

**APPENDIX TO
JURISDICTIONAL
STATEMENT**

LIST OF PARTIES

Eugene Martin LaVergne; Frederick John LaVergne;
Leonard P. Marshall; Scott Neuman, and Allen J.
Cannon,

Plaintiffs,

vs.

(1) United States House of Representatives, *a body politic created and constituted by Article I of the United States Constitution, as amended;* (2) Individual Members of the United States House of Representatives from the 50 States that have been seated so far at the One Hundred Fifteenth Congress (*435 Representatives Apportioned to date out of the minimum of 6,230 Representatives Constitutionally Required to be Apportioned*); (3) Honorable Paul Ryan, *United States Representative from the State of Wisconsin;* (4) Honorable David S. Ferriero, *Archivist of the United States;* (5) Honorable Wilbur Ross, *United States Secretary of Commerce;* (6) Honorable Donald J. Trump, *President of the United States;* and (7) Honorable Karen L. Haas, *Clerk of the United States House of Representatives;* **VIRGINIA STATE OFFICIALS:** (8) Honorable Terry McAuliffe, *Governor of Virginia;* (9) Honorable Mark Herring, *Virginia State Attorney General* (10) Honorable Kelly Thomasson, *Secretary of the Commonwealth of Virginia;* (11) Virginia State Senate (40 State Senators); (12) Virginia House of Delegates (100 State Delegates); **CONNECTICUT STATE OFFICIALS:** (13) Honorable Daniel P. Malloy, *Governor of Connecticut;* (14) Honorable George Jepsen, *Connecticut State Attorney General;* (15) Honorable Denise W. Merrill, *Connecticut Secretary of State;* (16) Connecticut State Senate (36 State Senators);

(17) Connecticut State House of Representatives (151 State Representatives); **KENTUCKY STATE OFFICIALS:** (18) Honorable Matt Bevin, *Governor of Kentucky*; (19) Honorable Andy Beshear, *Kentucky State Attorney General*; (20) Honorable Alison Lundergan Grimes, *Kentucky Secretary of State*; (21) Kentucky State Senate, (30 state Senators); (22) Kentucky State House of Representatives (100 State Representatives);

STATE OFFICIALS FROM THE OTHER 47 STATES:

ALABAMA STATE OFFICIALS: (23) Honorable Robert Bentley, *Governor of Alabama*; (24) Honorable Luther Strange, *Alabama State Attorney General*; (25) Honorable John H. Merrill, *Alabama Secretary of State*; (26) Alabama State Senate (35 State Senators); (27) Alabama State House of Representatives (105 State Representatives); **ALASKA STATE OFFICIALS:** (28) Honorable Bill Walker, *Governor of Alaska*; (29) Honorable Jahna Lindemuth, *Alaska State Attorney General*; (30) Honorable Josephine Bahnke, *Director Alaska Division of Elections*; (31) Alaska State Senate (20 State Senators); (32) Alaska State House of Representatives (40 State Representatives); **ARIZONA STATE OFFICIALS:** (33) Honorable Doug Ducey, *Governor of Arizona*; (34) Honorable Mark Brnovich, *Arizona State Attorney General*; (35) Honorable Michele Reagan, *Secretary of State of Arizona*; (36) Arizona State Senate (30 State Senators); (37) Arizona State House of Representatives (60 State Representatives); **ARKANSAS STATE OFFICIALS:** (38) Honorable Asa Hutchinson, *Governor of Arkansas*; (39) Honorable Leslie Rutledge, *Arkansas State Attorney General*; (40) Honorable Mark Martin, *Arkansas Secretary of State*; (41) Arkansas State Senate (35 State Senators); (42) Arkansas State House of Representatives (100 State Representatives);

CALIFORNIA STATE OFFICIALS: : (43) Honorable Edmund G. Brown, Jr., *Governor of California*; (44) Honorable Xavier Becerra, *California State Attorney General*; (45) Honorable Alex Padilla, *California Secretary of State*; (46) California State Senate (40 State Senators); (47) California State Assembly (80 State Representatives); **COLORADO STATE OFFICIALS:** (48) Honorable John Hickenlooper, *Governor of Colorado* (49) Honorable Cynthia H. Coffman, *Colorado State Attorney General*; (50) Honorable Wayne W. Williams, *Colorado Secretary of State*; (51) Colorado State Senate (40 State Senators); (52) Colorado State House of Representatives (80 State Representatives); **DELAWARE STATE OFFICIALS:** (53) Honorable John Carney, *Governor of Delaware*; (54) Honorable Matthew Denn, *Delaware State Attorney General*; (55) Honorable Elaine Manlove, *Department of Elections*; (56) Delaware State Senate (21 State Senators); (57) Delaware State House of Representatives (41 State Representatives); **FLORIDA STATE OFFICIALS:** (58) Honorable Rick Scott, *Governor of Florida*; (59) Honorable Pam Bondi, *Florida State Attorney General*; (60) Honorable Ken Detzner, *Florida Secretary of State*; (61) Florida State Senate (35 State Senators); (62) Florida State House of Representatives (105 State Representatives); **GEORGIA STATE OFFICIALS:** (63) Honorable Nathan Deal, *Governor of Georgia*; (64) Honorable Christopher M. Carr, *Georgia State Attorney General*; (65) Honorable Brian P. Kemp, *Georgia Secretary of State*; (66) Georgia State Senate (56 State Senators); (67) Georgia State House of Representatives (180 State Representatives); **HAWAII STATE OFFICIALS:** (68) Honorable David Y. Ige, *Governor of Hawaii*; (69) Honorable Doug Chinm, *Hawaii Attorney General*; (70) Honorable Scott T. Nago, *Chief Election Officer*; (71) Hawaii State Senate (25 State Senators); (72) Hawaii State House of Representatives

(51 State Representatives); **IDAHO STATE OFFICIALS:** (73) Honorable C. L. "Butch" Otter, *Governor of Idaho*; (74) Honorable Lawrence Wasden, *Idaho Attorney General*; (75) Honorable Lawrence Denney, *Idaho Secretary of State*; (76) Idaho State Senate (35 State Senators); (77) Idaho State House of Representatives (70 State Representatives); **ILLINOIS STATE OFFICIALS:** (78) Honorable Bruce Rauner, *Governor of Illinois*; (79) Honorable Lisa Madigan, *Illinois State Attorney General*; (80) Honorable Steve Sandvoss, *Executive Director, Illinois State Board of Elections*; (81) Illinois State Senate (59 State Senators); (82) Illinois State House of Representatives (70 State Representatives); **INDIANA STATE OFFICIALS:** (83) Honorable Eric J. Holcomb, *Governor of Indiana*; (84) Honorable Curtis Hill, *Indiana State Attorney General*; (85) Honorable Connie Lawson, *Indiana Secretary of State*; (86) Indiana State Senate, (50 State Senators); (87) Indiana State House of Representatives (100 State Representatives); **IOWA STATE OFFICIALS:** (88) Honorable Terry Branstad, *Governor of Iowa*; (89) Honorable Tom Miller, *Iowa State Attorney General*; (90) Honorable Paul D. Pate, *Iowa Secretary of State*; (91) Iowa State Senate (35 State Senators); (92) Iowa State House of Representatives (105 State Senators); **KANSAS STATE OFFICIALS:** (93) Honorable Sam Brownback, *Governor of Kansas* (94) Honorable Derek Schmidt, *Kansas State Attorney General*; (95) Honorable Kris W. Kobach, *Kansas Secretary of State*; (96) Kansas State Senate (40 State Senators); (97) Kansas State House of Representatives (125 State Senators); **LOUISIANA STATE OFFICIALS:** (98) Honorable John Bel Edwards, *Governor of Louisiana*; (99) Honorable Jeff Landry, *Louisiana Attorney General*; (100) Honorable Tom Schedler, *Louisiana Secretary of State*; (101) Louisiana State Senate (39 State Senators); (102) Louisiana State

