REL: September 25, 2020

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

1190644

Ex parte Steven Marshall, in his official capacity as Attorney General of the State of Alabama, et al.

PETITION FOR WRIT OF MANDAMUS

(In re: Michael Belcher et al.

v.

Steven Marshall, in his official capacity as Attorney General of the State of Alabama, et al.)

(Montgomery Circuit Court, CV-20-900154)

PER CURIAM.

Attorney General Steven Marshall and circuit judges Michael Bradley Almond, Ruth Ann Hall, Brandy Hambright, Jacqueline Hatcher, and Bert Rice (hereinafter referred to collectively as "the petitioners" and the circuit judges are hereinafter referred to collectively as "the petitioner circuit judges") -- all in their official capacities -- petition this Court for a writ of mandamus directing the Montgomery Circuit Court ("the trial court") to grant their motion to dismiss a complaint for a declaratory judgment filed by Michael Belcher, Peter Capote, Derrick Dearman, Lionel Francis, Brett Yeiter, and Benjamin Young, all prisoners on death row (hereinafter referred to collectively as "the respondents"). For the reasons set forth herein, we grant the petition and issue the writ.

I. Facts

The respondents were all convicted of capital offenses and were sentenced to death after August 1, 2017, the effective date of the Fair Justice Act ("FJA"), Act No. 2017-417, Ala. Acts 2017 (codified at Ala. Code 1975, § 13A-5-53.1). The FJA governs petitions for postconviction

relief under Rule 32, Ala. R. Crim. P., in death-penalty cases. Specifically, the FJA provides:

> "(a) Rule 32.2(c) of the Alabama Rules of Criminal Procedure shall not apply to cases in which a criminal defendant is convicted of capital murder and sentenced to death, and files a petition for post-conviction relief under the grounds specified in Rule 32.1(a), (e), or (f) of the Alabama Rules of Criminal Procedure.
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> "(b) Post-conviction remedies sought pursuant to Rule 32 of the Alabama Rules of Criminal Procedure in death penalty cases shall be pursued concurrently and simultaneously with the direct appeal of a case in which the death penalty was imposed. In all cases where the defendant is deemed indigent or as the trial judge deems appropriate, the trial court, within 30 days of the entry of the order pronouncing the defendant's death sentence, shall appoint the defendant a separate counsel for the purposes of post-conviction relief under this section. Appointed counsel shall be compensated pursuant to Chapter 12 of Title 15; provided, however, that notwithstanding any provision of that chapter to the contrary, the total fee awarded shall not exceed seventy-five hundred dollars ($7,500), which may be waived by the Director of the Office of Indigent Defense Services for good cause shown.
>
> "(c) A circuit court shall not entertain a petition for post-conviction relief from a case in which the death penalty was imposed on the grounds specified in Rule 32.1(a) of the Alabama Rules of Criminal Procedure unless the petition, including any amendments to the petition, is filed within 365 days of the filing of the appellant defendant's first brief on direct appeal of a case in which the death penalty was imposed pursuant to the Alabama Rules of Appellate Procedure.

"(d) A circuit court, before the filing date applicable to the defendant under subsection (c), for good cause shown and after notice and an opportunity to be heard from the Attorney General, or other attorney representing the State of Alabama, may grant one 90-day extension that begins on the filing date applicable to the defendant under subsection (c).

"(e) Within 90 days of the filing of the state's answer to a properly filed petition for post-conviction relief, the circuit court shall issue an order setting forth those claims in the petition that should be summarily dismissed and those claims, if any, that should be set for an evidentiary hearing. If the properly filed petition for post-conviction relief is still pending at the time of the issuance of the certificate of judgment on direct appeal, the court in which the petition is pending shall issue a final order on the petition or appeal within 180 days.

"(f) If post-conviction counsel files an untimely petition or fails to file a petition before the filing date applicable under this section, the circuit court shall direct post-conviction counsel to show good cause demonstrating extraordinary circumstances as to why the petition was not properly filed. After post-conviction counsel's response, the circuit court may do any of the following:

"(1) Find that good cause has been shown and permit counsel to continue representing the defendant and set a new filing deadline for the petition, which may not be more than 30 days from the date the court permits counsel to continue representation.

> "(2) Find that good cause has not been shown and dismiss any untimely filed petition.
>
> "(3) Appoint new and different counsel to represent the defendant and establish a new filing deadline for the petition, which may not be more than 270 days after the date the circuit court appoints new counsel. In the instance that this subdivision is applicable and new counsel is appointed, the circuit court in which the petition is pending shall issue a final order on the petition or appeal within 180 days of the filing of the petition.

