IN THE UNITED STATES DISTRICT COURT

EASTERN MISSOURI

PAUL BERRY III,

Division: Eastern Division

Plaintiff,

v.

Case Number: 4:26-CV-01419 JAR

DENNY HOSKINS,
in his official capacity as
Missouri Secretary of State, et al.,

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

Defendants.

Plaintiff Berry's Order to Show Cause Response

HERE COMES, Plaintiff Paul Berry III with his response to the Court's Order to Show Cause ("Show Cause Order") issued on September 4, 2026, directed to the Plaintiff Berry and the underlying Complaint, to which, Plaintiff Berry's instant response to the Court is filed under objection and protest regarding the Court's statutory authority and jurisdiction, but as commanded by the instant Show Cause Order, Plaintiff Berry responds to the Court's Show Cause Order , as follows:

Order to Show Cause Response Summary

This Court commands Plaintiff Berry to show cause in the underlying matter, as follows:

> "IT IS HEREBY ORDERED that Plaintiff Paul Berry III must show cause in writing no later than 12:00 p.m. CT on September 7, 2026 as to why his requests to convene a three-judge panel and obtain the equitable relief he seeks should not be denied in light of the procedural impossibility of complying with 28 U.S.C. § 2284(b)(2)."

This Court sua sponte by its Show Cause Order issued less than three (3) hours after the underlying Complaint was filed before the Court seeks to litigate against the Plaintiff Berry a summary dismissal of the Complaint by means of a show cause action initiated by the Court under the Court's statutory duties pursuant to 28 U.S.C. § 2284(b)(1), which provides the district judge may review the Complaint's request to convene a three-judge court limited to ensuring the "constitutional insubstantiality" of the Complaint pursuant to 28 U.S.C. § 2284(b)(1).

Plaintiff Berry takes notice that a similar current court case filed on the exact same day as the Complaint addressing the identical Missouri congressional map and election deadlines in question was not levied a show cause order against such Federal court congressional litigants in the Eastern District of Missouri Federal Court.

Plaintiff charges the Court is both without legal authority or jurisdiction to issue any summary judgment against the Complaint as a single-judge court because any action or final judgment by such a single-judge District Court is required to be reviewable by the three-judge District Court demanded by Plaintiff Berry and the Complaint as a matter of statutory right.

The Court's judgment that injunctive relief is either untimely or impossible prior to actually reviewing any such injunctive action seeking equitable relief is premature by the Court. Further, the relief that may be provided by the Complaint survives in a different form in the event Plaintiff Berry's congressional map judicial review is not applicable to the 2026 Missouri

General election.

The Court's instant Show Cause Order specifically prohibits Plaintiff Berry from seeking relief before the Court challenging the Chief District Judge's removal of the original District Judge over the underlying congressional map Complaint and the appointment of Judge Ross as the District Judge, judicial requisition in the underlying matter due to Judge Ross's beyond familiarity with the litigant and based upon clear statutory judicial procedural grounds, transfer of the underlying matter to the United States Supreme Court by this Court, request for discovery, hearing and pleading orders, request for a summons issued in the underlying matter to the State of Missouri and any other judicial relief conceivable to the Plaintiff in the underlying matter, without just cause or reason.

Plaintiff Berry objects here on the record of the Complaint to any requirement by the Court to respond to the instant Show Cause Order, however both the timing and the aforementioned nature of the Court's Show Cause Order does establish a procedural impossibility related to Plaintiff Berry seeking judicial review from the United States Supreme Court of this Show Cause Order prior to this Response being due to the Court at 12:00 pm on Labor Day.

Nevertheless, Plaintiff Berry responds to the instant Show Cause Order under protest regarding the Court's lack of statutory and jurisdictional authority as a single-judge District Court to engage either Plaintiff Berry or the Complaint in the manner the Court's Show Cause Order provides for.

Plaintiff Berry demands the Court immediately discharge the instant Show Cause Order and appoint a three-judge court in the manner statutes required by 28 U.S.C. § 2284, authorized by Section Five of the Fourteenth Amendment of the United States Constitution and the Elections Clause.

Response to Show Cause Order Factual and Legal Allegations

The Court decided (and is not required) to not present a traditional statement of facts in support of its Show Cause Order in the manner generally provided in Federal court adversarial proceedings, which requires Plaintiff Berry to identify the facts alleged by the Court to support its Show Cause Order in order to respond, which appear to be:

1. The Court's Show Cause Order states:

> "This matter is before the Court on review of the complaint filed by self-represented Plaintiff Paul Berry III. (ECF No. 1)."

Plaintiff Berry states the previous statement is true. The previous fact is irrelevant regarding the Court's Show Cause Order establishing a factual basis to dismiss any relief requested by the Complaint.

2. The Court's Show Cause Order states:

> "However, that emergency relief appears to be a legal impossibility under the clear terms of § 2284(b)(2), which requires Berry to provide "at least five days' notice of hearing of the action" to the Governor and Missouri Attorney General before a hearing may be held."

Plaintiff Berry states the previous statement is partially false. Plaintiff Berry agrees that at least five (5) days notice is statutorily required pursuant to § 2284(b)(2). Plaintiff Berry denies that the emergency relief (which has not even been filed before the Court due to the Show Cause

Order prohibition to do so) is a legal impossibility "under the clear terms of § 2284(b)(2)".

3. The Court's Show Cause Order states:

> "Based on this timeline, a hearing could not occur until after what Berry appears to recognize is the effective deadline for his requested relief. (ECF No. 1 at p. 61, ¶ 199; see also United States v. Texas, 422 F. Supp. 917, 923 (S.D. Tex. 1976) (denying relief, in part, based on the five-day notice requirement).

The Court purports paragraph 199 of the Complaint signifies Plaintiff Berry recognizes that a hearing could not occur before the effective deadline for his request. Prior to Plaintiff Berry addressing the Court's allegation regarding paragraph 199 of the Complaint further within this brief, Plaintiff Berry quotes verbatim from page 3 of the Complaint:

> "The "hard deck" deadline for Missouri to enact a constitutional Missouri congressional district map is September 19, 2026, minus any time for Missouri election officials to prepare absentee ballots for mail to United States Armed Service members 45 days prior to the 2026 Missouri General congressional election set for November 3, 2026. The Missouri General Assembly has shown around this time last year their ability to enact a Missouri congressional district map with six (6) of engagement in a Missouri special legislative session. Missouri should be provided a very limited opportunity to cure its unconstitutional use of the current Missouri congressional district map enacted yesterday and after the 2026 Missouri Primary congressional election prior to the Court enacting a Missouri congressional district map for use during the 2026 Missouri General congressional election." (First Amended Complaint adds the word "days" after six (6) in the language above)

For reasons further explained by Plaintiff Berry's instant Response brief, the Court's assertion that paragraph 199 of the Complaint somehow provides Plaintiff Berry pleaded the injunctive relief requested by the Complaint as admitting such injunctive relief requested to be procedurally impossible is completely false, bootstrapping worthy of Paul Revere and the only fact the Court's Show Cause Order pleads to substantiate the Court's proposed summary dismissal of the Complaint's emergency relief demanded by Plaintiff Berry.

Points Relied Upon Requiring the Court to Immediately Discharge Show Cause Order and Cease Further Delay in Appointment of Three-judge Court to Adjudtice the Complaint

I. The Show Cause Order should be immediately discharged by the Court, because the Court is in violation of 28 U.S.C. § 2284(b)(3) and without jurisdiction to issue summary judgment on the merits of the Complaint in the form of a show cause order as a single-court District judge under the Court's review of the Complaint for submission to the Chief District Judge for the empanelment of a three-judge court pursuant to 28 U.S.C. § 2284(b)(1).

The Court has not expressed by its Show Cause Order how any permissible inquiry into the "constitutional insubstantiality" of the Complaint pursuant to 28 U.S.C. § 2284(b)(1) may extend the Court's jurisdiction to sua sponte enter into any summary judgment judicial decision on the merits of the Complaint that as a matter of Federal law enacted by the United States Congress pursuant to 28 U.S.C. § 2284(b)(3) prohibits the final adjudication of the Complaint by a single-judge court and may only be adjudicated by the same three-judge court that this Court apparently opposes sus sponte convening to adjudicate the Complaint by the Court's Show Cause Order targeted at Plaintiff Berry.

