IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

DR. JULIUS J. LARRY, III **PLAINTIFF**

v. **No. 4:18CV00116 KGB**

STATE OF ARKANSAS, *et al* **DEFENDANTS**

PART I OF STATE DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION TO RECONSIDER

Defendants, the State of Arkansas, Asa Hutchison 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, Jeremy Gillam in his official capacity as a member of the House of Representatives for the State of Arkansas, and the Arkansas Legislature (collectively, "State Defendants"), through counsel, state for Part I of their response as follows:

This Court should deny Larry's motion to reconsider because it fails to identify any error in the Court's order of dismissal and adduces no new grounds to show that he has standing to bring his vote-dilution claim. Further, Larry's history of deceitful and frivolous litigation casts light on his continuing efforts to unduly consume the time and resources of this Court. Finally, as set forth in Part II of this response—submitted under separate cover for filing under seal—there are independent grounds for dismissal of this action for lack of standing.

BACKGROUND

On February 18, 2018, Larry brought this (now-dismissed) action alleging that the Defendants diluted African-American votes in violation of section 2 of the Voting Rights Act and that Defendants racially gerrymandered the boundaries of Arkansas's First

Congressional District in violation of the Equal Protection Clause. Doc. 1. Larry alleged that he is a resident of Pulaski County and a registered voter. Doc. 1 at 35; *see id.* at 27 (signature block). Both the State Defendants and Defendant Secretary Martin filed motions to dismiss, arguing that the face of Larry's complaint showed that he is not a resident of the First Congressional District and that he lacks standing to bring his claims. Docs. 7, 8, 13, 14. This Court dismissed Larry's equal-protection claim for lack of standing but convened a three-judge panel to adjudicate Larry's section 2 vote-dilution claim. Doc. 30. On August 3, 2018, the panel unanimously dismissed Larry's remaining claim, finding that Larry lacks standing because he does not live in the voting district where he alleges vote dilution has occurred. Doc. 46 at 15-16.

ARGUMENT

This Court should deny Larry's motion for reconsideration because it fails to identify any error in the Court's order of dismissal and adduces no new grounds to show that he has standing to bring his vote-dilution claim. His arguments lack any legitimate basis in law or fact. Further, Larry's history of deceptive and frivolous litigation sheds light on his meritless claims in this lawsuit.

I. Larry's "fracking" theory of injury is completely unsupported by any apposite authority, and his other claims likewise lack merit.

Larry's motion claims that he has been "castrated" through "fracking." Doc. 48 at 4. As he explains, "Fracking is Plaintiff Larry's coined term for fracturing Pulaski and Jefferson Counties" into different congressional districts. *Id.* (emphasis omitted). Further, he says, "Fracking . . . is the main culprit in the injury to Plaintiff Larry directly caused by defendants' unlawful conduct in CD1 [i.e., the First Congressional District]." *Id.* at 19. But—as this Court properly found—Larry lacks standing to bring any claim based on

alleged unlawful conduct in the First District. Doc. 46 at 15-16. Larry's motion to reconsider states no new argument but merely repackages and elaborates on this same dubious claim.

Larry again argues that he should have been allowed to amend his complaint pursuant to Fed. R. Civ. P. 15, because (as he incorrectly asserts) the Defendants failed to file a responsive pleading to his complaint. But, as this Court's order of dismissal notes, all properly-served Defendants filed motions to dismiss under Fed. R. Civ. P. 12(b) more than 21 days before Larry filed his motion to amend. Doc. 46 at 5; *see* Docs. 7, 13, 19; Fed. R. Civ. P. 15(a)(1)(B) (providing that a party may not amend its pleading as a matter of course after 21 days of the filing of a Rule 12(b) motion). The Defendants' motions to dismiss were still pending when the three-judge panel of this Court dismissed Larry's complaint for lack of standing on August 3, 2018. Doc. 46. Therefore, no further action was required of the Defendants, and Larry did not have a right to amend his complaint as a matter of course.

Larry also claims that this Court should have granted him leave to amend his complaint. But, as this Court's order of dismissal correctly notes, Larry's amendment would be futile. Doc. 46 at 6-10. Larry makes the further claim that futility is an affirmative defense which the Defendants have the burden to prove. But Larry adduces no authority for that novel claim, and in any case the law is clear that a court may dismiss a complaint *sua sponte* where it is obvious that the plaintiff cannot prevail and any amendment of the complaint would be futile. *Hartsfield v. Nichols*, 511 F.3d 826, 833 (8th Cir. 2008). This Court did not err in denying Larry leave to amend his complaint.

Larry asserts that the Defendants failed to answer requests for admissions. This claim is bogus. Larry never served requests for admissions on the State Defendants. And in any

case, Larry has the burden of proving that he served the requests for admissions on the Defendants. 8B Wright, et al., *Federal Practice & Procedure* § 2263 (3d ed. 2010) ("[A] party claiming admissions by failure to deny must prove service of a proper request in compliance with the rule and a failure to respond to the request."). As explained below, Larry has a history of making deceitful and frivolous legal claims. His claim that the Defendants failed to answer requests for admissions appears to be one more instance of his established pattern.

Larry's claims in his motion to dismiss are completely unsupported by any apposite authority and wholly lack merit. Therefore, this Court should deny his motion.

II. Larry's history of deceptive and frivolous litigation sheds light on his current efforts in this litigation.

Larry is a formerly licensed attorney. *Larry v. Dretke*, 361 F.3d 890, 898 (5th Cir. 2004). He was admitted to practice law in the State of Texas in 1992. Larry was plaintiff's counsel in *Williams v. Phillips Petroleum Co.*, 23 F.3d 930 (5th Cir. 1994). The court's published opinion in that case recounts that Larry accused opposing counsel of engaging in improper ex parte communications with the district judge. *Id.* at 938. The Fifth Circuit found that Larry's accusations were "scurrilous, frivolous, and contrary to the duties of an officer of the court." *Id.* The court stated that Larry had "attempt[ed] to prove his conclusion of unethical conduct . . . by seriously misquoting defendants' counsel's time records, omitting important facts from the description of counsel's activities, and drawing unsupported conclusions." *Id.* In unusually-strong language from a federal court of appeals, the court condemned Larry's misrepresentations:

> Larry has attempted to mislead the court by blatantly misrepresenting the record. Trying to sell this court on his conspiracy theories, he has attempted to put a veneer of impropriety on innocent contacts by quoting selectively from Notestine's time sheets and even mischaracterizing the parties involved. We will not stand by idly and allow an attorney to waste the time of this court

> and maliciously denigrate the reputations of judges and other officers of the court.

Id. at 940. Further, "Larry has attempted to mislead this court for no legitimate end. He has wasted the time and energy of opposing counsel and of this court." *Id.* The court sanctioned Larry for the frivolous appeal, ordering him to pay opposing counsel's fees of $20,000 and costs of $3,039.22, plus double taxable costs on appeal. *Id.* at 940-41; *see id.* at 938 (stating that "Larry's legal arguments are also frivolous and independently deserving of sanctions.").

One month later, Larry again advanced the same frivolous legal arguments that the court had just "squarely rejected." *Fuentez v. Houston Indus., Inc.*, 39 F.3d 319, at *1 (5th Cir. 1994) (per curiam). The Fifth Circuit noted, "This is a serious violation of Larry's obligation as an officer of this court," and again sanctioned him "double taxable costs on appeal, plus $5,000 in attorneys' fees on appeal." *Id.*

Larry's history of deceitful and frivolous litigation casts light on his continuing efforts in this (dismissed) litigation to unduly consume the time and resources of this Court. Therefore, this Court should deny his motion to reconsider.

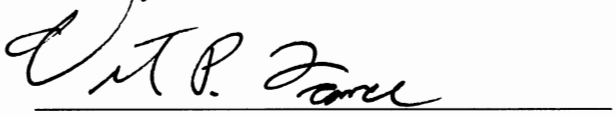
CONCLUSION

This Court should deny Larry's motion to reconsider because dismissal of this action was appropriate. For the reasons set forth above—as well as those set forth in Part II of this response submitted for filing under seal—Larry lacks standing, and this Court should deny Larry's motion to reconsider.

Therefore, the State Defendants respectfully request that the Court deny Larry's motion to reconsider.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General of Arkansas

By: 

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CERTIFICATE OF SERVICE

I, Vincent P. France, hereby certify that on August 27, 2018, I conventionally filed the foregoing and mailed copies by U.S. Postal Service to the following parties:

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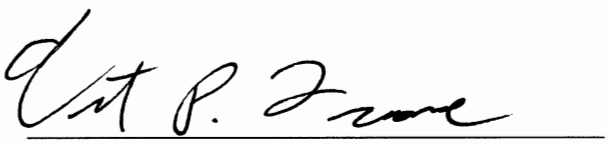

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