IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPELLATE DOCKET NO. 99-1262

BRANDON E., by and through his next friend, Robert Listenbee, Esq.; JOY E., by and through her next friend, Robert Listenbee, Esq.; JOSH R., by and through his next friend, Wendie Ziegler, Esq.; individually and on behalf of themselves and all other persons similarly situated,

Appellants,

v.

The Honorable ABRAM FRANK REYNOLDS and the Honorable GWENDOLYN BRIGHT, Philadelphia Court of Common Pleas, Family Court Division; the Honorable PAUL PANEPINTO, the Administrative Judge for the Philadelphia Court of Common Pleas, the Honorable ARTHUR E. GRIM, Berks County Court of Common Pleas, Family Court Division, on behalf of themselves and all other persons similarly situated,

Appellees.

Appeal From The Order of The United States District Court
For The Eastern District of Pennsylvania
Entered February 25, 1999 in Civil Action No. 98-4236

BRIEF FOR THE APPELLANT

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STATEMENTS OF SUBJECT MATTER AND APPELLATE JURISDICTION

This Court has jurisdiction to review the final decision of the lower court under 28 U.S.C. § 1291 (1988). The United States District Court for the Eastern District of Pennsylvania has jurisdiction under 28 U.S.C. §§ 1331 and 1343 to hear this matter in that claims are asserted under the Constitution and laws of the United States, including federal laws providing for the protection of civil rights. Plaintiffs's claims for declaratory relief are authorized by 28 U.S.C. § 2202 and 42 U.S.C. § 1983. Plaintiffs timely filed a Notice of Appeal on March 25, 1999.

STATEMENT OF ISSUES

On appeal to this Court appellants seek to have their complaint reinstated and to have the district court's conclusion that defendant judges are not proper parties under 42 U.S.C. § 1983 reversed. Judges of the Pennsylvania Court of Common Pleas are proper parties in a suit seeking a declaratory judgement that a statute which judicial defendants are statutorily obligated to administer, implement and enforce is unconstitutional.

STATEMENT OF THE CASE

Nature of Action & Course of Proceedings

This civil rights class action challenges the constitutionality of Act 53,[1] a recently enacted Pennsylvania statute that allows parents or guardians to petition courts to order involuntary commitment of their children to drug and alcohol treatment programs. The named plaintiffs ("Appellants") are three minors, Brandon E., Joy E. and Josh R., who challenge the constitutionality of the statute on due process and equal protection grounds and assert that it is unconstitutional both on its face and as applied to them in Act 53 proceedings.[2] Named plaintiffs sue on behalf of themselves and all similarly situated minors.

Named defendants ("Appellees") are Pennsylvania Court of Common Pleas judges who presided over state actions involving the plaintiffs: (i) the Honorable Abram Frank Reynolds, a judge on the Philadelphia Court of Common Pleas, Family Court Division, responsible for hearing

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[1] Act 53 of Nov. 26, 1997, No. 53, § 3, 1997 Pa. Laws 622 (amending Pennsylvania Drug and alcohol Abuse Control Act, 71 Pa. Cons. Stat. Ann. § 1690.101 et seq. (Purdon 1997)) ("Act 53") (full text attached hereto as Appendix D).

[2] In their Complaint and Motion for Preliminary Declaratory Relief, appellants raised the following Fourteenth Amendment Due Process claims: (1) the language of the Act is unconstitutionally vague; (2) Act 53 deprives minors of their liberty without due process; (3) the Act fails to require that judges order the minimum treatment necessary to meet the minor's needs; and (4) Act 53 compromises the neutrality of the presiding judge. Additionally, appellants claim that the Act denies minors the same procedural due process rights that similarly situated individuals receive under Pennsylvania's Mental Health Act in violation of the Equal Protection Clause of the Fourteenth Amendment.

Act 53 cases in Philadelphia County, (ii) the Honorable Gwendolyn Bright[3], a judge on the Philadelphia Court of Common Pleas, Family Court Division, (iii) the Honorable Paul P. Panepinto[4], Administrative Judge for the Philadelphia Court of Common Please, Family Court Division, and (iv) the Honorable Arthur E. Grim, a judge on the Berks County Court of Common Pleas, Family Court Division, who is responsible for hearing Act 53 cases in Berks County. Appellees are sued on behalf of themselves and all other Family/Juvenile Court judges statewide who are similarly charged with the administration and enforcement of Act 53 in their jurisdictions. They are sued in their official capacities only.