The authority and duties of the single-judge court related to the Complaint are pursuant to 28 U.S.C. § 2284(b)(3), which states:

> "(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the

> hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment." (underline added)

To use layman's vernacular, the duties of the single District Judge are pursuant to 28 U.S.C. § 2284(b)(3) are to boil down pretrial matters agreeable between parties, so issues that are not agreed upon between parties can be addressed, more specifically, appealed to the three-judge court and to issue temporary restraining orders. Plaintiff Berry brings the Court's attention to the language of U.S.C. § 2284(b)(3), which states verbatim: "Any action of a single judge may be reviewed by the full court at any time before final judgment."

As acknowledged by the Chief District Judge's judge transfer order, this issue has presented itself in previous congressional map litigation before the United States District Court of Eastern Missouri between Judge Ross and Paul Berry III. In the year 2022, Paul Berry III was a candidate for United States Congress and well-after candidate filing closed for the 2022 congressional election cycle, Missouri was deadlocked on passing a congressional map based upon the most recent United States Census results.

During the aforementioned Federal civil case, Judge Ross and the Chief District Judge refused after a multitude of requests and pleading from Plaintiff Berry for the Chief District Judge to appoint a three-judge court to adjudicate his complaint. Judge Ross refused referral of the complaint to the Chief District Judge, held a temporary restraining order hearing on an un-expedited scheduled, issued a decision denying Plaintiff Berry's temporary restraining order

application in a manner that was unreviewable by any three-judge panel as required by the United States Congress and the congressional map relief requested by Plaintiff Berry became moot. The Court's record in *Berry v. Ashcroft* speaks for itself.

Plaintiff Berry many moons later requests the Court to again consider how can any action of a single judge be reviewed by the full court any time before final judgment when like in this instance the Court refuses Plaintiff Berry the appointment of a three-judge panel to review the Court's temporary injunction decisions, scheduling decisions, and now in the instant, the Court's Instant dispositive Show Cause Order seeking dismissal of the Complaint sua sponte by the Court.

The Court threatening Plaintiff Berry with dismissal of the Complaints on the merits of the Complaint after the Court and the Chief District Judge both by their simultaneous orders served upon Plaintiff Berry resulting in the instant Show Cause Order issued by Judge Ross threatens a final judgment in the underlying manner and an action by the single judge unreviewable by the three-judge court, and as such, the Show Cause Order is impermissible by the clear language of U.S.C. § 2284(b)(3) and the Court exceeds its jurisdictional authority to sua sponte threaten or issue a **final summary dismissal decision of the Complaint on its merits** as a single-judge by use of the instant Show Cause Order.

II. The Show Cause Order should be immediately discharged by the Court, because the Court applied the wrong standard of juridical review when the Court reviewed the Complaint for submission to the Chief District Judge for the empanelment of a

three-judge court in violation of U.S.C. § 2284(b)(1).

The Court charges that the relief requested by the Complaint may not be granted to Plaintiff Berry due to an alleged procedural impossibility pursuant to U.S.C. § 2284(b)(2). Plaintiff Berry retorts that the District Court's duties to review the Complaint for notification to the Chief District Judge does not extend to adjudicating the Complaint by de facto summary judgment proceeding sua sponte by the Court by use of a show cause order under the wrong standard of review.

Plaintiff Berry first responds to the Court that as suggested by the exact same United States District Court case cited by the Court as cause for the the Court to deny Plaintiff Berry the appointment of a three-judge panel to pursuant to the five-day rule pursuant to 28 U.S.C. § 2284(b)(2), *USA v. Texas* District Court Case actually declares the United States Supreme Court standard to dissolve a three-judge panel, which is the exact same standard the Court is required to abide by to overrule Plaintiff Berry's three-judge panel demand, **and requires the underlying Complaint to be deemed as "insubstantial" by the Court to deny notice of Chief District Judge of Plaintiff Berry's three-judge court demand provided by the Complaint.**

