Federal law (the Three-Judge Act) requires three-judge panels to decide constitutional challenges to congressional and legislative redistricting. But the single judge to whom the request for a three-judge panel is made may determine that three judges are not required to decide the case.

The question on Shapiro v. Mack is whether a single judge may decide that a three-judge panel is not required because the complaint fails to state a claim under the Federal Rules of Civil Procedure, not because the complaint is frivolous.

Stephen Shapiro sued Maryland claiming that its Congressional redistricting plan violated his First Amendment rights of political association. A number of districts included non-contiguous segments connected by “one or more narrow orifices or ribbons” which don’t share similar political beliefs.

In his petition for Supreme Court review, Shapiro argues that to decide if a three-judge panel was required, based on Supreme Court precedent, the district court judge should have determined whether his complaint was frivolous, not whether it failed to state a claim. The district court concluded the distinction Shapiro was making was splitting hairs. Specifically, Fourth Circuit precedent indicates that where a plaintiff’s “pleadings do not state a claim, then by definition they are insubstantial [frivolous]” and a single judge may dismiss them.

State and local governments are the primary defendants in redistricting lawsuits. To the extent that frivolous complaints are easier to dismiss without being heard by a three-judge panel than complaints that merely fail to state a claim, if Shapiro wins it may be more likely that the Supreme Court will hear redistricting lawsuits.

Redistricting cases heard by one judge like most other cases are subject to discretionary review by the Court. If the Court denies a petition for review in this instance the denial has no precedential value. Redistricting cases heard by a three-judge panel may be appealed directly to the Supreme Court. If the Court “summarily disposes” of a direct appeal its decision has at least some precedential value. As Rick Hasen explains in his blog, for this reason the Court may be more inclined to agree to hear direct appeals.

In short, a decision in favor of Shapiro would make it easier for those challenging redistricting plans to get cases in front of a three-judge panel and then in turn in front of the Supreme Court.

The Three-Judge Act also applies to certain challenges brought under the Voting Rights Act, Bipartisan Campaign Reform Act, Prison Litigation Reform Act, and Communications Act.