

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN (Little Rock) DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 14 2018

JAMES W. McCORMACK, CLERK
By: [Signature]
DEP CLERK

**DR. JULIUS J. LARRY III, Individually §
And in his Official Capacity as Publisher –
The Little Rock Sun Community §
Newspaper, and on behalf of all other §
Similarly-situated African Americans §
Residing in the Southeast Quadrant of
the State of Arkansas**

PLAINTIFFS,

VS.

CASE NUMBER 4:18-cv-00116 KGB

**STATE OF ARKANSAS; ASA §
HUTCHINSON, in his Official §
Capacity as Governor of the State of §
Arkansas; LESLIE RUTLEDGE, in §
her Official Capacity as Attorney §
General of the State of Arkansas; MARK §
MARTIN, in his Official Capacity as §
Arkansas Secretary of State and the §
Arkansas Legislature, in their Official §
Capacities**

DEFENDANTS.

**PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' RULE 12(b)1 MOTIONS
TO DISMISS**

TO THE HONORABLE COURT:

Plaintiffs, Dr. Julius J. Larry III, individually and in his Official Capacity as Publisher of The Little Rock Sun Community Newspaper, and on behalf of all other Similarly-situated African Americans Residing in the Southeast Quadrant of the State of Arkansas, file this Brief in Opposition to all of defendants' motions to dismiss and move the Court to DENY defendants' motions to dismiss and GRANT Plaintiffs' Motion to Amend and Obtain Class Counsel, as follows:

Plaintiffs want to point out two important cases to the Court, although neither is controlling here due to class allegations and multiple Plaintiffs --- **U.S. v. Hays**, 515 U.S. 737 (1995) 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995) and **Sinkfield v. Kelley**, 531 U.S. 28, (2000) 121 S.Ct. 446, 148 L.Ed.2d 329 (2000). In **U.S. v. Hays**, the state of Louisiana's congressional redistricting scheme was found to represent an impermissible racial gerrymander that violated **equal protection**, 839 F.Supp. 1188. The State Legislature adopted a new redistricting scheme and the Supreme Court, 114 S.Ct. 2731, vacated and remanded. A **three-judge panel** of the United States District Court for the Western District of Louisiana, 862 F.Supp. 119, found the new redistricting scheme unconstitutional. Louisiana and the United States directly appealed. The Supreme Court, with Justice O'Connor writing for the majority, held that citizens who did not live in the district that was the primary focus of racial gerrymandering claim lacked standing to bring suit.

In the case at bar, because of class allegations, Plaintiff, Dr. Larry is only one Plaintiff. A clear and undisputed fact of the Request for Three-Judge Panel lists the **Parties Plaintiffs** as follows:

“7. The Plaintiffs are each and all residents, citizens and registered voters in Union; Ashley; Chicot; Drew; Lincoln; Jefferson; Pulaski; Desha; Arkansas; Phillips; Monroe; Lee; St. Francis; Crittenden and Cross Counties. The race and color of each Plaintiff is African American and Black”.

For purposes of **standing**, any of the above-listed Plaintiffs who live in the challenged districts have standing in a class action, which is the most efficient means to adjudicate these type claims that effect large numbers of similarly-situated voters. In an Amended Complaint, the un-named Plaintiffs from the above-listed counties will become **named- Plaintiffs** and the racial gerrymandering challenge will include not only the **1st Congressional District, but also the 2nd Congressional District**, from which State Senator Joyce Elliott ran unsuccessfully due to the racial gerrymandering; **and the 4th Congressional District**, which the evidence will show is racially gerrymandered.

As a result, no African American has ever been elected to the U.S. Congress from Arkansas from neither the **1st, 2nd or 4th Congressional Districts**. (And, no African American has ever been elected to Congress from the **3rd Congressional District**).

Hays, supra is inapposite and not applicable to the case at bar because of the class nature of multiple Plaintiffs. If any one of the Plaintiffs lives in any of the **three (3) challenged districts**, there is standing sufficient to defeat any of defendants’ motions to dismiss.

In **Sinkfield v. Kelley**, white Alabama voters brought suit alleging that the state's legislative districts violated the **Equal Protection Clause**. A **three-judge panel** of the United States District Court for the Middle District of Alabama, 96 F.Supp.2d 1301, held that seven of the

challenged majority-white districts were products of unconstitutional racial gerrymandering and enjoined their use in any election. African-American voters and the Secretary of State appealed.

