


FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 02 2018

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN (LITTLE ROCK) DIVISION**

Dr. JULIUS J. LARRY III

PLAINTIFF

VS.

NO. 4:18-CV-116-KGB

**STATE OF ARKANSAS;
HONORABLE ASA HUTCHINSON,
In his Official Capacity as Governor
of the State of Arkansas; HONORABLE
LESLIE RUTLEDGE, in her Official
Capacity as Attorney General of the
State of Arkansas; HONORABLE
MARK MARTIN, in his official capacity
as Arkansas Secretary of State**

DEFENDANTS

**DEFENDANT ARKANSAS SECRETARY OF STATE
MARK MARTIN'S MEMORANDUM BRIEF CONCERNING
THREE-JUDGE PANEL**

Comes now Defendant Secretary of State, Honorable Mark Martin, in response to this Court's Order concerning Plaintiff's request for a Three-Judge Panel, and states:


The Court has limited scope to deny a three-judge panel. *Shapiro v. McManus*, 136 S.Ct. 450, 454-456 (2015) (construing 28 U.S.C. § 2284). A three-judge court is not required to dismiss a case for lack of subject-matter jurisdiction. *Id.*, citing *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90 (1974). However, a three-judge court is required to dismiss a case for failure to state a claim. *Shapiro, id.*, 455-56.

Defendant Secretary has filed a Motion to Dismiss based on lack of subject matter jurisdiction for which a three-judge court is not required. Defendant Secretary has included in his Motion to Dismiss a request to dismiss for failure to state a claim against Defendant Secretary, for which a three-judge court is required. *Shapiro, id.*

WHEREFORE, and for the foregoing reasons, Defendant Secretary of State Mark Martin, in his official capacity, prays that the Court deny Plaintiff any of the relief requested against Defendant Secretary; that the Court dismiss Plaintiff's Complaint against Defendant Secretary of State; that the Court deny any of Plaintiff's requests for fees, costs, or expenses; that the Court grant Defendant Secretary such additional relief to which he may be entitled under the circumstances

Respectfully submitted this 2nd day of March, 2018.

HONORABLE MARK MARTIN
ARKANSAS SECRETARY OF STATE
In his Official Capacity, **Defendant**

By:  _____
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Attorney for Defendant
Arkansas Secretary of State

CERTIFICATE OF SERVICE

I do hereby certify that on this 2nd day of March, 2018, I have served the foregoing via the electronic filing system in the Federal District Court Clerk's Office (CM/ECF) to the Arkansas Attorney General, and to the Assistant Attorney General who has appeared, and via first class mail to the following:

Dr. Julius J. Larry III
2615 W.12th Street
Little Rock, AR 72202



AJ Kelly