UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON VICINATGE

EUGENE MARTIN LaVERGNE, ***Plaintiff,*** ***vs.*** **JOHN BRYSON, *et als.*** ***Defendants.***	**Civil Action No. 3-11-cv-7117(PSG)(LHG)**

VERIFICATION AND DECLARATION OF PLAINTIFF WITH EXHIBITS IN SUPPORT OF PLAINTIFF'S POST JUDGMENT MOTION FOR AN ORDER UNDER *RULE* 60(b)(4) VACATING AND DISMISSING THE COURT'S DECEMBER 16, 2011 MEMORANDUM & ORDER FOR LACK OF SINGLE JUDGE DISTRICT COURT SUBJECT-MATTER JURISDICTION AND CORRECTING THE PUBLIC DOCKET

EUGENE MARTIN LaVERGNE hereby swears, certifies and declares as follows:

1. I was the named Plaintiff in the above matter, and as such I am fully familiar with all facts relevant to the within case, *Eugene Martin LaVergne v. John Bryson, et als.*, Civil Action No. 3:11-cv-7117(PSG)(LHG), which was unilaterally and *sua sponte* "DISMISSED" by the Honorable Peter Sheridan, U.S.D.J., sitting as a Single Federal Judge District Court, in accordance with his Memorandum & Order dated and filed with the Clerk of the Court on

December 16, 2011. **(hereinafter "the First Case").** Relative to the First Case, attached are true copies of the following documents:

"Exhibit A": True copy of Memorandum & Order (4 pages) in *Eugene Martin LaVergne v. John Bryson,* Civil Action No. 3:11-cv-7117(PSG)(LHG), entered unilaterally and *sua sponte* on December 16, 2011 by the Honorable Peter Sheridan, U.S.D.J. exercising his Article III subject-matter jurisdiction over the matter while sitting as a Single United States District Court Judge.

"Exhibit B": True copy of PACER® case status sheet (1 page) in *Eugene Martin LaVergne v. John Bryson,* Civil Action No. 3:11-cv-7117(PSG)(LHG), showing that the Public Docket in the case reflects in relevant part as follows: **"CASE CLOSED on 12/16/2011"** and also: **"***Civil Case Terminated. (eaj)"**

"Exhibit C": True copy of entire PACER® Civil Docket (2 page) in *Eugene Martin LaVergne v. John Bryson,* Civil Action No. 3:11-cv-7117(PSG)(LHG), showing that the Public Docket in the case reflects in relevant part **"MEMORANDUM and ORDER ... Dismissing Complaint, Signed by Peter G. Sheridan on 12/16/2011. (eaj) Entered: 12:16/2011)"** (Docket Entry #3) and **"***Civil Case terminated. (eaj) (Entered: 12/16/2011)"** (Docket Entry #4).

2. I am also presently first named Plaintiff (of several named Plaintiffs) in a somewhat similar case now pending and proceeding before a Three Judge District Court in the United States District Court for the District of Columbia District, entitled *Eugene Martin LaVergne, et als. v. United States House of Representatives, et als.,* Civil Action No. 17-cv-793 (Three Judge Court). **(hereinafter "the Second Case").** The Second Case is assigned to the Honorable Cornelia T. L. Pillard, C.J., Circuit Judge of the United States

Court of Appeals for the District of Columbia (Presiding), and to the Honorable Colleen Kollar-Kotelly, U.S.D.J., and the Honorable Randolph Moss, U.S.D.J., of the United States District Court for the District of Columbia District. Relative to the Second Case, attached are true copies of the following documents:

"Exhibit D": True copy of May 18, 2017 Order (1 page) signed by the Honorable Merrick B. Garland, C.J., Chief Judge of the United States Court of Appeals for the District of Columbia, formally convening a Three Judge District Court pursuant to 28 *U.S.C.* § 2284 in the case of *Eugene Martin LaVergne, et als. v. United States House of Representatives, et als.,* Civil Action No. 17-cv-793 and appointing the Honorable Cornelia T. L. Pillard, C.J., Circuit Judge of the United States Court of Appeals for the District of Columbia (Presiding), the Honorable Colleen Kollar-Kotelly, U.S.D.J., and the Honorable Randolph Moss, U.S.D.J., of the United States District Court for the District of Columbia District to serve as the Three Judge District Court in the case of *Eugene Martin LaVergne, et als. v. United States House of Representatives, et als.,* Civil Action No. 17-cv-793 (Three Judge Court).