As explained by *USA v. Texas* District Court Case, the term "insubstantiality" when the Court analyzes the Complaint to determine whether the empanelment of a three-judge court is required pursuant to by 8 U.S.C. § 2284(b)(1) has been directly defined by the United Supreme Court in *Goosby v. Osser* (citation below), which was actually referenced and quoted by *USA v. Texas* District Court Case, and states as follows:

"In the context of one of the recently repealed general three-judge court statutes, the Supreme Court has defined insubstantiality as follows:

> Title 28 U.S.C. § 2281 does not require the convening of a three-judge court when the constitutional attack upon the state statutes is insubstantial. "Constitutional insubstantiality" for this purpose has been equated with such concepts as "essentially fictitious," Bailey v. Patterson, 369 U.S. 31, at 33, 82 S.Ct. 549, 7 L.Ed.2d 512; "wholly insubstantial," id.; "obviously frivolous," Hannis Distilling Co. v. Baltimore, 216 U.S. 285, 288, 30 S.Ct. 326, 54 L.Ed. 482 (1910); and "obviously without merit," Ex Parte Poresky, 290 U.S. 30, 32, 54 S.Ct. 3, 78 L.Ed. 152 (1933). The limiting words "wholly" and "obviously" have cogent legal significance. In the context of the effect of prior decisions upon the substantiality 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 for the purposes of 28 U.S.C. § 2281. 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, 409 U.S. 512, 518, 93 S.Ct. 854, 858, 35 L.Ed.2d 36 (1973)."

In order for the Court to issue Plaintiff Berry its instant Show Cause Order, the Court is required to allege conduct within the four walls of the Complaint that indicates the Complaint is "essentially fictitious," Bailey v. Patterson, 369 U.S. 31, at 33, 82 S.Ct. 549, 7 L.Ed.2d 512; "wholly insubstantial," id.; "obviously frivolous," Hannis Distilling Co. v. Baltimore, 216 U.S. 285, 288, 30 S.Ct. 326, 54 L.Ed. 482 (1910); and "obviously without merit," Ex Parte Poresky, 290 U.S. 30, 32, 54 S.Ct. 3, 78 L.Ed. 152 (1933), to which, the instant Show Cause Order alleges ZERO conduct of the Complaint that is in the same universe as the above-mentioned terms.

In fact, the Court does not acknowledge by its Show Cause Order that *USA v. Texas* District Court Case actually DID NOT result in the dissolution of the three-judge court, even when such district court highly suspected such underlying complaint was outright prohibited by

judicial doctrines could not sustain summary judgment, which states:

> "Although defendants may ultimately be entitled to partial summary judgment on the Twenty Sixth Amendment claim, the Court in determining substantiality may not go beyond the face of the pleadings, Ex Parte Poresky, 290 U.S. 30, 32, 54 S.Ct. 3, 78 L.Ed. 152 (1933), nor may the Court avail itself of summary judgment procedure. See Dale v. Hahn, 440 F.2d 633, 639, n. 11 (2d Cir. 1971)." (underlined added)

Plaintiff Berry can not respond to the Court's sua sponte proposition that the Complaint is deemed "insubstantial" by the Court without the Court first alleging or identifying any specific conduct of the Complaint that constitutes "essentially fictitious" or "obviously frivolous", and if such exists, Plaintiff Berry is prepared to "stand tall" before the Court and address any "insubstantial" charge purported by the Court to be alleged by Plaintiff Berry's Complaint.

No single-judge court may avail themselves with the summary judgment process sua sponte to determine Plaintiff Berry's complaint on the merits without the empanelment and decision from the three-judge court convened pursuant to 8 U.S.C. § 2284(b)(1), and as such, the Court should immediately discharge the instant Show Cause Order in violation of the statutory authority and judicial jurisdiction established pursuant 8 U.S.C. § 2284(b)(1).

III. The Show Cause Order should be immediately discharged by the Court, because paragraph 199 of the Complaint, the sole factual contention alleged by the Court against the Complaint to sustain its own Show Cause Order, does not state any fact that supports any procedural impossibility regarding the relief requested by the Complaint pursuant to 28 U.S.C. § 2284(b)(2), and as such, no other factual contention exists to support the Court's continued prosecution of its Show Cause

Order against Plaintiff Berry under their legal theory of procedural impossibility and should immediately cause the empanelment of a three-judge court to adjudicate the Complaint.

