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)

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF POST JUDGMENT MOTION UNDER *RULE* 60(b)(4) TO DISMISS THE COURT'S DECEMBER 16, 2011 MEMORANDUM & ORDER FOR LACK OF SINGLE JUDGE DISTRICT COURT SUBJECT-MATTER JURISDICTION

(*)ORAL ARGUMENT REQUESTED

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INTRODUCTION:

On December 6, 2011, Plaintiff Eugene Martin LaVergne paid the filing fee and filed a Verified Complaint[1] with Exhibits, Memorandum of Law, proposed Order to Show Cause and Civil Cover Sheet with the Clerk of the Court for the United States District Court for the District of New Jersey, Trenton Vicinage in the above case of *Eugene Martin LaVergne v. John Bryson, Secretary of Commerce, et als.* Plaintiff upon filing, moved by way of Order to Show Cause for the immediate convening of a Three Judge District Court to decide any and all issues in the case as mandated by 28 *U.S.C.* §2284(a) since this case was, by any objective review of the Complaint itself, on its face clearly an action "... *challenging the constitutionality of the apportionment of congressional districts* ..." within the meaning of 28 *U.S.C.* §2284(a). With Plaintiff having clearly met this initial threshold under §2284(a), the only subject-matter jurisdiction that a single District Court Judge had at this point in the process was to acknowledge that Plaintiff's case was indeed an action "... *challenging the constitutionality of the apportionment of congressional districts* ..." within the meaning of §2284(a) and to in turn ministerally refer the matter to the Chief Judge of the Third Circuit Court of Appeals for the immediate convening of a Three Judge Federal District Court in accordance with the procedures established by Congress in the plainly worded text of 28 *U.S.C.* §2284(b)(1). Due to the nature of Plaintiff's claims that limited ministerial action is the only authority and subject-matter jurisdiction that any one single Article III Federal District Court

[1] The actual named defendants, all sued in their official capacity, were John Bryson, the then Secretary of the United States Department of Commerce; John Grover, the then Director of the United States Census Bureau; Karen l. Haas, Clerk of the United States House of Representatives; John Boehner, the then Speaker of the United States House of Representatives; Joseph Biden, the then President of the United States Senate; and David Ferrieri, the Archivist of the United States.

Judge had over Plaintiff's case even at this early point in the process. Moreover, having factually met the threshold to entitlement to have the case substantively decided by, and only by, a Three Judge Federal District Court, the law was equally clear that even at this early point in the legal process that "... *[a] single judge ... shall not ... enter a judgment on the merits.*" 28 *U.S.C.* §2284(b)(3). This is what Congress statutorily mandated. Otherwise stated, 28 *U.S.C.* §2284(b)(3) is a clear and unambiguous Congressional statutory limit on the subject-matter Jurisdiction of an Article III inferior Court to act as a single Judge District Court. Or as the United States Supreme Court unequivocally stated 4 years later in *Shapiro v. McManus,* 577 *U.S.* ____ (2015), "... *§2284 entitle[d] ... [Plaintiff] ... to make ... [his] ... case before a three-judge district court.*" *Id.*, slip opinion at page 7.

Thereafter in due course the Clerk assigned the case docket number Civil Action No. 2-11-7117(PSG)(LHG) and the case was preliminarily assigned by the Clerk to the Honorable Peter G. Sheridan, U.S.D.J. for him to in turn preliminarily review the case and also the Order to Show Cause and to then ministerally refer the case to the Chief Judge of the Third Circuit to convene a Three Judge Federal District Court to further consider the Complaint and Order to Show Cause. However, that is not what occurred. Rather, what occurred next was action that was *sua sponte* and unilateral action taken by Judge Sheridan not sitting in his Article III capacity as part of - *and one of three votes on* - a Three Judge District Court appointed by the Chief Judge of the Third Circuit, but rather was substantive judicial action taken by Judge Sheridan sitting as a Single District Court Judge,

acting alone, when he DISMISSED the entirety of the case by written MEMORANDUM & ORDER dated December 16, 2011. ***See* "Exhibit A", "Exhibit B" and "Exhibit C" attached to Verification and Declaration of Plaintiff submitted herewith.**

Plaintiff now maintains that the DISMISSAL was entered by Judge Sheridan in the absence of subject-matter jurisdiction to do so and in specific violation on the limits of subject-matter jurisdiction to act as a single Judge District Court imposed by Congress which unambiguously directed that in any case challenging the constitutionality of congressional districts (and this was clearly such a case) that "... *[a] single judge ... shall not ... enter a judgment on the merits.*" 28 *U.S.C.* §2284(b)(3). For these reasons, Plaintiff contends that the December 16, 2011 MEMORANDUM & ORDER are a legal nully as being *void ab initio* as having been entered by a single Judge District Court without subject-matter jurisdiction to do so. Alternatively or cumulatively, Plaintiff maintains that to the extent that Judge Sheridan in 2011 (prior to the United States Supreme Court's decision in *Shapiro v. McManus,* 577 *U.S.* ____ (2015)) had even some limited legal authority to act alone as a single Judge District Court in the District of New Jersey within the Third Circuit and then and there enter a DISMISSAL, the only authority he could possibly have had was to dismiss the case under *RULE* 12(h)(3) for lack of subject-matter jurisdiction. In this regard Plaintiff maintains that the December 16, 2011 MEMORANDUM & ORDER are either **(1)** a legal nully as being *void ab initio* as having been entered without subject-matter jurisdiction to do so; or alternatively or

cumulatively, **(2)** constitute nothing more than a *Rule* 12(h)(3) dismissal for lack of subject-matter jurisdiction.