"(g) The time for filing a petition for post-conviction relief under Rule 32.1(f) in a case in which the death penalty was imposed shall be six months from the date the petitioner discovers the dismissal or denial, irrespective of the deadlines specified in this section. This provision shall not extend the deadline of a previously filed petition under Rule 32.1 of the Alabama Rules of Criminal Procedure.

"(h) Any petition for post-conviction relief filed pursuant to this section after the filing date that is applicable to the defendant under this section is untimely. Rule 32.7(b) of the Alabama Rules of Criminal Procedure shall not apply to any amendments to a petition for post-conviction relief filed pursuant to this section after the filing date that is applicable to the defendant under this section. Any amendments to a petition for post-conviction relief filed pursuant to this section filed after the filing date that is applicable to the defendant under this section shall be treated as a successive petition under Rule 32.2(b) of the Alabama Rules of Criminal Procedure.

> "(i) The circuit court shall not entertain a petition in a case in which the death penalty has been imposed based on the grounds specified in Rule 32.1(e) of the Alabama Rules of Criminal Procedure unless the petition for post-conviction relief is filed within the time period specified in subsection (c) or (d), or within six months after the discovery of the newly discovered material facts, whichever is later.
>
> "(j) This section shall apply to any defendant who is sentenced to death after August 1, 2017."

§ 13A-5-53.1, Ala. Code 1975.

Belcher was sentenced to death by petitioner Judge Almond in Tuscaloosa County, Alabama, on April 3, 2019. Belcher filed his appellant's brief in his direct appeal on February 14, 2020. Under the FJA, Belcher must file his Rule 32 petition within 365 days of his first brief on appeal, i.e., February 13, 2021, unless he is granted a 90-day extension. See § 13A-5-53.1(c) and (d). No other Rule 32 deadlines under the FJA will begin to run for Belcher unless and until the Court of Criminal Appeals affirms Belcher's conviction and death sentence, overrules his application for rehearing, any certiorari review is fully exhausted, and a certificate of judgment is issued. See § 13A-5-53.1(e).

Capote was sentenced to death in Colbert County, Alabama, on May 24, 2018, and petitioner Judge Hatcher is currently

presiding over his case. Capote filed his appellant's brief in his direct appeal on April 5, 2019. Thus, under the FJA, Capote's Rule 32 petition was originally due on April 4, 2020. Capote filed a motion for a 90-day extension to file his Rule 32 petition under the FJA, and Judge Hatcher granted his request while the underlying action was pending against her. Consequently, Capote's Rule 32 petition was due on or before July 3, 2020. The Alabama Court of Criminal Appeals issued an opinion affirming Capote's conviction and death sentence on January 10, 2020. See Capote v. State, [Ms. CR-17-0963, Jan. 10, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020). The Court of Criminal Appeals overruled Capote's application for rehearing on May 22, 2020. Thus, the 180-day deadline for a final order concerning Capote's Rule 32 petition will be November 18, 2020. See § 13A-5-53.1(e).

Dearman was sentenced to death in Mobile County, Alabama, on October 12, 2018, and petitioner Judge Hambright is currently presiding over his case. Dearman filed his appellant's brief in his direct appeal on August 27, 2019. Thus, under the FJA, Dearman must have filed his Rule 32 petition by August 26, 2020, unless he was granted a 90-day

extension. No other Rule 32 deadlines under the FJA will begin to run for Dearman unless and until the Court of Criminal Appeals affirms Dearman's conviction and death sentence, overrules his application for rehearing, any certiorari review is fully exhausted, and a certificate of judgment is issued.

Francis was sentenced to death by petitioner Judge Hall in Madison County, Alabama, on July 25, 2019. Francis filed his appellant's brief in his direct appeal on April 29, 2020. Thus, under the FJA, Francis must file his Rule 32 petition by April 29, 2021, unless he is granted a 90-day extension. No other Rule 32 deadlines under the FJA will begin to run for Francis unless and until the Court of Criminal Appeals affirms Francis's conviction and death sentence, overrules his application for rehearing, any certiorari review is fully exhausted, and a certificate of judgment is issued.

Yeiter was sentenced to death by petitioner Judge Rice in Escambia County, Alabama, on March 20, 2019. Yeiter filed his appellant's brief in his direct appeal on March 24, 2020. Thus, under the FJA, Yeiter has until March 24, 2021, to file his Rule 32 petition unless he receives a 90-day extension.

