IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

ANN SAUNDERS, SABREEN SHARRIEF; and DOROTHY TRIPLETT

PLAINTIFFS

v. **No. 25CH1:23-cv-00421**

STATE OF MISSISSIPPI; TATE REEVES, in his official capacity as Governor of Mississippi; LYNN FITCH, in her official capacity as Attorney General of Mississippi; Honorable MICHAEL K. RANDOLPH, in his official capacity as Chief Justice of the Mississippi Supreme Court; ZACK WALLACE, in his official capacity as Circuit Clerk of the Circuit Court of Hinds County, Mississippi; and GREG SNOWDEN, in his official capacity as Director of the Administrative Office of Courts.

DEFENDANTS

RESPONSE TO DEFENDANT RANDOLPH'S MOTION TO DISMISS ON JUDICIAL IMMUNITY GROUNDS

Plaintiffs hereby request that the Court deny Defendant Chief Justice Michael K. Randolph's (the "Chief Justice") motion to dismiss on grounds of judicial immunity (Dkt. 16). The burden lies with the Chief Justice to establish that judicial immunity applies. He cannot meet that burden.

Judicial immunity does not apply for two reasons. **First**, judicial immunity does not apply to suits for declaratory and prospective injunctive relief. Instead, immunity only applies to actions for civil damages for past actions. It is simply irrelevant whether judicial appointments are "judicial acts" for the purposes of judicial immunity because plaintiffs seek only declaratory and

prospective injunctive relief.[1] **Second**, granting immunity here would not serve the purpose of the judicial immunity doctrine. Instead, immunity could render this and future unconstitutional legislation immune from judicial review.[2]

I. ARGUMENT

a) Judicial Immunity Applies to Damages Actions. It Does Not Apply to Suits for Injunctive Relief.

The law of judicial immunity is well-settled: judicial immunity is only applicable in civil suits for money damages—not in requests for injunctive relief. In moving to dismiss, the Chief Justice does not cite a single case where judicial immunity was applied to suits for injunctive relief.

That general principle is spelled out in federal common law from which the doctrine developed.[3] In *Pulliam v. Allen*, the Supreme Court held that a judicial officer acting in his or her judicial capacity is not immune from prospective injunctive relief. 466 U.S. 522, 541-42 (1984) (considering an action under Section 1983).[4] The rule is crystal clear: "We never have had a rule

[1] In any event, making unconstitutional appointments is not a "judicial act" for immunity purposes because the Constitution forbids the Chief Justice to make those appointments. *See* Plaintiffs' Motion for Preliminary Injunction. In any event, *Prather* is inapposite. 879 So. 2d at 1053. *Prather* did not consider the constitutionality of judicial appointments or even involve the same portion of the statute at issue here. Further, for immunity purposes, *Prather* involved a civil claim for money damages based on a prior occurrence—and that is not this case.

[2] If the Court determines that the Chief Justice is not a necessary party, it is imperative that the Court confirm that the remaining defendants in the lawsuit are sufficient for Plaintiffs to obtain "complete relief." *See* MISS. R. CIV. P. 19(a) ("A person who is subject to the jurisdiction of the court shall be joined as a party in the action if . . . in his absence complete relief cannot be accorded among those already parties"). Otherwise, granting the Chief Justice judicial immunity would produce an untenable result: any legislative act requiring the Chief Justice alone to perform an unconstitutional act would be immune from judicial review. If the Chief Justice is granted immunity here, the remaining Defendants *must* be sufficient to prevent officials from violating the Mississippi Constitution.

[3] *See, e.g., Loyacono v. Ellis,* 571 So. 2d 237, 238 (Miss. 1990) (deciding a question of state judicial immunity by reasoning from and citing federal common law).

[4] Congress later amended 42 USC § 1983 to abrogate *Pulliam* in part. *See Ray v. Judicial Corr. Servs., Inc.* No. 2:12-cv-02819-RDP, 2014 WL 5090723, at *3 (N.D. Ala. Oct. 9, 2014) (noting that the amended federal statute requires Plaintiffs to show a judge violated a declaratory decree or that declaratory relief was unavailable before authorizing injunctive relief against judicial officers for actions taken in their judicial capacity). That amendment is irrelevant here because Plaintiffs' cause of action is not brought under 42 USC § 1983. Further, this case does not implicate

of absolute judicial immunity from prospective relief, and there is no evidence that the absence of that immunity has had a chilling effect on judicial independence. None of the seminal opinions on judicial immunity, either in England or in this country, has involved immunity from injunctive relief. No Court of Appeals ever has concluded that immunity bars injunctive relief against a judge. At least seven Circuits have indicated affirmatively that there is no immunity bar to such relief, and in situations where in their judgment an injunction against a judicial officer was necessary to prevent irreparable injury to a petitioner's constitutional rights, courts have granted that relief." *Id.* at 536–37; *see, e.g., Forrester v. White*, 484 U.S. 219, 219 (1988) (evaluating judicial immunity in a damages action); *Stump v. Sparkman*, 435 U.S. 349 (1978) (same); *Bradley v. Fisher*, 80 U.S. 335 (1871) (same). Here, plaintiffs seek only injunctive relief, so immunity does not apply.

This basic point is why Defendant Randolph can point to no cases where judges receive immunity from claims seeking only injunctive relief. Three of the four cases that counsel for the Chief Justice cite involve claims for damages, not injunctive relief. *See Weill v. Bailey*, 227 So. 3d 931, 935 (Miss. 2017) (seeking damages against a Judge for past libelous acts); *Wheeler v. Stewart*, 798 So. 2d 386, 392 (Miss. 2001) (seeking damages against a Judge for previously trying a person in absentia); *Loyacono v. Ellis*, 571 So. 2d 237, 238 (Miss. 1990) (seeking damages against a judge for past allegedly corrupt actions). The fourth case involves a suit where the plaintiffs sued the judge in her individual capacity. *Vinson v. Prather*, 879 So. 2d 1053, 1056 (Miss. App. 2004) (rejecting the individual capacity suit and finding "no nexus" between the judicial act and the past harm to plaintiff). In *Prather*, the Court of Appeals stated the reason for judicial immunity, "[p]ublic policy mandates that a judge should have the power to make decisions without having to worry about being held liable for [her] actions." *Id.* (citing *Loyacono v. Ellis*, 571 So.2d 237, 238

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the unique federalism concerns at issue when plaintiffs bring suit against state judges in *federal* court. Moreover, even in suits under Section 1983, Congress preserved plaintiffs' ability to bring suit against judges for declaratory relief and for injunctive relief if the judge violated a prior declaratory decree. Here, Plaintiffs seek both injunctive and declaratory relief against Chief Justice Randolph.

(Miss. 1990) (internal citations omitted). That reasoning does not apply here: the Chief Justice will not be subject to civil liability. Plaintiffs seek only prospective, declaratory and injunctive relief to prevent acts that will violate the Mississippi Constitution.

Even the Chief Justice may be enjoined. *See, e.g., Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003) (enjoining the Chief Justice of the Supreme Court of Alabama).[5] Further, if judicial immunity applied to suits for injunctive relief, there would be no basis for the Mississippi Supreme Court to enforce a *writ of prohibition* or a *writ of mandamus* against other state court judges. Judges would simply claim judicial immunity from those writs. "The writ of prohibition is of ancient origin, and . . . prohibits a judge or court from taking some action." *See State v. Maples*, 402 So.2d 350 (Miss. 1981); *Holmes v. Board of Supervisors*, 24 So.2d 867 (Miss. 1946) (issuing writ of prohibition). The reason these writs exist is the same reason why the Chief Justice must remain in this case: "the equitable principle that there is no wrong without a remedy." *Maples*, 402 So.2d at 351.

b) Granting Judicial Immunity Here Does Not Serve the Purpose of Judicial Immunity.

The purpose of judicial immunity is to ensure that a judge is "free to act upon his own convictions, without apprehension of personal consequences for himself." *Stump v. Sparkman*, 435 U.S. 349, 355 (1978) (citing *Bradley v. Fisher*, 80 U.S. 335 (1871)). The doctrine serves the same exact purpose in Mississippi. *Wheeler*, 798 So.2d at 392; *Loyacono*, 571 So.2d at 238. "[I]injunctive relief against a judge raises concerns different from those addressed by the protection of judges from damages awards. The limitations already imposed by the requirements for obtaining equitable relief against any defendant—a showing of an inadequate remedy at law and of a serious risk of irreparable harm—severely curtail the risk that judges will be harassed and their independence compromised by the threat of having to defend themselves against suits by

[5] Even lower federal courts may enjoin Chief Justices of state supreme courts—despite federalism concerns that are not present in this case. An injunction here would be nothing new.

disgruntled litigants." *Pulliam*, 466 U.S. at 537–38 (citing *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07 (1959)). Here, prospectively immunizing the Chief Justice from an injunction and from declaratory relief does not serve that goal. Declaratory and prospective injunctive relief are not remedies that would harm a judge's ability to exercise good judgment or act on their convictions.

Instead, granting immunity would dangerously imperil the public interest. Here, the legislature requires the Chief Justice to perform an unconstitutional action. If he is declared immune then unconstitutional legislation risks becoming unreviewable and unpreventable. That cannot be. For example, what if the Legislature instructed a Judge to hire only male law clerks? If the Judge is covered by judicial immunity, against whom would an injunction be imposed? Cf. *Forrester*, 484 U.S. at 221 (concluding that a judge's staffing decisions which may result in sex discrimination are "not judicial acts for which he should be absolutely immune"). There, as here, a grant of judicial immunity might not just immunize the Chief Justice, but also immunize unconstitutional actions from judicial review. That is not the law, and it is not the purpose for which judicial immunity is recognized in this state.

THEREFORE, this court should DENY Defendant Chief Justice's Motion to Dismiss.

RESPECTFULLY SUBMITTED, this 3rd day of April, 2023.

*/s/ Cliff Johnson_*
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CERTIFICATE OF SERVICE

I, Cliff Johnson, attorney for plaintiffs, do hereby certify that I have this day filed the foregoing document with the Court's electronic case filing system, which sent a true and correct copy to all counsel of record.

Dated: May 3, 2023

s/ *Cliff Johnson*
Cliff Johnson