As Plaintiff points out in detail in his Verification and Declaration submitted herewith in support of the instant motions, he is now also a named Plaintiff (with many others) in a somewhat similar case filed, pending and properly proceeding 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,,* Case No. 1:17-cv-00793 (Three Judge Court). In that Second Case a Three Judge District Court has already been formally convened by May 18, 2017 Order of the Honorable Merrick Garland, C.J., Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, as required by 28 *U.S.C.* §2284. The Three Judge District Court appointed by Chief Judge Garland consists of the Honorable Cornelia T. L. Pillard, C.J., Circuit Judge of the United States Court of Appeals for the District of Columbia (Presiding), and the Honorable Colleen Kollar-Kotelly, U.S.D.J., and the Honorable Randolph Moss, U.S.D.J., both of the United States District Court for the District of Columbia District. ***See* "Exhibit D" attached to Verification and Declaration of Plaintiff submitted herewith.** Next in time, the Clerk issued Summons, and all of the named Federal Defendants and many (if not most) of the State Defendants have been served. Moreover, Plaintiff Eugene Martin LaVergne maintains the historical facts and substantive law are so clear and undisputed that he has already filed a formal motion for Summary Judgment in the Second Case.

On October 20, 2017 the full Three Judge District Court held the initial Scheduling and Case Management Conference in the Second Case telephonically on the record in open Court. At the conclusion of the Scheduling and Case Management Conference the Three Judge District Court decided that there were two classes of procedural motions they were wished to address before addressing the already filed and pending substantive Summary Judgment Motion: First, the Federal Defendants and certain State Defendants expressed a desire to challenge the right of Plaintiff Eugene Martin LaVergne ***only*** to proceed in the Second Case because they believed that they had a colorable argument that the First Case and Judge Sheridan's December 16, 2011 MEMORANDUM & ORDER in the First Case may invoke the doctrine of "collateral estoppel" barring Plaintiff Eugene Martin LaVergne ***only*** from proceeding with all or some of the claims in the Second Case. Second, after that procedural issue as to Plaintiff Eugene Martin LaVergne ***only*** is briefed, argued and decided, the Federal Defendants and State Defendants will next be given opportunity to raise by motion any other preliminary procedural motions (challenging Plaintiffs' Article III standing, justiciability of the claims in the case, etc.). After the two classes of procedural motions are briefed, argued and decided, then the Three Judge District Court will proceed to the substance and consider the already pending Motion for Summary Judgment. In the interim the already filed and pending Summary Judgment Motion will remain on the Public Docket for all to review, but will not be scheduled to actually be heard until further Order of the Three Judge Court after the procedural issues are considered and disposed of.

Regarding the "collateral estoppel" issue as pertains to Plaintiff Eugene Martin LaVergne ***only***, the Court entered an ORDER on October 20, 2017 setting a briefing schedule for such motion, requiring the Federal Defendants and any State Defendants to have any such "collateral estoppel" motions filed on or before November 13, 2017, with Plaintiff Eugene Martin LaVergne ***only*** to respond with his opposition on or before November 27, 2017, with the Federal Defendants and any State Defendants to in turn file any reply on or before December 22, 2017. ***See* "Exhibit E" attached to Verification and Declaration of Plaintiff submitted herewith.**

Plaintiff Eugene Martin LaVergne will be opposing any motion in the Second Case that the Federal Defendants and State Defendants may be imminently file as permitted by the October 20, 2017 Three Court Judge Order on the "collateral estoppels" issue. However, the well settled applicable law clearly and unambiguously holds without exception that as a threshold matter, an Order or Judgment that is "void" may never be the basis of an argument in a later second case to support a "collateral estoppels" argument. The well settled applicable law also clearly and unambiguously holds without exception that an Order or Judgment entered by a Judge without subject-matter jurisdiction to do so is a legal nullity and also can may never be the basis of an argument in a later second case to support a "collateral estoppels" argument. (*see* LEGAL ARGUMENT, *infra.*). Moreover, both procedural law in our the *Court Rules,* and the substantive Federal Common Law, further clearly and unambiguously hold without exception that such an invalid

Order or Judgment (one entered without subject-matter jurisdiction) may be attacked, either collaterally or directly, at any time, even if the attack is brought by a party that earlier affirmatively invoked the jurisdiction of the court, chose the forum, never questioned subject-matter jurisdiction and never raised the issue of lack of subject-matter jurisdiction, even after a verdict or decision adverse to him has been rendered. (*see* LEGAL ARGUMENT, *infra.*). As such, while Plaintiff will be defending the "collateral estoppels" motions in the Second Case and will be bringing a collateral attack in the Second Case by way of Cross-Motion, each and both on the grounds that the December 16, 2011 MEMORANDUM & ORDER is either void *ab initio* and must be declared void and vacated under *Rule* 60(b)(4), or alternatively and cumulatively that the December 16, 2011 MEMORANDUM & ORDER, though not clearly articulated as such, was in fact a dismissal under *Rule* 12(h)(3) for lack of subject-matter jurisdiction, Plaintiff also in this case now brings a direct Post Judgment attack on the validity of the December 16, 2011 MEMORANDUM & ORDER on identical factual and legal grounds.

Plaintiff now moves before the Court pursuant to the authority of *F.R.Civ.P.* 60(b)(4) and *F.R.Civ.P.* 12(h)(3) seeking a Post Judgment Order from Judge Sheridan declaring void and vacating the December 16, 2011 MEMORANDUM & ORDER and correcting or supplanting the Public Docket to properly and specifically reflect that the *sua sponte* and unilateral single Judge District Court Dismissal of the case was improvidently entered without subject-matter jurisdiction and in specific violation of 28 *U.S.C.* §2284(d).

Alternatively or cumulatively, Plaintiff now also moves before the Court pursuant to the authority of *F.R.Civ.P.* 60(b)(4) and *F.R.Civ.P.* 12(h)(3) seeking a Post Judgment Order from Judge Sheridan supplementing and clarifying the December 16, 2011 MEMORANDUM & ORDER to confirm that such *sua sponte* unilateral single Judge District Court DISMISSAL - valid or otherwise - was in any or either event, merely a dismissal for lack of subject-matter jurisdiction under *Rule* 12(h)(3).

LEGAL ARGUMENT:

A STANDARD OF REVIEW ON THIS POST JUDGMENT MOTION:

In this motion Plaintiff specifically moves pursuant to the authority of *F.R.Civ.P.* 60(b)(4) and, to the extent applicable, *F.R.Civ.P.* 12(h)(3) seeking the relief requested. *F.R.Civ.P.* 60(b)(4) provides as follows:

> ***
> (b) *Grounds for Relief from a Final Judgment, Order or Proceeding.* On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> ***
> (4) ***The judgment is void***; ... (Emphasis added).