"Exhibit E": True copy of October 20, 2017 Order (1 page) entered in the case of *Eugene Martin LaVergne, et als. v. United States House of Representatives, et als.,* Civil Action No. 17-cv-793 (Three Judge Court) after an October 20, 2017 Status and Case Management Conference held in open Court via telephone before the full Three Judge District Court (Pillard, Kollar-Kotelly and Moss) fixing a briefing schedule for the Court to address the preliminary procedural issue raised by certain Defendants who seek to assert in accordance with *F.R.Civ.P.* 8 the affirmative defense of "Collateral Estoppel" against Plaintiff Eugene Martin LaVergne only.

The Second Case:

3. In the Second Case the collective Plaintiffs (including Plaintiff Eugene Martin LaVergne who in 2011 was the only Plaintiff in the First Case) contend that *Article the First,* the first ever proposed amendment to the United States Constitution proposed by Resolution of Congress in 1789 to the then eleven State Legislatures, was in fact fully ratified and automatically consummated into positive Constitutional Law by the Federal Constitution's *Article* V's standards at the latest on or about June 24, 1792 (if not earlier), and that this fact was lost or otherwise intentionally hidden in history. In support of this claim Plaintiffs cite to and proffered their intention to at time of trial or other proceedings to rely heavily upon the extensive research and documents that have been compiled in Plaintiff Eugene Martin LaVergne's commercially published book titled *How "Less" is "More": The Story of the Real First Amendment to the United States Constitution,* by Eugene Martin LaVergne, published by First Amendment Free Press, Inc., New York, New York (2016). Directly, the collective Plaintiffs contend that *Article the First* is binding Federal Constitutional law, that *Article the First* means and operates exactly as they contend in their Complaint, and that when the automatic mandatory non-discretionary standards of *Article the First* are applied to the 2010 Decennial Census of each State, that the Article I apportionment of the United States House of Representatives is actually required to have a minimum of 6,230 Representatives apportioned among the 50 States. At present the United States House of Representatives at the One Hundred and

Fifteenth Congress has only 435 Representatives apportioned among the now 50 States in the Union. The 435 Representatives were apportioned among the 50 States in the Union after the 2010 Census in accordance with the so called "Automatic Apportionment Act of 1929", as amended, using the base number of 435, the Census Population of each State, and the math formula known as the "Method of Equal Proportions". *See* 2 *U.S.C.* §2. If Plaintiffs are indeed historically, factually and legally correct, then this means that there is a minimum of 3,116 Representatives that must be elected in the various States, appear at the seat of Federal Government, present credentials, be sworn, and be seated in the United States House of Representatives before there is the required *Article* I, *Section* 5's mandatory "*Quorum*" (50% + 1 of the Membership of the Body) present to conduct any legislative business.

4. More specifically the primary legal claim in the Second Case is the collective Plaintiffs' directly challenge the constitutionality of *Public Law No.* 115-22 (04/03/2017), signed into law by President Donald J. Trump on April 3, 2017. As background, On Friday December 2, 2016 the Federal Communications Commission ("FCC") published a new Agency Rule entitled "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" in the *Federal Register,* at Volume 81, No. 232 (Friday December 2, 2016) pages 87274 through 87346.

5. In the official "Synopsis" published along with the new FCC Rule the FCC made the following relevant findings and declarations:

> * * *
>
> 2. Internet access is a critical tool for consumers – it expands our access to vast amounts of information and countless new services. It allows us to seek jobs and expand our career horizons; find and take advantage of educational opportunities; communicate with our health care providers; engage with our government; create and deepen our ties with family, friends and communities; participate in online commerce; and otherwise receive the benefits of being digital citizens. Broadband providers provide the "on ramp" to the Internet. These providers therefore have access to vase amounts of information about their customers including when we are online, where we are physically located when we are online, how long we stay online, what devices we use to access the Internet, what Web sites we visit, and what applications we use.
>
> 3. Without appropriate privacy protections, use or disclosure of information that our broadband providers collect about us would be at odds with our privacy interests. * * *

[*See Federal Register,* at Volume 81, No. 232 (Friday December 2, 2016) page 87274].

6. In this new FCC Rule the FCC applied the privacy requirements of the *Communications Act of 1934*, as amended, to broadband Internet access service (BIAS) and other telecommunications services, and specifically implemented the statutory requirement that telecommunications carriers and internet service providers (ISPs") protect the confidentiality of customer personal and proprietary information. Among the various requirements and restrictions in the new FCC Rule was a specific provision that protected consumers from having their data sold or otherwise disseminated by internet service providers ("ISPs") to third parties without the consumer's express permission first being given. Without this FCC Rule, ISPs would be permitted to sell customer's personal and proprietary information without

limitation or restriction, with much or all of the information permitted to be sold being information that consumers reasonably expect to otherwise remain confidential and private information. Moreover, most egregious, consumers will not even be made aware that this private information is being sold or otherwise made public and there is no mechanism for consumers to stop or block the sale or dissemination.

