

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THE SOUTH CAROLINA STATE
CONFERENCE OF THE NAACP,

and

TAIWAN SCOTT, on behalf of himself and
all other similarly situated persons,

Plaintiffs,

v.

HENRY D. MCMASTER, in his official
capacity as Governor of South Carolina;
HARVEY PEELER, in his official capacity
as President of the Senate; LUKE A.
RANKIN, in his official capacity as
Chairman of the Senate Judiciary Committee;
JAMES H. LUCAS, in his official capacity as
Speaker of the House of Representatives;
CHRIS MURPHY, in his official capacity as
Chairman of the House of Representatives
Judiciary Committee; WALLACE H.
JORDAN, in his official capacity as
Chairman of the House of Representatives
Elections Law Subcommittee; HOWARD
KNABB, in his official capacity as interim
Executive Director of the South Carolina
State Election Commission; JOHN WELLS,
Chair, JOANNE DAY, CLIFFORD J.
ELDER, LINDA MCCALL, and SCOTT
MOSELEY, in their official capacities as
members of the South Carolina State Election
Commission,

Defendants.

Case No.: 3:21-cv-03302-JMC

**REPLY IN FURTHER SUPPORT
OF PLAINTIFFS' REQUEST FOR
A THREE-JUDGE PANEL
PURSUANT TO 28 U.S.C. § 2284(a)**

REPLY IN FURTHER SUPPORT OF PLAINTIFFS' REQUEST FOR A THREE-JUDGE PANEL PURSUANT TO 28 U.S.C. § 2284(a)

Plaintiffs acknowledge that this Court discourages replies. Local Rule 7.07. But House Defendants' response invites the Court to abandon controlling U.S. Supreme Court precedent and the plain text of 28 U.S.C. § 2284 to deny Plaintiffs' request for the appointment of a three-judge court. The Court should reject this effort for two key reasons.

House Defendants cite no cases that cast doubt on *Shapiro v. McManus*, 577 U.S. 39 (2015). Instead, they cite cases from the 1970s and 1980 to argue there is still ambiguity after *Shapiro* concerning the mandatory appointment of a three-judge court in malapportionment cases. See ECF 18 at 6-9. *Shapiro* post-dates these cases and controls because this action expressly challenges “the constitutionality of the apportionment of congressional districts” and “the apportionment of any statewide legislative body,” as those terms are defined in 28 U.S.C. § 2284(a), and the Supreme Court held that the appointment of a three-judge court is mandatory under such circumstances. *Shapiro*, 577 U.S. at 44. The cases cited by House Defendants are inapposite. In *City of Philadelphia v. Klutznick*, for example, the district court denied a three-judge court request because plaintiffs' claim involved a challenge to the constitutionality of how the 1980 U.S. Census data was collected. 503 F. Supp. 657, 658 (E.D. Pa. 1980). The district court agreed, however, that § 2284 would “require[] the convening of a three-judge court [] ‘when an action is filed challenging the constitutionality of the apportionment of congressional districts.’”

Plaintiffs satisfy the requirement for a three-judge panel under § 2284. This is “an action . . . challenging the constitutionality of the apportionment of congressional districts” in South Carolina. § 2284(a); see also *Shapiro*, 577 U.S. at 41. And House Defendants cannot dispute that Plaintiffs raise deprivation of their First and Fourteenth Amendment rights. See ECF 1 ¶¶ 10, 17, 25-26.

As a final point, the Court should also reject House Defendant’s one-sentence request for a stay of Plaintiffs’ case. ECF 18 at 11. House Defendants have not come close to meeting the requirements to obtain stay. *See, e.g., Willford v. Armstrong World Indus.*, 715 F.2d 124, 127 (4th Cir. 1983) (a party seeking stay “must justify it by clear and convincing circumstances outweighing potential harms to the party against whom it is operative.”); *VanRosenberg v. Lawrence*, 429 F. Supp. 3d 175, 181 (D.S.C. 2019) (a party seeking stay must demonstrate “the presence of the exacting standards” of the four factors set by *Nken v. Holder*, 556 U.S. 418, 434 (2009)). This request should be summarily denied.

* * *

For these reasons, the Court should grant their request for a three-judge court.

Dated: October 21, 2021

Respectfully submitted,

Leah C. Aden*
Stuart Naifeh*
Raymond Audain*
John S. Cusick*
NAACP Legal Defense & Educational Fund, Inc.
40 Rector St, 5th Fl.
NY, NY 10006
Tel.: (212) 965-7715
laden@naacpldf.org

/s/ Christopher J. Bryant
Christopher J. Bryant, Fed. ID 12538
Boroughs Bryant, LLC
1122 Lady St., Ste. 208
Columbia, SC 29201
Tel.: (843) 779-5444
chris@boroughsbryant.com

Samantha Osaki*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500
sosaki@aclu.org

Somil B. Trivedi*
Patricia Yan*
American Civil Liberties Union Foundation
915 15th St., NW
Washington, DC 20005
Tel.: (202) 457-0800
strivedi@aclu.org
pyan@aclu.org

John A. Freedman*
Elisabeth S. Theodore*
Gina M. Colarusso*
John “Jay” B. Swanson*
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.

Allen Chaney, Fed. ID 13181
American Civil Liberties Union
of South Carolina
Charleston, SC 29413-0998
Tel.: (843) 282-7953
Fax: (843) 720-1428

Washington, D.C. 20001
Tel: (202) 942-5000

Jeffrey A. Fuisz*
Paula Ramer*
Jonathan I. Levine*
Theresa M. House*
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
Tel: (212) 836-8000

Sarah Gryll*
ARNOLD & PORTER KAYE SCHOLER LLP
70 West Madison Street, Suite 4200
Chicago, IL 60602-4231
Tel: (312) 583-2300

achaney@aclusc.org

Attorneys for Plaintiffs

*Motion for admission *Pro Hac Vice*
forthcoming

RETRIEVED FROM DEMOCRACYDOCKET.COM

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THE SOUTH CAROLINA STATE
CONFERENCE OF THE NAACP,

and

TAIWAN SCOTT, on behalf of himself and
all other similarly situated persons,

Plaintiffs,

v.

HENRY D. MCMASTER, in his official
capacity as Governor of South Carolina, et
al.,

Defendants.

Case No.: 3:21-cv-03302-JMC

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2021, a copy of the foregoing Reply in Further Support of Plaintiffs' Request for a Three-Judge Panel was mailed, postage prepaid, to each Defendant for whom counsel has not yet made an appearance in this case at the address identified on their summons. Courtesy copies were also sent via email to counsel that Plaintiffs' counsel anticipates will make appearances in this case.

/s/ Christopher J. Bryant
Christopher J. Bryant