Even if the Court could engage in sua sponte summary judgment proceeding against Plaintiff Berry, the crux of the Court's propositions charged by the Show Cause Order lies with Plaintiff Berry's statement in paragapgh 199, which states:

> "The *Purcell Principle* should not be applied when the function of changing the Missouri congressional district map requested by Plaintiff Berry before the Missouri state court does not expire until September 8, 2026, and to apply the Purcell Principle to the instant Complaint would obliterate the United States Congress' express intention that Plaintiff Berry be permitted more than two (2) court hours to challenge a racially unconstitutional map enacted by Missouri pursuant to 28 U.S.C. § 2284(a)."

Paragraph 199 of the Complaint pleads before the Court that the *Purcell Principle* is wholly inapplicable to the Federal court system's consideration of whether the requested relief is still timely by state election law, which is both a question of fact and law for the Court.

Plaintiff Berry contends by paragraph 199 of the Complaint, that there is zero proposition that the Federal court system may cause chaos in a state election by providing Federal judicial relief within the same time frame that is otherwise permissible by state election laws and state courts, not a declaration that the state court deadline in the underlying matter prohibits the Court from granting the relief requested by the Complaint.

Plaintiff Berry's paragraph 199 of the Complaint, outlined in the Complaint that if judicial review of any congressional map is deemed literally impossible to have occurred in any manner, which is the exact same argument the Court makes against the Complaint in the instant,

then such literal impossibility for review of such congressional map in question renders the same Missouri congressional map void and unenforceable for failing to avail itself to the opportunity for any judicial review pursuant required by the United States Congress pursuant to 8 U.S.C. § 2284.

The Court purports paragraph 199 of the Complaint signifies Plaintiff Berry recognizes that a hearing could not occur before the effective deadline for his request, which is directly contradicted by page 3 of the Complaint, to which, Plaintiff Berry quotes verbatim

> "The "hard deck" deadline for Missouri to enact a constitutional Missouri congressional district map is September 19, 2026, minus any time for Missouri election officials to prepare absentee ballots for mail to United States Armed Service members 45 days prior to the 2026 Missouri General congressional election set for November 3, 2026. The Missouri General Assembly has shown around this time last year their ability to enact a Missouri congressional district map with six (6) of engagement in a Missouri special legislative session. Missouri should be provided a very limited opportunity to cure its unconstitutional use of the current Missouri congressional district map enacted yesterday and after the 2026 Missouri Primary congressional election prior to the Court enacting a Missouri congressional district map for use during the 2026 Missouri General congressional election." (First Amended Complaint adds the word "days" after six (6) in the language above)

The Court by its Show Cause Order does not challenge the Complaint's specific factual pleadings conflicting with the specific factual charge made by the Court, specifically, that the Complaint's requested relief is deemed by Plaintiff Berry's own Complaint as simply impossible based upon Plaintiff Berry's statement made by paragraph 199 of the Complaint as the only conceivable relevant single purported factual contention made in support of the Court's Show Cause Order, which apparently warrants summary dismissal of the Complaint, specifically, see paragraphs 130 thru 135 of the Complaint.

Plaintiff Berry contends that the Court is required to consider any plead fact or allegation provided by the Complaint with all other plead facts and allegations made in conjunction with the Complaint and the Court should consider the plain language of paragraph 199 of the Complaint with the full pleading of the Complaint and conclude that the Plaintiff Berry neither stated or intended to state in paragraph 199 of the Complaint that Missouri's state court deadline to amend any congressional map maintained any dispositive bearing on prohibiting the relief requested by the Complaint in any matter, and as such, the Court should find that there is ZERO evidentiary basis to sustain the Court's instant Show Cause Order calling for the summary dismissal of the Complaint.

The Court is unable to sustain the Show Cause Order in the instant because there are no further factual allegations incorporated with the Show Cause Order still enforce within the four corners of such judicial order. Any Federal show cause order at a bare minimum is required to clearly provide the respondent a single fact alleged to support the action to be taken by the Court, especially when such show cause order specifically states such response is under the draconian penalty of dismissal of a Federal civil action.

Plaintiff does not argue the level of factual pleading which is required by the Court, because in the instant, there are ZERO viable factual contentions made by the Show Cause Order that can support the Court's legal conclusions under any legal theory when such Show Cause Order does not maintain a single factual contention against the Complaint outside of the disputed paragraph 199 of the Complaint.

IV. The Show Cause Order Should be Immediately Discharged by the Court Because the Show Cause Order does not plead any procedural impossibility pursuant to 28 U.S.C. § 2284(b)(2) permitting the purported authority of the Court to dismiss the emergency relief sought by Plaintiff Berry.

Other than the Court's incorrect application of paragraph 99 of the Complaint, the Show Cause Order does not state any facts or declare any specific purported legal authority justifying the Court's Show Cause Order other than 28 U.S.C. § 2284(b)(2) and the wrong proposition that *USA v Texas* is dispositive of a summary judgment matter.

First, *USA v Texas* is a District Court judicial opinion, which may serve as a compass to the underlying proceedings at the Court's pearl and good wisdom, but in no way does *USA v Texas* established any legal judicial precedence over the Complaint, to which, Plaintiff Berry should not be required to respond to *USA v Texas* as legal authority to the dismissal of the Complaint provided by the instant Show Cause Order, because any such response by Plaintiff is simply providing prospective opinion on an unenforceable Federal legal opinion as applicable or otherwise conclusive of the instant dismissal action against the Complaint issued from a different state issued over 50 years ago and maintains zero legal precedent upon the Complaint or the Court's Show Cause Order.

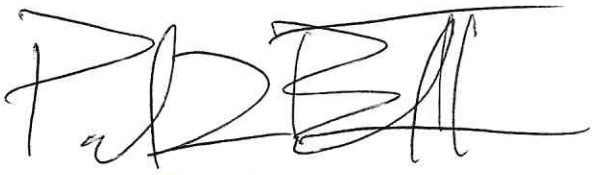
Second, *USA v Texas* actually overruled the dissolution of a three-judge panel in Federal civil court circumstances where injunctive relief could only be had one week before the election in question by the procedure of 8 U.S.C. § 2284(b)(2).

Third, the circumstances that would require the Court to actually weigh the factors for injunctive relief before actually being presented by Plaintiff Berry to the Court in the instant, and the Court's requirement to make specific findings of fact concerning regarding the various factual allegations made by the Complaint the conflict with the Court's bare bonds facts alleged against the Complaint and consider the specific equitable relief request regarding the application of 8 U.S.C. § 2284(b)(2) causes the Show Cause Order as not ripe for the Court's application, if any of the above was actually lawful conduct of the Court.

Prayer for Discharge

WHEREFORE, Plaintiff Paul Berry III seeks the Court to immediately discharge its Show Cause Order issued on September 4, 2026, directed to Plaintiff Paul Berry III in the underlying matter and immediately order the empanelment of a three-judge court to adjudicate the underlying Complaint in the manner statutorily required pursuant to 8 U.S.C. § 2284, without fail or further delay by the Court.

Respectfully Submitted,



Paul Berry III
Plaintiff, Pro Se
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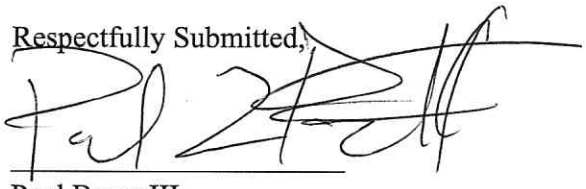
St. Louis, Missouri 63117
314-755-9252
PBIIIUSA@gmail.com

CERTIFICATE OF SERVICE

A copy of the foregoing motion will be hand delivered or mailed to the Defendants at the first opportunity due to the United States Postal Services being closed for Labor Day 2026 and will be uploaded to the Pacer court document filing system by the United States District Court of Eastern Missouri assumed in the manner provided by its local Federal civil court docketing procedures.

Respectfully Submitted,



Paul Berry III
Plaintiff Pro Se