7. The named Plaintiffs in the Second Case each use Broadband Internet Access Service ("BIAS") through Internet Service Providers ("ISPs") for business and personal and health care purposes. Plaintiffs each object to and are alarmed at the fact that their private and proprietary business, personal and health care information can be made available for dissemination and / or sale by ISPs without notice to them and without their right or legal to object which actions by ISPs may constitute *per se* violations of the *Health Insurance Portability and Accountability Act of 1996* ("HIPPA"). Plaintiffs claim that they will suffer damage and irreparable harm if ISPs are allowed to sell and / or otherwise disseminate the business and personal and health care information of Plaintiffs.

8. Under the *Congressional Review Act,* the new FCC Rule "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" published in the Federal Register on Friday December 2, 2016 becomes final binding Federal Law unless the Senate and House of Representatives pass,

and the President approves, a "disapproval resolution" in accordance with the procedures outlined therein. *See* 5 *U.S.C. sec.* 802.

9. On March 7, 2017 in accordance with the terms and conditions and procedures of the *Congressional Review Act,* Senator Jeff Flake of Arizona, sponsored and introduced a formal "disapproval resolution" in the Senate to reject the new FCC Rule "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services". The "disapproval resolution" was thereafter assigned and identified as Senate Joint Resolution Number 34 of the 115th Congress ("S.J. Res. 34").

10. On March 23, 2017 Senate considered S.J. Res. 34. *See Congressional Record – Senate,* March 23, 2017 at pages S1942 - S1943 (Senate debate at pages S1947 through S1955). On recorded Senate Roll Call vote No. 94, S.J. Res. 34 was approved by a close vote of 50 "Yeas" to 48 "Nays", with 2 Senators (Senator Isakson of Georgia and Senator Paul of Kentucky) absent.

11. Plaintiffs in the Second Case claim that on January 3, 2017, the House of Representatives erroneously determined that they had achieved the required Article I *quorum* to conduct business. *See* Res. 2 (House) One Hundred Fifteenth Congress. The House of Representatives calculated the *quorum* based upon 435 voting Representatives apportioned among the 50 States in the Union whereas the Constitution's *Article the First* requires a minimum of 6,230 Representatives apportioned among the 50 States. Plaintiffs contend therefore that the minimum number of Representatives to constitute an

Article I *quorum* is 3,116 Representatives (50% +1 of the mandatory minimum 6,230 Representatives).

12. Plaintiffs contend that the House of Representatives lacks the required Article I *quorum* to Conduct any legislative business, but that the House of Representatives nevertheless substantively considered S.J.Res. 34. On March 28, 2017, on second reading and House Roll Call vote No. 200, S.J. Res. 34 was approved by the United States House of Representatives by a comfortable majority of those present – but - Plaintiffs contend - not with the Constitutionally mandated *quorum* being present. Specifically by a vote of 231 "Ayes" to 189 "Noes", with 9 Representatives absent, the House purportedly approved S.J. Res. 34 at the second of the required three readings. *See Congressional Record – House,* March 28, 2017 at pages , H2488 – H2489. Immediately thereafter that same day there was debate in the House meeting in a Committee of the Whole, *see Congressional Record – House,* March 28, 2017 at pages 2489 – 2501, after which S.J. Res. 34 was read the required third and last time, and after which there was a third and final vote where "... *the Speaker pro tempore announced that the ayes appeared to have it.*" *See Congressional Record – House,* March 28, 2017 at page 2501. In the Second Case the Plaintiffs' contend that the March 28, 2017 third vote in the House of Representatives approving S.J. Res. 34 was invalid, ultra vires, and in violation of the Constitution's Article I's "*Quorums* Clause" as there were not at least 3,116 Representatives (50% +1 of the

mandatory minimum 6,230 Representatives) that had appeared, presented their credentials, been sworn, and taken their seats.

13. On March 30, 2017 S.J. Res. 34, having been validly passed by the Article I Senate and having been believed to have been validly passed by the Article I House of Representatives, was then presented to the Article II President by the Senate for his approval or disapproval.

14. On April 3, 2017 Article II President Donald J. Trump signed and approved S.J. Res. 34 (now identified as Public Law No: 115-22 (04/03/2017)).