[*F.R.Civ.P.* 60(b)(4)].

Next, *F.R.Civ.P.* 12(h)(3) provides as follows:

> ***
> (h) *Waiving and Preserving Certain Defenses.*
>
> ***
> (3) *Lack of Subject-Matter Jurisdiction.* If the court determines ***at any time*** that it lacks subject-matter jurisdiction, the court must dismiss the action. (Emphasis added).

[*F.R.Civ.P.* 12(h)(3)].

F.R.Civ.P. 60(b)(4) authorizes the Court to grant relief from a Judgment or Order when the Judgment or Order is "... ***void*** ...", and *F.R.Civ.P.* 12(h)(3) states that if "... ***at any time*** ..." the Court determines that it lacks subject-matter jurisdiction that "... the court ***must*** dismiss the action." *Id.* Additional authority for the Court to grant the relief is found in the Federal Declaratory Judgments Act, codified at 28 *U.S.C.* §2201[2] and 28 *U.S.C.* §2202[3].

B. VOID JUDGMENTS AND A RULE 60(b)(4) MOTION TO VACATE A VOID JUDGMENT:

"[A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final." *United States Aid Funds, Inc. v. Espinosa,* 559 *U.S.* 260, 270 (2010); *see also United States v. One Toshiba Color Television,* 213 *F.3d* 147, 157 (3d Cir. 2000); *In re: Raphael,* 238 *B.R.* 69 (D.N.J. 1999). The Third Circuit has specifically held that "... [a] judgment may indeed be void, and therefore subject to relief under 60(b)(4), if the court that rendered it lacked jurisdiction over the subject-matter of the parties or 'entered a decree which is not within the power granted to it by law.' " *Marshall v. Board of*

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[2] 28 *U.S.C.* §2201 provides in relevant part as follows:

> In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

[3] 28 *U.S.C.* §2202 provides as follows:

> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

Education of Bergenfield, New Jersey, 575 *F.2d* 417, 422 (3d Cir. 1978) (citing in part to *United States v. Walker,* 109 *U.S.* 258, 265-267 (1883)). Therefore, when a Judgment or Order is "void" because the Court that entered the Judgment or Order did so in the absence of subject-matter jurisdiction, on a party's motion to vacate under *F.R.Civ.P.* 60(b)(4) the Court is required to unconditionally and immediately vacate the Judgment or Order. This is so notwithstanding the fact that subsection (b) of the cited *RULE* speaks in terms of "... the court ***may*** ...", which in turn indicates that there is a level of retained discretion for the Court to exercise when considering such a motion. However, under subsection (b)(4) there is no discretion whatsoever because a void judgment is a legal nullity from the inception and remains so. Indeed,

> ... no passage of time can transmute a nullity into a binding judgment, and hence there is no time limit for such a motion. It is true that the text of the rule dictates that the motion will be made within "a reasonable time.' However, ... there are no time limits with regards to a challenge to a void judgment because of its status as a nullity ...."

[*United States v. One Toshiba Color Television, supra.,* 213 *F.3d* 147, 157 (3d Cir. 2000)].

The only question on a Post Judgment Motion to vacate under *F.R.Civ.P.* 60(b)(4) is whether the Judgment or Order is void. If the answer is yes, the Judgment or Order must be vacated: There are NO EXCEPTIONS. *See Id.* and *Ibid.* Indeed, the party bringing the *F.R.Civ.P.* 60(b)(4) motion to vacate may be the same party who originally invoked the jurisdiction of the Court in the first instance, and indeed such party may do so even years after a full trial on the merits, oe ever years later. . *American Fire and Casualty Co. v. Finn,* 341 *U.S.* 6, 17-18 (1951);

Joyce v. United States, 474 F.2d 215 (3d Cir. 1973); *Television Reception Corporation v. Dunbar,* 426 *F.2d* 174 (6th Cir. 1970); *On Track Transp., Inc. v. Lakeside Warehouse & Trucking, Inc.,* 245 *F.R.D.* 213 (E.D. Pa. 2007); *Lackawanna Refuse Removal, Inc. v. Proctor & Gamble Paper Products Co.,* 86 F.R.D. 330 (M.D. Pa. 1979). A Federal Court, when challenged, is always required to examine and state its own basis of legal authority to exercise subject-matter jurisdiction over a case. *Esola v. Groomes,* 520 *F.2d* 830 (3d. Cir. 1975). Moreover, Federal Courts have an independent affirmative obligation to determine whether subject-matter jurisdiction exists even in the absence of a challenge from any party. *Ruhrgas AG v. Marathon Oil Company,* 526 *U.S.* 574, 583 (1999). When at any time a Court determines or realizes that it lacks subject-matter jurisdiction, it must dismiss the case in its entirety. *Ruhrgas AG v. Marathon Oil Company, supra; Auster v. Ghana Airways, Ltd.,* 514 *F.3d* 44, 48 (D.C. Cir. 2008); *United Transp. Serv. Employees ex rel Washington v. National Mediation Board,* 179 *F.2d* 466, (D.C. Cir. 1949); and *see* also 10A Charles Allen Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure sec.* 2713 (3d Edition 1998).

POINT I:

JUDGE SHERIDAN ACTED WITHOUT SUBJECT-MATTER JURISDICTION AND VIOLATED THE EXPRESS PROVISIONS OF 28 *U.S.C.* §2284(d) WHEN HE SUMMARILY DISMISSED PLAINTIFF'S CASE ON DECEMBER 16, 2011 AND AS SUCH THE MEMORANDUM & OIRDER WERE AND ARE *VOID AB INITIO* AND MUST NOW BE DISMISSED:

A. SUBJECT-MATTER JURISDICTION IN THE ARTICLE III INFERIOR FEDERAL COURTS GENERALLY:

The concept of "subject-matter jurisdiction" refers to the power of a particular Court to hear and decide a particular type of case. In this regard, the *United States Constitution's Article* III, §1 states that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. ..." *Id.*[4] In furtherance of the power of Congress to create and establish inferior Federal Courts just alluded to, the *United States Constitution's Article* I, §8 specifically provides authorization to carry out such duties by stating in part that "The Congress shall have Power ... To constitute Tribunals inferior to the supreme Court. ..." *Id.* To be sure these are pretty basic and elementary concepts. In this regard, the United States Supreme Court has long recognized, without challenge, that the power of Congress to create inferior Article III Federal Courts is both specified and necessarily implied. As was observed as far back as 1812:

