Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SHAPIRO ET AL. *v.* McMANUS, CHAIRMAN, MARYLAND STATE BOARD OF ELECTIONS, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 14–990. Argued November 4, 2015—Decided December 8, 2015

Since 1976, federal law has mandated that a "district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts . . . ," 28 U. S. C. §2284(a), and has provided that "the judge [presented with a request for a three-judge court] shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges" to serve, §2284(b)(1).

Petitioners requested that a three-judge court be convened to consider their claim that Maryland's 2011 congressional redistricting plan burdens their First Amendment right of political association. Concluding that no relief could be granted for this claim, the District Judge dismissed the action instead of notifying the Chief Judge of the Circuit to convene a three-judge court. The Fourth Circuit affirmed.

Held: Section 2284 entitles petitioners to make their case before a three-judge court. Pp. 3–8.

(a) Section 2284(a)'s prescription could not be clearer. Because the present suit is indisputably "an action . . . challenging the constitutionality of the apportionment of congressional districts," the District Judge was *required* to refer the case to a three-judge court. Section 2284(a) admits of no exception, and "the mandatory 'shall' . . . normally creates an obligation impervious to judicial discretion." *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U. S. 26, 35. The subsequent provision of §2284(b)(1), that the district judge shall commence the process for appointment of a three-judge panel "unless he determines that three judges are not required," should be read not as a grant of discretion to the district judge to ignore §2284(a), but as

Syllabus

a compatible administrative detail requiring district judges to "determin[e]" only whether the "request for three judges" is made in a case covered by §2284(a). This conclusion is bolstered by §2284(b)(3)'s explicit command that "[a] single judge shall not . . . enter judgment on the merits." Pp. 3–5.

(b) Respondents' alternative argument, that the District Judge should have dismissed petitioners' claim as "constitutionally insubstantial" under *Goosby* v. *Osser*, 409 U. S. 512, is unpersuasive. This Court has long distinguished between failing to raise a substantial federal question for jurisdictional purposes—what *Goosby* addressed—and failing to state a claim for relief on the merits—what the District Judge found here; only "wholly insubstantial and frivolous" claims implicate the former, *Bell* v. *Hood*, 327 U. S. 678, 682–683. Absent such obvious frivolity, "the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Id.,* at 682. Petitioners' plea for relief, which was based on a legal theory put forward in JUSTICE KENNEDY's concurrence in *Vieth* v. *Jubelirer*, 541 U. S. 267, 315, and uncontradicted in subsequent majority opinions, easily clears *Goosby*'s low bar. Pp. 5–7.

584 Fed. Appx. 140, reversed and remanded.

SCALIA, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 14–990

STEPHEN M. SHAPIRO, ET AL., PETITIONERS *v.* DAVID J. MCMANUS, JR., CHAIRMAN, MARYLAND STATE BOARD OF ELECTIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[December 8, 2015]

JUSTICE SCALIA delivered the opinion of the Court.

We consider under what circumstances, if any, a district judge is free to "determin[e] that three judges are not required" for an action "challenging the constitutionality of the apportionment of congressional districts." 28 U. S. C. §§2284(a), (b)(1).

I

A

Rare today, three-judge district courts were more common in the decades before 1976, when they were required for various adjudications, including the grant of an "interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute . . . upon the ground of the unconstitutionality of such statute." 28 U. S. C. §2281 (1970 ed.), repealed, Pub. L. 94–381, §1, 90 Stat. 1119. See Currie, The Three-Judge District Court in Constitutional Litigation, 32 U. Chi. L. Rev. 1, 3–12 (1964). Decisions of three-judge courts could, then as now, be appealed as of right directly to this Court. 28 U. S. C. §1253.

In 1976, Congress substantially curtailed the circumstances under which a three-judge court is required. It was no longer required for the grant of an injunction against state statutes, see Pub. L. 94–381, §1, 90 Stat. 1119 (repealing 28 U. S. C. §2281), but was mandated for "an action . . . challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." *Id.*, §3, now codified at 28 U. S. C. §2284(a).

Simultaneously, Congress amended the procedures governing three-judge district courts. The prior statute had provided: "The district judge to whom the application for injunction or other relief is presented shall constitute one member of [the three-judge] court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges" to serve. 28 U. S. C. §2284(1) (1970 ed.). The amended statute provides: "Upon the filing of a request for three judges, the judge to whom the request is presented shall, *unless he determines that three judges are not required*, immediately notify the chief judge of the circuit, who shall designate two other judges" to serve. 28 U. S. C. §2284(b)(1) (2012 ed.) (emphasis added). The dispute here concerns the scope of the italicized text.

B

In response to the 2010 Census, Maryland enacted a statute in October 2011 establishing—or, more pejoratively, gerrymandering—the districts for the State's eight congressional seats. Dissatisfied with the crazy-quilt results, see App. to Pet. for Cert. 23a, petitioners, a bipartisan group of citizens, filed suit *pro se* in Federal District Court. Their amended complaint alleges, *inter alia*, that Maryland's redistricting plan burdens their First Amendment right of political association. Petitioners also requested that a three-judge court be convened to hear the

case.

The District Judge, however, thought the claim "not one for which relief can be granted." *Benisek* v. *Mack*, 11 F. Supp. 3d 516, 526 (Md. 2014). "[N]othing about the congressional districts at issue in this case affects in any proscribed way [petitioners'] ability to participate in the political debate in any of the Maryland congressional districts in which they might find themselves. They are free to join preexisting political committees, form new ones, or use whatever other means are at their disposal to influence the opinions of their congressional representatives." *Ibid.* (brackets, ellipsis, and internal quotation marks omitted).

For that reason, instead of notifying the Chief Judge of the Circuit of the need for a three-judge court, the District Judge dismissed the action. The Fourth Circuit summarily affirmed in an unpublished disposition. *Benisek* v. *Mack*, 584 Fed. Appx. 140 (CA4 2014). Seeking review in this Court, petitioners pointed out that at least two other Circuits consider it reversible error for a district judge to dismiss a case under §2284 for failure to state a claim for relief rather than refer it for transfer to a three-judge court. See *LaRouche* v. *Fowler*, 152 F. 3d 974, 981–983 (CADC 1998); *LULAC* v. *Texas*, 113 F. 3d 53, 55–56 (CA5 1997) (*per curiam*). We granted certiorari. *Shapiro* v. *Mack*, 576 U. S. ___ (2015).

II

Petitioners' sole contention is that the District Judge had no authority to dismiss the case rather than initiate the procedures to convene a three-judge court. Not so, argue respondents; the 1976 addition to §2284(b)(1) of the clause "unless he determines that three judges are not required" is precisely such a grant of authority. Moreover, say respondents, Congress declined to specify a standard to constrain the exercise of this authority. Choosing, as

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