15. Plaintiffs contend in the Second Case that the affirmative legislative vote in the United States House of Representatives on March 28, 2017 (when the legislation was identified as "S.J. Res. 34") is invalid and a nullity as the constitutionally required *Article* I, *Section* 5 *Quorum* of at least 3,116 Representatives was not present then and there. The Plaintiffs argument follows that as that specific March 28, 2017 vote in the House of Representatives failed to satisfy and comply with the Constitution's *Article* I, *Section* 5's mandatory "*Quorum's* Clause", that the March 28, 2017 vote by the United States House of Representatives was invalid and a nullity and may not be counted as legal for *Article* I law making purposes. This in turn means that *Public Law No.* 115-22 (04/03/2017) failed to satisfy the vesting and bi-camerality requirements of the *United States Constitution's Article* I and *Article* II and is not valid Federal Law. *See I.N.S. v. Chada,* 462 *U.S.* 919 (1983) and *Clinton v. New York,* 524 *U.S.* 417 (1996). This also means

that named Defendant Representatives Paul Ryan is not legally the Speaker of the House, nor is he legally in the line of Presidential succession.

16. Because of this, less than a month later on April 28, 2017, the collective Plaintiffs' filed the Second Case in the United States District Court for the District of Columbia District.

17. Shortly thereafter, on May 9, 2017, and in contemplation of then expected impending legislative approval in the full United States Senate, the collective Plaintiffs filed a First Amended Complaint where they added one additional named Plaintiff and also add a new Fifth Count making the identical argument as just cited, but regarding the validity of the May 4, 2017 vote in the House of Representatives on "H.R. 1628" which, if adopted by the full Senate and signed by the President, would have repealed and drastically changed the existing "Patient Protection and Affordable Care Act" (also known as "The Affordable Care Act of 2010" or "Obama - Care") signed into law by President Barak Obama on March 23, 2010. *See Public Law No.* 111-148 (03/23/2010). Since the filing of the First Amended Complaint circumstances developed that the full Senate - by 1 vote - rejected efforts to repeal or change or amend the existing "Patient Protection and Affordable Care Act". Nevertheless, legislative efforts persist in both the House and Senate to make radical changes to or to repeal the "Patient Protection and Affordable Care Act", all efforts so far having been unsuccessful. As such, the

Plaintiffs' newly asserted claim in the FIFTH COUNT may be either moot or otherwise not yet ripe.

18. Next, the collective Plaintiff's next moved for the convening of a Three Judge District Court in accordance with the authority and procedures established in 28 *U.S.C.* §2284(a) and District of Columbia District Court *L.Civ.R.* 9.1. In that motion Plaintiffs claimed that with factual, equitable and legal claims as asserted in the original Complaint and as asserted in the First Amended Complaint, that they were in fact, albeit indirectly, "... *challenging the constitutionality of the apportionment of congressional districts* ..." within the meaning of 28 *U.S.C.* §2284(a).

19. Thereafter, the Honorable Colleen Kollar-Kotelly, U.S.D.J. found such motion to have merit and as required by law referred the case to the Honorable Merrick B. Garland, Chief Judge of the District of Columbia Court of Appeals. On May 18, 2017, Judge Garland formally appointed and convened a three judge court to hear the claims in this case, appointing the Honorable Cornelia T. L. Pillard, Circuit Judge from the District of Columbia Court of Appeals and the Honorable Randolph D. Moss, U.S.D.J. of the District of Columbia District Court to serve along with Judge Kollar-Kotelly. Circuit Judge Pillard was appointed the Presiding Judge of the panel. ***See* True Copy of the May 18, 2018 Order at "Exhibit B" attached hereto.**

20. Thereafter, Summons were issued by the Clerk and Plaintiffs commenced serving the various Defendants. An Order was entered by Judge Kollar-

Kotelly under *F.R.Civ.P.* 4(m) extending the time for service of process, and an Order was also entered fixing October 20, 2017 as the date for an initial Scheduling and Case Management Conference and allowing no pleadings to be filed by Defendants until further Order of the Court.

21. Prior to the October 20, 2017 Scheduling and Case Management Conference Plaintiff Eugene Martin LaVergne moved pursuant to *F.R.Civ.P.* 56 and *L.Civ.R.* 7(h) for an Order granting Summary Judgment in his favor on the claims in Counts I, II, III & IV (He do not move for Summary Judgment on Count V). No return date was set as it was assumed that the Court would fix a briefing schedule and return date for this Summary Judgment motion at the October 20, 2017 Scheduling and Case Management Conference. The other Plaintiffs are joining in this motion.