Defendants filed a motion to dismiss below for failure to state a claim upon which relief can be granted. Defendants argued, *inter alia*, that as "neutral adjudicators" they are not the proper parties to defend the constitutionality of this statute under § 1983, and that no case or controversy exists under Article III of the Constitution.[5]

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[3] Act 53 cases are now heard by Philadelphia Court of Common Pleas Judge Abram Frank Reynolds. At the time Appellants filed their First Amended Complaint, CV-98-2384, Judge Bright presided over Act 53 matters. That case was consolidated with CV-98-4236 by the district court.

[4] As Administrative Judge, Judge Panepinto is responsible for ensuring the enforcement of Act 53 in Philadelphia Family Court. Since Act 53 became effective, Judge Panepinto has assigned three different Judges to hear Act 53 matters: Judge Esther Sylvester, Judge Gwendolyn Bright, and Judge Abram Frank Reynolds.

[5] Defendants also argued that the Rooker-Feldman doctrine, the Eleventh Amendment, and the Federal Courts Improvement Act all prevent the district court from granting relief on all or some of plaintiffs claims. Alternatively, they urge the court to abstain under the

Following briefing by both parties, on February 25, 1999, the district court dismissed Plaintiffs' complaint upon finding that judges are not proper defendants under § 1983. Plaintiffs timely filed a Notice of Appeal.

Statement of Facts

This civil rights class action arises out of the Pennsylvania General Assembly's passage of Act 53, which became effective on January 26, 1998.

Prior to the passage of Act 53, all persons subject to involuntary commitment for alleged drug or alcohol dependence in Pennsylvania could be committed by the court only in accordance with the involuntary commitment provisions of Pennsylvania's Mental Health Procedures Act ("Mental Health Act"), 50 Pa. Cons. Stat. Ann. §§ 7101 et seq. Act 53 amended the Drug and Alcohol Abuse Control Act to carve out drug dependent minors from the class of all other persons otherwise committable under the Mental Health Act and established, for the first time, specific involuntary treatment and commitment procedures for drug dependent minors only — that is, persons under the age of eighteen. Pursuant to Act 53, the Drug and Alcohol Abuse Control Act now subjects minors to personally intrusive assessments based on the unverified and conclusory allegations of drug dependence by their parents or guardians, and authorizes the involuntary

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Pullman, Younger, and Burford abstention doctrines. The district court did not address these contentions.

commitment of minors for drug and alcohol treatment under circumstances which provide them none of the procedural or substantive protections available under the Mental Health Procedures Act.[6]

As set forth in Plaintiff's Complaint, Brandon E.'s father filed an Act 53 petition with the Philadelphia Court of Common Pleas, Family Court Division, on June 23, 1998 for involuntary commitment of Brandon for his alleged addiction to alcohol and marijuana. Defendant Judge Reynolds held a hearing on July 15, 1998 where, in accordance with the Act, he ordered a drug and alcohol assessment of Brandon. The court-ordered assessment was based upon the conclusory allegations of drug dependence set forth in the petition filed by Brandon's father. The assessment was performed that same day by a certified addiction counselor ("CAC") at the Philadelphia Family Court. The CAC used the Adolescent Problem Severity Index ("APSI"), a non-diagnostic screening instrument.[7]

At a subsequent hearing before Judge Reynolds on August 3, 1998, the CAC presented a written report and recommendation to the court that Brandon be committed to an inpatient drug treatment program for

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[6] The full text of Act 53 is attached hereto as Appendix D.

[7] As described in Plaintiffs' Complaint ¶¶ 45-63, the APSI is not a diagnostic tool. Plaintiffs believe that other instruments used elsewhere in the state include the Problem Severity Index ("PSI"), and the Comprehensive Adolescent Severity Index ("CASI"). None of these instruments should be used to diagnose drug or alcohol dependence among adolescents. They are screening instruments only, which can at best (i) identify areas in the adolescent's life that may warrant some form of intervention and (ii) indicate the need for a more in-depth clinical assessment of the adolescent. Complaint ¶¶ 58-60.

sixty to ninety days. Although Brandon did not believe that he required drug treatment, in order to avoid being committed involuntarily by the court, Brandon advised Judge Reynolds that he would agree voluntarily to attend an outpatient drug treatment program. Subsequent to the filing of the complaint, Brandon was adjudicated a delinquent child under the Juvenile Act, 42 Pa. Cons. Stat. Ann. §§ 6301 et seq. and Judge Reynolds dismissed the Act 53 petition on September 16, 1998.

Plaintiff Joy E.'s mother filed an Act 53 petition with the Philadelphia Family Court on or about June 18, 1998. Joy appeared before Judge Reynolds on July 15, 1998. Judge Reynolds ordered an assessment of Joy, which was again performed by a CAC using the APSI, and ordered Joy to undergo two urine tests each week until the next scheduled hearing on August 7, 1998. At the August 7, 1998 hearing, Judge Reynolds again ordered Joy to submit to twice-weekly drug tests and continued the proceedings. At a subsequent hearing on September 14, 1998 Judge Reynolds dismissed the petition against Joy after emancipating her from the custody of her parents.

