

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

EUGENE MARTIN LAVERGNE,

Plaintiff,

v.

JOHN BRYSON, *et al.*

Defendants.

Civil Action No.: 11-cv-7117 (PGS)(LHG)

**ORDER**

*Whereas* this matter comes before the Court on Plaintiff Eugene Martin Lavergne's motion to vacate the Court's December 16, 2011 decision (ECF No. 6), wherein the Court denied his request for a three-judge panel under 28 U.S.C. § 2284, as void under Federal Rule of Civil Procedure 60(b)(4).

*Whereas* the Third Circuit affirmed the Court's decision. *Lavergne v. Bryson*, 497 F. App'x 219 (3d Cir. 2012).

*Whereas* Plaintiff contends the 2011 order runs afoul of the Supreme Court's decision in *Shapiro v. McManus*, 136 S. Ct. 450 (2015), which was decided more than four years later. In *Shapiro*, the Supreme Court explained that when a district court is presented with a request to convene a third-judge panel, "all the district judge must 'deteremin[e]' is whether the 'request for three judges' is made in a case covered by § 2284(a) – no more, no less." *Id.* at 455. The Court acknowledged that "[a] three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts." *Id.* (quoting *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 100 (1974)).

*Whereas* the Court reviewed the parties' submissions and heard oral argument on the motion. The Court finds that the 2011 order was not based on the merits of Plaintiff's claim; rather, as the Third Circuit affirmed, predicated on a lack of standing and justiciability.

**IT IS** on this \_\_\_ day of \_\_\_\_\_, 2018 hereby

**ORDERED** that Plaintiff's Motion to Vacate (ECF No. 6) is **DENIED**



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PETER G. SHERIDAN, U.S.D.J.