No other Rule 32 deadlines under the FJA will begin to run for Yeiter unless and until the Court of Criminal Appeals affirms Yeiter's conviction and death sentence, overrules his application for rehearing, any certiorari review is fully exhausted, and a certificate of judgment is issued.

Young was sentenced to death in Colbert County, Alabama, on March 13, 2018, and petitioner Judge Hatcher is currently presiding over his case. Young filed his appellant's brief in his direct appeal on April 10, 2019. Thus, under the FJA, Young had until April 9, 2020, to file his Rule 32 petition, unless he received a 90-day extension. Young filed a motion for a 90-day extension to file his Rule 32 petition under the FJA, and Judge Hatcher granted his request while the underlying action was pending against her. Young's Rule 32 petition was due on or before July 8, 2020. Young's death-penalty conviction and sentence are pending on direct appeal. No other Rule 32 deadlines under the FJA will begin to run for Young unless and until the Court of Criminal Appeals affirms Young's conviction and death sentence, overrules his application for rehearing, any certiorari review is fully exhausted, and a certificate of judgment is issued.

On January 29, 2020, the respondents filed in the trial court a complaint for a declaratory judgment under the Declaratory Judgment Act, §§ 6-6-220 through -232, Ala. Code 1975, and for injunctive relief[1] against the petitioners in their official capacities as the officials the respondents believe are responsible for enforcing the provisions of the FJA against the respondents. In their complaint the respondents alleged that the FJA is unconstitutional because it:

> "(1) denies [respondents] of the opportunity to fairly present their constitutional claims thereby depriving them of 'access to courts' in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Alabama law; (2) denies [respondents] their rights to due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Alabama law; (3) denies [respondents] their rights to ensure that their convictions and sentences are not imposed in an arbitrary and capricious manner in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Alabama law; (4) denies [respondents] their rights to effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Alabama law; and (5) violates established constitutional

[1]The respondents filed a motion for a preliminary injunction on the same date they filed their complaint seeking a declaratory judgment. The trial court had not ruled on that motion before this petition for a writ of mandamus was filed and this Court ordered answers and briefs and entered a stay of all proceedings in the trial court.

> principles of separation of powers by mandating Alabama courts to act on filed petitions within a fixed timeline ...."

More specifically, the respondents alleged:

> "69. The FJA specifically mandates that Rule 32.7(b), [Ala. R. Crim. P.,] which had previously allowed for amendment to petitions prior to judgment to modify or add claims based on information obtained during the Rule 32 process, does not apply under the FJA and that any amendments filed after the filing date will be treated as successive petitions. Ala. Code [1975,] § 13A-5-53.1(h).
>
> "70. However, existing Alabama precedent prohibits discovery from being obtained in Rule 32 proceedings prior to the filing of a petition.
>
> "....
>
> "73. As a consequence, under this precedent [respondents] are not able to seek discovery until after filing their petitions for relief, but, due to the FJA's prohibition on amendment, Alabama Code [1975, §] 13A-5-53.1(c), (h), [respondents] are unable to use any discovery that they obtain, as they would be unable to amend their petitions to incorporate that discovery.
>
> "74. In effect, the FJA eliminates the ability to seek discovery in post-conviction proceedings if an individual has been sentenced to death."

The complaint went on to allege that, because of the FJA's alleged prohibition on seeking discovery in postconviction proceedings for death-penalty petitioners, the respondents will be unable to assert in their Rule 32 petitions any Brady

v. Maryland, 373 U.S. 83 (1963), claims for the alleged withholding of potentially exculpatory evidence or to raise any claims of ineffective assistance of counsel that require access to the prosecution's file to establish or to allege many juror claims that require rigorous investigation. Additionally, the complaint alleged that the FJA's deadline on a circuit court for issuing a final order in a Rule 32 proceeding "violate[s] state constitutional separation of powers principles" and prevents proper deliberation of a Rule 32 petitioner's claims.

On February 21, 2020, the petitioners filed a motion to dismiss the complaint under Rule 12(b)(1), Ala. R. Civ. P., asserting that the trial court lacked subject-matter jurisdiction over the complaint. Specifically, the petitioners contended that the trial court could not enjoin the enforcement of criminal laws through this civil action and that the respondents failed to present a justiciable controversy because their claims were not ripe for adjudication. The petitioner circuit judges additionally moved to dismiss the complaint under Rule 12(b)(6), Ala. R.

Civ. P., on the ground that they are absolutely judicially immune from suit.