The Act 53 petition against Josh R. was filed by his mother on March 16, 1998 in Berks County Juvenile Court. Following his assessment, Josh voluntarily agreed to enter an inpatient drug and alcohol treatment program. Shortly after entering drug treatment, Josh was adjudicated a dependent child under the Juvenile Act, 42 Pa. Cons. State Ann. §§ 6301 et seq., and defendant Judge Grim suspended

the act 53 proceedings.

STATEMENT OF RELATED CASES & PROCEEDINGS

This case has not been presented to this Court previously. To plaintiffs' counsel's knowledge, there are no other related cases, either pending or completed, in this Court or any other court or agency.

STATEMENT OF SCOPE OF REVIEW

This Court's review of the District Court's decision dismissing plaintiffs' complaint is plenary. Coalition to Save Our Children v. State Bd. Of Educ., 90 F.3d 752, 759 (3rd Cir. 1996). This Court applies the same standard as the District Court to assess the propriety of a motion to dismiss, i.e. it must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party." Rocks v. Philadelphia, 868 F. 2d 644, 645 (3rd Cir. 1989).

Summary of Argument

The district court's ruling that defendant judges are not proper parties under 42 U.S.C. § 1983 contradicts Supreme Court precedent approving suits for equitable relief against judges acting in their adjudicative capacities and Congressional intent to specifically allow such suits against judicial officers as reflected in the 1996 amendments to § 1983. Additionally, the district court's decision is contrary to this Court's ruling in Georgevitch upholding plaintiffs' challenge against judges statutorily mandated to adjudicate plaintiff's claims.

Assuming arguendo the district court is correct that judges acting in their capacity as so-called "neutral adjudicators" are not amenable to suit under § 1983, the statutory scheme created by Act 53 also imposes non-judicial responsibilities on the judges sufficient to otherwise bring them within the scope of § 1983.

Moreover, Article III does not warrant the dismissal of either minor plaintiffs nor judicial defendants as parties. Both meet the Constitutional requirements of a "case" or "controversy." Their interests are sufficiently adverse. This is not a suit challenging the merits of a judge's determination that a minor is drug dependent. Plaintiffs here seek implementation of due process procedures in state judicial proceedings. Because the judges are sued as enforcers of the statutes, the case at bar is indistinguishable from the many cases, decided by the Supreme Court and this Circuit, which have allowed such claims against judicial defendants.

ARGUMENT

The district court dismissed plaintiffs' Complaint on the ground that defendant Court of Common Pleas judges are not proper defendants under 42 U.S.C. § 1983. Relying primarily on In re Justices of the Supreme Court of Puerto Rico, 695 F.2d 17 (1st Cir. 1982), the lower court concluded that judges named as defendants in a lawsuit "who have not acted in an enforcement capacity by initiating actions against the plaintiffs, are not proper defendants under § 1983." (Opinion at 15, attached hereto as Appendix B). Characterizing the defendant judges' roles in Act 53 proceedings as encompassing "only adjudicative determinations," the court dismissed the complaint. (Opinion at 16.) In a footnote, the district court also opined that, while not basing its opinion on the case or controversy requirement of Article III of the Constitution, "given the parallels between the proper party analysis under § 1983 and case or controversy analysis, (citation omitted), the likelihood exists that plaintiffs' complaint fails to present a justiciable claim." (Opinion at 16, n. 13).

As set forth below, the ruling of the district court that defendant judges are not proper parties under § 1983 cannot be squared with either Supreme Court precedent approving such equitable relief against judges acting in their judicial capacity, or Congressional intent to specifically allow such suits against judicial officers, as reflected in recent Congressional amendments to 42 U.S.C. § 1983. Additionally, the decision is contrary to this Court's ruling in

Georgevitch v. Strauss, 772 F.2d 1078 (3rd Cir. 1985) (upholding the plaintiffs/prisoners rights to sue state court judges charged with adjudicating the plaintiffs' parole requests under Pennsylvania statutory law. Accordingly, the decision of the district court must be reversed.

I Judges of the Courts of Common Pleas are Proper Parties in Suits Under § 1983 Which Seek A Declaratory Judgment that A State Statute Which They Are Statutorily Obligated to Implement and Enforce Is Unconstitutional.

A. 42 U.S.C. § 1983 Expressly Authorizes Suits Against A Judicial Officer for Declaratory Relief for an "Act or Omission Taken in Such Officer's Judicial Capacity."

The central holding of the district court is that judges may not be sued for declaratory relief under § 1983 if they are acting as "neutral adjudicators" – that is, making "neutral determinations of the applicable facts and law." (Opinion at 14.) Rather, the district court held, they are properly sued under § 1983 only when acting as "administrators, enforcers or advocates." (Opinion at 9, quoting In re Justices at 21.) This holding flies in the face of both the plain meaning of § 1983, as recently amended in 1996, and Supreme Court precedent.

42 U.S.C. § 1983 now provides in pertinent part as follows:

> Every person who, under color of any statute...of any State, subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in...suit in equity, **except 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.

(As amended October 19, 1996, P.L. 104-317)(emphasis added to highlight amendment)

On its face, § 1983 authorizes appellants' claims against defendant judges herein. First, it expressly authorizes suits against judges for declaratory relief. Second, it expressly authorizes such suits for an act or omission "taken in such officer's judicial capacity." Indeed, the district court's characterization of the defendant judges' role in Act 53 proceedings as adjudicatory in nature places their conduct well within the ambit of the statute's requirement that the challenged action be taken in the judges' "judicial capacity."

Moreover, as the legislative history shows, the 1996 amendments to § 1983 authorizing suits against judges for declaratory relief (and injunctive relief in certain limited circumstances) were adopted by Congress in response to the Supreme Court's decision two years earlier in Pulliam v. Allen, 446 U.S. 522 (1994). S. Rep. No. 104-366, at 39 (1996). The Supreme Court held in Pulliam that judicial immunity was not a bar to injunctive relief in § 1983 actions against judges acting in their judicial capacity, and further upheld an award of attorneys fees against a magistrate to the prevailing plaintiffs under the Civil Rights Attorney Fees Award Act, 42 U.S.C. § 1988.[8]

[8] Section 1988 was also amended in 1996 to prohibit costs and attorneys fees against judges.

The amendment's legislative history declares that Congress aimed through these amendments to "restore the doctrine of judicial immunity to the status it occupied" prior to Pulliam. Thus, Congress codified the general prohibition against holding judicial officers liable for costs, including attorneys fees, for acts or omissions taken in their judicial capacity, and barred federal judges from granting injunctive relief against a State judge unless declaratory relief is unavailable or the State judge violated a declaratory decree. S. Rep. No. 104-355, at 39 (1996). Most importantly, Congress for the first time in history expressly codified a litigant's right to obtain declaratory relief from judges for conduct undertaken in their "judicial capacity." Id.

In expressly authorizing declaratory relief against judges for actions taken in their "judicial capacity" as part of a larger effort to broaden the scope of judicial immunity, Congress plainly drew on – and incorporated - the Supreme Court's longstanding interpretation of "judicial capacity" as set forth in the various immunity cases decided prior to, and including, Pulliam. The district court's interpretation of judicial capacity is directly at odds with these Supreme Court cases, which have consistently construed "judicial capacity" to encompass a judge's traditional adjudicatory function. Likewise, to the extent the district court adopted the reasoning of In re Justices to support its ruling, In re Justices is also contrary to Supreme

Court precedent.[9]

As the Supreme Court explained in Stump v. Sparkman, 435 U.S. 349 (1978), where it reaffirmed the principle that judges are absolutely immune from suits for damages for acts performed in their "judicial capacity," the factors determining whether an act by a judge is a "judicial" one "relate to the nature of the judicial act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." 435 U.S. at 362. Noting that the judge in Stump by virtue of his position was "not infrequently called upon in [his] official capacity to approve petitions relating to the affairs of minors," id., and that at the time he approved the challenged petition Judge Stump "was acting as a county circuit court judge,", id., the Court found no merit to the respondent's argument that Judge Stump was acting in a non-judicial capacity and thus not entitled to absolute immunity. Id. at 363. See also Mireles v. Waco, 502 U.S. 9, 13 (1991) (citations omitted) (In determining whether a judicial act is undertaken in the judge's judicial capacity, " the relevant inquiry is the 'nature' and 'function' of the act, not the 'act itself.' In other words, we look to the particular act's relation to a general

[9] Even assuming In re Justices was correctly decided in 1982 – which appellants dispute – it is surely no longer good law in light of the Congressional amendment to § 1983 in 1996. The First Circuit's holding that judges acting as "neutral adjudicators" are not proper parties under that statute is plainly contrary to Congressional intent that judges be subject to suit for actions taken in their judicial capacity, which at a minimum includes the neutral adjudication of disputes.

function normally performed by a judge."); Offutt v. Kaplan, 884 F. Supp. 1179, 1188 (N.D. Ill, 1995)(Where defendant judge dealt with plaintiff as litigant in child custody case, and had jurisdiction over the parties, the acts complained of were "of the kind normally performed by a judge, and plaintiff was dealing with [defendant] in his judicial capacity.').