22. On October 20, 2017 the full Three Judge District Court held the Scheduling and Case Management Conference via telephone with many parties throughout the United States. During the Scheduling and Case Management Conference the issue of whether or to what extent Judge Sheridan's December 16, 2011 Memorandum & Order in the First Case would have "collateral estoppel" effect in the Second Case as to Plaintiff Eugene Martin LaVergne only. This was expected.

23. During the Scheduling and Case Management Conference certain Defendants stated to the Three Judge District Court their desire to formally raise the *F.R.Civ.P.* 8 affirmative defense of "collateral estoppel" against Eugene

Martin LaVergne only, claiming that he should somehow be barred now in the Second Case from raising and asserting some or all of the claims in the Second Case because both the First Case and Second Case each involved some similar or common questions as to the ratification and consummation as positive Constitutional Law of *Article the First.* Defendants contend that these issues were already decided in the First Case when on December 16, 2011, Judge Sheridan, acting as a Single Judge Federal District Court, exercised Article III subject-matter jurisdiction and *sua sponte* and unilaterally entered a Memorandum & Order Dismissing the First Case, referring to the *Article the First* claims as "... *wholly insubstantial and completely without merit* ...", questioning (but not actually ever addressing and deciding) Eugene Martin LaVergne's Article III standing, and dismissing the *Article the First* claims out of hand with the (***demonstrably false***) assertion that ",,, *the longstanding principles establishing representation in our republican form of government have been thoroughly evaluated since the Constitutional Convention.*" *See* December 11, 2011 Memorandum & Opinion at page 2-3, copy attached at "Exhibit A"; *see also* PACER® Case Status Sheet at "Exhibit B" and PACER® Civil Docket at "Exhibit C".

24. The Three Judge District Court decided that as a matter of procedure and case management, that first, the Three Judge District Court would entertain and decide the "collateral estoppel" issue as to Plaintiff Eugene Martin LaVergne only, that second the contends that Three Judge District Court

would entertain and decide any other preliminary procedural arguments the Defendants wanted to raise, and that Third the Three Judge District Court would entertain and decide the pending substantive Motion for Summary Judgment. The Court further stated that the Motion for Summary Judgment was to remain on the Public Docket a pending but that a briefing schedule and return date would not be scheduled until after first addressing the "collateral estoppel" issue and second addressing all other preliminary procedural matters. The Three Judge District Court therefore memorialized a briefing schedule for addressing and deciding the "collateral estoppel" issue, directing the Defendant's Motions to be filed by November 13, 2017, and with Plaintiff Eugene Martin LaVergne's opposition due on November 28, 2017. ***See* October 20, 2017 Order attached hereto at "Exhibit E".**

25. Plaintiff Eugene Martin LaVergne will be opposing the forthcoming "collateral estopple" motions in the Second Case and filing his opposition on November 28, 2017. He will also be bringing a "collateral attack" on the underlying validity of Judge Sheridan's December 16, 2011 Memorandum & Order in the Second Case by way of Cross-Motion.

26. The primary ground for his opposition will be that the December 16, 2011 Memorandum & Order Dismissing the First Case, where Judger Sheridan acted alone as a Single Judge Federal District Court and *sua sponte* and unilaterally dismissed the First Case, was a clear and unquestionable violation the limits of Article III Congressionally conferred subject-matter

jurisdiction in 28 *U.S.C.* §2284(b)(3), because due to the nature of the claims in the First Case which was clearly an action "... *challenging the constitutionality of the apportionment of congressional districts* ..." within the meaning of 28 *U.S.C.* §2284(a), Congress mandated the convening of a Three Judge Federal District Court to hear and decide the case, and 28 *U.S.C.* §2284(b)(3) clearly provides that "... *[a] single judge ... shall not ... enter a judgment on the merits.*" *Id.* Plaintiff contends that Judge Sheridan was acting without subject-matter jurisdiction on December 16, 2011 as only a Three Judge District Court was lawfully empowered to dismiss the First Case, and therefore Judge Sheridan's Memorandum & Order are, as a matter of fact and law, void *ab initio* and a legal nullity. It is elementary that for a prior Order or Judgment to have any "collateral estoppels" effect in subsequent litigation that it must as a threshold matter be a "valid" Order or Judgment. And as the December 16, 2011 Memorandum & Order are both void *ab initio* and a legal nullity, as a matter of law the December 16, 2011 Memorandum & Order has no "collateral estoppels" effect whatsoever in the Second Case.

