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' REPLY
IN FURTHER 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 reply in further 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

In their opening brief, the Judges explained that they were not the proper defendants for a suit challenging the constitutionality of the Illinois Name Change Statute, for three reasons. First, there is no case or controversy between the Judges and the Plaintiffs because the Judges are neutral adjudicators of name change petitions, not enforcers of the Illinois Name Change Statute. For the same reason, the Judges are not the proper defendants for a Section 1983 challenge because have "no stake in upholding the challenged practice." *Alcan Alum. Corp. v. Lyntel Prod.,*

Inc., 656 F. Supp. 1138, 1143–44 (N.D. Ill. 1987). Finally, Section 1983 itself bars injunctive relief against a judge, further reinforcing the conclusion that the Judges are not the proper defendants in this case.

In response, Plaintiffs argue that the Judges "enforce" the statute by granting or denying petitions, or that in the alternative the Judges' decisions to grant or deny name change petitions are so ministerial as to not qualify as judicial acts. But the decision whether to issue a judicial order is the quintessential judicial act, even if the petition is routine or uncontested. And the Judges' administrative decisions relating to the running of the courts are judicial acts as well. Thus, because they act as neutral adjudicators rather than enforcers or administrators, the Judges are not proper defendants under Section 1983 and should be dismissed from the case.

ARGUMENT

I. The Judges are not proper defendants because they are neutral adjudicators, not enforcers or administrators of the Name Change Statute.

In their opening brief, the Judges explained that they were not the proper defendants in this case because they served as neutral adjudicators of name change petitions, rather than "enforcing" the statute. Because of this distinction, there was no case or controversy between the Plaintiffs and the Judges, and the Judges were not the appropriate defendants for a constitutional challenge. Dkt. 26 at 3-7. Plaintiffs make several arguments in response, none of which are availing.

Plaintiffs argue that the Judges are not neutral adjudicators, but are rather charged with "enforcing" the statute by "receiving name change petitions, granting or denying name change petitions, and setting policy with respect to such petitions." Dkt. 31 at 10. Plaintiffs further claim that the Judges have the authority to "enforce the Ten-Year and Lifetime Prohibitions, to prevent

the filing of Plaintiffs' petitions, and to deny Plaintiffs' name change petitions under the two prohibitions." *Id*. at 12. But none of these actions constitute "enforcing" the statute.

First, a judge's decision as to whether to grant or deny a petition, and whether to issue a name change order is a quintessential judicial act. *See Hunziker v. German-American State Bank*, No. 88-3160, 1990 U.S. App. LEXIS 11749, at *5 (7th Cir. July 10, 1990) ("Holding a hearing and signing orders are judicial functions."); *Bostic v. Vasquez*, No. 2;15-cv-429, 2018 WL 1762847, at *6 (N.D. Ind. April 12, 2018) ("[T]he issuance of the order falls squarely within the purview of absolute judicial immunity as a purely judicial act.").

Plaintiffs argue that the Judge's actions with respect to the statute are "administrative" because name change petitions under the Statute "are frequently decided in an uncontested proceeding." Dkt. 31 at 16. During this proceeding, Plaintiffs argue, the Judges grant or deny petitions "based on which boxes are checked" on a "ministerial checklist." *Id*. at 17. But a judicial decision need not be contested or difficult to be considered a judicial act. As the Seventh Circuit has observed:

> In the continuum of judicial proceedings some judicial acts require extensive exercise of a judge's decision-making skills and others do not—yet all such acts make up the judicial function regardless of their isolated importance. In the judicial context, scheduling a case for hearing is part of the routine procedure in any litigated matter. However, the fact that the activity is routine or requires no adjudicatory skill renders that activity no less a judicial function.

Thompson v. Duke, 882 F.2d 1180, 1184 (7th Cir. 1989) (applying judicial immunity to decisions regarding whether to schedule a parole revocation hearing). Thus, the Seventh Circuit has already rejected the Plaintiffs' "attempt to avoid the bar of absolute immunity by trying to characterize certain aspects of the judicial function as administrative and therefore not worthy of protection." *Wilson v. Kelkhoff*, 86 F.3d 1438, 1444-45 (7th Cir. 1996). Instead, the Seventh Circuit has held that "conduct deserving of protection includes not only actual decisions, but also

those mundane, even mechanical, tasks undertaken by judges that are related to the judicial process.

Moreover, even the briefest look at the Order for Name Change belies the Plaintiffs' characterization of the Judges' decision as "ministerial." For example, the first item on the "checklist" is "The Court has jurisdiction." Exhibit A hereto.[1] Certainly, a judge's determination as to whether the court has jurisdiction is judicial, not administrative or ministerial. And the final two items on the checklist require the judge to determine whether the statements made in the petition "meet the statutory requirements," which likewise is clearly a judicial decision. Thus, the granting or denying of a name change petition is clearly an act performed within the judge's role as a neutral adjudicator, not an enforcer or administrator.