House of Representatives (105 State Representatives); **MAINE STATE OFFICIALS:** (103) Honorable Paul LePage, *Governor of Maine*; (104) Honorable Janet T. Mills, *Maine State Attorney General*; (105) Honorable Matthew Dunlap, *Maine Secretary of State*; (106) Maine State Senate (35 State Senators); (107) Maine State House of Representatives (151 State Representatives); **MARYLAND STATE OFFICIALS:** (108) Honorable Larry Hogan, *Governor of Maryland*; (109) Honorable Brian Frosh, *Maryland State Attorney General*; (110) Honorable John C. Wobensmith, *Maryland Secretary of State*; (111) Maryland State Senate (47 State Senators); (112) Maryland State House of Delegates (141 State Delegates); **MASSACHUSETTS STATE OFFICIALS:** (113) Charlie Baker, *Governor of Massachusetts*; (114) Honorable Maura Healey, *Massachusetts State Attorney General*; (115) Honorable William Francis Galvin, *Secretary of the Commonwealth of Massachusetts*; (116) Massachusetts State Senate (40 State Senators); (117) Massachusetts State House of Representatives (160 Representatives); **MICHIGAN STATE OFFICIALS:** (118) Honorable Rick Snyder, *Governor of Michigan* (119) Honorable Bill Schultze, *Michigan State Attorney General*; (120) Honorable Ruth Johnson, *Michigan Secretary of State*; (121) Michigan State Senate (38 State Senators); (122) Michigan State House of Representatives (110 State Representatives); **MINNESOTA STATE OFFICIALS:** (123) Honorable Mark Dayton, *Governor of Minnesota*; (124) Honorable Lori Swanson, *Minnesota State Attorney General*; (125) Honorable Steve Simon, *Minnesota Secretary of State*; (126) Minnesota State Senate (67 State Senators); (127) Minnesota State House of Representatives (134 State Representatives); **MISSISSIPPI STATE OFFICIALS:** (128) Honorable Phil Bryant, *Governor of Mississippi*; (129) Honorable Jim Hood, *Mississippi State Attorney General*; (130)

Honorable Delbert Hosemann, *Mississippi Secretary of State*; **(131)** Mississippi State Senate (52 State Senators); **(132)** Mississippi State House of Representatives (122 State Representatives); **MISSOURI STATE OFFICIALS:** **(133)** Honorable Eric Greitens, *Governor of Missouri*; **(134)** Honorable Joshua Hawley, *Missouri Attorney General*; **(135)** Honorable John R. Ashcroft, *Missouri Secretary of State*; **(136)** Missouri State Senate (34 State Senators); **(137)** Missouri State House of Representatives (163 State Representatives); **MONTANA STATE OFFICIALS:** **(138)** Honorable Steve Bullock, *Governor of Montana*; **(139)** Honorable Tim Fox, *Montana Attorney General*; **(140)** Honorable Corey Stapleton, *Montana Secretary of State*; **(141)** Montana State Senate (50 State Senators); **(142)** Montana State House of Representatives (100 State Representatives); **NEBRASKA STATE OFFICIALS:** **(143)** Honorable Pete Ricketts, *Governor of Nebraska*; **(144)** Honorable Doug Peterson, *Nebraska Attorney General*; **(145)** Honorable John A. Gale, *Nebraska Secretary of State*; **(146)** Nebraska Unicameral State Legislature (49 Members); **NEVADA STATE OFFICIALS:** **(147)** Honorable Brian Sandoval, *Governor of Nevada*; **(148)** Honorable Adam Paul Laxalt, *Nevada State Attorney General*; **(149)** Honorable Barbara K. Cegavske, *Nevada Secretary of State*; **(150)** Nevada State Senate (21 State Senators); **(151)** Nevada State House of Representatives (42 State Representatives); **NEW HAMPSHIRE STATE OFFICIALS:** **(152)** Honorable Chris Sununu, *Governor of New Hampshire*; **(153)** Honorable Joseph Foster, *New Hampshire State Attorney General*; **(154)** Honorable William M. Gardner, *New Hampshire Secretary of State*; **(155)** New Hampshire State Senate (24 State Senators); **(156)** New Hampshire State House of Representatives (400 State Representatives); **NEW JERSEY STATE OFFICIALS:** **(157)** Honorable Chris Christie, *Governor*

*of New Jersey; (158) Honorable Kim Guadagno, Lt. Governor / Secretary of State; (159) Honorable Christopher S. Porrino, Acting New Jersey State Attorney General; (160) New Jersey State Senate (40 State Senators); (161) New Jersey State General Assembly (80 State Representatives); **NEW MEXICO STATE OFFICIALS:** (162) Honorable Susana Martinez, Governor of New Mexico; (163) Honorable Hector Balderas, New Mexico State Attorney General; (164) Honorable Dianna Duran, New Mexico Secretary of State; (165) New Mexico State Senate (24 State Senators); (166) New Mexico State House of Representatives (70 State Representatives); **NEW YORK STATE OFFICIALS:** (167) Honorable Andrew Cuomo, Governor of New York; (168) Honorable Eric Schneiderman, New York State Attorney General; (169) Honorable Rossana Rosado, New York Secretary of State; (170) New York State Senate (63 State Senators); (171) New York State House of Representatives (150 State Representatives); **NORTH CAROLINA STATE OFFICIALS:** (172) Honorable Ray Cooper, Governor of North Carolina; (173) Honorable Josh Stein, North Carolina State Attorney General; (174) Honorable Elaine F. Marshall, North Carolina Secretary of State; (175) North Carolina State Senate (50 State Senators); (176) North Carolina State House of Representatives (120 State Representatives); **NORTH DAKOTA STATE OFFICIALS:** (177) Honorable Doug Burgum, Governor of North Dakota; (178) Honorable Wayne Stenehjem, North Dakota Attorney General; (179) Honorable Al Jaeger, North Dakota Secretary of State; (180) North Dakota State Senate (47 State Senators); (181) North Dakota State House of Representatives (94 State Representatives); **OHIO STATE OFFICIALS:** (182) Honorable John Kasich, Governor of Ohio; (183) Honorable Mike DeWine, Ohio State Attorney General; (184) Honorable Jon Husted, Ohio Secretary of State;*

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(185) Ohio State Senate (33 State Senators); (186) Ohio State House of Representatives (99 State Representatives); **OKLAHOMA STATE OFFICIALS:** (187) Honorable Mary Fallin, *Governor of Oklahoma*; (188) Honorable Mike Hunter, *Oklahoma State Attorney General*; (189) Honorable Hike Hunter, *Oklahoma Secretary of State*; (190) Oklahoma State Senate (48 State Senators); (191) Oklahoma State House of Representatives (101 State Representatives); **OREGON STATE OFFICIALS:** (192) Honorable Kate Brown, *Governor of Oregon*; (193) Honorable Ellen F. Rosenblum, *Oregon State Attorney General*; (194) Honorable Dennis Richardson, *Oregon Secretary of State*; (195) Oregon State Senate (30 State Senators); (196) Oregon State House of Representatives (60 State Representatives); **PENNSYLVANIA STATE OFFICIALS:** (197) Honorable Tom Wolf, *Governor of Pennsylvania*; (198) Honorable Josh Shapiro, *Pennsylvania State Attorney General*; (199) Honorable Pedro A. Cortes, *Pennsylvania Secretary of State*; (200) Pennsylvania State Senate (50 State Senators); (201) Pennsylvania State House of Representatives (203 State Representatives); **RHODE ISLAND STATE OFFICIALS:** (202) Honorable Gina Raimondo, *Governor of Rhode Island*; (203) Honorable Peter F. Kilmartin, *Rhode Island Attorney General*; (204) Honorable Nellie M. Gorbea, *Rhode Island Secretary of State*; (205) Rhode Island State Senate (38 State Senators); (206) Rhode Island State House of Representatives (75 State Representatives); **SOUTH CAROLINA STATE OFFICIALS:** (207) Honorable Henry McMaster, *Governor of South Carolina*; (208) Honorable Alan Wilson, *South Carolina Attorney General*; (209) Honorable Mark Hammond, *South Carolina Secretary of State*; (210) South Carolina State Senate (46 State Senators); (211) South Carolina State House of Representatives (179 State Representatives); **SOUTH**