On direct appeal, the Supreme Court, held that **white voters lacked standing** to claim that Alabama's legislative re-districting plan was racial gerrymandering which violated the Equal Protection Clause.

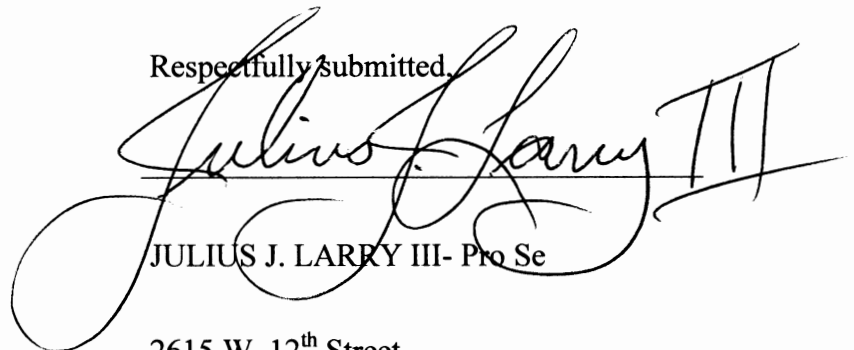
The Supreme Court stated: **“Appellees are challenging their own majority-white districts as the product of unconstitutional racial gerrymandering under a redistricting plan whose purpose was the creation of majority-minority districts, some of which border appellees’ districts.** Like the appellees in Hays, they have neither alleged nor produced any evidence that any of them was assigned to his or her district as a direct result of having “personally been subjected to a racial classification.” *Id.*, at 745, 115 S.Ct. 2431; see also Shaw v. Hunt, 517 U.S. 899, 904, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996). Rather, appellees suggest that they are entitled to a presumption of injury-in-fact because the bizarre shapes of their districts reveal that the districts were the product of an unconstitutional racial gerrymander. See App. to Pet. for Cert. 120a, 148a, 153a. The shapes of appellees' districts, however, were necessarily influenced by the shapes of the majority-minority districts upon which they border, and appellees have produced no evidence that anything other than the deliberate creation of those majority-minority districts is responsible for the districting lines of which they complain. Appellees' suggestion thus boils down to the claim that an unconstitutional use of race in drawing the boundaries of majority-minority districts necessarily involves an unconstitutional use of race in drawing the boundaries of neighboring majority-white districts. We rejected that argument in Hays, explaining that evidence sufficient to support a Shaw claim with respect to a majority-minority district **did “not prove anything” with respect to a neighboring majority-white district in**

which the appellees resided. 515 U.S., at 746, 115 S.Ct. 2431. Accordingly, “an allegation to that effect does not allege a cognizable injury under the Fourteenth Amendment.” Ibid.

The judgment of the District Court was vacated and the cases were remanded with instructions to dismiss the complaint. The **Kelley** case is totally inapplicable to the facts herein but is instructive on the issue of white voters claiming “reverse-discrimination” in redistricting, when the purpose was to create majority-minority districts.

For all of the foregoing reasons, this Court should DENY defendants’ motions to dismiss; GRANT Plaintiffs’ Motion to Amend and Obtain Class Counsel and pursuant to 28 U.S.C. §2284(b)1, refer the **Plaintiffs’ Request for Three- Judge Panel to the Chief Judge of the Eighth Circuit** and for such other relief, at law and in equity, such that Justice prevails.

Respectfully submitted,

A large, stylized handwritten signature in black ink, reading "Julius J. Larry III". The signature is written over a horizontal line. Below the signature, the name "JULIUS J. LARRY III- Pro Se" is printed in a smaller, black, sans-serif font.

JULIUS J. LARRY III- Pro Se

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2018, a true and correct copy of Plaintiffs' Brief in Opposition to Defendants' Motions to Dismiss, has been served on defendants, by and through their attorneys of record by USPS, certified, return receipt requested.

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A handwritten signature in black ink, reading "Julius Lamy III". The signature is written in a cursive style with large, flowing loops and a prominent "J" at the beginning.