**CRS Reports & Analysis**

## Legal Sidebar

# Three-Judge Court Must Be Convened In Constitutional Challenges to Redistricting Maps

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In a unanimous ruling, on December 8, 2015, the U.S. Supreme Court held that a three-judge district court must be convened in cases challenging the constitutionality of redistricting maps. In this case, *Shapiro v. McManus*, the Court reversed the U.S. Court of Appeals for the Fourth Circuit, and remanded the case for further proceedings. Due to a federal law providing for direct appeal to the U.S. Supreme Court from three-judge court decisions, this ruling could increase the number of redistricting challenges that are considered by the Court.

**Background:** A federal law, known as the "Three-Judge Court Act," specifies that constitutional challenges to federal or state legislative districts are to be considered by a three-judge federal district court panel, with direct appeal to the U.S. Supreme Court. The law further provides that a three-judge court be convened to hear such cases unless the single judge to whom the case is initially referred "determines that three judges are not required." In a 1973 ruling, the Supreme Court held that the law does not require a three-judge court when the constitutional challenge is "insubstantial." The Court further explained that under its precedent, "constitutional insubstantiality" in this context has meant "essentially fictitious," "wholly insubstantial," "obviously frivolous," and "obviously without merit," while on the other hand, decisions "that merely render claims of doubtful or questionable merit" are not to be considered insubstantial for the purposes of the statute. If a three-judge court is not convened, the litigation process is longer: an appeal to a decision by a single federal district court judge must first go to the court of appeals, and Supreme Court review would be discretionary.

**Lower Court Rulings:** Plaintiffs in *Shapiro* challenged Maryland's congressional redistricting map, arguing that certain congressional districts had been unconstitutionally drawn for partisan political purposes. The plaintiffs claimed that several congressional districts: first, impermissibly abridged their representational and voting rights under Article I, Section 2 of the Constitution and the Fourteenth Amendment; and second, infringed upon their First Amendment rights of political association. Citing Supreme Court precedent, a federal district court judge dismissed the plaintiffs' first claim as a nonjusticiable political question. and the court dismissed the plaintiffs' second claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, holding that it did not meet the "usual Rule 12(b)(6) standard" of legal sufficiency to proceed. Therefore, the judge did not refer the case to a three-judge court. The U.S. Court of Appeals for the Fourth Circuit affirmed the lower court. In their appeal to the Supreme Court, petitioners argued that the lower court should have evaluated the claim under the "obviously frivolous" standard discussed above, a different standard than that of Rule 12(b)(6).

**Supreme Court Ruling:** In *Shapiro*, the Supreme Court found that Section 2284(a) of the Three-Judge Court Act was very clear: "A district court of three judges shall be convened ... when an action is filed challenging the constitutionality of the apportionment of congressional districts." While Section 2284(b) further provides that the district court judge shall commence the process of appointing the three-judge panel "unless he determines that three judges are not required," the Court held that subsection (b) does not grant discretion to a judge to ignore the requirement of subsection (a). Rather, the Court interpreted subsection (b) to be an "administrative detail that is entirely compatible with" subsection (a), because it serves to clarify that a judge need not automatically initiate convening a three-judge court without first examining the allegations in the complaint.

Likewise, the Supreme Court rejected the State of Maryland's alternative argument that a three-judge court is unwarranted in this case because the voters' constitutional claim is "insubstantial." While the Court's 1973 precedent holds that Section 2284 permits a single judge to dismiss a case for jurisdictional purposes as an "insubstantial" constitutional challenge, the Court held that its precedent does not authorize a judge to dismiss a case when the challenge fails to state a claim for relief on the merits. Further, the Court announced that, at a minimum, a claim will not be considered "insubstantial" if it incorporates a theory espoused in a concurrence by a Supreme Court Justice. In this case, the Court found the challenge to Maryland's redistricting plan to be "along the lines" of Justice Kennedy's concurrence in *Vieth v. Jubelirer*. While a plurality of the Court in *Vieth* concluded that all political gerrymandering challenges were nonjusticiable, in a concurrence, Justice Kennedy reasoned that if a state imposes burdens on persons based on their views, a First Amendment violation would likely be found unless the state demonstrates a compelling interest.

**Implications:** This case clarifies that a three-judge district court panel is required to be convened to consider the merits of a constitutional challenge to a redistricting plan. Therefore, as a result of the law providing for direct appeal, such cases will then be considered by the U.S. Supreme Court. By implication, this ruling also appears to affect the convening of three-judge courts in other contexts, including certain challenges to federal campaign finance law under Section 403 of the Bipartisan Campaign Reform Act (BCRA).

CRS is tracking other redistricting cases that are currently pending before the Supreme Court in this report. For further reading, see also *Congressional Redistricting and the Voting Rights Act: A Legal Overview*, and *Congressional Redistricting: An Overview*.

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