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

Ann Saunders; Sabreen Sharrief;
and Dorothy Triplett   Plaintiffs

v.   Civil Action No. G2023-421

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

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Reply in Support of Motion to Dismiss

Comes now Defendant Honorable Michael K. Randolph, in his official capacity as Chief Justice of the Mississippi Supreme Court (the "Chief Justice") and files this his Reply in Support of the Motion to Dismiss (Dkt. 16) and in support thereof, would state:

Procedural Background

On May 1, 2023, the Chief Justice filed his Motion to Dismiss pursuant to Miss. R. Civ. P. 12(b)(6) based on the doctrine of judicial immunity. (Dkt. 16). On May 3, 2023, Plaintiffs filed their Response in Opposition to the Motion. (Dkt. 32).

Separately, on May 3, 2023, Plaintiffs filed their Motion for Leave to Amend Complaint and Add Additional Parties. (Dkt. 26). On the same date, the Chief Justice filed his Response in Opposition to the Motion for Leave. (Dkt. 33).

This Reply is brought in support of the Motion to Dismiss (Dkt. 16) and response/reply to the new arguments advanced in the Response in Opposition to the Motion for Leave. (Dkt. 33). The Chief Justice's prior pleadings are specifically adopted and incorporated by reference as if fully restated herein.

Argument

I. Judicial Immunity

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In response to the Chief Justice's Motion to Dismiss, Plaintiffs offer *Glassroth v. Moore*, claiming it supports that a Chief Justice may be enjoined. (Dkt. 32 at p. 4). Plaintiffs' cite of *Moore* is misguided and completely distinguishable , and borders on specious. The *Moore* case involved Roy Moore the Former Chief Justice of the Alabama Supreme Court. Moore, without informing his fellow justices, caused a Ten Commandments monument to be installed in the rotunda of the State Judicial building. Moore conceded that he acted in his private, individual capacity and not as a Justice of the Court. *Glassroth v. Moore*, 335 F. 3d 1282, 1302 (11th Cir. 2003). The 11th Circuit's Opinion expressly pointed out that **"[a]t issue here is *not* a judicial decision of the Alabama Supreme Court . . . . At issue here is the conduct of a party, who concedes he acted *not judicially*** . . . ." *Id.*, 335 F. 3d at 1302, n. 6 (emphasis added). So, the cite "[e]ven the Chief Justice may be enjoined" has application to today's case. (Dkt. 32 at p. 4). The question before this Court is not,

"can a Chief Justice never be enjoined in an unstated, imagined circumstance, but rather can the Chief Justice of the Mississippi Supreme Court be enjoined in this case?" *Moore* made a unilateral and admittedly non-judicial act to install a religious monument in the State Judicial building is a universe apart from today's issues. A word-specific computer search of the *Moore* decision fails to identify the word "immunity." Immunity does not appear once in the *Moore* decision. That case had nothing to do with judicial immunity.

The Mississippi Court of Appeals decision in *Vinson v. Prather* is controlling. That case involved a challenge of judicial appointments by the Chief Justice Prather of the Mississippi Supreme Court pursuant to Miss. Code Ann. § 9-1-105. *Vinson v. Prather*, 879 So. 2d 1053 (Miss. Ct. App. 2004). Plaintiffs argue, "[i]t is simply irrelevant whether judicial appointments are 'judicial acts' for the purposes of judicial immunity. …" (Dkt. 32 at p. 1). In concluding that the Chief Justice was immune from suit, the Court in *Prather* held otherwise, "[i]f we look to the act itself, we find no error because **we consider an appointment** pursuant to Mississippi Code Annotated Section 9-1-105 **a judicial act**." *Prather*, at 1057 (emphasis added).

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Mississippi precedent dictates that judicial immunity bars the Plaintiffs claims against Chief Justice Randolph. Judicial appointments made by the Chief Justice are judicial acts, entitled to judicial immunity. Otherwise, the 1,463 appointments Chief Justice Randolph has made since becoming Chief Justice, would be at risk. Should the Plaintiffs succeed, no appointment made by the Courts of this State would be safe. Such a result would create unfathomable consequences,

that in performance of judicial acts, judges could be summons to court and responsible for proving "that he decided as he did with judicial integrity; and the second judge would be subjected to a similar burden, as he in his turn might also be held amenable by the losing party." *Bradley v. Fisher*, 80 U.S. 335, 349 (1871).

