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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Arizona State Legislature, Plaintiff, v. Arizona Independent Redistricting Commission, et al., Defendants.	**No. 2:12-cv-01211-PGR** **PLAINTIFF'S RULE 1 MOTION AND SUPPORTING MEMORANDUM**

Pursuant to Rule 1 of the Federal Rules of Civil Procedure, which encourages the construction and administration of the Federal Rules "to secure the just, speedy, and

inexpensive determination of every action and proceeding," Plaintiff respectfully moves this Court to deny reconsideration of the order appointing a three-judge panel pursuant to 28 U.S.C. § 2284(a). This Motion is supported by the following Memorandum of Points and Authorities. A proposed order denying reconsideration is lodged herewith pursuant to Local Rule 7.1(b)(2 & 3).

MEMORANDUM OF POINTS AND AUTHORITIES

The original motion was granted by this Court on June 13, 2012. (Doc. 7.) Pursuant to the Defendants' motion for reconsideration, on July 3, 2012, this Court ordered Plaintiff to file a response (Doc. 10), which Plaintiff filed on July 20, 2012 (Doc. 11). The Defendants filed a reply on July 30, 2012. (Doc. 13.)

At the time the case was initially filed, the imminence of the next election cycle was not a source of significant concern. Now, a full year later, the next election cycle has begun to loom, especially given the procedural posture of this case. As the Sixth Circuit has noted:

> Although § 2284 seems to contemplate "the filing of a request for three judges" by a party and a determination by the district judge of the need for such a court, the "shall" language of the statute quoted above appears to make the convening of such a court a jurisdictional requirement once it becomes clear that there exists a non-frivolous constitutional challenge to the apportionment of a statewide legislative body. Our test for "non-frivolousness" requires that the district court determine whether a substantial constitutional claim exists as a prerequisite to the convening of a three-judge court, but the district court's task is limited. *See Jones v. Branigin*, 433 F.2d 576 (6th Cir.1970), *cert. denied*, 401 U.S. 977, 91 S.Ct. 1205, 28 L.Ed.2d 327 (1971). A claim is unsubstantiated only when it is obviously without merit or clearly determined by previous case law. *Ex*

> *parte Poresky*, 290 U.S. 30, 32, 54 S.Ct. 3, 4, 78 L.Ed. 152 (1933); *Piper v. Swan*, 319 F.Supp. 908 (E.D.Tenn.1970). Moreover, the sufficiency of the complaint for three-judge jurisdictional purposes must be determined by the claims stated in the complaint and not by the way the facts turn out. *See Morales v. Turman*, 430 U.S. 322, 324, 97 S.Ct. 1189, 1190, 51 L.Ed.2d 368 (1977); *Calloway v. Briggs*, 443 F.2d 296, 298 (6th Cir.), *cert. denied*, 404 U.S. 916, 92 S.Ct. 230, 30 L.Ed.2d 190 (1971).
>
> Thus, we read the language of the statute as giving the district judge a limited jurisdiction to determine whether such a case shall be heard by one judge and then appealed to the court of appeals or heard by a three-judge district court and then appealed to the Supreme Court under 28 U.S.C. § 1253. The statute does not give a district court or a court of appeals a broad discretion to choose between a single judge or a three-judge court. See *Hamilton v. Mengel*, 629 F.Supp. 1110, 1112 (D.Utah 1986) (emphasizing mandatory nature of § 2284).

Armour v. State of Ohio, 925 F.2d 987, 989 (6th Cir. 1991). Based on the persuasive reasoning of the *Armour* case, and the fact that a "substantial constitutional claim" exists in this matter, Plaintiff respectfully requests that the Court deny reconsideration and complete the three-judge panel process so that the merits of this case can be reached in a just and speedy manner. 28 U.S.C. § 2284(a); *see also* Rule 40, Fed. R. Civ. Pro. ("The Court must give priority to actions entitled to priority by a federal statute."); *and* see Rule 40 Advisory Committee Notes (identifying actions under the prior codification of 28 U.S.C. § 2284 as an example of a statute "giving precedence.").

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RESPECTFULLY SUBMITTED on August 5, 2013.

ARIZONA STATE LEGISLATURE

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2013, I electronically transmitted the attached document to the Clerk's office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the CM/ECF to the following:

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