

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DR. JULIUS J. LARRY, III, et al.

PLAINTIFF

v.

Case No. 4:18-cv-116-KGB

STATE OF ARKANSAS, et al.

DEFENDANTS

RESPONSE TO PLAINTIFF'S SUPPLEMENTAL REQUEST
FOR THREE JUDGE PANEL TO CHALLENGE APPORTIONMENT
OF SECOND CONGRESSIONAL DISTRICT OF ARKANSAS
ON BEHALF OF SEPARATE STATE DEFENDANTS

Come Separate Defendants State of Arkansas, Asa Hutchinson in his official capacity as the Governor of the State of Arkansas, Leslie Rutledge in her official capacity as the Attorney General of the State of Arkansas, and Jeremy Gillam in his official capacity as a member of the House of Representatives for the State of Arkansas, and for their Response in Opposition to “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.” [D.E. 23] state:

1. Dr. Larry’s recent Supplemental Request [D.E. 23] is an attempt to amend his original complaint. See F.R.C.P. 15. Here, Dr. Larry’s original pleading [D.E. 1] was defective in that he failed to demonstrate subject matter jurisdiction. See Defendants’ Motion to Dismiss and supporting Brief. [D.E. 7, 8] Dr. Larry’s Supplemental Request does not allege any transaction, occurrence, or event that happened after he filed his Complaint. Rather, where his original pleading alleged a constitutional violation in the First Congressional District, Dr. Larry now also alleges a constitutional violation in the Second Congressional District as presently drawn. [D.E. 23, ¶ 3]

2. These Defendants adopt and incorporate Secretary Martin's Response to Plaintiff's Supplemental Request [D.E. 24] pursuant to Fed. R. Civ. P. 10(c) as equally applicable to these Defendants. For the reasons set forth therein, Plaintiff's attempted amendment cannot cure the original defect and dismissal is appropriate.

3. In his Supplemental Request, Dr. Larry expands his attempt to represent others as a pro se plaintiff to include "Martha Dixon, Dorothy Jefferson, and all other similarly situated African Americans residing in the Second Congressional District as presently drawn." [D.E. 23, p. 2] For the reasons set out in Defendants' Motion to Dismiss and supporting Brief [D.E. 7, 8], Dr. Larry may only represent himself in court.

4. If the Court allows the amendment, Dr. Larry's new claim of racial gerrymandering in the Second Congressional District likely requires a three judge panel.

5. Dr. Larry's Complaint and Supplemental Request taken together still fail to state a claim for relief.

6. "To withstand a Rule 12(b)(6) motion, a complaint must contain sufficient factual allegations to 'state a claim to relief that is plausible on its face.'" *Smithrud v. City of St. Paul*, Nos. 12-3713, 12-3736, 746 F.3d. 391, 397 (8th Cir. 2014) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). "[A]lthough a complaint need not contain 'detailed factual allegations,' it must contain facts with enough specificity 'to raise a right to relief above the speculative level.'" *United States ex rel. Raynor v. Nat'l Rural Utils. Coop. Fin., Corp.*, 690 F.3d 951, 955 (8th Cir. 2012) (quoting *Twombly*, 550 U.S. at 555); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.").

“A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Iqbal*, 556 U.S. at 678. Similarly, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* “In deciding a motion to dismiss under Rule 12(b)(6), a court assumes all facts in the complaint to be true and construes all reasonable inferences most favorably to the complainant.” *Raynor*, 690 F.3d at 955.

7. For factual support of the new claim, Dr. Larry points to the 2010 election in the Second Congressional District. [D.E. 23, pp. 2-4]

8. The Second Congressional District lines were redrawn on July 27, 2011. See Ark. Code Ann. § 7-2-103. Simply put, the factual allegations relate to a congressional district that no longer exists, not the present-day Second Congressional District. Furthermore, the chart alleged by Dr. Larry does not demonstrate any constitutional violation and Dr. Larry provides no explanation to show otherwise.

9. Therefore, Dr. Larry’s attack on the Second Congressional District does not allege facts with enough specificity to raise a right to relief above the speculative level. These Separate Defendants respectfully request the Court dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and, if necessary, also Federal Rule of Civil Procedure 12(b)(6).

WHEREFORE, Separate Arkansas Defendants respectfully request the Court dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and, if necessary, also Federal Rule of Civil Procedure 12(b)(6) and grant them all other relief to which they may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I Brett W. Taylor, hereby certify that on March 28, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send electronic notification to the following:

A. J. Kelly, kellylawfedecf@aol.com
Michael J. Fincher, mi.fincher@yahoo.com

I Brett W. Taylor, hereby certify that on March 28, 2018, I mailed the foregoing document by U.S. Postal Service to the following non-CM/ECF participant:

Julius J. Larry, III
2615 West 12th St.
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/s/ Brett W. Taylor