DAKOTA STATE OFFICIALS: (212) Honorable Dennis Daugaard, *Governor of South Dakota*; (213) Honorable Marty Jackley, *South Dakota Attorney General*; (214) Honorable Shantel Krebs, *South Dakota Secretary of State*; (215) South Dakota State Senate (35 State Senators); (216) South Dakota State House of Representatives (70 State Representatives); **TENNESSEE STATE OFFICIALS:** (217) Honorable Bill Haslam, *Governor of Tennessee*; (218) Honorable Herbert R. Slattery, III, *Tennessee Attorney General*; (219) Honorable Tre Hargett, *Tennessee Secretary of State*; (220) Tennessee State Senate (33 State Senators); (221) Tennessee State House of Representatives (99 State Representatives); **TEXAS STATE OFFICIALS:** (222) Honorable Greg Abbott, *Governor of Texas*; (223) Honorable Ken Paxton, *Texas State Attorney General*; (224) Honorable Rolando Pablos, *Texas Secretary of State*; (225) Texas State Senate (31 State Senators); (226) Texas State House of Representatives (150 State Representatives); **UTAH STATE OFFICIALS:** (227) Honorable Gary R. Herbert, *Governor of Utah*; (228) Honorable Sean D. Reyes, *Utah Attorney General*; (229) Honorable Spencer J. Cox, *Utah Lieutenant Governor*; (230) Utah State Senate (29 State Senators); (231) Utah State House of Representatives (75 State Representatives); **VERMONT STATE OFFICIALS:** (232) Honorable Phil Scott, *Governor of Vermont*; (233) Honorable TJ Donovan, *Vermont Attorney General*; (234) Honorable Jim Condos, *Vermont Secretary of State*; (235) Vermont State Senate (30 State Senators); (236) Vermont State House of Representatives (150 State Representatives); **WASHINGTON STATE OFFICIALS:** (237) Honorable Jay Inslee, *Governor of Washington*; (238) Honorable Bob Ferguson, *Washington State Attorney General*; (239) Honorable Kim Wyman, *Washington Secretary of State*; (240) Washington State

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Senate (49 State Senators); (241) Washington State House of Representatives (98 State Representatives); **WEST VIRGINIA STATE OFFICIALS:** (242) Honorable Jim Justice, *Governor of West Virginia*; (243) Honorable Patrick Morrissey, *West Virginia State Attorney General*; (244) Honorable Mac Warner, *West Virginia Secretary of State*; (245) West Virginia State Senate (34 State Senators); (246) West Virginia State House of Representatives (100 State Representatives); **WISCONSIN STATE OFFICIALS:** (247) Honorable Scott Walker, *Governor of Wisconsin*; (248) Honorable Brad Schimel, *Wisconsin State Attorney General*; (249) Honorable Doug La Follette, *Wisconsin Secretary of State*; (250) Wisconsin State Senate (33 State Senators); (251) Wisconsin State House of Representatives (99 State Representatives); **WYOMING STATE OFFICIALS:** (252) Honorable Matthew Mead, *Governor of Wyoming*; (253) Honorable Peter K. Michael, *Wyoming State Attorney General*; (254) Honorable Ed Murray, *Wyoming Secretary of State*; (255) Wyoming State Senate (30 State Senators); (256) Wyoming State House of Representatives (60 State Representatives);

Defendants;

and

(257) Michael Pence, *Vice President of the United States and President of the United States Senate*; (258) United States Senate, *a body politic created and constituted by Article I of the United States Constitution, as amended*; (259) Individual Members of the United States Senate from the 50 States that have been seated at the One Hundred Fifteenth Congress,

Interested Parties.

(A-11)
DOCUMENTS

Appendix Document A
[ECF Document 54]
[Filed October 20, 2017]

United States District Court
for the
District of Columbia

-----X Civil Action No.
Eugene Martin : 1:17-cv-00793-CKK-CP-RDM
LaVergne, :
et al, : Honorable Cornelia T.L.
 : Pillard, C.J. (Presiding)
Plaintiffs, : Honorable Colleen Kollar-
 : Kotelly, U.S.D.J.
vs. : Honorable Randolph D. Moss,
 : U.S.D.J.
United States House of :
Representatives, et al, : *Civil Action*
 :
Defendants. :
-----X

Notice of Motion for Summary Judgment

TO: Honorable Cornelia T. L. Pillard, C.J. (Presiding)
United States Circuit Court of Appeals
for the District of Columbia Circuit
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

(A-12)

Honorable Colleen Kollar-Kotelly, U.S.D.J.
United States District Court
for the District of Columbia District
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Honorable Randolph D. Moss, U.S.D.J.
United States District Court
for the District of Columbia District
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Angela Cesare, Clerk of the Court
United States District Court
for the District of Columbia District
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

MADAMES/SIR:

PLEASE TAKE NOTICE that on a date and time to be fixed by the Court after the October 20, 2017 11:00 a.m. Scheduling and Case Management Conference, that the undersigned Plaintiff *Pro Se* shall move 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 as asserted in the First Count, Second Count, Third Count and Fourth Count of the First Amended Complaint; and

PLEASE TAKE FURTHER NOTICE that in support of this motion Plaintiff *Pro Se* shall rely upon the following documents which are being filed with the Court and the Clerk of the Court:

- Notice of Motion for Summary Judgment;

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- Verification and Declaration of Eugene Martin LaVergne pursuant to 28 U.S.C. §1746 and *L.Civ.R.* 11.1(2) with Exhibits attached;
- Plaintiff's *F.R.Civ.P.* 56(c) and *L.Civ.R.* 7(h)(1) Statement of Material facts as to which Plaintiff Contends There is no Genuine Issue for Purposes of Summary Judgment;
- Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment;
- Proposed form or Order; and

PLEASE TAKE FURTHER NOTICE that Oral Argument is Requested.

/s/

EUGENE MARTIN LaVERGNE
543 CEDAR AVENUE
WEST LONG BRANCH, NEW JERSEY 07764
TELEPHONE: (732) 515-8229
PLAINTIFF *PRO SE*
DATED: October 17, 2017

Appendix Document B
[Colloquy found at ECF Document No. 123, pages 14 & 15, balance of document redacted]
[Filed May 31, 2018]

JUDGE KOLLAR-KOTELLY: *** So Mr. Eugene LaVergne, um, how do you want to handle it?

EUGENE MARTIN LaVERGNE: With all due respect, your honor, I want the substance on the record. I filed my motion. I understood that it would probably be heard after the substance, uh, from our perspective and

our discussion we don't need any discovery. We are going on basically documents that the Court can almost all but take judicial notice of, and then the legal conclusions based upon undisputed facts is something the Court will decide, um, but that doesn't preclude the defendants from wanting discovery. I don't know what they could possibly want, um, but that's, that's not my argument to make. But as far as the motion, like I say, it is filed of record. My preference would be, I'm not inclined to withdraw it. Just enter an Order staying it so that no one has to respond to it until after the procedural motions are addressed, because when they are done, then you can set a schedule and the motion is already filed. I understand the other Plaintiffs are going to join in it. I know you haven't had a chance to read it, but there's courtesy copies that will be carried up to your Chambers at some point today.

