IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

REYNA ANGELINA ORTIZ, *et. al.*,	)	
	)	
Plaintiffs,	)	No. 19 CV 2923
	)	
v.	)	Judge Charles P. Kocoras
	)	Magistrate Judge Susan E. Cox
KIMBERLEY M. FOXX, *et. al.*,	)	
	)	
Defendants.	)	

THE STATE JUDGE DEFENDANTS' MEMORANDUM
IN SUPPORT OF THEIR MOTION TO DISMISS

Defendants, Timothy C. Evans, Chief Judge of the Circuit Court of Cook County, and Sharon M. Sullivan, Presiding Judge of the County Division of the Circuit Court of Cook County, (the "State Judge Defendants" or the "Judges"), by their attorney, Kwame Raoul, Attorney General of Illinois, submit the following memorandum in support of their motion to dismiss all claims against them pursuant to Federal Rule of Civil Procedure 12(b)(6) and 12(b)(1).

INTRODUCTION

Plaintiffs claim that the Illinois Name Change Statute, which bars them from changing their legal names due to their past criminal convictions, violates their First Amendment and substantive due process rights. However, they cannot sue the State Judge Defendants in order to challenge the constitutionality of a state statute, for three reasons. First, there is no case or controversy between the State Judge Defendants and the Plaintiffs because judges do not enforce the law; rather, a judge is a neutral adjudicator that applies the law as it exists. For the same

reason, a judge is not a proper defendant under Section 1983 to challenge the constitutionality of a statute. Finally, the text of Section 1983 bars Plaintiffs from suing judges for injunctive relief in these circumstances. For all these reasons, the Judges should be dismissed from this case.

BACKGROUND

Plaintiffs are a group of transgender women who would like to change their legal names to a name of their choosing that reflects their gender identity. Dkt. 1 ¶ 1. However, Plaintiffs allege that they are unable to change their legal name because the Illinois Name Change Statute, 735 ILCS 5/21-101, bars some individuals from changing their legal name. *Id*. Specifically, the Illinois Name Change Statute bars anyone convicted of a felony from changing his or her name until at least ten years after the completion and discharge of his or her sentence. 735 ILCS 5/21-101(b). The statute also permanently bars anyone convicted of identity theft and anyone required to register as a sex offender from changing his or her legal name. *Id*. Plaintiffs allege that they are barred from changing their legal names based on their past convictions. Dkt. 1 ¶ 3. In Count I, Plaintiffs allege that this statutory prohibition violates their First Amendment rights because they "are forced to speak, respond to, and acknowledge legal names that do not comport with their gender or personal identities." *Id*. ¶ 110. Count III of the Complaint alleges a substantive due process claim based on their "fundamental right" to "self-identify." *Id*. ¶ 127.

Moreover, Plaintiffs Keisha Allen, Shamika Lopez Clay, Heaven Edwards, Amari Garza, Eisha Latrice Love, and Reyna Ortiz (the "Pre-2010 Name Change Plaintiffs") allege that they changed their names pursuant to the common law prior to 2010. *Id*. ¶ 118-20. However, the Pre-2010 Name Change Plaintiffs claim that Section 21-105 of the Illinois Name Change Statute "retroactively invalid[ated] those common law name changes." Count II alleges that the Pre-

2010 Name Change Plaintiffs have a property interest in their common law names, and that the State's deprivation of that interest violated their substantive due process rights.

Plaintiffs have sued Kimberly M. Foxx, the Cook County States' Attorney as well as Chief Judge Evans and Presiding Judge Sullivan in their official capacities. *Id*. ¶¶ 13-14. Plaintiffs seek a declaration that "the Illinois Name Change Statute is unconstitutional as applied to Plaintiffs," as well as an injunction barring the defendants from "(a) objecting to Plaintiffs' name change petitions; (b) preventing Plaintiffs' filing of name change petitions; and (c) denying Plaintiffs' name change petitions" based on the Plaintiffs' criminal convictions. *Id*. ¶¶ 113, 123, 137.