> The powers of the general Government are made up of concessions from the several states – whatever is not expressly given to the former, the later expressly reserve. The judicial power of the United States is a constituent part of these concessions – that power is to be exercised by the Courts organized for the purpose, and brought into existence by an effort of the legislative power of the Union. Of all the Courts which the United States may, under their general powers, constitute, one only, the Supreme Court, possesses jurisdiction derived immediately from the constitution, and of which the legislative power cannot deprive it. ***All other Courts created by the general Government possess no jurisdiction but what is given then by the power that creates them, and can be vested with none but what the power ceded to the general Government will authorize them to confer.*** (Emphasis added).

[*United States v. Hudson & Goodwin,* 11 *U.S.* (7 *Cranch*) 32, 33 (1812) (Johnson, J.)].

[4] For purposes of this Brief Plaintiff will cite to the literal text of the United States Constitution as found in the most recent edition of the *United States Constitution Annotated*, published by the United States Government Printing Office.

Reiterating the same principles a quarter century later, the Supreme Court again noted that "... [t]he power of Congress to make ... provision for carrying into execution the judicial power ... has never been, and we think cannot be questioned." *State of Rhode Island v. Commonwealth of Massachusetts*, 37 *U.S.* (12 *Peters*) 657, 722 (1838). These same principles remain true and are unquestioned to this day. *See Hertz Corporation v. Friend,* 599 *U.S.* 77 (2010) (The Constitution "... authorizes congress ... to determine the scope of federal courts' jurisdiction within constitutional limits."); *Bowles v. Russell,* 551 *U.S.* 205, 212 (2007) (Although the Constitution defines the maximum extent of judicial power, the Constitution gives Congress the authority, "[w]ithin constitutional bounds, [to] decide[] what cases the federal courts have jurisdiction to consider.").

Today the inferior Article III United States District Courts are and remain courts of specifically limited subject-matter jurisdiction that are empowered, when permitted by a granted authority from Congress, to exercise an amalgamation of exclusive original or concurrent original subject-matter jurisdiction over a variety of topics. The various authorizing statutes themselves define the parameters of an Article III Federal District Court's subject-matter jurisdiction and lawful authority to act, whether that authority conferred by Congress be to only take action in consort with two other Article III Judges sitting as a designated Three Judge District Court to hear certain specified types of cases[5], or when the authority

[5] The present version of the general "Federal Three Court Judge Act", most recently revised in 1976, is now codified at 28 *U.S.C.* §2284. IN addition to the ***general*** "Federal Three Court Judge Act", today Congress also still ***specifically*** directs that Article III subject-matter jurisdiction may only be exercised by a Three Judge Federal District Court regarding certain select enumerated types of legal claims. *See e.g.*, including but not limited to, suits brought under the "Voting Rights Act of

conferred by Congress is to a single Judge District Court to hear other specified types of cases.[6]

B. THE FIRST "FEDERAL THREE COURT JUDGE ACT" AND THE SUBJECT-MATTER JURISDICTION OF THREE JUDGE FEDERAL DISTRICT COURTS:

In *Ex Parte Young,* 209 *U.S.* 123 (1908), the United States Supreme Court ruled that it was proper for a single Federal District Court Judge, acting alone, to exercise subject-matter jurisdiction over a case and to enter an injunction enjoining state officials from continuing to enforce unconstitutional state statutes. There was immediate political outcry in the States that now a single Federal District Court Judge, acting alone, was recognized to have the unilaterally power to act alone and declare a state statute - a statute already passed into law by that State's full Legislature and Governor - unconstitutional and to then also unilaterally halt the implementation of that state statute through use of the injunction powers. While such a notion is a generally accepted principle - and indeed is once again the law - today, in 1908 this was a extraordinarily radical and controversial concept.

In direct response to the continuing outcry in the States as a result of the *Ex Parte Young* decision, Congress and the President thereafter passed "The Three Judge Court Act of June 18, 1910", 36 *Stat.* 577 (1910). This Act specifically

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1965" pursuant to 42 *U.S.C.* §1971 (action by the U.S. for preventative relief with respect to a pattern or practice of discrimination in voting rights"; 42 *U.S.C.* §1973b(a) (action by state or political subdivision for declaratory judgment regarding tests or devices to determine eligibility to vote); 42 *U.S.C.* §1973c (action by Stat or political subdivision for declaratory judgment regarding voting qualifications and procedures); 42 *U.S.C.* §1973bb (action by U.S. seeking injunction against state denying right under 26th Amendment); 42 *U.S.C.* §1973h(c) (actions for relief against enforcement of poll tax requirement).

6 *See e.g.* 28 *U.S.C.* §1330, 28 *U.S.C.* §1331, 28 *U.S.C.* §1332, 28 *U.S.C.* §1333, 28 *U.S.C.* §1334, 28 *U.S.C.* §1335, 28 *U.S.C.* §1336, 28 *U.S.C.* §1337, 28 *U.S.C.* §1338, 28 *U.S.C.* §1339, 28 *U.S.C.* §1340, 28 *U.S.C.* §1341, 28 *U.S.C.* §1342, 28 *U.S.C.* §1343, 28 *U.S.C.* §1344, 28 *U.S.C.* §1345, 28 *U.S.C.* §1346, 28 *U.S.C.* §1347, 28 *U.S.C.* §1348, 28 *U.S.C.* §1349, 28 *U.S.C.* §1350, 28 *U.S.C.* §1351, 28 *U.S.C.* §1352, 28 *U.S.C.* §1353, 28 *U.S.C.* §1354, 28 *U.S.C.* §1355, 28 *U.S.C.* §1356, 28 *U.S.C.* §1357, 28 *U.S.C.* §1358, 28 *U.S.C.* §1359, 28 *U.S.C.* §1360.

prohibited a single Federal District Court Judge from acting alone and mandated that in such cases where injunctive relief was sought against a state official that only a Three Judge Federal District Court has subject-matter jurisdiction to enter injunctive relief. The Act also provided for direct appeal from any decision of the Three Judge Federal District Court directly o the United States Supreme Court.

Over the next 60 years - and apparent to the dismay and consternation of the already busy and overworked Article III inferior Courts - Congress greatly increased the number and types of cases where Article III Courts were only granted authority and subject-matter jurisdiction to hear a case when heard and decided by a full Three Judge Federal District Court. The most recent but still pre-1976 version of the Three Judge District Court laws were enacted in 1970 and were thereafter found and codified at 28 *U.S.C.* §2281 (1970), 28 *U.S.C.* §2282 (1970), and 28 *U.S.C.* §2284 (1970).

In 1972 in his annual public report to the American Bar Association, then United States Supreme Court Chief Justice Warren E. Burger, publically expressed his opinion that "... [w]e should totally eliminate the three-judge district courts that now disrupt district and circuit judges' work." *See* Warrant E. Burger, *State of the Federal Judiciary - 1972,* 58 *A.B.A.J.* 1049, 1053 (1972).

C. THE *GOOSBY v. OSSER* EXCEPTION PERMITTING SINGLE JUDGE DISTRICT COURT ACTION IN A THREE JUDGE COURT CASE TO PRELIMINARILY DETERMINE FEDERAL JURISDICTION:

The next year the Supreme Court decided *Goosby v. Osser,* 409 *U.S.* 512 (1973). *Goosby v. Osser* involved a challenge brought as a proposed class action

against Philadelphia County, Pennsylvania on behalf of persons who were being detained in the County Jail on state law charges who were unable to make bail and therefore remained incarcerated pending and awaiting trial, and also on behalf of persons who were being detained pre-trial in the County Jail on state law charges that were "non-bailable" charges. The Pennsylvania state statutes operated to specifically deny such persons access to ballots by mail or other means to vote even though they had been convicted of nothing yet and their civil rights remained intact. Plaintiffs there sought the remedy of injunctive relief, and upon filing the Complaint claimed that they were entitled to have the case decided by a Three Judge District Court under the authority of (now repealed) 28 *U.S.C.* §2281 (1970)[7] which at the time required that the constitutionality of any state statute and any injunction entered as the result of such invalid and unconstitutional statute could only be entered by a Three Judge District Court.

Contrary to the statute, in *Goosby v. Osser* a single Federal District Court Judge unilaterally determined that it was not necessary to convene a Three Judge Court as the claims were viewed as "... *wholly insubstantial* ...".

On appeal, the Supreme Court agreed as a general principle that a Three Judge Court need not be convened when the claims in a case brought under (now

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[7] Then 28 *U.S.C.* §2281 (1970), later repealed by Congress in 1976, at that time provided as follows:

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of an officer or such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefore is heard and determined by a district court of three judges under section 2284 of this title.

[28 *U.S.C.* §2281 (1970) In addition, then 28 *U.S.C.* §2282 (1970), also later repealed by Congress in 1976, was virtually identical but applied to mandating a Three Judge District Court only could enter injunctive relief regarding acts of Congress.]

repealed) 28 *U.S.C.* §2281 (1970) challenging the Constitutionality of a state statute are "... *wholly insubstantial* ...". However, this was merely a one District Court Judge ruling on the subject-matter jurisdiction to hear a case, as Federal Counts are not empowered to hear wholly insubstantial federal questions. However, the Supreme Court then went further on to describe just how minimal a showing was actually required to establish "... *substantiality* ..." of a Federal claim under (now repealed) 28 *U.S.C.* §2281 (1970) mandating the convening of a Three Judge District Court to decide all aspects of the case challenging the constitutionality of a State law:

> "[I]nsubstantiality" for this purpose has been equated with such concepts as "essentially fictitious," "wholly insubstantial," "obviously frivolous," and "obviously without merit." The limiting words "wholly" and "obviously" have cogent legal significance. In the context of the effect of prior decisions upon the sustainability of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial. ... ***A claim is insubstantial only if its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.*** (Emphasis added).

[*Goosby v. Osser, supra* 409 *U.S.* at 518 (citations and some internal quotations omitted); *see also LaRouche v. Fowler,* 152 *F.3d* 974, 982 (D.C. Cir. 1998)].

D. THE 1976 REPEALS AND AMENDMENTS AND REVISIONS TO THE FEDERAL THREE COURT JUDGE ACT RESULTS IN THE PRESENT ONE STATUTE VERSION OF THE GENERAL "FEDERAL THREE COURT JUDGE ACT" CODIFIED AT 28 *U.S.C.* §2284:

Three years after the Supreme Court's decision in *Goosby v. Osser*, in 1976 Congress finally formally considered and legislatively addressed the Chief Justice's continuing recommendation to eliminate the use of Three Judge District

Courts. Ultimately Congress took a middle ground, and rather than totally eliminate and abolish use of Three Judge District Courts, legislation was passed severely cutting back use of Three Judge Courts in all but a very few specific areas that Congress considered particularly important and worthy of initial Three Judge District Court review. Firstly, Congress repealed in full 28 *U.S.C.* §2281 (1970) (the Three Judge District Court mandated to hear all Constitutional challenges to state statutes at issue in *Goosby v. Osser*) and also repealed in full 28 *U.S.C.* §2282 (1970) (Three Judge District Court mandated to hear all Constitutional challenges to Federal statutes), and made modest (and for our purposes here, irrelevant) changes to 28 *U.S.C.* §2284. However, while the class of cases and claims that were subject only to Three Judge District Court review was severely reduced, nothing was changed regarding Federal Court subject-matter jurisdiction in the class of cases where Three Judge District Court review was still specifically retained and mandated. *See* Act of August 12, 1976, *Pub.L.* No. 94-381, 90 *Stat.* 1119, now codified at 28 *U.S.C.* §2284 (1976). Moreover, the 1976 change in the law

> "... clarified that an individual member of a three-judge court has no more power to decide a case ***on the merits*** than a single judge has under *Goosby*: neither may enter a judgment ***on the merits*** of a claim requiring action by a three judge court, *ie.* a claim that is not "wholly insubstantial" or "obviously frivolous" [as those terms are unambiguously defined in *Goosby*]. (Emphasis added).