JUDGE KOLLAR-KOTELLY: Ok, that's fine, not a problem. I was just giving you an option. Um, alright, we will put out an Order that indicates the schedule that we have at least at this point. ... ***

Appendix Document C
[ECF Document No. 51]
[Filed October 20, 2017]

United States District Court
for the District of Columbia

-----X Civil Action No. 1:17-cv-793
Eugene Martin :
LaVergne, :
et al, :
:

Plaintiffs, :
 :
us. :
 :
United States House of :
Representatives, et al, :
 :
Defendants. :
-----X

ORDER
(October 20, 2017)

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

- Federal Defendants are to file their motion regarding collateral estoppels issues by no later than November 13, 2017.
- If the State Defendants seek to raise any arguments regarding collateral estoppels 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 estoppels 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 estoppels issue. The Court will set a full

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briefing schedule for those motions after the collateral estoppels issue is resolved.

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

SO ORDERED.

/s/

COLLEEN KOLLAR-KOTELLY
United States District Court

Appendix Document D

[ECF Document No. 123, page 70 (email colloquy of October 31, 2017), balance of document redacted]

[Filed May 31, 2018]

[October 31, 2017 email from Mr. Smith to Appellant:]

Mr. LaVergne - The Idaho and Washington defendants will be filing a motion to stay the duty of all State defendants to respond to your motion for summary judgment (ECF No. 54) until further order of court. Do you oppose the motion? Thank you.

[To which Appellant responded:]

The 3 Judge Court already orally ruled on this on the record on October 20, but did not memorialize it in any Order. As ruled, the Motion for Summary Judgment is to remain on the public docket, but the obligation of anyone to respond, and the assigning of a return date, is stayed until further Order of the Court. As long as the motion remains on the public docket and is stayed, I of course

(A-17)

consent as this was technically already ordered.
(Emphasis added)

Thank you,
EML

[To which Mr. Smith responded:]

Thank you for your response.

Appendix Document E
[ECF Document No. 60 (Proof of Service and
Proposed Order redacted)]
[Filed October 31, 2017]

United States District Court
for the District of Columbia

-----	X	Civil Action No. 1:17-cv-793
Eugene Martin	:	-CKK-CP-RDM
LaVergne,	:	
et al,	:	
	:	
<i>Plaintiffs,</i>	:	
	:	
<i>us.</i>	:	
	:	
United States House of	:	
Representatives, et al,	:	
	:	
<i>Defendants.</i>	:	
-----	X	

IDAHO AND WASHINGTON DEFENDANTS'
MOTION TO STAY DUTY TO RESPOND TO
PLAINTIFF EUGENE MARTIN LaVERGNE'S
MOTION FOR SUMMARY JUDGMENT

Defendants C.L. "Butch" Otter, Lawrence Wasden, Lawrence Denny, Idaho State Senate and Idaho State House of Representatives (collectively, Idaho defendants) and Defendants Jay Inslee, Robert Ferguson, Kim Wyman, Washington State Senate and Washington State House of Representatives (collectively, Washington defendants) respectfully request that this Court stay all State defendants' duty to respond to plaintiff Eugene Martin LaVergne's Motion for Summary Judgment filed on October 23, 2017 (ECF No. 54) until further order of the court.

Good cause for this motion exists in view of this Court's statements during the October 20, 2017 scheduling conference in which it offered plaintiff LaVergne the opportunity to withdraw his motion without prejudice pending resolution of the *res judicata* and collateral estoppel issues. When he declined the offer, the Court indicated that a stay would therefore be appropriate with respect to all defendants' duty to respond. Because a stay order has not been entered *sua sponte*, Idaho and Washington defendants concluded that a formal motion for a stay should be submitted.

Pursuant to *L.Civ.R.* 7(m), counsel for the Idaho and Washington defendant conferred with counsel for the federal defendants and other State defendants. They do not oppose this motion. They further conferred with plaintiff LaVergne who does not oppose the motion.

For the foregoing reasons, the Idaho and Washington defendants request that this motion be granted.

DATED: October 31, 2017

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LAWRENCE WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB#3586
Chief of Civil Litigation

/s/ Clay R. Smith

CLAY R. SMITH, ISB#6385
Deputy Attorney General
954 W. Jefferson Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
Attorney for Defendants C.L. "Butch" Otter,
Lawrence Wasden, Lawrence Denney, Idaho State
Senate and Idaho House of Representatives

ROBERT W. FERGUSON
WASHINGTON ATTORNEY GENERAL

/s/ Jeffrey T. Even

JEFFREY T. EVEN, WSB#20367
Deputy Solicitor General
P.O. Box 4010
Olympia, WA 98504-0100
Tel: (360) 586-0728
Fax: (360) 664-2963
jeffe@atg.wa.gov
Counsel for Defendants Governor Jay Inslee,
Attorney General Robert W. Ferguson, Secretary of
State Kim Wyman, the Washington State Senate, and
the Washington State House of Representatives.

Appendix Document F
[ECF Document No. 61 (Proof of Service and Proposed Order redacted)]
[Filed October 31, 2017]

United States District Court
for the District of Columbia

-----X Civil Action No. 1:17-cv-793
Eugene Martin : -CKK-CP-RDM
LaVergne, :
et al, :
 :
Plaintiffs, :
 :
vs. :
 :
United States House of :
Representatives, et al, :
 :
Defendants. :
-----X

**CONSENT MOTION TO HOLD IN ABEYANCE
PLAINTIFF EUGENE LaVERGNE'S MOTION FOR
SUMMARY JUDGMENT**

Defendants the United States House of Representatives, the Clerk of the House of Representatives, the members House of Representatives, the United States Senate, the President of the Senate, the members of the Senate, the Archivist of the United States, the Secretary of Commerce, and the President of the United States (the "Federal Defendants") hereby move

to hold in abeyance the motion for summary judgment filed by Plaintiff Eugene LaVergne on October 20, 2017, ECF No. 54.

During the scheduling conference on October 20, 2017, Defendants in this case raised several issues about the Court's jurisdiction to decide this case as well as Plaintiff Eugene LaVergne's ability to prosecute it under the doctrine of claim preclusion (among other bases for dismissal). The Court ordered Defendants to brief preclusion as a preliminary issue, and it set a schedule for doing so. ECF No. 51. Nevertheless, Plaintiff Eugene LaVergne requested that a motion for summary judgment that he had sent to the Court be docketed. Because preliminary matters regarding preclusion and jurisdiction should be decided first, the Federal Defendants move to hold the motion for summary judgment in abeyance pending further order of the Court, which the Federal Defendants should come only after preliminary issues of preclusion and jurisdiction have been resolved (if they are resolved in favor of plaintiffs). Counsel for the Federal Defendants conferred with counsel for the State Defendants and with Plaintiff Eugene LaVergne and they consent to the abeyance. The Federal Defendants note that the State Defendants have moved to stay their own response to the motion for summary judgment. ECF. No. 60. The same relief should apply to the Federal Defendants.

Respectfully submitted,

JESSIE K. LIU, D.C. Bar#4728545
United States Attorney

DANIEL F. VAN HORN, D.C. Bar#924092
Chief, Civil Division

(A-22)

By: /s/ JohnnyWalker
JOHNNY H. WALKER, D.C. Bar#991325
Assistant United States Attorney
555 4th Street, N.W.
Washington, District of Columbia 20530
Telephone: 202-252-2575
johnny.walker@usdoj.gov
Counsel for the Federal Defendants

Appendix Document G
[ECF Document No. 80]
[Filed December 21, 2017]

United States District Court
for the District of Columbia

-----X Civil Action No. 1:17-cv-793
Eugene Martin :
LaVergne, :
et al, :
 :
Plaintiffs, :
 :
us. :
 :
United States House of :
Representatives, et al, :
 :
Defendants. :
-----X

ORDER
(December 21, 2017)

(A-23)

- Plaintiffs' [54] Motion for Summary Judgment is DENIED WITHOUT PEJUDICE to it being refilled at a later date if and when this case proceeds to a point where the Court considers the merits of Plaintiffs' claims. State and Federal Defendants' respective [60] and [61] motions to either stay the duty to respond to Plaintiffs' motion, or to hold that motion in abeyance, are accordingly DENIED AS MOOT.
- Defendants shall respond to the [72] Motion to Intervene that has been filed by Citizen's for Fair Representation, Mark Baird, Steven Baird, Cindy Brown, Tanya Nemcik, and Terry Rapoza, by no later than January 5, 2018. This response should address the merits of the proposed-intervenors' right to intervene, as opposed to merely arguing that their motion is premature. Proposed-intervenors shall file a reply by no later than January 12, 2018.
- The [74] Motion to Appear Pro Hac Vice filed on behalf of Scott E. Stafne is GRANTED. Mr. Stafne may appear as counsel for the proposed-intervenors. Counsel shall promptly register for this Court's CM/ECF system.