Second, Plaintiffs claim that the Judges' roles in "receiving name change petitions" and "prohibit[ing] even the filing of Plaintiffs' name change petitions" constitute administrative or ministerial functions rather than adjudicative ones. Dkt. 31 at 10, 18. But "receiving a name change petition" is merely part of the process of granting or denying the petition; it does not constitute "enforcement." *See Trotter v. Klincar*, 748 F.2d 1177, 1182 (7th Cir. 1984) (judicial or quasi-judicial function "include not only the actual decision to revoke parole, but also the activities that are part and parcel of the decision process"). It is not clear, either from the Complaint or the Statute, how the Judges are responsible for preventing the Plaintiffs from filing a name change petition. Plaintiffs do not allege that the Judges stand at the door of the courthouse to bar them from filing their petitions. And if, hypothetically, the Judges instituted a process whereby a judge prescreened petitions, then such a screening process would itself be a judicial act.

[1] Plaintiffs' response included a web link to this form. The Judges have attached a copy to their reply for the convenience of the Court.

Plaintiffs cite several cases holding that administrative or ministerial acts are not judicial, but these cases do not apply here. These cases hold that a *clerk's* administrative actions may not be considered judicial acts. *See Snyder v. Nolen*, 380 F.3d 279, 288-89 (7th Cir. 2004) (finding that the defendant clerk's "duty under the law of Illinois to maintain the official record was purely ministerial; he had no authority to resolve disputes between parties or to make substantive determinations on the worth or merits of a filing"); *Hoard v. Reddy*, No. 97 C 2372, 1998 U.S. Dist. LEXIS 9395, 1998 WL 341821, at *3 (N.D. Ill. June 12, 1998) ("If a clerk has only performed a ministerial function, he is not entitled to absolute immunity."). And in *Kowalski v. Boliker*, 893 F.3d 987, 999 (7th Cir. 2018), the judge defendant was a potential witness in the case and her intervention in the case was "more like that of a party or investigator than a judge." Plaintiffs cite to no cases holding that a *judge's* actions in deciding whether to issue a judicial order may be considered administrative or ministerial actions. Nor could they—the scope of judicial functions is quite broad, and includes many decisions relating to the administration of the courts. *See, e.g., Primm v. Cty. of Dupage*, No. 92 C 3726, 1993 WL 338762, at *6 (N.D. Ill. Sept. 2, 1993) ("[A] judge, and particularly a chief judge, has many administrative duties that which are part of his normal function, and no less judicial than the act of presiding over a courtroom."); *Payne v. County of Cook*, No. 15 C 3154, 2016 WL 1086527 (N.D. Ill. March 21, 2016) (the Chief Judge's oversight of the Probation Department was a judicial function).

At one point in their brief, Plaintiffs argue that the Judges are responsible for "setting policy with respect to [name change] petitions." Dkt. 31 at 10. This assertion echoes the allegation in their Complaint 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. Dkt. 1 ¶ 14. But as discussed in the Judges' opening brief, Plaintiffs do not challenge any such rules

or policies promulgated by the Judges. Dkt. 26 at 5. And as discussed above, a judge's implementation of rules or policies relating to the running of the courts are judicial acts as well.

Plaintiffs further argue that "inclusion of the Judge Defendants as Defendants is necessary to ensure full relief to Plaintiffs." Dkt. 31 at 15. But this argument presumes that the Judges will not obey a declaratory judgment of this Court unless they are actually named as defendants. But "it is ordinarily presumed that judges will comply with a declaration of a statute's unconstitutionality without further compulsion." *In re Justices of Supreme Court of Puerto Rico*, 695 F.2d 17, 23 (1st Cir. 1982) (citations omitted). Plaintiffs offer no reason to depart from that presumption here.

Finally, Plaintiffs argue that they should be allowed to sue the Judges because there must be *someone* that they can sue. Dkt. 31 at 11, 13. In doing so, they quote at length from Judge Wood's dissent in *Doe v. Holcomb*, 883 F.3d 971, 981-82 (7th Cir. 2018). Dkt. 31 at 13. But while Judge Wood's concerns may be valid, they do not justify suing the wrong defendant just to have someone to sue. In *Holcomb*, the Seventh Circuit did not allow the plaintiff to sue the Governor or Attorney General of Indiana, holding that neither the Governor nor the Attorney General had a role in enforcing the statute at issue. *Holcomb*, 883 F.3d at 976-77. Where the defendant in question is a judge charged with adjudicating the statute at issue, a suit against the judge is even less appropriate.

II. Section 1983 does not allow injunctive relief against the Judges.

Finally, in their opening brief the Judges explained that Section 1983, by its own terms bars injunctive relief against a judicial officer "unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. In response, Plaintiffs assert that this statutory bar does not act as a "prohibition on even filing a claim for injunctive relief" against the Judges. Dkt. 31 at 19. But the Seventh Circuit has held that a plaintiff's claims for injunctive

relief against a judge are "foreclosed" by the clear language of Section 1983. *Haas v. Wisconsin*, 109 F. App'x 107, 114 (7th Cir. 2004). Given this clear language from the Seventh Circuit, the Plaintiffs' claims for injunctive relief against the Judges must be dismissed.

CONCLUSION

For these reasons, as well as the reasons given in their opening brief, the State Judge Defendants respectfully request that this Honorable Court grant their motion to dismiss them from the case.

Respectfully submitted,

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