[*LaRouche v. Fowler,* 152 *F.3d* 974, 982-983 (D.C. Cir. 1998)].

E. IN *SHAPIRO v. McMANUS* THE SUPREME COURT LATER AGAIN CLARRIFIES THAT A DISMISSAL BY A SINGLE JUDGE IN A THREE JUDGE COURT CASE BASED ON THE LIMITED AUTHORITY OF THE *GOOSBY v. OSSER* EXCEPTION CAN ONLY BE A DISMISSAL FOR LACK OF SUBJECT-MATTER JURISDICTION UNDER *RULE* 12(h)(3) AND NOT A DISMISSAL ON THE MERITS UNDER *RULE* 12(B)(6):

After the 1976 changes in the law, there was small degree of confusion as to what authority – if indeed any – a single Judge District Court may have had over a case under *Goosby v. Osser* when the case fell within the mandates of a Three Judge District Court as required by 28 *U.S.C.* §2284(a). The Supreme Court stated as follows:

> In *Goosby v. Osser,* 409 *U.S.* 512 (1973), we stated that the filing of a "constitutionally insubstantial" claim did not trigger the three-judge-court requirement under the pre-1976 statutory regime. *Id.* at 518. *Goosby* rested not on an interpretation of statutory text, but on the familiar proposition that "[i]n the absence of diversity of citizenship, it is essential to the jurisdiction that a *substantial* federal question should be presented." *Ex parte Poresky,* 290 *U.S.* 30, 31 (1933) (*per curium*) (emphasis added). Absent a substantial federal question, even a single-judge district court lacks jurisdiction, and "[a] three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justifiable in the federal courts." *Gonzalez v. Automatic Employees Credit Union,* 419 *U.S.* 90, 100 (1974).

[*Shapiro v. McManus,* 577 *U.S.* ___ (2015) (slip opinion at pages 5-6)].

F. JUDGE SHERIDAN'S IMPROPER EXERCISE OF SINGLE JUDGE SUBJECT-MATTER JURISDICTION IN WHAT WAS CLEARLY A THREE JUDGE DISTRICT COURT CASE UNDER 28 *U.S.C.* §2284:

1. JUDGE SHERIDAN HIMSELF AGREES THAT THE PLAINTIFF'S COMPLAINT FACIALLY FALLS WITIN THE SCOPE OF 28 *U.S.C.* §2284(a):

In the context of the state of the law just recited, in the First Case in 2011, Federal District Court Judge Sheridan, acting alone, *sua sponte* and unilaterally took action sitting as a single Judge District Court. More specifically, after preliminarily reviewing Plaintiff's filing, Judge Sheridan described his impression of the nature of the case, in his own words, in his December 16, 2011 MEMORANDUM as follows:

> ***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 the convention of a three-judge panel to hear certain actions challenging the apportionment of congressional districts. ...
>
> * * *
>
> ... Plaintiff's core contentions involve the constitutionality of an eight-two year old federal statute and the potential enactment of an amendment to the U.S. Constitution two hundred and nineteen years ago. (Emphasis added)

[*See* copy of December 16, 2011 Memorandum & Order at "Exhibit A" attached to Verification and Declaration of Plaintiff submitted herewith at pages 1-2].

Judge Sheridan himself observed that "... *Plaintiff's underlying Complaint states a claim ... [that] the current system of apportioning Representatives for the United States House of Representatives is unconstitutional ...*" which at that point, under 28 *U.S.C.* §2284(a) limited Judge Sheridan's Single District Judge subject-matter jurisdiction and legal authority to act unilaterally to nothing more than taking the further now ministerial action of referring the case to the Chief Judge of

the Third Circuit and to wait for the convening of a Three Judge Court in accordance with procedures established by Congress in 28 *U.S.C.* §2284(b). Judge Sheridan failed to do that.

Rather, before service on any Defendants was effected, before any Defendant entered an appearance, before any of the Defendants were even aware of the pendency of the lawsuit, and without ever affording Plaintiff any advance notice or opportunity to be heard beyond the initially filed papers, and with no proceeding in open Court ever taking place, on December 16, 2016, Judge Sheridan, acting unilaterally and alone, *sua sponte* issued a MEMORANDUM & ORDER ruling on the papers. And before doing so, and at no time, did Judge Sheridan ever request that the Chief Judge of the Third Circuit convene a Three Judge Court to participate in the decision. Nor did the MEMORANDUM & ORDER cite to any source of legal authority that purported to confer "subject matter jurisdiction" on Judge Sheridan to act unilaterally and alone as a single District Court Judge at this point in the process on the claims presented. Nor did the MEMORANDUM & ORDER even so much as cite to what subsection of (presumably) *RULE* 12 Judge Sheridan was relying upon as the basis of his dismissal, nor did the ORDER state that the DISMISSAL was with or without prejudice. Nor did Judge Sheridan afford Plaintiff an opportunity to file a more specific Amended Complaint. Rather, after making a few brief perfunctory superficial (and factually unsupportable and historically incorrect) written statements and observations in the MEMORANDUM noted, the Judge Sheridan entered an Order stating as follows:

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

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

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

/s/ Peter G. Sheridan
PETER G. SHERIDAN, U.S.D.J.

December 16, 2011

[*See* copy of December 16, 2011 Memorandum & Order at "Exhibit A" attached to Verification and Declaration of Plaintiff submitted herewith at pages 3-4].

A series of unsuccessful appeals followed.