ARGUMENT

"[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). When reviewing the sufficiency of a complaint, the court must accept as true all well-pleaded factual allegations. *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011). However, legal conclusions and "conclusory allegations merely reciting the elements of the claim are not entitled to this presumption of truth." *Id.*

I. The State Judge Defendants should be dismissed because there is no controversy between the Plaintiffs and the Judges.

Plaintiffs have sued the State Judge Defendants solely in their official capacities as the Chief Judge of the Cook County Circuit Court and the Presiding Judge of the County Division. Dkt. 1 ¶ 14. However, this Court lacks jurisdiction over the State Judge Defendants because there is no case or controversy between the Plaintiffs and the Judges. "It is fundamental that to be heard in a federal court, a 'controversy' between litigants must be 'definite and concrete, touching the legal relationships of the parties having adverse legal interests.'" *In re Justices of Supreme Court of Puerto Rico*, 695 F.2d 17, 21 (1982), *quoting Aetna Life Ins. Co. v. Haworth*,

300 U.S. 227, 240-41 (1937). The case or controversy requirement applies to actions for declaratory judgments "with as much force as it does to actions seeking monetary or injunctive relief." *Perry v. Barnard*, 745 F. Supp. 1394, 1405 (S.D. Ind. 1989), *aff'd*, 911 F.2d 736 (7th Cir. 1990). Declaratory relief may be obtained only when there is a "substantial controversy[] between parties having adverse legal interests." *Alcan Aluminium Ltd. v. Dep't of Revenue of State of Oregon*, 724 F.2d 1294, 1298 (7th Cir. 1984).

The seminal case on the subject is *In re Justices of Supreme Court of Puerto Rico*, 695 F.2d 17, 21 (1982). In that case, five attorney-plaintiffs sued the Puerto Rico Supreme Court and the Puerto Rico Bar Association, attacking the constitutionality of statutes requiring members of the bar to support the bar association through dues payments. The justices argued that "they and the plaintiffs possess[ed] no . . . 'adverse legal interest[s],' for the Justices' only function concerning the statutes being challenged [was] to act as neutral adjudicators rather than as administrators, enforcers, or advocates." *Id*. The First Circuit stated that "at least ordinarily, no 'case or controversy' exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute." *Id*. As the court explained:

> Judges sit as arbiters without a personal or institutional stake on either side of the constitutional controversy. They are sworn to uphold the Constitution of the United States. They will consider and decide a claim that a state or Commonwealth statute violates the federal Constitution without any interest beyond the merits of the case. Almost invariably, they have played no role in the statute's enactment, they have not initiated its enforcement, and they do not even have an institutional interest in following their prior decisions (if any) concerning its constitutionality if an authoritative contrary legal determination has subsequently been made (for example, by the United States Supreme Court).

Id. at 21. For these reasons, "one seeking to enjoin the enforcement of a statute on constitutional grounds ordinarily sues the enforcement official authorized to bring suit under the statute; that individual's institutional obligations require him to defend the statute." *Id*. Litigants "typically do[] not sue the court or judges who are supposed to adjudicate the merits of the suit that the

enforcement official may bring." *Id*. at 21-22. The United States Supreme Court cited *In re Justices* with approval for the proposition that "Article III also imposes limitation on the availability of injunctive relief against a judge." *See Pulliam v. Allen,* 466 U.S. 522, 538 n. 18 (1984), *superseded by statute on other grounds as stated in Bolin v. Story,* 225 F.3d 1234, 1242 (11th Cir.2000) (per curiam).

Here, the Judges' sole role with regard to the Illinois Name Change Statute is that they adjudicate name change petitions. They do not bring actions to enforce the statute, nor do they act in a prosecutorial or adversarial role. Rather, when a petitioner (like the Plaintiffs) comes before him or her, they apply the statute in a neutral and disinterested fashion. Thus, the fact that the State Judge Defendants adjudicate name change petitions "does not establish a case or controversy under article III of the Constitution." *Crosetto v. Heffernan,* 771 F. Supp. 224, 226 (N.D. Ill. 1990).

In an attempt to avoid this fatal flaw, Plaintiffs allege that they are suing the Judges in their "official administrative capacities." Dkt. 1 ¶ 14. Plaintiffs further allege that the Judges "are the officials charged with promulgating the rules, regulations, and policies of the Circuit Court of Cook Count and the County Division, the court and division charged with granting or denying Plaintiffs' petitions for name changes." *Id*. But Plaintiffs do not challenge any "rules, regulations, and policies" promulgated by the Judges; rather Plaintiffs challenge the Illinois Name Change Statute itself. Plaintiffs' conclusory assertion that the Judges are sued in their administrative capacity does not create a controversy between the Plaintiffs and the Judges. Thus, there is no case or controversy between the Plaintiffs and the Judges, and the claims against the Judges should be dismissed on jurisdictional grounds.

