

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LEAGUE OF WOMEN VOTERS)
OF MICHIGAN, ROGER J. BRDAK,))
FREDERICK C. DURHAL, JR.,)
JACK E. ELLIS, DONNA E.)
FARRIS, WILLIAM "BILL" J.)
GRASHA, ROSA L. HOLLIDAY,)
DIANA L. KETOLA, JON "JACK")
G. LASALLE, RICHARD "DICK")
W. LONG, LORENZO RIVERA)
and RASHIDA H. TLAIB,)

No. 2:17-cv-14148-DPH-SDD

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

Plaintiffs,)

v.)

RUTH JOHNSON, in her official)
Capacity as Michigan)
Secretary of State,)

Defendant.)

**APPLICATION FOR THREE-JUDGE COURT AND
MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiffs move for the convening of a three-judge court to adjudicate the challenges in the Complaint pursuant to 28 U.S.C. § 2284(a).

Points and Authorities

Plaintiffs meet the requirements for a three-judge court, as required by 28 U.S.C. § 2284, and thus, as demonstrated by United States Supreme Court jurisprudence, the District Court is required to convene a three-judge court.

I. Plaintiffs Meet the Requirements for a Three-Judge Court Pursuant to 28 U.S.C. § 2284.

Pursuant to 28 U.S.C. § 2284(a), a “district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.” 28 U.S.C. § 2284(a). Section 2284(b)(1) specifically requires that:

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.

Here, the Plaintiffs are challenging the constitutionality of the apportionment of the Michigan State Senate and the Michigan House of Representatives, each of which is a statewide legislative body. The Plaintiffs are also challenging the apportionment of the Michigan congressional districts. Therefore, pursuant § 2284(a), Plaintiffs are entitled to a three-judge court.

II. United States Supreme Court Jurisprudence Demonstrates that the District Court is Required to Convene a Three-Judge Court in the Present Case.

In *Shapiro v. McManus*, a bipartisan group of citizens dissatisfied with a statute establishing districts for Maryland's eight congressional seats filed suit *pro se* in federal district court. *Shapiro v. McManus*, No. 14-990, — U.S. —, 136 S.Ct. 450, 453 (U.S. Dec. 8, 2015). Petitioners requested that a three-judge court be convened to hear the case. *Id.* The District Judge found the claim to be “not one for which relief can be granted,” *Id.* (quoting *Benisek v. Mack*, 11 F. Supp. 3d 516, 526 (D. Md. 2014)), and therefore dismissed the action. *Id.*

Upon review, the Supreme Court determined that the “text’s initial prescription could not be clearer: ‘A district court of three judges *shall be convened . . .*’” *Id.* at 454 (quoting § 2284(a)). The Court found that since the suit challenged the constitutionality of the apportionment of congressional districts, “[i]t follows that the district judge was *required* to refer the case to a three-judge court, for § 2284(a) admits of no exception, and ‘the mandatory ‘shall’ . . . normally creates an obligation impervious to judicial discretion.’” *Id.* (quoting *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U. S. 26, 35 (1998)) (emphasis in original). Further, the Court found that § 2284(b)(1) was not a “grant of discretion” but rather “an administrative detail that is entirely compatible with § 2284(a).” *Id.*

Here, as in *Shapiro*, the Plaintiffs are challenging the constitutionality of the apportionment of two statewide legislative bodies and congressional districts. Section 2284(a) requires the District Court to convene a three-judge court.

Respectfully Submitted,

/s/ Joseph H. Yeager, Jr.

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2017, I electronically filed the foregoing Application for Three-Judge Court and Memorandum of Points and Authorities with the Clerk of the Court using the ECF system. A copy of the same will be served on the following entities and individuals by certified mail:

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