state a claim against Defendant Secretary in his capacity as Secretary of State. There is no allegation that Defendant Secretary had any part in the formation of the Congressional Districts in the State of Arkansas.

Defendant Secretary was not, and is not, a member of the General Assembly, and did not sign Acts 1241 and 1242 of 2011 into law. Consequently, the Complaint should be dismissed against Defendant Secretary. Fed. R. Civ. P. 12(b)(2).

3. Defendant Secretary joins the pending Motion to Dismiss filed by the Attorney General for the State of Arkansas.

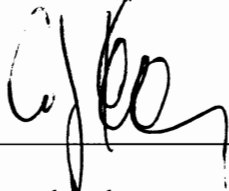
4. Defendant asks the Court to dismiss the Complaint for lack of subject matter jurisdiction, to dismiss Defendant Secretary from the Complaint, to deny Plaintiff the relief he seeks, and to grant Defendant such additional relief to which he may be entitled under the circumstances.

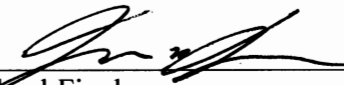
WHEREFORE, and for the foregoing reasons, Defendant Secretary of State Mark Martin, in his official capacity, prays that the Court deny Plaintiff any of the relief requested against Defendant Secretary; that the Court dismiss Plaintiff's Complaint against Defendant Secretary of State; that the Court deny Plaintiff's requests for declaratory, preliminary, and injunctive relief; that the Court deny any of Plaintiff's requests for fees, costs, or expenses; that

the Court grant Defendant Secretary such additional relief to which he may be entitled under the circumstances

Respectfully submitted this 2nd day of March, 2018.

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

By: 
A.J. Kelly
General Counsel and
Deputy Secretary of State
AB No. 92078
PO Box 251570
Little Rock, AR 72225-1570
(501) 682-3401
Fax: (501) 682-1213
kellylawfedecf@aol.com

By: 
Michael Fincher
Associate General Counsel
Arkansas Secretary of State
AB No. 2016037
500 Woodlane St., Ste 256
Little Rock, AR 72201
(501) 682-3401
Fax: (501) 682-1213

*Attorneys for Defendant
Arkansas Secretary of State*

CERTIFICATE OF SERVICE

I do hereby certify that on this 2nd day of March, 2018, I have served the foregoing via the electronic filing system in the Federal District Court Clerk's Office (CM/ECF) to the Attorney General and the Assistant Attorney General who has entered his appearance, and via first class mail to the following:

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


Michael Fincher