On April 15, 2020, the trial court held a hearing on the motion to dismiss, and it requested proposed orders from each side concerning the motion. On April 27, 2020, the trial court entered an order denying the petitioners' motion to dismiss that addressed each of the petitioners' arguments. On May 15, 2020, the petitioners filed this petition for a writ of mandamus. This Court ordered answers and briefs.

II. Standard of Review

> "Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."

Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). The question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. See Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000). The denial of a claim of judicial immunity is also reviewable by mandamus. See Ex parte City of Greensboro, 948 So. 2d 540 (Ala. 2006).

III. Analysis

A. Interference with Criminal Law Through Civil Action

The petitioners first contend that the trial court lacks jurisdiction to entertain the respondents' claims because, they say, the requested relief -- a judgment declaring that the FJA is unconstitutional and an injunction precluding its enforcement against the respondents -- "would interfere with future criminal proceedings, i.e., the Rule 32 petitions." The petitioners rely upon the principle this Court enunciated in Tyson v. Macon County Greyhound Park, Inc., 43 So. 3d 587, 589 (Ala. 2010):

> "The general rule is that a court may not interfere with the enforcement of criminal laws through a civil action; instead, the party aggrieved by such enforcement shall make his case in the prosecution of the criminal action:
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> > "'It is a plain proposition of law that equity will not exert its powers merely to enjoin criminal or quasi criminal prosecutions, "though the consequences to the complainant of allowing the prosecutions to proceed may be ever so grievous and irreparable." Brown v. Birmingham, 140 Ala. [590,] 600, 37 South. [173,] 174 [(1904)]. "His remedy at law is plain, adequate, and complete by way of establishing and having his innocence adjudged in the criminal court." Id.'

> "Board of Comm'rs of Mobile v. Orr, 181 Ala. 308, 318, 61 So. 920, 923 (1913). See also 22A Am. Jur. 2d Declaratory Judgments § 57 (2003) ('A declaratory judgment will generally not be granted where its only effect would be to decide matters which properly should be decided in a criminal action.')."

The petitioners argue that this principle is reinforced by Rule 32.4, Ala. R. Crim. P., which states that a Rule 32 petition "displaces all post-trial remedies except post-trial motions under Rule 24 and appeal. Any other post-conviction petition seeking relief from a conviction or sentence shall be treated as a proceeding under this rule." The petitioners interpret this language to prohibit the use of a declaratory-judgment action if the action in any way concerns a Rule 32 petition.

However, there are multiple problems with the petitioners' argument. To begin with, Rule 32.4 expressly notes that it "displaces ... [a]ny other post-conviction petition seeking relief from a conviction or sentence." (Emphasis added.) As the respondents rightly observe, they "do not challenge their convictions or death sentences, but rather seek a straightforward declaratory judgment that the procedures established by the FJA are unconstitutional and an injunction to prevent the Attorney General and the Circuit

Court judges in their official capacities from enforcing the FJA's provisions." Respondents' brief, p. 2. Indeed, the petitioners conceded this fact in their motion to dismiss, stating that "[i]t is true that [the respondents] ... do not ask this Court to overturn their convictions or change their sentences." In other words, this declaratory-judgment action is not a "post-trial remed[y]" but, rather, a constitutional challenge to the procedures the respondents must follow when seeking a postconviction remedy. Thus, by the plain language of Rule 32.4, the respondents' declaratory-judgment action is not precluded.

Second, Tyson itself recognized an exception to the principle that "a court may not interfere with the enforcement

of criminal laws through a civil action."[2] Tyson, 43 So. 3d

[2]A Rule 32 proceeding is not, strictly speaking, a criminal proceeding.

> "Rule 32 postconviction proceedings in Alabama are considered civil in nature .... As Justice Stuart explained in her dissent in Ex parte Hutcherson, 847 So. 2d 386, 389 (Ala. 2002) (Stuart, J., dissenting):
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> > "'[W]hile a Rule 32 proceeding for postconviction relief is considered to be civil in nature, such a proceeding is distinct from a typical civil case. Rule 32, Ala. R. Crim. P., provides a defendant a method by which to seek postconviction relief; therefore, the rights to be accorded a defendant during a Rule 32 proceeding and the procedures pursuant to which such a proceeding is conducted are based upon the rule and caselaw.'
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> "847 So. 2d at 389-90 (citation omitted)."

Ex parte Jenkins, 972 So. 2d 159, 162-63 (Ala. 2005). However, the fact that a Rule 32 proceeding is civil in nature does not by itself prevent the application of the principle enunciated in Tyson. As the petitioners note, in both Ex parte Rich, 80 So. 3d 219 (Ala. 2011), and State v. Greenetrack, Inc., 154 So. 3d 940 (Ala. 2014), this Court concluded that the plaintiffs in those cases could not use a civil action to interfere with civil-forfeiture type proceedings sought by the State because, "[l]ike a criminal prosecution, a civil forfeiture action is a mechanism available to the executive branch for the enforcement of criminal laws making the possession of certain property illegal." Greenetrack, 154 So. 3d at 956 n.5. Thus, the principle enunciated in Tyson is concerned with protecting executive enforcement of criminal laws, regardless of whether that enforcement is carried out in a civil or criminal proceeding.

at 589. Specifically, the Court noted:

> "This Court has recognized an exception to the general rule whereby the equitable powers of the court can be invoked to avoid irreparable injury when the plaintiff contends that the statute at issue is void. ... The exercise of equitable jurisdiction in such cases is consistent with this Court's recognition of the propriety of actions against State officials in their official capacity to enjoin enforcement of a void law because such conduct -- enforcing a void law -- exceeds the discretion of the executive in administering the laws of this State. ...
>
> "The complaint in this action does not present a situation in which the plaintiff acknowledges that his conduct is prohibited by a statute and then challenges the enforceability of the statute."

Id. at 589-90. As the respondents observe, their declaratory-judgment action falls squarely within the stated exception because they contend that the FJA is void under the United States Constitution and the Alabama Constitution. Moreover, unlike the plaintiffs in Tyson, the respondents here posit that what they wish to do -- engage in discovery and then amend their Rule 32 petitions to include the fruits of that discovery in support of their Rule 32 allegations -- is prohibited by the FJA. Further, the respondents correctly observe that the Declaratory Judgment Act specifically recognizes that it may be used to challenge the

constitutionality of state laws. See Ala. Code 1975, §§ 6-6-223 and 6-6-227 (stating that "[a]ny person ... whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute" and that, "if the statute ... is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard").

The petitioners argue that the exception noted in Tyson is not available to the respondents based on Citizenship Trust v. Keddie-Hill, 68 So. 3d 99 (Ala. 2011), and Arthur v. State, 238 So. 3d 1276 (Ala. Crim. App. 2017). But Keddie-Hill and Arthur are inapposite because in each of those cases the plaintiffs actually sought to address their criminal punishments through civil actions.

> "In Keddie-Hill, this Court addressed claims by Mary Kathleen Keddie-Hill, Cheryl Tillman, and Justin Hammond, alleging, among other things, that the provision in Act No. 2009-768, Ala. Acts 2009, allowing a portion of the DNA-database fee to be distributed to the Citizenship Trust was unconstitutional. Keddie-Hill and Tillman had pleaded guilty to traffic violations and paid the fines and court costs assessed against them in their respective cases, including the DNA-database fee. However, they paid the DNA-database fee under protest, arguing that the provision for distribution

> of the fee to the Citizenship Trust was unconstitutional but that they could not afford a lawyer to challenge the allegedly unconstitutional portion of the fee. Hammond had also received a traffic citation, but, at the time he filed his claims in Keddie-Hill, he had not yet pleaded guilty or been ordered to pay any fines or court costs. Instead, he argued that '"[s]hould I plea[d] or be found guilty I anticipate being ordered to pay fines and court costs assessed against me,"' including the allegedly unconstitutional portion of the DNA-database fee. Keddie-Hill, 68 So. 3d at 103."

Poiroux v. Rich, 150 So. 3d 1027, 1033 (Ala. 2014). The Keddie-Hill Court expressly noted that Keddie-Hill and Tillman

> "seek an injunction remedying the payment of the allegedly unconstitutional fine by ordering the defendants to refund the fees or, alternatively, an order making distribution of those fees pursuant to the cy pres doctrine. Thus, the present proceeding is a collateral proceeding to secure relief from criminal sentences on constitutional grounds."

168 So. 3d at 104. As for Hammond, his criminal proceeding had not yet occurred, but he sought an injunction against the penalty he would be subjected to in his pending criminal proceeding. See id. at 106.

