

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MEXICAN AMERICAN LEGISLATIVE §
CAUCUS, TEXAS HOUSE OF §
REPRESENTATIVES, §

Plaintiff,

v.

STATE OF TEXAS; GREG ABBOTT, §
GOVERNOR OF THE STATE OF §
TEXAS, in his official capacity; and §
JOHN SCOTT, SECRETARY OF §
STATE OF TEXAS, in his official §
capacity, §

Case No. 1:21-cv-00988-RP

Defendants.

REQUEST FOR THREE JUDGES

Defendants request that a district court of three judges be convened to hear this case under 28 U.S.C. § 2284.

“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). In this case, Plaintiff challenges the constitutionality of the apportionment of the Texas House of Representatives, Texas’s congressional districts, and the Texas State Board of Education. *See, e.g.*, ECF 1 ¶¶ 232, 237, 241. A three-judge court is therefore required.

No one disputes that Section 2284 requires a three-judge district court in cases like this one. Section “2284(a) admits of no exception.” *Shapiro v. McManus*, 577 U.S. 39, 43 (2015). Recent disputes about how the provision applies to certain statutory challenges are immaterial here

because the case indisputably includes constitutional challenges. *Compare Thomas v. Reeves*, 961 F.3d 800, 801–10 (5th Cir. 2020) (en banc) (Costa, J., concurring), *with id.* at 810–27 (Willet, J., concurring).

To avoid any doubt about whether “a request for three judges” has been properly filed, Defendants hereby request that the Court “immediately notify the chief judge of the circuit” and that she “designate two other judges, at least one of whom shall be a circuit judge,” “to serve as members of the court to hear and determine the action or proceeding.” 28 U.S.C. § 2284(b)(1).

By filing this request, Defendants do not waive any of their defenses. Nor do they concede that Plaintiff’s action has any merit. Defendants simply invoke Section 2284 because Plaintiff’s action challenges the constitutionality of the apportionment of both congressional districts and statewide legislative bodies.¹

¹ On November 4, 2021, the Governor and the Secretary of State filed a motion to consolidate this case and several others into *Gutierrez v. Abbott*, No. 1:21-cv-00769-RP-JES-JVB (W.D. Tex. Sept. 1, 2021). *See* ECF 26. The Court has not yet ruled on that motion.

Date: November 8, 2021

Respectfully submitted.

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Attorney General of Texas

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on November 8, 2021, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN