

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

State of Missouri, David Mason, Andrea McCann, Jessica Fisher, and Phillip Fisher,

Plaintiffs,

v.

United States Department of Commerce, Howard W. Lutnick in his official capacity as Secretary of Commerce, United States Census Bureau, George Cook in his official capacity as Acting Director of the U.S. Census Bureau,

Defendants.

Case No. 4:26-cv-00131

Three-Judge Panel
Required Pursuant to
28 U.S.C. § 2284

NOTICE THAT THIS ACTION REQUIRES THREE-JUDGE PANEL UNDER 28 U.S.C. § 2284

Plaintiffs respectfully notify this Court that a three-judge district court must be convened under 28 U.S.C. § 2284. This action challenges the constitutionality of the apportionment of congressional representation amongst the States. *See* Doc. 1. Plaintiffs allege that Defendants’ practice of including illegal aliens and temporary visa holders in the apportionment base violates Section 2 of the Fourteenth Amendment. *Id.* Because this action involves the constitutionality of congressional apportionment, only a three-judge district court has jurisdiction over this dispute.

Section 2284(a) provides, “A district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts . . .” In light of this provision, the Supreme Court has emphasized that—in any action “challenging the constitutionality of the

apportionment of congressional districts”—a “district judge [i]s *required* to refer the case to a three-judge court, for § 2284(a) admits of no exception.” *Shapiro v. McManus*, 577 U.S. 39, 43 (2015) (emphasis in original) (quoting 28 U.S.C. § 2284(a)).

Section 2284(b) establishes procedure for appointment of a three-judge panel. Part (b)(1) provides that “[u]pon the filing of a request for three judges, the judge to whom the request is presented shall . . . immediately notify the chief judge of the circuit,” who shall designate the other members of the three-judge panel. § 2284(b)(1). To be sure, § 2284(b)(1) clarifies that a district judge need not credit a request for a three-judge panel if the judge “determines that three judges are not required.” But this power is limited. As the U.S. Supreme Court emphasized in *Shapiro*, this language “merely clarifies that a district judge need not unthinkingly initiate the procedures to convene a three-judge court without first examining the allegations in the complaint.” *Shapiro*, 577 U.S. at 44. But that is “all” a district judge can do—“no more, no less.” *Id.*; see also 28 U.S.C. § 2284(b)(3) (“A single judge shall not . . . determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits.”). Here, Plaintiffs’ complaint clearly challenges the constitutionality of congressional apportionment, Doc. 1, and thus easily meets § 2284(a)’s standard.

Plaintiffs therefore respectfully request that this Court “immediately notify” the Eighth Circuit’s Chief Judge of the pendency of this action and of Plaintiffs’ motion for a three-judge district court. § 2284(b)(1). Plaintiffs also respectfully request that the Chief Judge to “designate two other judges, at least one of whom

shall be a circuit judge,” to serve on the three-judge district court with jurisdiction over this action. *Id.*

Dated: January 30, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 30, 2026, the above was filed electronically through the Court's electronic filing system to be serve electronically on counsel for the parties.

/s/ Louis J. Capozzi III