27. Secondly, Plaintiff Eugene Martin LaVergne will oppose the motion (and affirmatively Cross-Move collaterally attacking the December 16, 2011 Memorandum & Order) by alternatively or cumulatively arguing that even if in 2011, three years prior to the United States Supreme Court's unanimous decision in *Shapiro v. McManus,* 577 *U.S.* ___ (2015), that somehow Judge

Sheridan was nevertheless free to misinterpret the language in 28 *U.S.C.* §2284(b)(1) that reads " ... *unless he determines that three judges are not required* ..." in a vacuum as some limited Congressional grant of Article III subject-matter jurisdiction to act as a Single District Court Judge and unilaterally Dismiss a case rather than act as one part of three of, and one vote on, a Three Judge District Court, at best the limited grant was only for a single District Court Judge to determine whether there was subject-matter jurisdiction. Therefore, whether intended or not, point in fact, with Judge Sheridan having (inexplicably) not referred the First Case to the Chief Judge of the Third Circuit for the convening of a Three Judge Federal District Court, the only actual authority of Judge Sheridan could have had even in 2011 (pre *Shapiro v. McManus*) was to dismiss the First Case for want of subject-matter jurisdiction under *Rule* 12(h)(3). As such, the December 16, 2011 Memorandum & Order must be clarified or supplemented to specifically reflect that the Order of Dismissal was for lack of subject-matter jurisdiction only, and that it was not some substantive Dismissal on the merits entered by a single District Court Judge under *Rule* 12(b)(6). This clarification is important because, again, a Judgment or Order dismissing a case for lack of subject-matter jurisdiction, as a matter of law, has no "collateral estoppels" effect whatsoever in any subsequent litigation either. It is merely a Court's assertion that it has no authority to hear the claims in a case and no authority to proceed and to take substantive action.

28 Thirdly, Plaintiff Eugene Martin LaVergne will oppose application of the "Collateral estoppels" doctrine on the so called traditional grounds (not being adequate opportunity to be heard, etc.).

29. However, in addition to opposing the "collateral estoppels" motion in the Second Case on November 28, 2017, and in addition to affirmatively Cross-Moving to collaterally attack the validity of the December 16, 2011 Memorandum & Order in the Second Case, Plaintiff Eugene Martin LaVergne retains the right to move "at any time" in the First Case to have the December 16, 2011 Order of Dismissal changed to, or confirmed as, a having been entered without subject-matter jurisdiction, or that it is itself in fact a dismissal for lack of subject-matter jurisdiction. Plaintiff Eugene Martin LaVergne now proactively so moves before this Court. This Declaration with Exhibits is submitted in support of Plaintiff Eugene Martin LaVergne's Post Judgment Motion in this case under *F.R.Civ.P.* 60(b)(4) and, to the extent necessary, *F.R.Civ.P.* 12(h)(3), for an Order Vacating and Dismissing the Court's December 16, 2011 Memorandum & Order for lack of single Judge District Court subject-matter jurisdiction and correcting the Public Docket.

"I DECLARE, CERTIFY, CERIFY AND STATE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT." EXECUTED ON THIS 12th DAY OF NOVEMBER 2017.

EUGENE MARTIN LaVERGNE
Plaintiff *Pro Se*

"Exhibit A"

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EUGENE MARTIN LaVERGNE,

Plaintiff,

v.

JOHN BRYSON et al.,

Defendants.

Civil Action No.:
11-7117 (PGS)

MEMORANDUM & ORDER

This matter comes before the Court on the application of plaintiff Eugene Martin LaVergne, pro se ("Plaintiff")[1] for an order to show cause and for the underlying matter to be heard and determined by a three-judge panel. Plaintiff's underlying Complaint states a claim for vote dilution, alleging that (1) the current system of apportioning Representatives for the United States House of Representatives is unconstitutional, and (2) the current system of appointing Electors to the Electoral College is unconstitutional. Plaintiff applies for an order to show cause pursuant to Local Civil Rule 65.1, seeking preliminary injunctions, writs of mandamus, and declaratory judgments. Additionally, Plaintiff requests a three-judge panel pursuant to 28 U.S.C. § 2284(a), which requires the convention of a three-judge panel to hear certain actions challenging the apportionment of congressional districts.