Notwithstanding any subsequent appeals, the fact remains that at its inception the December 16, 2016 MEMORANDUM & ORDER, entered *sua sponte* and unilaterally by Judge Sheridan in his Article III capacity as a single District Court Judge, was entered without jurisdiction over the subject-matter to enter a substantive dismissal and was entered in clear violation of and in excess of the specifically defined limits of his jurisdiction to act as declared by Congress in 28 *U.S.C.* §2284(b)(3). *See also Shapiro v. McManus,* 577 *U.S.* ___ (2015). Therefore, the December 16, 2016 MEMORANDUM & ORDER must be declared as having been improvidently entered in violation of 28 *U.S.C.* §2284(b)(3), and declared as void *ab initio* pursuant to *F.R.Civ.P.* 60(b)(4) and dismissed from the Public Docket pursuant to *F.R.Civ.P.* 12(b)(1) for lack jurisdiction over the subject-matter. This is

particularly compelling and required to clarify matters and to prevent an injustice and to make clear that the Court in this First Case acted without subject-matter jurisdiction, rendering the December 16, 2011 MEMORANDUM & ORDER void, thereby making it clear in the Second Case that "collateral estoppel" doctrine simply does not and can not apply.[8]

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[8] The "Collateral Estoppel" may never ne employed using a void judgment, so clarification here in the First Case will bar the efforts of the Defendants to seek to comply the doctrine in the Second Case.

> Under collateral estoppel, once an issue is actually and necessarily determined ***by a court of competent jurisdiction,*** that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. (emphasis added)

[*Montana v. United States*, 440 *U.S.* 147, 153 (1979); *Parklane Hosiery Co. v. Shore*, 439 *U.S.* 322, 326, note 5 (1979); *see also Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 *U.S.* 313 (1971)].

The threshold requirement for possible applicability of the "collateral estoppel" doctrine is the presence in the first instance of a Judgment or Order issued by a "... court of competent jurisdiction ...." This is a universal, base and elementary requirement in all Federal and State Courts when considering whether to apply the "collateral estoppel" doctrine. *Id.; see also Restatement of the Law Second – Judgments*, published by the American Law Institute, Philadelphia, Pennsylvania (1982) ("hereafter simply *"Restatement of Judgments – Second"*), at Volume I, sec.17 ("A ***valid*** and final personal judgment is conclusive between the parties ..." (emphasis added)). Therefore, a specific bright line exception barring even so much as consideration of application of the "collateral estoppel" doctrine arises when the Judgment or Order at issue is a legal nullity and is not valid. The rules of preclusion, including "collateral estoppel", are all premised on the assumption of the rendition of a ***valid*** Judgment or Order having being entered in the earlier case by a Judge and Court with authority to do so. Invalid or void Judgments or Orders don't preclude anything, and indeed anything that may operate to make a Judgment or Order invalid or void also operates equally as an exception to the applicability all rules and doctrines of preclusion and bar. *Demp v. Emerson Enterprises*, 504 *F.Supp.* 281 (E.D. Pa. 1980) (The various doctrines of Preclusion and Bar are not applicable to void judgments.). As pointed out earlier, a Judgment or Order entered by a Federal District Court lacking subject-matter jurisdiction is an invalid and void judgment. *Id., see also American Fire and Casualty Co. v. Finn*, 341 *U.S.* 6 (1951); *United States v. Walker*, 109 *U.S.* 258 (1883); *United States v. One Toshiba Color Television, supra.*, 213 *F.3d* 147 (3d Cir. 2000); *Education of Bergenfield, New Jersey*, 575 *F.2d* 417 (3d Cir. 1978); *Joyce v. United States*, 474 F.2d 215 (3d Cir. 1973); *Television Reception Corporation v. Dunbar*, 426 *F.2d* 174 (6th Cir. 1970); *On Track Transp., Inc. v. Lakeside Warehouse & Trucking, Inc.*, 245 *F.R.D.* 213 (E.D. Pa. 2007); *Lackawanna Refuse Removal, Inc. v. Proctor & Gamble Paper Products Co.*, 86 F.R.D. 330 (M.D. Pa. 1979); Capehart-Creager Enterprises, Inc. v. O'Hara and Kendall Aviation, 543 *F.Supp.* 259 (D.C. Ark. 1982). Therefore, if the Judgment or Order is invalid or void, then as a matter of law the doctrine of collateral estoppel may never be applied. *Montana v. United States*, 440 *U.S.* 147 (1979); *Parklane Hosiery Co. v. Shore*, 439 *U.S.* 322 (1979); *see also Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 *U.S.* 313 (1971). Explained perhaps somewhat more simply, ...

> ...[a]s applied in the United States, the traditional theory has a logical but simplistic appeal. Both federal; and state courts are limited in their subject matter jurisdiction by constitutions and legislation. Courts that act beyond those constraints act without power; judgments of courts lacking subject matter jurisdiction are void – not deserving of respect by other judicial bodies or by the litigants. This is so even if the litigants want the court to exercise jurisdiction; parties cannot confer power upon a court if the legislature or constitution has denied it power. Thus, the parties could collaterally attack a judgment at any time.

[*See* "Collateral Attack on Subject Matter Jurisdiction: A Critique of the *Restatement (SECOND) of Judgments*", BY Karen Nelson Moore, 66 *Cornell L. Rev.* 534, 537 (1981)].

POINT II:

ALTERNATIVDELY AND CUMULATIVELY, JUDGE SHERIDAN'S DECEMBER 16, 2011 DISMISSAL OF PLAINTIFF'S CASE WAS UNDER THE *GOOSBY v. OSSER* EXCEPTION AND THEREFORE WAS A DISMISSAL FOR LACK OF SUBJECT-MATTER JURISDICTION UNDER *RULE* 12(h)(3) AND THE PUBLIC DOCKET MUST BE CLARRIFIED TO STATE THIS:

A. THE SUPREME COURT'S DECSION IN *GOOSBY v. OSSER,* AS LATER CLARRIFIED IN SHAPIRO V. McMANUS, MAKES IT CLEAR THAT WHEN A CASE FALLS WITHIN THE PURVIEW OF 28 *U.S.C.* §2284 MANDATING A THREE JUDGE DISTRICT COURT, THE ONLY POSSIBLE VALID SINGLE DISTRICT JUDGE COURT ACTION IS ONE FOR LACK OF SUBJECT MATTER JURISDICTION WHICH IS A DISMISSAL UNDER *RULE* 12(h)(3):

In Supreme Court's 1973 decision in *Goosby v. Osser* the Supreme Court held that the pre-1976 version of the Three Judge Court Act "... does not require the convening of a three-judge court when the [claim] is insubstantial." *Goosby v. Osser,* 409 *U.S. at* 518. A claim is insubstantial "for this purpose" if it is "obviously frivolous," " ' essentially fictitious, ' " or "inescapably *** foreclose[d]" by existing Supreme Court precedents.

