

**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; et al.**

**DEFENDANTS**

**DEFENDANT ARKANSAS SECRETARY OF STATE  
MARK MARTIN'S MEMORANDUM BRIEF  
IN SUPPORT OF RESPONSE TO PLAINTIFF'S  
MOTION TO FILE AMENDED COMPLAINT**

The Court should deny the Motion to File an Amended Pleading. The amended pleading purports to add plaintiffs and attorneys, yet does not conform to Local Rule 5.5(e) of the U.S. District Court Rules. While this rule does not apply to *pro se* parties, it does apply to those with an attorney. The filed Motion purports to have three named attorneys representing a number of

new plaintiffs. Moreover, it is difficult to distinguish what the motion is, what the new pleading will be, and what is a brief in support.

The Court should deny the Motion 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 (7<sup>th</sup> Cir. 2002); *Walton v. Mental Health Ass'n*, 168 F.3d 661, 665 (3<sup>rd</sup> Cir. 1999); *Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1065 (8<sup>th</sup> Cir. 2005).

Plaintiff(s) concede that “experts conclude that no majority-Black district can be drawn in Arkansas” [Motion at p. 7]. In other words, Plaintiff(s) concede that they cannot meet the first precondition for a claim under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973: “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. The Supreme 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).

“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.’” *Id.* at 15 (alteration in original) (quoting *Gingles*, 478 U.S. at 50 n.17). 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 *Grove 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 *Grove*, 507 U.S. at 41).

The Supreme Court has held that § 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*, 458 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.

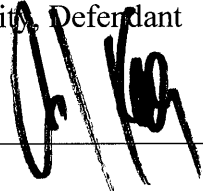
The Court should deny the Motion, because it appears that it would be frivolous. *Gamma-10 Plastics, Inc., v. American President Lines, Ltd.*, 32 F.3d 1244, 1255-56 (8<sup>th</sup> Cir. 1994).

Defendant Secretary joins with the other Defendants in opposing the Motion to File an Amended Complaint.

**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 deny Plaintiff's Motion to Amend; that the Court dismiss Plaintiff's Complaint against Defendant Secretary of State; that the Court grant Defendant Secretary such additional relief to which he may be entitled under the circumstances

**Respectfully submitted** this 14<sup>th</sup> day of June, 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

*Attorney for Defendant  
Arkansas Secretary of State*

**CERTIFICATE OF SERVICE**

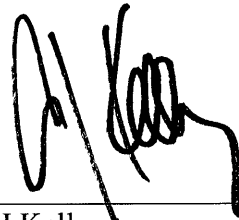
I do hereby certify that on this 14<sup>th</sup> day of June, 2018, I have served the foregoing via the electronic filing system in the Federal District Court Clerk's Office (CM/ECF) to the Attorney General and the Assistant Attorney General who has entered his appearance, and via first class mail to the following:

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

Q. Byrum Hurst, Jr.  
Hurst Law  
518 Ouachita Avenue  
Hot Springs AR 71901

Jimmy Morris, Jr.  
221 West 2<sup>nd</sup> Street  
Little Rock AR 72206

Gene McKissic  
116 West 6<sup>th</sup> Avenue  
Pine Bluff, AR 71601

A handwritten signature in black ink, appearing to read 'AJ Kelly', written over a horizontal line.

AJ Kelly