Local Civil Rule 65.1 states in pertinent part that "[n]o order to show cause to bring on a matter for hearing will be granted except on a clear and specific showing by affidavit or verified

[1] At the present time, Plaintiff is an attorney whose admission has been suspended.

pleading of good and sufficient reasons why a procedure other than by notice of motion is necessary." Plaintiff has made no such showing. Neither Plaintiff's verified complaint nor Plaintiff's application for an order to show cause addresses the issue of why this matter needs to be resolved on an expedited basis. Rather, the facts as stated in the Complaint suggest entirely the opposite; Plaintiff's core contentions involve the constitutionality of an eighty-two year old federal statute and the potential enactment of an amendment to the U.S. Constitution two hundred and nineteen years ago. As these issues have waited a combined thirty decades to reach their ultimate resolution, there seems to be no reason now why they cannot wait until the end of the standard motion cycle.

Separately, the Court denies Plaintiff's request for the convention of a three-judge panel. Section 2284 of Title 28 of the U.S. Code states "[a] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts . . . ." 28 U.S.C. § 2284(a). However, application of this provision is not mechanical. The procedure for convening a three-judge court requires the judge to whom the request is presented to notify the chief judge of the circuit upon the filing of a request for three judges, "unless he determines that three judges are not required." 28 U.S.C. § 2284(b)(1). Essentially, the statute requires that the judge to whom the request is presented to screen the complaint to determine whether a three-judge panel is required. *See Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 715 (1962), *superseded by statute on other grounds*, Act. of Aug. 12, 1976, Pub. L. No. 94-381, 90 Stat. 1119, *as recognized by Morrill v. Weaver*, 224 F. Supp. 2d 882, 887 (E.D. Pa. 2002); *N.J. Sand Hill Band of Lenape & Cherokee Indians v. Corzine*, No. 09-683 (KSH), 2009 WL 799210, at *2 (D.N.J. Mar. 24, 2009). As the Fifth Circuit explained, "[a]

three-judge court is not required if the claim is wholly insubstantial or completely without merit." *United States v. Saint Landry Parish Sch. Bd.*, 601 F.2d 859, 863 (5th Cir. 1979).

Here, the convention of a three-judge panel is not required for several reasons. First, recent case law suggests otherwise. *See Clemons v. U.S. Dep't of Commerce*, 710 F. Supp. 2d 570, *vacated and remanded by* 131 S. Ct. 821 (2010). Second, Plaintiff's standing is questionable when his interest is considered in relation to individuals such as New Jersey Governor Chris Christie, who implemented the redistricting; Congresspersons whose seats were abolished; and presidential candidates who may fear an election result like that of Vice President Gore, who had won the popular vote but lost in the electoral college vote to George Bush. Third, the ability of a pro se Plaintiff who is suspended from the practice of law to professionally and adequately present such a case which effects every state is tenuous.[2] Finally, the long standing principles establishing representation in our republican form of government have been thoroughly evaluated since the Constitutional Convention.

ORDER

The Court has considered the papers submitted in support of Plaintiff's application and request. Pursuant to Federal Rule of Civil Procedure 78, no oral argument was heard. For the reasons stated below,

IT IS on this 16th day of December, 2011, hereby

ORDERED that Plaintiff's application for an order to show cause is DENIED; and

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2 I recall that when I was practicing, Mr. LaVergne was always a very competent and professional adversary; however, this case is of a different ilk.

ORDERED that Plaintiff's request that the Court convene a three-judge panel pursuant to 28 U.S.C. § 2284 is DENIED; and it is further

ORDERED that Plaintiff's Complaint is DISMISSED the case is CLOSED.

PETER G. SHERIDAN, U.S.D.J.

December 16, 2011

"Exhibit B"

Utility Events

3:11-cv-07117-PGS-LHG LAVERGNE v. BRYSON et al

U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered on 12/16/2011 at 2:58 PM EST and filed on 12/16/2011

Case Name: LAVERGNE v. BRYSON et al
Case Number: 3:11-cv-07117-PGS-LHG
Filer:
WARNING: CASE CLOSED on 12/16/2011
Document Number: No document attached

Docket Text:
***Civil Case Terminated. (eaj)

3:11-cv-07117-PGS-LHG Notice has been electronically mailed to:

3:11-cv-07117-PGS-LHG Notice will not be electronically mailed to::

EUGENE MARTIN LAVERGNE
543 CEDAR AVENUE
WEST LONG BRANCH, NJ 07764

"Exhibit C"

CLOSED

U.S. District Court
District of New Jersey [LIVE] (Trenton)
CIVIL DOCKET FOR CASE #: 3:11-cv-07117-PGS-LHG
Internal Use Only

LAVERGNE v. BRYSON et al
Assigned to: Judge Peter G. Sheridan
Referred to: Magistrate Judge Lois H. Goodman
Cause: 28:1361 Petition for Writ of Mandamus

Date Filed: 12/06/2011
Date Terminated: 12/16/2011
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: U.S. Government Defendant

Plaintiff

EUGENE MARTIN LAVERGNE represented by **EUGENE MARTIN LAVERGNE**
543 CEDAR AVENUE
WEST LONG BRANCH, NJ 07764
(732) 272-1776
PRO SE

V.

