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SUPREME COURT OF APPEALS
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STACEY PESTOL, CLERK

IN THE SUPREME COURT OF ARKANSAS

NO. _____

**PETITION OF CIRCUIT JUDGE WENDELL GRIFFEN FOR
RESTORATION OF POWER TO HEAR AND DECIDE CASES INVOLVING
THE DEATH PENALTY AND METHOD OF EXECUTION**

Wendell Griffen, Circuit Judge for the Sixth Judicial Circuit of Arkansas, 5th Division, appearing *pro se*, hereby petitions the Supreme Court of Arkansas to restore his power to hear and decide civil and criminal cases involving the death penalty, capital punishment, and the method of execution, and states:

1. Petitioner, a person of African-American ancestry and racial identity, was elected by the voters and citizens of Judicial Subdistrict 6.01 in the Sixth Judicial Circuit to a six-year term as Circuit Judge for the 5th Division of the Sixth Judicial Circuit of Arkansas in May 2010. He was re-elected, without opposition, in 2016.
2. According to the Constitution of Arkansas, "Circuit Courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution." Ark. Const. Amend. 80, § 6(A). Among the justiciable matters assigned to the circuit courts pursuant to the Arkansas Constitution are matters involving capital punishment and imposition of the death penalty.

3. On April 17, 2017, without notice to Petitioner and acting *sua sponte*, the Supreme Court of Arkansas issued Per Curiam Order No. 17-155, which “immediately reassign[ed] all cases in the Fifth Division [i.e., the cases assigned to Petitioner] that involve the death penalty or the state’s execution protocol, whether civil or criminal.” Order No. 17-155 further declared that this was a “permanent reassignment” of then existing cases and “all future cases involving this subject matter,” for all time.
4. The Arkansas Supreme Court provided no advance notice to Petitioner and the public – including the voters who twice elected Petitioner – that it was considering reassignment of all cases involving the death penalty and method of execution for all time.
5. On April 17, 2017 – the date the Arkansas Supreme Court issued Order No. 17-155 – Petitioner was not presiding over nor assigned to hear any pending death penalty cases.
6. On information and belief, no white member of the Arkansas judiciary has ever been summarily banned from hearing and deciding an entire category of cases. No white member of the Arkansas judiciary has ever before or since April 17, 2017 been pre-emptively, prospectively, and permanently banned from hearing any category of cases. No white member of the Arkansas judiciary has ever been denied notice and opportunity to be heard before being

pre-emptively, prospectively, and permanently banned from hearing any category of cases.

7. Order No. 17-155 also referred Petitioner for investigation by the Executive Director of the Arkansas Judicial Discipline and Disability Commission (JDDC) on April 17, 2017. Based solely on that referral, JDDC Executive Director David Sachar and Deputy Director Emily White commenced an investigation of Petitioner as JDDC Case No. 17-171, 172, and 173 before their recusals due to concerns about conflict of interest.
8. On June 14, 2019, the JDDC – pursuant to the motion of Petitioner based on JDDC Rule 15 - formally dismissed all allegations of judicial misconduct in JDDC Case No. 17-171, 172, and 173 against Petitioner arising from the April 17, 2017 referral by the Supreme Court of Arkansas in Order No. 17-155. Dismissal with prejudice was ordered due to failure to prosecute the judicial misconduct allegations within the 18-month time limit prescribed by JDDC Rule 15. JDDC Rule 15 states that “dismissal of a complaint under this or any Rule of the Commission shall be an absolute bar to any subsequent filing of the complaint or any complaint that could have been joined with the complaint dismissed.”
9. Due only to Order No. 17-155, Petitioner has been pre-emptively, prospectively, and permanently barred from adjudicating any civil or criminal

cases involving capital punishment, the death penalty, and the method of execution in Arkansas. No white circuit judge in Arkansas has ever been similarly prohibited from exercising the powers of that office after having been elected to office.

10. Of special note, Judge William Pearson, who is white, pleaded guilty on April 17, 2017 to charges of driving while intoxicated and reckless driving after he deliberately and recklessly drove through a police sobriety checkpoint, which forced law enforcement officers to undertake a high-speed car chase to apprehend and arrest him. Judge Pearson was charged with and found guilty of that criminal conduct, and was relieved of the power to preside over any driving- while- intoxicated cases for eight months, until December 31, 2017. Meanwhile, Petitioner, an African-American judge whose charges of judicial misconduct have been dismissed, with prejudice, for lack of prosecution, has been barred from presiding over any cases involving the death penalty or method of execution in Arkansas for more than two years – three times longer than Judge Pearson – and remains permanently barred despite not having been found guilty of any illegal or otherwise disqualifying conduct.

11. At the specific direction of the Arkansas Supreme Court in Order No. 17-155, the Sixth Judicial Circuit of Arkansas amended its Case Assignment Plan, over the objection of Petitioner, and instructed the Circuit Clerk of Pulaski

County to immediately refrain from assigning any civil or criminal cases involving the death penalty or method of execution.

12. Since Order No. 17-155 was issued on April 17, 2017, seventeen (17) criminal cases have been filed and remain pending in the Sixth Judicial Circuit involving the charge of capital murder. The docket numbers and filing dates of those cases are listed below.

i.	60CR-17-3367	Filed September 28, 2017
ii.	60CR-17-3442	Filed October 12, 2017
iii.	60CR-17-3491	Filed October 6, 2017
iv.	60CR-18-770	Filed March 2, 2018
v.	60CR-18-1038	Filed March 22, 2018
vi.	60CR-18-1828	Filed May 23, 2018
vii.	60CR-18-1908	Filed May 31, 2018
viii.	60CR-18-2071	Filed June 11, 2018
ix.	60CR-18-2588	Filed July 13, 2018
x.	60CR-18-3301	Filed September 7, 2018
xi.	60CR-18-3598	Filed September 28, 2018
xii.	60CR-18-3599	Filed September 28, 2018
xiii.	60CR-18-4766	Filed December 14, 2018
xiv.	60CR-19-236	Filed January 16, 2019
xv.	60CR-19-501	Filed February 4, 2019
xvi.	60CR-19-1406	Filed March 28, 2019
xvii.	60CR-19-2008	Filed May 9, 2019

13. Since Order No. 17-155 was issued on April 17, 2017, three (3) criminal cases filed in the Sixth Judicial Circuit involving the charge of capital murder have been closed. The docket numbers, filing dates, and closing dates of those cases appear below.

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|-------------------|----------------|----------------|
| i. 60CR-17-2463 | Filed 7/18/17 | Closed 2/28/19 |
| ii. 60CR-17-2487 | Filed 7/20/17 | Closed 10/8/18 |
| iii. 60CR-17-4123 | Filed 11/28/17 | Closed 4/16/19 |

14. As a direct result of Order No. 17-155, Petitioner has been, presently, and is prospectively barred and disqualified from hearing the most serious cases a Circuit Judge can adjudicate in Arkansas. Voters and citizens of Judicial Subdistrict 6.01 in the Sixth Judicial Circuit have been, are now, and are prospectively deprived of their choice of elected judge from hearing all the matters heard by Circuit Judges under the Arkansas Constitution. Thus, Order No. 17-155 has operated, currently operates, and threatens to continue usurpation of the will of the voters and citizens in Judicial Subdistrict 6.01 in the Sixth Judicial Circuit, absent any notice, opportunity to be heard, or adjudication that Petitioner should be disqualified from exercising the full range of powers exercised by all other Circuit Judges in Arkansas.
15. Order No. 17-155 violates the provisions of the consent decree issued in the case of *Eugene Hunt et al. v. State of Arkansas et al.*, No. PB-C-89-0406 (E.D. Ark.) – hereafter termed “the *Hunt Decree*” – that was issued November 7, 1991. The *Hunt Decree* requires that judges serving in the majority black voter judicial subdistricts identified in that decree shall exercise the same powers of all other judges.

16. Because Order No. 17-155 disqualifies Petitioner from exercising the same rights to be assigned to cases involving capital punishment, the death penalty, and the method of execution in Arkansas, Order No. 17-155 denies Petitioner equal protection under the law as required by Amendment XIV to the Constitution of the United States.

17. Because Order No. 17-155 denies the right of voters in Judicial Subdistrict 6.01 the right to have the judge elected by their votes to adjudicate cases and controversies ordinarily assigned to, heard by, and decided by all other persons elected to the office of Circuit Judge in Arkansas, Order No. 17-155 infringes upon the voting rights of citizens within Judicial Subdistrict 6.01 in violation of Amendments XIV and XV to the Constitution of the United States and the Voting Rights Act of 1965 (42 U.S.C. §§ 1973-1973aa-6).

18. And because Order No. 17-155 denies Petitioner the right to adjudicate civil and criminal cases involving the death penalty and method of execution in Arkansas without any notice, opportunity to be heard, or adjudication that factual and legal grounds exist for disqualification of Petitioner from performing a power entrusted to all other Circuit Judges under the Arkansas Constitution, Order No. 17-155 violates Petitioner's right to due process of law.

19. At all times prior to this filing and presently, Petitioner has been and remains qualified to adjudicate civil and criminal cases involving the death penalty and method of execution in Arkansas. In the last case in which Petitioner was called upon to rule on the death penalty, Petitioner demonstrated the ability to follow the law and precedent from the Arkansas Supreme Court even in the face of his personal religious and moral opposition to capital punishment. In *Johnson v. Kelley*, Case No. 60CV-15-2921 (“*Johnson*”), Petitioner *dismissed* the complaint by nine death row inmates who challenged their method of execution and *denied* their request to amend the complaint, thereby allowing their executions to proceed. In doing so, Petitioner wrote, “This Court must and will abide by the ruling issued by the Arkansas Supreme Court” that precluded the inmates’ challenge to their method of execution.

20. Petitioner has engaged in extrajudicial conduct, in his personal capacity and as a pastor in the religion of Jesus, that involves expression of his personal moral and religious opposition to capital punishment based on his personal and religious conviction that the death penalty is *morally* – not legally – unjustifiable. At the same time, Petitioner has never made any statement, pledge, or promise that committed him to rule for or against any party in any case, including any civil or criminal case involving the death penalty or method of execution. To the contrary, Petitioner has at all times declared and

demonstrated fidelity to the oath he swore to support the Constitution of the United States and the Constitution of the State of Arkansas, and follow the rulings of the appellate courts in Arkansas.

WHEREFORE, Petitioner respectfully petitions the Arkansas Supreme Court to (1) restore, reinstate, and otherwise reinvest him with the power to adjudicate civil and criminal cases involving the death penalty and method of execution in Arkansas, (2) direct the Administrative Judge of the Sixth Judicial Circuit of Arkansas to direct the Circuit Clerks in the Sixth Judicial Circuit to resume assignment of civil and criminal cases involving the death penalty and method of execution in Arkansas to Petitioner, and (3) for all other proper relief.



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