The application of judicial immunity to the past and future appointments by the Chief Justice negates the Plaintiffs' ability to maintain an action against him and deprives this Court of jurisdiction over the parties.

II. Nature of the Claims

Plaintiffs acknowledge that they seek prospective relief against the Chief Justice. (Dkt. 32 at p. 1). There are no allegations that the Chief Justice acted in his individual capacity. The crux of the Plaintiffs claims turns on the constitutionality of HB 1020, presently being litigated before this Court.

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The Plaintiffs argue that the doctrine of judicial immunity does not apply because "[m]aking unconstitutional appointments is not a 'judicial act' for immunity purposes because the Constitution forbids the Chief Justice to make those appointments." (Dkt. 32 at n. 1). This argument presupposes that if HB 1020 is found to be unconstitutional, the Chief Justice would abandon his Oath of Office and violate the Mississippi Constitution. Not only does this argument impugn the integrity of the Chief Justice, it also suggests that in order to prevent the Chief Justice from acting unconstitutionally, he must be enjoined by a trial court. To the contrary, the Constitution and the Judicial Oath of Office preclude the Chief Justice from performing any unconstitutional act.

Plaintiffs argue that application of judicial immunity would "immunize unconstitutional actions from judicial review." (Dkt. 32 at p. 5). This position ignores the reality that the Chief Justice, and all judges, may be held accountable apart from civil liability.

> If in the exercise of the power with which they are clothed as ministers of justice, they act with partiality, or maliciously, or corruptly, or arbitrarily, or oppressively, they may be called to an account by impeachment and suspended or removed from office.

Fisher, 80 U.S. at 350.

A Mississippi Federal Court addressed a comparable situation where it was argued that because Mississippi Chancellors were empowered to apply a specific code provision (Miss. Code Ann. § 93-17-3(5)), that they were proper parties to litigation challenging the statute's constitutionality. The Court found that, **"The problem is that the judges are not the Plaintiffs' adversaries."** *Campaign v. Miss. Dep't of Human Servs.*, 175 F. Supp. 3d 691, 698 (S.D. Miss. March 31, 2016) (emphasis added). Any argument that the Chief Justice's inclusion as a Defendant is necessary, fails to establish how the Plaintiffs and the Chief Justice are adverse. "When a judge acts in his or her adjudicatory capacity – as opposed to administrative capacity – no such adversity exists." *Campaign*, at 698, Citing *Bauer v. Texas*, 341 F. 3d 352 (5th Cir. 2003).

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The established law of our state is that the appointment of Judges by the Chief Justice is a Judicial Act for purposes of immunity. See *Prather*, *supra* at 1057. The established law of this country is that "A judge will not be deprived of immunity because the action he took was in error, was done maliciously or was in

excess of his authority; rather, **he will be subject to liability only when he has acted in the clear absence of all jurisdiction**. *Stump v. Sparkman*, 435 U.S. 349, 356-357 (1978)(emphasis added). Plaintiffs position requires proof that the Chief Justice lacks jurisdiction to make judicial appointments, a burden which *Prather* renders impossible.

III. Distinction from 42 U.S.C. § 1983

Plaintiffs cite to *Pulliam v. Allen*, a case governed by 42 U.S.C. § 1983, to argue that the Chief Justice can be subject to an injunction. (Dkt. 32 at p. 2-3) See *Pulliam v. Allen*, 466 U.S. 522 (1984). Special attention should be paid to Plaintiffs' footnote 4, disclosing that "Congress later amended 42 U.S.C. § 1983 to abrogate *Pulliam* in part … 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." (Dkt. 32 at n. 4). By amendment, Congress did more than partially abrogate *Pulliam*.

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> [i]n 1996 Congress enacted the Federal Courts Improvement Act of 1996 which amended 42 U.S.C. § 1983 to provide that 'in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, **injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable**.' Pub. L. No. 104-317, 110 Stat. 3847 (Oct. 19, 1996). The Senate report indicates that the amendment "**restores the doctrine of judicial immunity to the status it occupied prior to [Pulliam]**" **because Pulliam had departed from "400 years of common law tradition and weakened judicial immunity protections**."

Leclerc v. Webb, 270 F. Supp. 2d 779, 792-793 (E.D. L.A., July 2, 2003). Plaintiffs do not allege a cause of action pursuant to § 1983, yet seek to apply *Pulliam*, a pre-

amendment case to muddle their ill-fated claim against the Chief Justice. By their Response to the Chief Justice's Motion to Dismiss, Plaintiffs attempt to walk away from § 1983 language, arguing that the 1996 amendment to § 1983 is "irrelevant here because Plaintiffs' cause of action is not brought under" Section 1983 (Dkt. 32 at p. 2-3 & fn.4)).

The Senate report quoted by the Court in Webb above, went on to note that:

> In the 12 years since Pulliam, thousands of Federal cases have been filed against judges and magistrates. The overwhelming majority of these cases lack merit and are ultimately dismissed. The record from the Committee's previous hearings on this issue is replete with examples of judges having to defend themselves against frivolous cases. Even when cases are routinely dismissed, the very **process of defending against those actions is vexatious and subjects judges to undue expense. More importantly, the risk to judges of burdensome litigation creates a chilling effect that threatens judicial independence and may impair the day-to-day decisions of the judiciary in close or controversial cases**.

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S. Rep. No. 104-366, at 36-37 (1996) (emphasis added). In this action, Plaintiffs arguments that the Chief Justice is a necessary party speaks to the very necessity for the 1996 amendment to § 1983. Plaintiffs should not be allowed to compel the Chief Justice Randolph to defend himself in a case in which he has no personal stake. See *Chancery Clerk of Chickasaw County, Mississippi v. Wallace*, 646 F. 2d 151 (5th Cir. 1981). To find otherwise, would unnecessarily threaten judicial independence and impair the day-to-day decisions of the judiciary. S. Rep. No. 104-366 at p. 37 (1996). Practically, the Plaintiffs seek to impose a prior restraint on the Chief Justice in the performance of the duties and obligations of his office.

IV. Case or Controversy

Finally, the Plaintiffs suggest that the Chief Justice must remain a Defendant in this case because "there is no wrong without a remedy." Dkt. 32 at p. 4) quoting *State v. Maples*, 402 So. 2d 350 (Miss. 1981). Simultaneously, the Plaintiffs contradict this assertion:

> 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.

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(Dkt. 32 at n. 2). Chief Justice Randolph should be dismissed because he is simply not adverse to the Plaintiffs. (Dkt. 33 at p. 4-7). Additionally, with the Intervention of the State of Mississippi *ex rel.* Attorney General Lynn Fitch, "the Mississippi officials with executive responsibility for defending the challenged laws are now a party to the litigation and well-positioned to represent the interests of the state." *Wallace*, 646 F. 2d 151 (5th Cir. 1981).

V. Conclusion

For these reasons, and the previously submitted Motion to Dismiss (Dkt. 16) and Response in Opposition to the Motion for Leave (Dkt. 33), the Defendant Chief Justice should be dismissed with prejudice from this action. This action represents an orchestrated assault on not only the Chief Justice but would have a chilling

effect on the entire Mississippi Judiciary. This action has delayed the Chief Justice from performing the duties of his office. The Chief Justice is immune and cannot be enjoined from causing some unstated or imaginary harm.

Respectfully submitted,

Michael K. Randolph, in his
official capacity as Chief Justice
of the Mississippi Supreme Court

By: ***/s/ Ned A. Nelson***
Ned A. Nelson, MB 105712

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Of Counsel:

Mark A. Nelson, MB #3808
Ned A. Nelson, MB #105712
Nelson Law PLLC
7 Woodstone Plaza, Ste. 7
Hattiesburg, MS 39402
Telephone: 601.602.6031
Facsimile: 601.602.3251
mark@nelsonfirm.law
ned@nelsonfirm.law

Certificate of Service

I, Ned A. Nelson, hereby certify that on this the 9th day of May, 2023, I electronically filed the foregoing with Clerk of the Court using the MEC system which will provide notice to all counsel of record.

/s/ Ned A. Nelson

Ned A. Nelson