Defendant

JOHN BRYSON
in his official capacity as the Secretary of the United States Department of Commerce

Defendant

JOHN GROVER
in his official capacity as the Director of the United States Census Bureau

Defendant

KAREN L. HAAS
in her official capacity as the Clerk of the United States House of Representatives

Defendant

JOHN BOEHNER
in his official capacity as the Speark of the United States House of Representatives

Defendant

DANIEL INOUYE
in his official as the President Pro Tempore of the United States Senate

Defendant

JOSEPH BIDEN
in his official capacity as the President of the Senate

Defendant

DAVID FERRIERO
in his official capacity as the Archvist of the United States of America

Date Filed	#	Docket Text
12/06/2011	1	COMPLAINT against JOSEPH BIDEN, JOHN BOEHNER, JOHN BRYSON, DAVID FERRIERO, JOHN GROVER, KAREN L. HAAS, DANIEL INOUYE (Filing fee $ 350 receipt number TRE016893.) NO JURY DEMAND., filed by EUGENE MARTIN LAVERGNE. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Order To Show Cause, # 8 Memorandum of Law 1 of 2, # 9 Memorandum of Law 2 of 2)(ma) (Entered: 12/07/2011)
12/07/2011	2	SUMMONS ISSUED as to JOSEPH BIDEN, JOHN BOEHNER, JOHN BRYSON, DAVID FERRIERO, JOHN GROVER, KAREN L. HAAS, DANIEL INOUYE with answer to complaint due within 60 days. (ma) (Entered: 12/07/2011)
12/16/2011	3	MEMORANDUM and ORDER Denying Plaintiff's application for an order to show cause; Denying Plaintiffs request that the Court convene a three-judge panel; Dismissing Complaint. Signed by Judge Peter G. Sheridan on 12/16/2011. (eaj) (Entered: 12/16/2011)
12/16/2011		***Civil Case Terminated. (eaj) (Entered: 12/16/2011)

"Exhibit D"

September Term, 2016
17cv793
No. 493

Eugene Martin Lavergne, *et al.*,

Plaintiffs,

v.

United States House of Representatives, *et al.*,

Defendants.

DESIGNATION OF JUDGES TO SERVE ON THREE-JUDGE DISTRICT COURT

The Honorable Colleen Kollar-Kotelly, Judge, United States District Court for the District of Columbia, having notified me of her conclusion that the above-captioned case is an appropriate one for the convocation of a three-judge District Court, and having requested that such a three-judge court be appointed to hear and decide this case, it is

ORDERED, pursuant to 28 U.S.C. § 2284, that the Honorable Cornelia T.L. Pillard, Circuit Judge, United States Court of Appeals for the District of Columbia Circuit, and the Honorable Randolph D. Moss, Judge, United States District Court for the District of Columbia, are hereby designated to serve with the Honorable Colleen Kollar-Kotelly as members of the court to hear and determine this case. Judge Pillard will preside.

Merrick B. Garland
Chief Judge

Date: 5/18/17

"Exhibit E"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EUGENE MARTIN LAVERGNE, *et al.*,
Plaintiffs

v.

UNITED STATES HOUSE OF REPRESENTATIVES, *et al.*,
Defendants

Civil Action No. 17-cv-793

ORDER
(October 20, 2017)

The Court held a telephonic conference with the parties on the record on Friday, October 20, 2017. During that conference the Court set the following schedule:

- Federal Defendants are to file their motion regarding collateral estoppel issues by no later than **November 13, 2017**.
- If the State Defendants seek to raise any arguments regarding collateral estoppel that have not been raised in Federal Defendants' brief, they may file their own brief simultaneously.
- Plaintiffs shall file their opposition to Defendants' motion(s) regarding collateral estoppel by no later than **November 27, 2017**.
- Defendants shall file their replies to Plaintiffs' opposition by no later than **December 22, 2017**.
- Federal Defendants and State Defendants may each file additional dispositive motions raising any other grounds for dismissing Plaintiffs' complaint by no later than 30 days after the Court issues an order resolving the collateral estoppel issue. The Court will set a full briefing schedule for those motions after the collateral estoppel issue is resolved.

The Clerk of the Court shall mail a copy of this Order to Plaintiffs' addresses of record.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge