

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

STATE OF ALABAMA, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants,

and

DIANA MARTINEZ, et al.,

COUNTY OF SANTA CLARA,
CALIFORNIA, et al.,

STATE OF NEW YORK, et al.,

Defendant-Intervenors.

Civil Action No. 2:18-cv-00772-RDP

MARTINEZ DEFENDANT-INTERVENORS’
RESPONSE TO PLAINTIFFS’ REQUEST FOR A THREE-JUDGE PANEL

Martinez Intervenors object to Plaintiffs’ request for a three-judge panel under 28 U.S.C. § 2284(a). Martinez Intervenors urge this Court to first address the jurisdictional issues in both the main case and the cross-claim, which can be resolved by a single judge, before determining whether this case should be referred to a three-judge panel under the statute.

A single judge may decide whether there is jurisdiction over the case, specifically whether Plaintiffs have standing. In *Shapiro v. McManus*, 136 S. Ct. 450, 455 (2015), the Court stated that “a three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts,” (quoting *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90 (1974)). The Court in *Shapiro* held that the

single judge presiding over a challenge to Maryland's redistricting plan improperly dismissed plaintiffs' case for failure to state a claim, when the case should have been referred to a three-judge panel under 28 U.S.C § 2284(a). As the Supreme Court noted, where a case is not frivolous, dismissal for failure to state a cause of action "calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Id.* at 456.

The Supreme Court has acknowledged the distinction between decisions on the merits and on jurisdictional issues with respect to the appropriateness of three-judge panels. There are likely to be several jurisdictional questions in this case, both with respect to Plaintiffs' claim and Martinez Intervenors' cross-claim, including questions of standing, ripeness, and remediability. Discovery in this case has been limited to the question of whether this Court has jurisdiction, in recognition of these important questions. The Court should resolve these questions first before considering the merits, at which point the Court can make a determination of whether a three-judge panel is appropriate.

Dated: September 30, 2020

Respectfully submitted,

/s/ Andrea Senteno

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CERTIFICATE OF SERVICE

This is to certify that on the 30th day of September, 2020, a copy of the foregoing was served by electronic mail to counsel of record agreed to by the parties.

/s/ Andrea Senteno
Andrea Senteno