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

SO ORDERED.

/s/

COLLEEN KOLLAR-KOTELLY
United States District Court

**Appendix Document H
[ECF Document No. 116]
[Appellant's Declaration Filed Dated March 30, 2018,
Stamped "received" by the Clerk on April 16, 2018 but not
Filed until April 23, 2018 after hand written permission
from Judge Kollar-Kotelly to the Clerk, exhibits redacted
from Declaration]**

United States District Court for the
District of Columbia

*Let this be filed
Judge C Kollar-Kotelly
4/23/18*

-----X CASE NO. 1:17-cv-00793
Eugene Martin :
LaVergne, :
et al, : Honorable Cornelia T.L.
 : Pillard, C.J. (Presiding)
Plaintiffs, : Honorable Colleen Kollar-
 : Kotelly, U.S.D.J.
vs. : Honorable Randolph D. Moss,
 : U.S.D.J.
United States House of :
Representatives, et al, : *Civil Action*
 :
Defendants. : [Received by Clerk
-----X April 16, 2018]

Verification and Declaration of Eugene Martin
LaVergne pursuant to 28 U.S.C. §1746 and L.Cv.R.
11.1(2)

Eugene Martin LaVergne hereby swears, certifies and declares as follows:

1. I am the first named Plaintiff in the above matter and as such I am fully familiar with all facts relevant to this case.
2. I make this Declaration (1) in Opposition to the "Collateral Estoppel" Motions of the Federal Defendants and the State Defendants, (2) in support of my *Rule* 60(b)(4) Post Judgment Cross-Motion "collaterally attacking" in this case the validity of Judge Sheridan's Single District Court Judge Memorandum & Order of December 16, 2011 in the *LaVergne v. Bryson* case, and (3) in support of my pending *Rule* 11 motion against the Federal and certain State Defendants.
3. Attached hereto at "Exhibit A" is a True copy of the certified transcript of proceedings of March 6, 2018 oral argument in the *Rule* 60 Post Judgment Motion in the related earlier *LaVergne v. Bryson*, United States District Court, District of New Jersey, Civil Action No. 11-7117(PGS). Of particular importance is the following colloquy which I respectfully direct the Court and parties to, as follows:

THE COURT: I know you were saying my decision was unclear, but it was affirmed if I remember it right. And, you know, I dismissed it based on your lack of standing. (Emphasis added).

MR. LaVERGNE: That's okay, you can clarify that now because you didn't say that then that's my whole point.

THE COURT: Oh.

(A-26)

MR. LaVERGNE: Because the point is if you dismissed it for lack of standing I'm okay with that, I disagree that was a correct decision but I'm not challenging that. Because the point is a dismissal for lack of jurisdiction based upon lack of standing has no preclusive effect in the case in Washington. So if that's why you dismissed it then just clarify that and say so and we're done.

THE COURT: Al right. ***

[See certified transcript of proceedings of March 6, 2018 in *LaVergne v. Bryson*, United States District Court, District of New Jersey, Civil Action No. 11-7117(PGS) attached hereto at "Exhibit A" at page 5, Line 11 through Line 24]

THE COURT: Al right. Thank you for coming in, but actually I didn't think my judgment last time was so ambiguous that no one understood it. And I do believe I was entering a judgment because I thought you lacked standing to present a case on reapportionment ...[.]
(Emphasis added).

[See certified transcript of proceedings of March 6, 2018 in *LaVergne v. Bryson*, United States District Court, District of New Jersey, Civil Action No. 11-7117(PGS) attached hereto at "Exhibit A" at page 11, Line 15 through Line 19]

4. In the foregoing passages Judge Sheridan has now clarified beyond dispute that his December 16, 2011 *sua sponte* single Judge District Court Order "Dismissing" the entirety of the *LaVergne v Bryson* case was because he found that Plaintiff Eugene Martin LaVergne, to quote Judge Sheridan: "...

lacked standing to present a case on reapportionment, with Judge Sheridan also unequivocally confirming that he "... dismissed [the case] based on your lack of standing." As such, at this point there can be no question but that Judge Sheridan's December 16, 2011 *sua sponte* single Judge District Court Order "Dismissing" the entirety of the *LaVergne v Bryson* case was because Judge Sheridan found that Plaintiff Eugene Martin LaVergne lacked Article III Standing to present that case on reapportionment. Irrespective of long existing Supreme Court authority to the contrary, this is what Judge Sheridan ruled to be the case on December 16, 2011, and what Judge Sheridan clarified and confirmed that he ruled at oral argument on March 8, 2018 during the *Rule 60* Motion in the District of New Jersey.

5. Judge Sheridan's ruling in this regard was "wrong", but that is of no moment for purposes of all of the pending motions and cross-motions. The point is that the earlier December 16, 2011 "Dismissal" was for lack of Article III Standing, and a dismissal for lack of standing carries no preclusive effect under any of the recognized doctrines of preclusion and bar (Collateral Estoppel, *Res Judicata*, and Entire Controversy Doctrine). See Prior Memorandum of Law where this undisputable clear point of law is discussed in detail *ad nauseum*.
6. The Federal and State Defendants can no longer claim that the earlier dismissal they rely upon was for anything other than Standing. As a matter of law a dismissal for "Lack of Standing" carries no preclusive effect in any subsequent action. Moreover, in light of the failure of such Defendants to have voluntarily withdrawn their respective

“Collateral Estoppel” motions as demanded is therefore a clear and inexcusable violation of *Rule 11*.

“I declare, certify, verify and state under penalty of perjury that the foregoing is true and correct.”

Executed on this 30th day of March 2018.

 /s/
Eugene Martin LaVergne
Plaintiff *Pro Se*

Appendix Document J
[ECF Document No. 116]
[Appellant’s Request to Schedule all Pending Motions for Oral Argument and Disposition Dated March 30, 2018 but not Filed until April 23, 2018 after direction from Judge Kollar-Kotelly to the Clerk regarding Appendix Document I and this Appendix Document J]

United States District Court for the
District of Columbia

-----	X CASE NO. 1:17-cv-00793
Eugene Martin	:
LaVergne,	:
et al,	: Honorable Cornelia T.L.
	: Pillard, C.J. (Presiding)
<i>Plaintiffs,</i>	: Honorable Colleen Kollar-
	: Kotelly, U.S.D.J.
<i>vs.</i>	: Honorable Randolph D. Moss,
	: U.S.D.J.

United States House of :
Representatives, et al, : *Civil Action*
: :
Defendants. :
-----X

REQUEST TO SCHEDULE ALL PENDING
MOTIONS
FOR ORAL ARGUMENT AND DISPOSITION

Presently before the Court are the following
unresolved pending motions:

1. The Pending Motions of the Federal Defendants and Certain State Defendants to dismiss the claims of Plaintiff Eugene Martin LaVergne only on "Collateral Estoppel" Grounds (opposed by Mr. LaVergne);
2. The Pending Cross-Motion of Eugene Martin LaVergne "collaterally attacking" Judge Sheridan's December 16, 2016 Memorandum and Order in the earlier *LaVergne v. Bryson* case (opposed by Federal Defendants and certain State Defendants);
3. The Pending Motion of Eugene Martin LaVergne seeking *Rule 11* sanctions against the Federal Defendants and certain State Defendants (opposed by Federal Defendants and certain State Defendants);
4. The Pending Motion of Interveners for permission for intervention (Consented to by all Plaintiffs, opposed by Federal Defendants and certain State Defendants);
5. The Pending Motion of Scott Neuman for leave to file a Second Amended Complaint (Consented to by

**Appendix Document K
[ECF Document No. 115]
[Appellant's Joint Request with Scott E. Stafne,
Esq., attorney for proposed Intervenor's, for an
Immediate Telephonic Case Management and
Scheduling Conference before the full Three
Judge Court with all parties, filed April 20,
2018].**

United States District Court for the
District of Columbia

-----	X CASE NO. 1:17-cv-00793
Eugene Martin	:
LaVergne,	:
et al,	: Honorable Cornelia T.L.
	: Pillard, C.J. (Presiding)
<i>Plaintiffs,</i>	: Honorable Colleen Kollar-
	: Kotelly, U.S.D.J.
<i>us.</i>	: Honorable Randolph D. Moss,
	: U.S.D.J.
United States House of	:
Representatives, et al, :	<i>Civil Action</i>
	:
<i>Defendants.</i>	:
-----	X

JOINT REQUEST OF PLAINTIFF EUGENE
MARTIN LaVERGNE AND SCOTT E. STAFNE,
ESQ. FOR AN IMMEDIATE TELEPHONIC CASED
MANAGEMENT AND SCHEDULING
CONFERENCE BEFORE THE FULL THREE
JUDGE COURT WITH ALL PARTIES

(A-32)

EUGENE MARTIN LaVERGNE, Plaintiff Pro Se,

and

SCOTT E. STAFNE, ESQ., lead counsel for potential
Intervenors Citizens for fair Representation (“CFR”),
Mark Baird, Steven Baird, Cindy Brown, Win
Carpenter, Tanya Nemcik and terry Rapoza,

HEREBY JOINTLY REQUEST An immediate
(within 7 days) Telephonic Case Management and
Scheduling Conference before the full Three Judge
Court with all parties noticed and given opportunity
to appear and be heard telephonically; and

IN SUPPORT OF SUCH JOINT REQUEST
the undersigned rely upon the Declaration of Eugene
Martin LaVergne dated April 18, 2018 and Scott E.
Stafne dated April 19, 2018 submitted herewith.

/s/

EUGENE MARTIN LaVERGNE
543 CEDAR AVENUE
WEST LONG BRANCH, NEW JERSEY 07764
TELEPHONE: (732) 515-8229
PLAITNIFF *PRO SE*
DATED: April 18, 2018

/s/

Scott E. Stafne, Esq. (WA Bar #6964)
Sara S. Hemphill, Esq. admission pending
Alexander Penley Esq. (D.C. Bar#993230)
STAFNE LAW ADVOCY AND CONSULTING

(A-33)

239 North Olympic Avenue
Arlington, Washington 98223
Telephone: (360) 403-8700
Attorney for potential Intervenor's Citizens for
fair Representation ("CFR"), Mark Baird,
Steven Baird, Cindy Brown, Win Carpenter,
Tanya Nemcik and Terry Rapoza
DATED: April 19, 2018

Appendix Document L
[ECF Document No. 121]
[Filed May 10, 2018]

United States District Court
for the District of Columbia

-----	X Civil Action No. 1:17-cv-793
Eugene Martin	:
LaVergne,	:
et al,	:
	:
<i>Plaintiffs,</i>	:
	:
<i>us.</i>	:
	:
United States House of	:
Representatives, et al, :	:
	:
<i>Defendants.</i>	:
-----	X

ORDER
(May 10, 2018)

- Plaintiff Eugene Martin LaVergne and Scott E. Stafne Esq.'s [115] Joint Request for an

(A-34)

Immediate Telephone Case Management and Scheduling Conference before the Full Three Judge Court with all Parties, and Plaintiff LaVergne's [117] Request to Schedule all Pending Motions for Oral Argument and Disposition are both DENIED. The Court will proceed to consider and resolve the motions that have been filed and fully briefed. The Court will schedule oral argument if it determines that such argument would be helpful.

- Plaintiff Eugene Martin LaVergne has WITHDRAWN his [1-20 Motion for Temporary Stay of Consideration of Defendants' Pending Motions and Plaintiff's Pending Cross-Motion. s" [54] Motion for Summary Judgment is DENIED WITHOUT PEJUDICE to it being refilled at a later date if and when this case proceeds to a point where the Court considers the merits of Plaintiffs' claims. State and Federal Defendants' respective [60] and [61] motions to either stay the duty to respond to Plaintiffs' motion, or to hold that motion in abeyance, are accordingly DENIED AS MOOT.

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

SO ORDERED.

/s/

COLLEEN KOLLAR-KOTELLY
United States District Court

Appendix Document M
[ECF Document No. 123]
[Filed May 31, 2018]

United States District Court
for the District of Columbia

-----X Civil Action No.
Eugene Martin : 1:17-cv-00793-CKK-CP-RDM
LaVergne, : Three Judge Court:
et al, : Honorable Cornelia T.L.
 : Pillard, C.J. (Presiding)
Plaintiffs, : Honorable Colleen Kollar-
 : Kotelly, U.S.D.J.
us. : Honorable Randolph D. Moss,
 : U.S.D.J.
United States House of :
Representatives, et al, : *Civil Action*
Defendants, :
 :
and :
 :
Michael Pence, *Vice* :
President of the United :
States and President of :
the United States Senate, :
et al, :
 :
Interested Parties. :
-----X

Notice of Motions

(A-36)

TO: Honorable Cornelia T. L. Pillard, C.J.
(Presiding)

United States Circuit Court of Appeals
for the District of Columbia Circuit
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Honorable Colleen Kollar-Kotelly, U.S.D.J.
United States District Court
for the District of Columbia District
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Honorable Randolph D. Moss, U.S.D.J.
United States District Court
for the District of Columbia District
United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Frederick John LaVergne
312 Walnut Street
Delanco, New Jersey 08075
Plaintiff *Pro Se*

Leonard P. Marshall
303 Spinnaker Way
Neptune, New Jersey 08757
Plaintiff *Pro Se*

Scott Neuman
1325 Englemere Boulevard
Toms River, New Jersey 08757
Plaintiff *Pro Se*

Allen J. Cannon
7 Brookside Drive
Titusville, New Jersey 08560
Plaintiff *Pro Se*

Scott Stafne, Esq.
Sara S. Hemphill, Esq.
STAFNE LAW ADVOCY AND CONSULTING
239 North Olympic Avenue
Arlington, Washington, 98223

and

Alexander Penley, Esq.
GLOBAL PENLEY LAW
4111 Crittenden Street
Hyattsville, Maryland 20781
Attorney for Proposed Intervenors:
Citizens for Fair Representation
Mark Baird
Steven Baird
Win Carpenter
Tanya Nemcik
Terry Rapoza

Johnny H. Walker
Assistant United States Attorney
555 4th Street N.W.
Washington, D.C. 20530
Attorney for all "Federal Defendants":
(1) United States House of Representatives
(2) Individual Members of the U.S. House of
the 115th Congress
(3) Honorable Paul Ryan, U.S. Representative
of Wisconsin
(4) Honorable David S. Ferriero, Archivist of
the United States

- (5) Honorable Wilbur Ross, U.S. Secretary of Commerce
 - (6) Honorable Donald J. Trump, President of the United States
 - (7) Honorable Karen L. Hass, Clerk of the U.S. House of Representatives
- Attorney for all "Federal Interested Parties":
- (257) Michael Pence, Vice President of the United States and President of the United States Senate
 - (258) United States Senate
 - (259) Individual Members of the U.S. Senate of the 115th Congress

Brian Vernon Church
Clay R. Smith
Deputy Attorneys General
Idaho State Attorney General's Office
954 West Jefferson Street - 2d Floor
P.O. Box 83720
Boise, Idaho 83720-0010

Attorney for State Defendants:

- (73) C.L. "Butch" Otter, Governor of Idaho
- (74) Lawrence Wasden, Idaho Attorney

General

- (75) Lawrence Denney, Idaho Secretary of

State

- (76) Idaho State Senate (35 State Senators)
- (77) Idaho State House of Representatives (70 State Representatives)

Jeffrey T. Even
Deputy Solicitor General
Washington State Attorney General's Office
P.O. Box 4010
Olympia, Washington 98504-0100

Attorney for State Defendants:

- (237) Honorable Jay Inslee, Governor of Washington
- (238) Honorable Bob Ferguson, Washington State Attorney General
- (239) Honorable Kim Wyman, Washington Secretary of State
- (240) Washington State Senate (49 Senators)
- (241) Washington State House of Representatives (98 State Representatives)

MADAMES / SIRS:

PLEASE TAKE NOTICE that on a date and time as to be fixed by this Three Judge District Court that the undersigned Plaintiff *Pro Se* shall move in each instance before the full Three Judge Court for an Order Granting the following relief:

- First, he moves pursuant to *L.Cv.R.* 5.4(b)(2) for an Order permitting him to file and receive papers in this case electronically through the Court's Case Management / Electronic Case Files ("CM / ECF") system.
- Second, he seeks an Order under 28 *U.S.C.* §2284(b)(3) (full Court review of Single Judge Action) and / or *F.R.Civ.P.* 60 vacating and declaring void the portion of Judge Kollar-Kotelly's December 21, 2017 Single District Court Judge Order [Document 80] where she, without notice, suddenly *sua sponte* DENIED WITHOUT PREJUDICE Plaintiff's pending motion for Summary Judgment.
- Third, he seeks an Order under the authority of 28 *U.S.C.* §1657(a) and precedents of the United States Supreme Court cited immediately fixing

(A-40)

an expedited briefing schedule on the pending motion for Summary Judgment and a decision on that motion from this Three Judge Court on an expedited basis.

PLEASE TAKE FURTHER NOTICE that at such time and place that the Plaintiff *Pro Se* shall rely upon the following:

- May 28, 2018 Verification and Declaration of Eugene Martin LaVergne pursuant to 28 U.S.C. §1746 and *L.Cv.R.* 11.1(2) with “Exhibits”;
- Memorandum of Points and Authorities
- A proposed form or Order; and

PLEASE TAKE FURTEHR NOTICE that (*)
Oral Argument is Hereby Requested.

/s/

Eugene Martin LaVergne
Plaintiff *Pro Se*
543 Cedar Avenue
West Long Branch, New Jersey 07764
Telephone: (732) 515-8229
Email: emlesqnj@hotmail.com
Dated: May 28, 2018

Appendix Document N
[ECF Document No. 124]
[Filed June 6, 2018]

United States District Court
for the District of Columbia

-----X Civil Action No. 1:17-cv-793
Eugene Martin :
LaVergne, :
et al, :
 :
Plaintiffs, :
 :
us. :
 :
United States House of :
Representatives, et al, :
 :
Defendants. :
-----X

ORDER
(June 6, 2018)

The three-judge panel is in receipt of Plaintiff Eugene martin LaVergne's [123] Motions. Plaintiff's Motions seek three types of relief, each of which is addressed separately below:

- To the extent that Plaintiff requests permission to file and receive papers electronically, Plaintiff's request is DENIED WITHOUT PREJUDICE. Local Civil Rule 5.4(b)(2) states that "[a] *pro se* party may obtain a CM/ECF

user name and password from the Clerk with leave of Court. Whether leave of Court should be granted is within the discretion of the judge to whom the case is assigned.” In an exercise of its discretion, because the three-judge panel does not contemplate a need for filings during this phase of litigation, it DENIES Plaintiff’s motion WITHOUT PREJUDICE. Plaintiff may re-file such a motion at a later date, after the Court has a better sense of how this litigation will proceed. As with all Orders issued in this case, this Order represents the decision of the three-judge panel, not of any one particular judge.

- To the extent that Plaintiff requests that the Court vacate and declare void its Order denying without prejudice Plaintiff’s Motion for Summary Judgment, Plaintiff’s request is DENIED. Plaintiff’s summary judgment motion was denied without prejudice because, in an exercise of its discretion, the three-judge panel determined that it would be more efficient to consider that motion at a later state of this case after certain threshold, dispositive legal issues were resolved. Despite its having been issued by Judge Coleen Kollar-Kotelly, the Order denying Plaintiff’s motion represented the decision of the three-judge panel
- To the extent that Plaintiff requests that the Court set and expedited briefing schedule for Plaintiff’s motion for Summary Judgment, Plaintiff’s request is DENIED. Plaintiff’s summary judgment motion was denied without

(A-43)

prejudice to be refilled at a later stage of this case if and when this case proceeds to a point where the three-judge panel considers the merits of Plaintiffs' claims. The case has not proceeded to that point yet. The three-judge panel is still currently considering certain other threshold motions that have been filed.

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

SO ORDERED.

/s/
CORNELIA T.L. PILLARD
United States Circuit Court of Appeals Judge

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

/s/
RANDOLPH D. MOSS
United States District Judge

Appendix Document O
[ECF Document No. 126 (Proof of Service
redacted]
[Filed June 11, 2018]

United States District Court
for the
District of Columbia

-----X Civil Action No.
Eugene Martin : 1:17-cv-00793-CKK-CP-RDM
LaVergne, :
et al, : Honorable Cornelia T.L.
 : Pillard, C.J. (Presiding)
Plaintiffs, : Honorable Colleen Kollar-
 : Kotelly, U.S.D.J.
us. : Honorable Randolph D. Moss,
 : U.S.D.J.
United States House of :
Representatives, et al, : *Civil Action*
Defendants, :
and :
Michael Pence, *Vice* :
President of the United :
States and President of :
the United States Senate, :
et al, :
Interested Parties. :
-----X

NOTICE OF DIRECT APPEAL TO THE UNITED
STATES SUPREME COURT FROM THIS THREE-
JUDGE DISTRICT COURT'S DENIAL OF
PLAINTIFF'S APPLICATION FOR PERMANENT
INJUNCTIVE RELIEF
(28 U.S.C. §1253)

(A-45)

PLEASE TAKE NOTICE pursuant to *Rule 18* of the *United States Supreme Court Rules* that Plaintiff Eugene Martin LaVergne hereby directly appeals to the United States Supreme Court seeking review of this Three Judge District-Court's Order dated June 6, 2018 [Document 124] DENYING Plaintiff's Motion [Document 123] seeking Summary Judgment and Permanent Injunctive Relief on an Expedited Basis; and

PLEASE TAKE FURTHER NOTICE that this direct Appeal is taken pursuant to the authority of 28 U.S.C. §1253 which provides for the immediate and direct appeal to the United States Supreme Court from any Three-Judge District Court Order denying an application for permanent injunctive relief.

/s/

Eugene Martin LaVergne
543 Cedar Avenue
West Long Branch, New Jersey 07764
Telephone: (732) 515-8229
Email: emlesqnj@hotmail.com
Plaintiff *Pro Se*

Dated: June 11, 2018

Appendix Document P
[ECF Document No. 125 (Proof of Service
redacted]
[Filed June 11, 2018]

United States District Court
for the
District of Columbia

-----X Civil Action No.
Eugene Martin : 1:17-cv-00793-CKK-CP-RDM
LaVergne, :
et al, : Honorable Cornelia T.L.
 : Pillard, C.J. (Presiding)
Plaintiffs, : Honorable Colleen Kollar-
 : Kotelly, U.S.D.J.
vs. : Honorable Randolph D. Moss,
 : U.S.D.J.
United States House of :
Representatives, et al, : *Civil Action*
Defendants, :
and :
Michael Pence, Vice :
President of the United :
States and President of :
the United States Senate, :
et al, :
Interested Parties. :
-----X

NOTICE OF DIRECT APPEAL TO THE UNITED
STATES SUPREME COURT
(28 U.S.C. §1253)

PLEASE TAKE NOTICE pursuant to *Rule 18*
of the *United States Supreme Court Rules* that
Plaintiff Eugene Martin LaVergne and Intervenor-
Plaintiff Citizens for Fair Representation hereby
directly appeals

to the United States Supreme Court seeking review of this Three Judge District-Court's Order dated June 6, 2018 [Document 124] DENYING Plaintiff's Motion [Document 123] seeking Summary Judgment and Permanent Injunctive Relief on an Expedited Basis; and

PLEASE TAKE FURTHER NOTICE that this direct Appeal is taken pursuant to the authority of 28 U.S.C. §1253 which provides for the immediate and direct appeal to the United States Supreme Court from any Three-Judge District Court Order denying an application for permanent injunctive relief.

Dated this 11th day of June, 2018 at Arlington, Washington.

Respectfully submitted,

/s/

Scott E. Stafne WSBA#6964

Pro Hac Vice

STAFNE LAW ADVOCACY & CONSULTING

239 N. OLYMPIA Avenue

Arlington, WA 98223

(360) 403-8700

scott@stafnelaw.com

Attorney for Plaintiffs/Intervenors CFR, Mark Baird, Steven Baird, Terry Rapoza, Tanya Namcik and Cindy Brown

CONSTITUTIONAL AND STATUTORY PROVISIONS
AT ISSUE

United States Constitution, Article the First

Article the First of the United States Constitution properly reads¹ as follows:

Article the First

After the first enumeration, required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor *more* than one Representative for every forty thousand persons, until the number shall amount to two hundred, after which the proportion shall be so regulated nu Congress, that there shall be not less than two hundred representatives, nor *less* than one Representative for every fifty-thousand persons. (Emphasis added).

¹ This is the correct literal text of the Amendment. *Rule 34(5)* of the Supreme Court indicates that when a federal law is at issue and is not classified in the United States Code, the citation should *ordinarily* be to the *Unites States Statutes at Large*. However, the *Rule* continues stating that "... additional or alternative citation should be provided *only if there is a particular reason why* the citations are relevant to the argument." (emphasis added) *Id.* In this case there is just such a "particular reason", as the text of *Article the First* as found in the *United States Statutes at Large* (specifically at 1 *Stat.* 97 (1789)), first printed and published in 1845 (56 years after the actual events in issue) is in error as it perpetuates a scrivener's error and printing error in the text where the word "more" was inserted in the incorrect location in place of the word "less". See detailed explanation of the scrivener's error and printing error in the text of *Article the First* in *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, New York, New York (2016) at pages 179-220.

United States Constitution, Article I, Section 1

Article I, Section 1 of the *United States Constitution* (commonly known as the “Vesting Clause”) provides in relevant part as follows:

“All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”

United States Constitution, Article I, Section 2

Article I, Section 2 of the *United States Constitution* in its original (un-amended form) provides in relevant part as follows:

“Representatives and direct taxes² shall be apportioned among the several States which may be included within this Union, according to their respective numbers which shall be determined by adding the whole Number of free Persons, including those bound to Serve

² The original Constitutional requirement in Article I, Section 2 that “... *direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers ...*” was made inoperative and was effectively repealed on February 3, 1919 with the full ratification and automatic consummation into positive Federal Constitutional law and promulgation of the Sixteenth Amendment.

for a Term of Years, and excluding Indians not taxed³, three fifths of all other Persons.⁴

The actual Enumeration shall be made within three Years after the first Meeting of Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law Direct. The number of Representatives shall not exceed one for every thirty Thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.”

³ The Constitutional requirement in Article I, Section 2 and the Fourteenth Amendment, Section 2 that “... Indians not taxed ...” were exempt and were not to be counted in the official Census was rendered moot in 1940 when the United States Attorney General declared that there were no longer any Indians that met this definition.

⁴ The Fourteenth Amendment, Section 2, which was fully ratified and automatically consummated into positive Federal Constitutional law and promulgated required that starting with the 1870 Decennial census and each Decennial census thereafter that each former slave, to that point counted as 3/5 of a person for Census purposes, would now be counted as 1 “whole person” for Article I, Section 2 Census purposes.

United States Constitution, Article I, Section 5

Article I, Section 5 of the United States Constitution (commonly known as the "Quorums Clause") provides in relevant part as follows:

"... a majority of each [House] shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide."

United States Constitution, Article II, Section 7, Clause 2

Article II, Section 7, Clause 2 of the United States Constitution (commonly known as the "Bicamerality Clause") provides in relevant part as follows:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States."

United States Constitution, Article V

Article V of the United States Constitution provides as follows:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution,

or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses of the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”

1 U.S.C. §106b

1 U.S.C. §106b in its present form provides as follows:

“Whenever official notice is received by the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.”

2 U.S.C. §2a

2 U.S.C. §2a in its present form provides as follows:

“Sec. 2a. Reapportionment of Representatives; time and manner; existing decennial census figures as basis, statement by President; duties of clerk.

(a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and in the fifth Congress thereafter, the President shall transmit to the Congress a Statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no state to receive less than one Member.

(b) Each State shall be entitled in the Eighty-Third Congress and in each Congress thereafter until the taking of effect of a reapportionment under this section or

subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representative to which such State is entitled under this section. In case of a vacancy in the office of the Clerk, such duty shall devolve upon the Sergeant at Arms of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts provided by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives from the districts then provided by the law of such State; (3) if there is a decrease in the number of representatives but the number of districts in each State is equal to such decreased number of Representatives, they shall be elected from the districts then provided by the law of such State; (4) if there is a

decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by law of such state; (5) if there is a decrease in the number of Representatives and number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.”

5 U.S.C. §702

5 U.S.C. §702 provides as follows:

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or other officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, that any mandatory or

(A56)

injunctive decree shall specify that the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

5 U.S.C. §801 (a)(1)(A) & (a)(1)(C)(3)

5 U.S.C. §801 (a)(1)(A) & (a)(1)(C)(3) each provides as follows:

“(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing -

- (i) a copy of the rule;
- (ii) a concise general statement relating to the rule, including whether it is a major rule; and
- (iii) the proposed effective date of the rule.”

(A-57)

“(a)(1)(C)(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of -

- (A) the later of the date occurring 60 days after the date on which -
 - (i) the Congress receives the report submitted under paragraph (1); or
 - (ii) the rule is published in the Federal Register, if so published;
- (B) if the Congress passed a joint resolution of disapproval in section 802 relating to the rule, and the president signs a veto of such resolution, the earlier date -
 - (i) on which either House of Congress votes and fails to override the veto of the President; or
 - (ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or
- (C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).”

(A-58)

5 U.S.C. §802

5 U.S.C. §802 provides as follows:

“(a) For purposes of this section, the term “joint resolution” means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: “that Congress disapproves the rule submitted by the _____ relating to _____, and such rule shall have no force or effect.” (The blank spaces being appropriately filled in).”

28 U.S.C. §2284

28 U.S.C. §2284 provides as follows:

(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

(A-59)

(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

(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

(A-60)

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 (referee?), 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.

28 U.S.C. §1253

28 U.S.C. §1253 provides as follows:

“Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.”

28 U.S.C. §1657(a)

28 U.S.C. §1657(a) provides as follows:

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause is shown. For purposes of this subsection, "good cause" is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

131 Stat. 88
(Public Law 115-22 - April 3, 2017, 115th
Congress)

131 Stat. 88 (*Public Law 115-22 - April 3, 2017, 115th Congress*), reads as follows:

Public Law 115-22
115th Congress

Joint Resolution

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Federal Communications Commission relating to "Protecting Privacy of Customers of Broadband and other Telecommunications Services."

(A-62)

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Federal Communications Commission relating to "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" (81 Fed. Reg. 87274 (December 2, 2016)) and such rule shall have no force or effect.

Approved April 3, 2017.

END