II. Plaintiffs' claims against the Judges should also be dismissed because they are not the proper defendants for a challenge to the constitutionality of a state statute.

In addition to the lack of a case or controversy, the claims against the State Judge Defendants should be dismissed because they are not the proper defendants for a challenge to the constitutionality of the statute at issue. While the Eleventh Amendment allows suits against state officials for declaratory relief, the official must have a sufficiently close connection to the enforcement or implementation of the statute at issue. *See Doe v. Holcomb*, 883 F.3d 971, 975 (7th Cir. 2018), *citing Ex parte Young*, 209 U.S. 123, 157 (1908) (holding that Indiana's Governor, Attorney General, and the Executive Director of the Indiana Supreme Court Division of State Court Administration were not proper defendants for a challenge to Indiana's name change statute).

Applying these principles, the federal courts have consistently held that judges were not proper party defendants in § 1983 actions challenging the constitutionality of state statutes. As the First Circuit put it, Section 1983 "does not provide relief against judges acting purely in their adjudicative capacity, any more than, say, a typical state's libel law imposes liability on a postal carrier or telephone company for simply conveying a libelous message." *In re Justices*. 695 F.2d at 22-23. As a neutral adjudicator, a state judge is "not a proper defendant in such a suit because he has no stake in upholding the challenged practice." *Alcan Aluminum Corp. v. Lyntel Prod., Inc.*, 656 F. Supp. 1138, 1143–44 (N.D. Ill. 1987). *See also R.W.T. v. Dalton*, 712 F.2d 1225, 1232 (8th Cir. 1983), *abrogated by Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827 (1990); *Brandon E. ex rel. Listenbee v. Reynolds*, 201 F.3d 194, 199 (3d Cir. 2000) (judges presiding over Act 53 petitions were neutral adjudicators and thus not proper defendants to challenge the constitutionality of the statute); *Grant v. Johnson*, 15 F.3d 146, 148 (9th Cir. 1994) ("[J]udges adjudicating cases pursuant to state statutes may not be sued under § 1983 in a suit

challenging [a] state law"); *Allen v. DeBello*, 861 F.3d 433, 442 (3d Cir. 2017) (state court judges were not proper defendants despite the custody statute's grant of "broad discretion to determine a custody situation").

In *R.W.T. v. Dalton*, the Eighth Circuit rejected the plaintiffs' claims that they were challenging the court's "practice" as being irrelevant to the analysis:

> The judges of the Eleventh Judicial Circuit, in the course of deciding juvenile cases, are interpreting Missouri law and the United States Constitution as requiring no probable-cause hearings for detained juveniles. The fact that we disagree with them does not make their determination any less an act of disinterested adjudication. Their position is no more adverse to that of the plaintiffs than the position of any judge who rules adversely on a point of law to any litigant. Thus, the judges were not proper defendants in this suit.

712 F.2d at 1233.

As discussed above, the Judges have been sued in their capacity as neutral adjudicators of the law, notwithstanding the Plaintiffs' conclusory assertion that they are sued in their administrative capacity. Thus, the Eleventh Amendment bars suit against the Judges, and they should be dismissed accordingly.

III. Plaintiffs cannot seek injunctive relief against the Judges under Section 1983.

Finally, Section 1983 bars any suit for injunctive relief against a judge. In 1996, Congress amended 42 U.S.C. § 1983 to state that "injunctive relief shall not be granted" in an action brought against "a judicial officer for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable." *Haas v. Wisconsin*, 109 F. App'x 107, 114 (7th Cir. 2004), *quoting* 42 U.S.C. § 1983. This amendment was intended to overrule the Supreme Court's decision in *Pulliam v. Allen*, 466 U.S. 522, 541-43 (1984), which held that judicial immunity is not a bar to demands for injunctive relief against state judges. *Haas*, 109 F. App'x at 114, *citing Bolin*, 225 F.3d at 1242. This

statutory bar on injunctive relief further reinforces the conclusion that the Judges are not the proper defendants in this case.

CONCLUSION

For these reasons, the State Judge Defendants respectfully request that this Honorable Court grant their motion to dismiss them from the case.

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ *Sarah H. Newman*
Sarah H. Newman
Assistant Attorney General
General Law Bureau
100 W. Randolph, 13th Floor
Chicago, Illinois 60601
Tel: (312) 814-6131
snewman@atg.state.il.us

Counsel for Defendants
Chief Judge Timothy C. Evans and
Presiding Judge Sharon M. Sullivan