

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

<b>KENNETH L. SIMON, et al.,</b>	:
	:
Plaintiffs,	: Case No. 4:22-cv-612
	:
v.	: <b>JUDGE JOHN ADAMS</b>
	:
<b>GOVERNOR MIKE DeWINE, et al.,</b>	:
	:
Defendants.	:

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**DEFENDANTS’ MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR A THREE JUDGE PANEL**

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Plaintiffs’ Motion for a Three Judge Panel should be denied because their challenges to the March 2 Plan as set forth in their Complaint are in direct derogation of previous case law and they are obviously without merit.

In a legislative reapportionment case, the district court must invoke the procedures established in 28 U.S.C. § 2284 for convening a three-judge panel. *Armour v. The State of Ohio*, 925 F.2d 987, 988 (6th Cir. 1991). “[O]nce it becomes clear that there exists a non-frivolous constitutional challenge to the apportionment of a statewide legislative body,” the jurisdictional requirement to convene a three-judge court under § 2284(a) is met. *Id.* at 989. The test for “‘non-frivolousness’ requires the district court originally assigned to the matter to determine whether a substantial constitutional claim exists as a prerequisite to the convening of a three-judge court.” *Id.* The sufficiency of a claim is based on the allegations of the complaint and a claim is unsubstantiated only when it is obviously without merit or clearly determined by previous case law. *Id.* The district judge initially assigned to the matter has a limited jurisdiction to determine

whether such a case shall be heard by one judge or three judges. *Id.* See *Goosby v. Osser*, 409 U.S. 512, 518, 93 S. Ct. 854, 859, 35 L. Ed. 2d 36 (1973) (“Claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial....”).

For all of the reasons set forth in Defendants’ Combined Motion to Dismiss and Memorandum in Opposition to Plaintiffs’ Motion for Temporary Restraining Order, Preliminary Injunction and Partial Summary Judgment, Plaintiffs have failed to bring any claims involving the mandatory appointment of a three judge panel pursuant to 28 U.S.C. § 2284. Thus, this Court should deny the Plaintiffs’ motion and dismiss Plaintiffs’ Complaint.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

*/s/ Julie M. Pfeiffer*

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Keith Faber, House Speaker Robert Cupp, and  
Senate President Matt Huffman*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2022, the foregoing was filed with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties for whom counsel has entered an appearance. Parties may access this filing through the Court's system.

*/s/ Julie M. Pfeiffer*

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