Applying this test to the role of defendant judges here, the district court's finding that the judges presiding over Act 53 proceedings "are acting solely within their adjudicatory roles" – a finding that, in accordance with Supreme Court precedent, is virtually synonymous with actions taken in their "judicial capacity" – is precisely what makes them amenable to suit for declaratory relief under § 1983. Rather than defeating jurisdiction under § 1983, the district court's characterization of the judges' roles under Act 53 brings them squarely within the bounds of that statute. Simply put, the district completely misapplied § 1983 to these facts and parties.

B. Assuming *Arguendo* the District Court Correctly Held that Appellee Judges Are Proper Parties Under § 1983 Only for Actions Taken in an Administrative or Enforcement Capacity, Plaintiffs' Complaint Meets that Test

As reflected in the statute and as described in plaintiffs' complaint, the statutory structure of Act 53 compromises the traditional role of juvenile court judges in these proceedings. The statutory scheme created by Act 53 forces judges to perform administrative and prosecutorial, as well as judicial, functions in proceedings initiated pursuant to the Act.

First, upon the commencement of an Act 53 commitment proceeding by the filing of a petition alleging the minor's drug dependence by his parent or guardian, the judge must order a drug and alcohol assessment without any "adjudicatory" process. Second, at the hearing on the petition to determine whether the minor shall be committed under the Act, judges do not, and indeed cannot, act in a traditional judicial capacity because they are the sole Commonwealth agent who is responsible for gathering evidence and "prosecuting" the petition.

Contrary to the district court's holding, Act 53 does not allow judges to "act[ ] solely within their adjudicatory roles." (Opinion at 12). Rather, upon receipt of a parental petition, the Act dictates that the judge "shall order a minor who is alleged to have a dependency on drugs or alcohol to undergo a drug and alcohol assessment." 71 Pa. Cons. Stat Ann. § 1690.112(b)(2) (Purdons 1997) (emphasis added). Under Act 53, judges specifically do not have the authority "to make a neutral determination of the applicable facts and law." (Opinion at 14). To the contrary, by mandating the ordering of a drug assessment of a minor merely upon the filing of a petition, the Act strips the judge of his traditional role of applying a legal standard or interpreting current law. The judge's role in ordering the evaluation is purely a ministerial act, compelled by the terms of the statute and precluding the exercise of any discretion whatsoever by the judge. Moreover, by compelling the judge to order a drug assessment of the minor, the Act places the judge in the role of

gathering evidence for the parent's case, much like a state prosecutor ordering police surveillance of an area during the pre-indictment investigation of an alleged crime.

Similarly, the judge's traditional role during the "hearing" on the petition, following the completion of the mandated assessment, is also compromised by the statutory scheme. Because there is no provision for the appointment of counsel for the parent-petitioner, and no separate prosecutor/solicitor representing any interest of the Commonwealth or the county, the judge is required to juggle both his prosecutorial and judicial roles simultaneously.

First, the judge must receive the report and testimony of the drug assessor that the judge (acting as a prosecutor) requested. Since the Act provides for no counsel to prosecute the petition, the generally non-judicial task of calling the assessor to testify and eliciting the assessor's testimony necessarily falls to the judge, who alone will conduct the direct examination of the assessor in order to adduce evidence to support the parent's request for commitment. Presumably, the judge must also then rule on any objections to his direct examination of the assessor by the child's attorney – assuming the attorney would assert any objections.

Having then called and examined the assessor, the judge must next revert to his traditional adjudicatory role and evaluate that very same evidence to determine whether it supports commitment under the Act. Finally, although the minor is represented by counsel, see 71

Pa. Cons. Stat Ann. § 1690.112a(b)(1) (Purdons 1997), Act 53 curiously does not provide any opportunity for the minor to present witnesses, enter a statement, or challenge evidence. In fact, the only basis on which the judge is to make his determination on involuntary commitment is the drug assessment that he ordered. See 71 Pa. Cons. Stat Ann. § 1690.112a(c) (Supp. 1998). Far from "acting precisely as [they do] in any judicial proceeding," Opinion at 12, judges under Act 53 are forced to fulfill different roles at different times and even play some roles simultaneously.

The non-judicial actions of judges under Act 53 makes them proper defendants here.[10]

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[10] Contrasting the statutory schemes at issue in the cases relied upon by the district court to support its dismissal of plaintiffs' complaint underscores the atypical roles thrust on appellee judges by Act 53 here.

In R.W.T. v. Dalton, 712 F.2d 1225 (8th Cir. 1983), for example, plaintiffs sued juvenile court judges responsible for making pre-trial detention decisions under Missouri Supreme Court Rules 111.01, et. seq., which established procedures for the temporary detention of a juvenile. The temporary detention procedures followed by the judges in R.W.T., however, distinguish R.W.T.'s holding from this case.

The Missouri Supreme Court Rules establish several steps that must be followed to detain a juvenile temporarily. While a juvenile or police officer may authorize the temporary detention of a juvenile for an initial period of twenty-four hours, Mo. Sct. R. 111.06(b), a court order is required to extend the detention. Mo. Sct. R. 111.06(d). Accordingly, after a juvenile has been taken into custody, the officer must "as soon as practicable" notify a judge of the situation. Mo. Sct. R. 111.06(c). Under Missouri Law, the judge's role is exclusively adjudicatory. Upon notification that a juvenile is in custody, the judge "shall examine the reasons therefore and immediately: (1) order the juvenile released . . . or (2) order the juvenile continued in detention until a detention hearing . . ." See Mo. Sct. R. 111.07(a) (emphasis added). Unlike the judge in an Act 53 proceeding, the judge's role under the Missouri detention scheme is purely that of an adjudicator, neutrally applying the law to the facts presented by the state in support of the detention.

II. The "Case" and "Controversy" Requirements of Article III of the United States Constitution Are Satisfied.

In the case at bar, where plaintiffs seek prospective declaratory relief against a class of state juvenile court judges to declare unconstitutional a state statute which defendant judges alone have the statutory authority and obligation to enforce, the judges are proper parties. The district court's conclusion that the instant case lacks the Constitutional requirements of a case and controversy between plaintiffs and defendants erroroniously relies upon a 1982 First Circuit case of questionable precedential value today, in light of the 1996 amendments to § 1983,[11] and misinterprets the doctrine of justiciability, particularly the requirement of standing. The decision is at odds not only with the teachings of the Supreme Court regarding the requirements of Article III, but with Georgevich v. Strauss, 772 F.2d 1078 (3rd Cir. 1985), cert denied, 475 U.S. 1028 (1986), controlling authority in this Circuit that has addressed this issue.

As a threshold matter, separate and apart from whether defendants are proper parties, plaintiffs' complaint meets the requirements imposed by Article III.[12] The Supreme Court clearly delineated the

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[11] See discussion supra, Point I.

[12] The standing doctrine generally focuses on the particular plaintiff seeking to bring his or her claim before the federal court, not the claim itself. See Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 484 (1982)

requirements:

> At an irreducible minimum, Article III requires the party who invokes the court's authority to `show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' . . . (citations omitted), and that the injury `fairly can be traced to the challenged action' and `is likely to be redressed by a favorable decision.'

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982). In this matter, plaintiffs have been subject to Act 53 and their injuries were the result of judicial defendants' administration and enforcement of the statute against them. Furthermore, because plaintiffs' injuries flow from an unconstitutional statute, they can be remedied by declaratory relief in plaintiffs' favor. Article III does not warrant dismissal of plaintiffs' complaint.

Nor does the general concept of justiciability, also derived from Article III, necessitate dismissing judicial defendants in this matter. See Federal Kemper Ins. Co. v. Rauscher, 807 F.2d 345, 350

(quoting from Flast v. Cohen, 392 U.S. 83, 99 (1968)) (emphasis added) ("The requirement of standing 'focuses on the party seeking to get his complaint before the federal court and not on the issues he wishes to have adjudicated.'"); Warth v. Seldin, 422 U.S. 490, 500 (1975) ("Although standing in no way depends on the merits of the plaintiff's contention, that particular conduct is illegal, . . . it often turns on the nature and source of the claim asserted. . . . Essentially, the standing question in such cases is whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief."); See also **Wright, Miller & Cooper**, Federal Practice & Procedure, § 3531, Standing, p. 340 ("[In reviewing standing t]he party focused upon, moreover, is almost invariably the plaintiff.").

(3rd Cir. 1986). As succinctly described by the Supreme Court in Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, reh'g denied, 300 U.S. 687 (1937):

> A "controversy" in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Id. at 240 (citations omitted).

Plaintiffs clearly meet this test. Their claims are not of a hypothetical or abstract nature, but rather flow from specific actions taken by appellees in enforcing Act 53 against them. Their challenge to the constitutionality of the statute raises a real and substantial controversy that can be resolved by a declaratory judgment conclusively determining this question. Given the facts of this case and the nature of plaintiffs' claims, such a decree would not constitute an advisory opinion.

The notion that the defendant judges do not state a position adverse to the plaintiffs is simply not a reason to dismiss them as defendants as a matter of constitutional law. Defendants' position, calculated or otherwise, to refrain from defending the constitutionality of the procedures they enforce, cannot control their

status as parties in this litigation. A federal district court in this Circuit has aptly noted:

> The requirement of justiciability, of course, does not require this Court to consider whether a more suitable set of defendants exists who would choose to defend the state rules of civil procedure in question more vigorously; rather, the requirement is met if the "named defendants . . . meet the prerequisites to adjudication in a federal suit."

Shipley v. First Federal Sav. and Loan Ass'n of Del., 619 F. Supp 421, 430 (D.C. Del. 1985) quoting Fineberg v. Sullivan, 634 F.2d 50,53 (3rd Cir. 1980) (en banc). Holding otherwise allows defendants to force the dismissal of lawsuits by simply declaring that they refuse or don't want to take a position on the matter, or that they agree with the plaintiffs. The Supreme Court's holding in Valley Forge Christian College that "standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy" is directly applicable to defendants. 454 U.S. at 486 (emphasis added). Judicial defendants are proper parties under Article III no matter how disinterested they claim to be where, as here, the requirements of Article III are otherwise met.

Whether the named class of juvenile court judges are proper defendants for Article III purposes depends on their enforcement role under the challenged statute - not whether they agree, or disagree, or even care, about plaintiffs' challenge. The district court plainly misconceives the basis on which the present suit rests and the nature of relief that both named and class member plaintiffs request from the

federal district court. Opinion at 12. This is not a suit challenging the merits of a judge's determination that a minor is drug dependent -- a purely "adjudicatory" role.[13] Plaintiffs here seek implementation of due process procedures in state judicial proceedings. The judges are sued as enforcers of the statutes, in other words, as administrators of Act 53. Consequently this Court's holding in Georgevitch v. Strauss, 772 F.2d 1078, 1087 (3rd Cir. 1985) is directly applicable: "Where a suit challenges 'statutes related to the judicial process or statutes previously enforced by the particular judge against the plaintiff,' judges are proper parties." Id. at

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[13] The district court's concern that the adjudicative decisions of judicial defendants not be challenged is unwarranted in light of basic abstention principles. Plaintiffs do not dispute the limitations imposed by the Rooker-Feldman abstention doctrine that lower federal courts may not review the merits of a state court decision. However, plaintiffs' constitutional challenge to Act 53 can be addressed without regard to the underlying merits of the Act 53 petitions and without concluding that the state court "erred" in rendering those judgements. A ruling by a federal court that the statutory scheme pursuant to which Act 53 judgements are made is unconstitutional does not require the court to consider and rule whether plaintiffs are in fact "drug dependent" under the statute.

This Circuit has not squarely ruled on the justiciability of a challenge against judges for actions taken in their adjudicatory capacity for declaratory relief, assuming, *arguendo*, the absence of abstention concerns. However, in Pulliam v. Allen, 466 U.S. 522 (1984), the United States Supreme Court held that "judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity." 466 U.S. at 541-542. The district court's assertion that the Supreme Court did not decide in Pulliam "whether the defendant had acted in her judicial capacity so as to make injunctive relief against her proper," Opinion at 7, n.9, is simply wrong. The Court had to make that initial determination to sustain the award of attorney's fees; the Court only refrained from deciding the propriety of the actual injunctive relief ordered -- i.e., whether plaintiffs had an adequate remedy at law, or whether the relief was narrowly drawn. See 466 U.S. at 541-542.

1087, quoting In re Justices of the Supreme Court of Puerto Rico, 695 F.2d 17, 23 (1st Cir. 1982)[14].

Again, there is no question as to plaintiffs' own standing and stake in the outcome. Nor is there any dispute that defendants have enforced Act 53 against plaintiffs; nor is there any dispute that defendants have the statutory obligation to enforce Act 53. Moreover, judicial defendants have an institutional stake in plaintiffs' challenge.[15] The Act requires that only juvenile court judges hear

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[14] The district court's heavy dependance on In re Justices to support the proposition that defendants are not proper under Article III is also misplaced. Opinion at 8-10. Such a conclusion is at odds not only with the teachings of Georgevich, but with several decisions of the Supreme Court that should set to rest any concerns about the propriety of suing state court judges in federal court -- Supreme Court v. Consumers Union of the United States, 446 U.S. 719, 736 (1980) (Virginia Supreme Court and its chief justice, in his individual and official capacity, were proper defendants in a §1983 action for declaratory and injunctive relief against enforcement of court-promoted rules), Gerstein v. Pugh, 420 U.S. 103 (1975) (state court judges were proper defendants in a suit by pre-trial detainees to enforce their procedural due process rights), and Pulliam.

Additionally, the district court's reliance on In re Justices is belied by the First Circuit's holding in Rivera-Puig v. Garcia-Rosario, 983 F.2d 311 (1st Cir. 1992) (deciding that a trial court judge who had enforced and was continuing to enforce a local rule of criminal procedure, precluding the plaintiff from attending preliminary examinations, was a proper defendant in an action to enjoin enforcement of the rule). The First Circuit reasoned that "[i]f judges possess administrative responsibilities, they are proper parties for 'case or controversy' purposes on those issues." Id.

[15] While defendants may not have a personal stake in the outcome, it is difficult to accept that they don't have an institutional stake in the outcome. See Mattis v. Schnarr, 502 F. 2d 588, 595 (8th Cir. 1974), on remand 404 F. Supp 643 (E.D. Mo), rev'd 547 F.2d 1007 (8th Cir. 1975), vacated on other grounds, 431 U.S. 171 (1977) (In suit against police officers challenging constitutionality of state statutes authorizing police conduct at issue, court disagreed that police officers had neither a sufficient adverse interest or stake in the outcome to warrant their dismissal; "The defendants have a stake in the outcome because the declaratory relief sought would define

commitment petitions. In discharging their judicial duties, defendants have placed good faith reliance on a statute whose commitment procedures are unconstitutional. Under these circumstances, and in accordance with the law of this Circuit, plaintiffs have properly named the juvenile court judges as defendants in this lawsuit:

> A plaintiff challenging the validity of a state statute may bring suit against the official who is charged with the statute's enforcement only if the official has either enforced, or threatened to enforce, the statute against the plaintiffs. Rode v. Dellarciprete, 845 F.2d 1195, 1209 n. 9 (3rd Cir. 1988) (Rosenn, J.). General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law.

1st Westco Corp. v. School District, 6 F.3d 108, 113 (3rd Cir. 1993) (Third Circuit dismissed lawsuit challenging the constitutionality of state statute against the Secretary of Education and the Attorney General under Article III, where the state officials had neither the power nor the duty to enforce the challenged statutory provision.).

Finally, the district court cites Pulliam v. Allen, 466 U.S. 522, 537-38 & n.18 (1984) for the remarkable proposition that the Supreme Court agreed that the availability of injunctive relief against a judge is barred by Article III. Opinion at 8. The district court's reading of Pulliam is

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their rights and powers as police officers. They have an interest in assuring that the law governing their official conduct is clear so that they may perform their duties in a manner consistent with the Constitution."); See also ACLU v. Florida Bar, 999 F.2d 1486, 1490-91 (11th Cir. 1993) ("[W]hen a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce that rule who is the proper defendant, even when that party has made no attempt to enforce the rule.")

wrong for several reasons. First, if injunctive relief against judges was truly barred by Article III, the Supreme Court would not have decided Pulliam as it did. In Pulliam there was simply no issue that Article III imposed a limitation on the availability of injunctive relief against the magistrate. The district court has ignored the relevant issue confronting the Court in Pulliam, that "*judicial immunity is not a bar to prospective relief against a judicial officer acting in her judicial capacity*." 466 U.S. at 541-42 (emphasis added). Second, the Supreme Court's reference to Article III in footnote 18 as a further possible limitation on the availability of injunctive relief against judges was plainly dicta which the district court has wrongly interpreted to meant that any suit against a judge acting in his judicial capacity for injunctive relief is barred by Article III. Footnote 18 in Pulliam and the citations therein, merely distinguish between allowing judges to be sued for injunctive relief and continuing the need to protect judges from damages awards. Id. at 537-538. Third, the authority cited in footnote 18 belies the district court's reasoning that the availability of injunctive relief against judges is barred by Article III. In In re Justices, on which the district court repeatedly relies with favor, the First Circuit actually stated "we are reluctant to rest our decision directly on Article III when the case can be resolved on a non-constitutional basis." Because the First Circuit never actually addressed the Article III question, it is simply improper to continue relying on In re Justices for the proposition that Article III bars suits against judges.[16]

[16] Moreover, since the "case or controversy" requirement of Article III is an element of a federal court's subject matter jurisdiction, which cannot be waived by the parties and which the

III. CONCLUSION

For the reasons set forth above, plaintiffs respectfully request that district court's decision to dismiss their Complaint be reversed, and the case remanded for further proceedings.

Respectfully submitted,

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court has an inherent obligation to raise on its own if the facts and circumstances warrant it, see, **Wright Miller,& Cooper,** Federal Practice and Procedure, §1393, the federal courts' repeated adjudication of claims for injunctive relief against judges under similar circumstances to the case at bar demonstrates that the requirements of Article III.