> *Goosby* rested not on an interpretation of statutory text, but on the familiar proposition that "[i]n the absence of diversity of citizenship, it is essential to the jurisdiction that a *substantial* federal question should be presented." *Ex parte Poresky,* 290 *U.S.* 30, 31 (1933) (*per curium*) (emphasis added). Absent a substantial federal question, even a single-judge district court lacks jurisdiction, and "[a] three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justifiable in the federal courts." *Gonzalez v. Automatic Employees Credit Union,* 419 *U.S.* 90, 100 (1974).

[*Shapiro v. McManus,* 577 *U.S.* ___ (2015) (slip opinion at pages 5-6)].

Otherwise stated, the only single Judge District Court dismissal permitted under a limited so called *Goosby* exception to exclusive Three Judge District Court subject-matter jurisdiction was a dismissal for lack of jurisdiction over the subject matter, which is a *Rule* 12(h)(3) jurisdictional dismissal. *See also LaRouche v. Fowler,* 152 *F.3d* 974, 982 (D.C. Cir. 1998).

B. THE CLEAR INAPPLICABILITY OF *RULE* 12(b)(6) TO THE DECEMBER 16, 2011 MEMORANDUM & ORDER DISMISSING THE CASE:

While the actual specific grounds for Judge Sheridan's single Judge District Court dismissal of this case, and what section under *RULE* 12 he was relying upon on December 11, 2016, were never specifically stated and made clear. As such, and as noted, by way of alternate or cumulative relief, Plaintiff is asking Judge Sheridan to now to clarify his ruling to explain his grant of authority to have entered any dismissal other than one under *Rule* 12(h)(3).

Since the Supreme Court's 2015 *Shapiro* decision, any "claimed ambiguity" that existed in the law prior to 2015 (which time frame includes 2011 when this first case was dismissed by Judge Sheridan acting alone) on the limits of single Judge District Court subject-matter jurisdiction in a Three Judge Court District Case has now certainly been clarified and settled. The only single Judge District Court Order of Dismissal that Judge Sheridan had subject-matter to enter, even in 2011, was a limited dismissal as per *Goosby* for lack of subject-matter jurisdiction under *Rule* 12(h)(3), and not under *Rule* 12(b)(6). While such a decision then was

historically wrong and today would still be historically wrong[9], such action clarifies Judge Sheridan's subject-matter jurisdiction well after the fact and lets his historically wrong decision stand, but in doing so does no violence in the Second Case as his historically wrong decision will have no "collateral estoppel" effect. *See* footnote 8, *supra.* Therefore, at the least Judge Sheridan must now clarify that his Dismissal pursuant to his December 16, 2011 MEMORANDUM & ORDER was intended to be, or could only have been, a *Rule* 12(h)(3) dismissal for lack of subject-matter jurisdiction as that was – and is – the only possible subject-matter

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[9] There is no gracious way of pointing out how historically wrong Judge Sheridan was. But oddly in this instance his wrong decision may stand and still have no prejudicial effect on Plaintiff in the Second Case. Note the following regarding Historical accuracy:

- Scholars who have since reviewed the information in and contents of the 2011 PACER® Docket in this case after the December 11, 2016 DISMISSAL all without exception universally agree that Plaintiff's claims have substantial constitutional merit and are all historically factually and legally correct in all respects. To quote but one, an article from Sean Trende in the University of Virginia's *Sabato's Crystal Ball,* written specifically regarding LaVergne's information in this case as taken off of PACER® and reviewed in detail, and after a thorough and objective and independent review, Trende observes that now ...

  > ..."most agree that there's a scrivener's error in the final line..." and also that Article the First "... should technically be part of the Constitution: It was ratified by the requisite number of states in June 1792 ...".

  [*See* "It's Time to Increase the Size of the House", by Sean Trende, Senior Columnist, *Sabato's Crystal Ball,* published by University of Virginia Center for Politics, Richmond, Virginia (March 6, 2014)].

- Plaintiff's commercially published book, *How "Less" is "More": The Story of the Real First Amendment to the United States Constitution,* by Eugene Martin LaVergne, published by First Amendment Press, New York, New York (2016) has now been published. This comprehensive 600 page book with thousands of detailed endnotes, since nominated for consideration for the Pulitzer Prize ®, meticulously details and discusses the relevant historical books, documents and other history to conclusively demonstrate the factual and legal truth of the factual and legal claims in this First Case also made now in the Second Case.

- In the Second Case, as required by existing pre-2011 D.C. Circuit precedent in *LaRouche v. Fowler* and by later 2015 Supreme Court Precedent in *Shapiro v. McManus,* the Honorable Katherine Kollar-Kotelly, U.S.D.J. of the District of Columbia District Court, reviewed the claims in the Second Case immediately referred the Second Case to D.C. Circuit Chief Judge the Honorable Merrick Garland, C.J. pursuant to 28 *U.S.C.* §2284(b) for Judge Garland to convene a Three Judge Court;

- In the Second Case, D.C. Circuit Chief Judge the Honorable Merrick Garland, C.J., in turn, issued an Order on May 18, 2017, formally convening a Three Judge District Court to hear the Second Case which case is now proceeding in due course;

- In the Second Case, Plaintiff Eugene Martin LaVergne has already moved for an Order granting Summary Judgment in his favor, which motion viewable on the Public Docket and PACER®, and which substantive motion remains pending while certain procedural motions are addressed first;

- At present in the Second Case, numerous individuals and groups are preparing and filing formal motions to Intervene and / or to appear as *Amicus.*

jurisdiction he could ever have exercised as a single Judge District Court in this case. And he must correct the Public Docket in this case accordingly.

CONCLUSION:

For the foregoing reasons and authorities cited in support thereof, it is respectfully requested that the Court grant the relief requested in this Post Judgment Motion.

Respectfully submitted,

EUGENE MARTIN LaVERGNE
PLAINTIFF *PRO SE*