In Arthur, a death-row inmate sought a judgment declaring that Alabama's statutes relating to the execution of convicts violated the Alabama Constitution and an injunction barring the State from executing him pursuant to a method of execution determined by the executive branch. In an appeal-transfer

order, this Court determined that Arthur's action "'in substance seeks relief from a sentence on constitutional grounds'" and that, therefore, "Arthur's declaratory-judgment action is in substance a Rule 32, Ala. R. Crim. P., petition for postconviction relief." Arthur, 238 So. 3d at 1278. In other words, Arthur plainly sought relief from his death sentence through his declaratory-judgment action.

In contrast to the situations presented in both Keddie-Hill and Arthur, the respondents in this case do not seek to attack their murder convictions or their death sentences in this declaratory-judgment action; they seek a judgment declaring that the FJA is unconstitutional and an injunction to prohibit the enforcement of the FJA, relief that will not affect the respondents' convictions or sentences in any way. Because the respondents do not seek "relief from [a] criminal sentence[] on constitutional grounds," or "collaterally attack[] the judgments in criminal cases," their declaratory-judgment action falls within the exception noted in Tyson concerning an action that contends that the subject statute is void. Keddie-Hill, 68 So. 3d at 104, 105. Accordingly, the

principle enunciated in Tyson does not deprive the trial court of subject-matter jurisdiction over the respondents' claims.

B. The Ripeness of the Respondents' Claims

The petitioners argue that the respondents' claims

> "present only a nonjusticiable anticipated controversy and invite an advisory opinion -- something the circuit court lacks jurisdiction to provide. They allege that in their future Rule 32 proceedings, they might not be able to meet the FJA's standard for amending their Rule 32 petitions, that the FJA's filing deadlines might interfere with their ability to prepare a Rule 32 petition, and that the FJA's deadlines for the Petitioner Circuit Judges to enter a final order on their petitions might prevent meaningful consideration of their petitions. But these claims are inherently fact-specific and must be raised in the circumstances of their six individual Rule 32 proceedings rather than collectively in a collateral civil suit. The circuit court erred in finding Respondents' claims were ripe and that they alleged an imminent and tangible injury caused by the FJA as required for standing."

Petition, pp. 18-19.

The respondents counter that "[t]here is nothing 'abstract' or 'anticipated' ... about the imminent threat of injury or the inevitability of litigation" because they are subject to the provisions of the FJA right now if any of them seeks to file a Rule 32 petition. Respondents' brief, p. 14. The respondents allege that their "post-conviction counsel are

already being forced to make impossible choices about which claims to investigate and raise, and which to forfeit forever," because of the procedural deadlines in the FJA. Id. In support of the contention that their complaint presents a justiciable controversy, the respondents point to the fact that the purpose of the Declaratory Judgment Act "is to settle and to afford relief from uncertainty and insecurity with respects to rights, status, and other legal relations and is to be liberally construed and administered." § 6-6-221, Ala. Code 1975. They argue that their constitutional rights are in present jeopardy because the FJA has the force of law.

> "In a legal context,
>
> "'"[r]ipeness is defined as '[t]he circumstance existing when a case has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made.'" Ex parte Safeway Ins. Co. of Alabama, Inc., 990 So. 2d 344, 352 n.5 (Ala. 2008) (quoting Black's Law Dictionary 1353 (8th ed. 2004)).'
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> "Martin v. Battistella, 9 So. 3d 1235, 1240-41 (Ala. 2008). Courts generally restrain themselves from addressing cases that have not reached the point of ripeness. The United States Supreme Court has stated that the basic rationale of the ripeness doctrine is 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements ....' Abbott Labs. v.

> Gardner, 387 U.S. 136, 148, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). See also National Park Hospitality Ass'n v. Department of the Interior, 538 U.S. 803, 807, 123 S.Ct. 2026, 155 L.Ed.2d 1017 (2003). Alabama cases often address ripeness in the context of whether a case is justiciable, or appropriate for judicial review. That is, the case must concern a dispute that is '"'a real and substantial controversy admitting of specific relief through a [judgment].'"' Ex parte Bridges, 925 So. 2d 189, 193 (Ala. 2005) (holding that declaratory relief is not available for an 'anticipated controversy' (quoting Baldwin County v. Bay Minette, 854 So. 2d 42, 45 (Ala. 2003), quoting in turn Copeland v. Jefferson County, 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969)))."

Ex parte Riley, 11 So. 3d 801, 806–07 (Ala. 2008).

> "'[A]pplying the ripeness doctrine in the declaratory judgment context presents a unique challenge.' Orix Credit Alliance, Inc. v. Wolfe, 212 F.3d 891, 896 (5th Cir. 2000). This is because declaratory relief is more likely to be discretionary, and declaratory actions contemplate an 'ex ante determination of rights' that 'exists in some tension with traditional notions of ripeness.' Id. (citing Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 692 (1st Cir. 1994))."

Certain Underwriters at Lloyd's London v. A & D Interests, Inc., 197 F. Supp. 2d 741, 749 (S.D. Tex. 2002). See also Ex parte Town of Summerdale, 252 So. 3d 111, 121 (Ala. 2016) ("A declaratory-judgment action is a unique form of action in that it is often filed before an actual breach of a right has occurred, and so an 'actual injury' has not yet been sustained

by the plaintiff. A declaratory judgment often seeks to avoid harm before it happens.").

Nonetheless, ripeness is still required for a court to entertain a request for a declaratory judgment.

> "Although the Declaratory Judgment Act, codified at Ala. Code 1975, §§ 6-6-220 through -232 ('the Act'), provides for actions to declare the legal rights, status, and relations of parties, the Act does not '"'empower courts to decide moot questions, abstract propositions, or to give advisory opinions, however convenient it might be to have these questions decided for the government of future cases.'"' Bruner v. Geneva County Forestry Dep't, 865 So. 2d 1167, 1175 (Ala. 2003) (quoting Stamps v. Jefferson County Bd. of Educ., 642 So. 2d 941, 944 (Ala. 1994), quoting in turn Town of Warrior v. Blaylock, 275 Ala. 113, 114, 152 So. 2d 661, 662 (1963) (emphasis added in Stamps)).
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> > "'This Court has emphasized that declaratory-judgment actions must "settle a 'bona fide justiciable controversy.'" Baldwin County v. Bay Minette, 854 So. 2d 42, 45 (Ala. 2003) (quoting Gulf South Conference v. Boyd, 369 So. 2d 553, 557 (Ala. 1979)). The controversy must be "'definite and concrete,'" must be "'real and substantial,'" and must seek relief by asserting a claim opposed to the interest of another party "'upon a state of facts which must have accrued.'" Baldwin County, 854 So. 2d at 45 (quoting Copeland v. Jefferson County, 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969)). "'Declaratory judgment proceedings will not lie for an "anticipated controversy."'" Creola Land Dev., Inc. v. Bentbrooke Housing, L.L.C., 828 So. 2d 285, 288 (Ala. 2002) (quoting

> City of Dothan v. Eighty-Four West, Inc., 738 So. 2d 903, 908 (Ala. Civ. App. 1999))."
>
> "Bedsole[v. Goodloe,] 912 So. 2d [508,] 518 [(Ala. 2005)]."

Surles v. City of Ashville, 68 So. 3d 89, 93 (Ala. 2011).

In light of the foregoing principles, the difficulty with the respondents' claims is a lack of a factual context necessary to make a proper determination concerning the constitutionality of the FJA. We do not doubt the likelihood of future litigation between the respondents and the Attorney General's office: inmates on death row nearly always file at least one Rule 32 petition. But the respondents' claims make largely hypothetical assumptions about the effect the FJA will have upon their respective Rule 32 petitions and how the FJA will be applied in their respective cases. The respondents simply state, without specific explication concerning each of their cases, that the procedural requirements of the FJA will force them to file Rule 32 petitions without sufficient time to research and formulate arguments, that it will prevent them from engaging in discovery that supports the claims in their petitions or sheds light on new claims, that the petitioner circuit judges will be forced to disallow amendments to their

Rule 32 petitions based upon such discovery, and that the petitioner circuit judges will not have sufficient time to thoroughly examine the claims in the respondents' Rule 32 petitions before the FJA requires them to issue final orders on the respondents' Rule 32 petitions. Indeed, although the subject declaratory-judgment action is brought by six specific death-row inmates, their claims are couched in general terms because the respondents assume that the FJA will be applied the same way and have the same effects for every death-penalty Rule 32 petitioner. As the respondents assert in their brief: "Given the FJA's dramatically reduced statute of limitations, any Plaintiff who takes the time required to file a petition that incorporates discovery will default their constitutional claims, and never be able to raise them due to procedural bars, no matter the strength of these claims." Respondents' brief, pp. 13-14 (emphasis added). But there is no way a court can actually know that such results will occur under the FJA for each of the respondents -- or, for that matter, for any other death-row inmate who has yet to file a Rule 32 petition governed by the FJA -- until the Rule 32 petitions are filed and the claims are examined.

This declaratory-judgment action forces the trial court to make assumptions or predictions absent the factual context that would exist in an actual Rule 32 proceeding.[3] "'Predominantly legal questions are generally amenable to a conclusive determination in a preenforcement context'; however, judgements that would be 'based upon a hypothetical set of facts' stray towards the realm of advisory opinions and thus favor a finding of unripeness." AXIS Ins. Co. v. PNC Fin. Servs. Grp., Inc., 135 F. Supp. 3d 321, 327 (W.D. Pa. 2015) (quoting Pittsburgh Mack Sales & Serv., Inc. v. International Union of Operating Engineers, Local Union

[3]The respondents argue that all of their allegations "must be accepted as true at the motion to dismiss stage." Respondents' brief, p. 13. But this confuses the respondents' factual allegations with their legal allegations; the court is required to accept only the former as true in evaluating a motion to dismiss. Specifically, we must accept as true that the respondents are all subject to the FJA and that they will file Rule 32 petitions before the petitioner circuit judges because those are factual allegations. However, the effects that the respondents allege the FJA will have on the substance of their Rule 32 claims and upon the rulings of the petitioner circuit judges are legal allegations that carry no such presumption. See, e.g., Ex parte Gilland, 274 So. 3d 976, 985 n.3 (Ala. 2018) ("Although we are required to accept McCain's factual allegations as true at this stage of the proceedings, we are not required to accept her conclusory allegations that Gilland acted willfully, maliciously, fraudulently, or in bad faith. Rather, to survive Gilland's motion to dismiss, McCain was required to plead facts that would support those conclusory allegations.").

No. 66, 580 F.3d 185, 190-91 (3d Cir. 2009)). As we noted in the rendition of the facts, the FJA's initial deadline for filing a Rule 32 petition has not passed for respondents Belcher, Francis, and Yeiter, and it has passed for respondents Capote, Dearman, and Young, though we have no information as to whether the latter three respondents have, in fact, filed Rule 32 petitions. Regardless, before a Rule 32 proceeding has been initiated, there is an "absence of an extant factual scenario from which to frame a controversy." Baldwin Cnty. v. Bay Minette, 854 So. 2d 42, 46 (Ala. 2003). Determination of the effects of the FJA on the respondents' constitutional rights outside the Rule 32 context "would require the trial court to speculate on presently undeterminable circumstances," including how the FJA would affect the claims filed by each respondent in his Rule 32 petition and how the petitioner circuit judges would apply the FJA in each Rule 32 proceeding. Bruner v. Geneva Cnty. Forestry Dep't, 865 So. 2d 1167, 1176 (Ala. 2003). As to the latter point, "[w]e presume that trial court judges know and follow the law." Ex parte Atchley, 936 So. 2d 513, 516 (Ala. 2006). And yet, the subject declaratory-judgment action

presumes that the petitioner circuit judges in the yet-to-occur Rule 32 proceedings will apply the law in such a way as to violate the respondents' constitutional rights. This discrepancy further highlights why the asserted claims are speculative, absent the context of a Rule 32 proceeding. For all that appears, the deadlines mandated by the FJA might be navigated in such a way that there are no detrimental effects upon the respondents' constitutional rights -- or at least upon those of some of the respondents. Until such time as the respondents file their respective Rule 32 petitions, "any attempt to obtain a declaratory judgment as to a hypothetical future controversy is beyond the subject-matter jurisdiction of the circuit courts." Ex parte Johnson, 993 So. 2d 875, 884 (Ala. 2008).

In short, "whether there is an actual case or controversy to support a declaratory judgment may be affected by a preference for resolution in a different and better-developed proceeding." 13 Charles Alan Wright et al., Federal Practice and Procedure § 3529 n.17 (3d ed. 2008). In this instance, the respondents' claims are inherently fact-specific and necessitate resolution within the context of a Rule 32

proceeding. In the present context, their claims amount to an anticipated controversy, which the Declaratory Judgment Act does not address. See Surles, 68 So. 3d at 93. Accordingly, the trial court lacks jurisdiction to entertain the respondents' complaint, and the trial court erred in denying the petitioners' motion to dismiss.[4]

IV. Conclusion

Based on the foregoing, we conclude that the general principle that a court may not interfere with the enforcement of criminal laws through a civil action does not deprive the trial court of jurisdiction in this case. However, we also conclude that the respondents' claims are not ripe for adjudication in this declaratory-judgment action because their claims are inherently fact-specific and must be raised within the context of their six individual Rule 32 proceedings. Therefore, the trial court lacked jurisdiction to entertain the respondents' complaint. Accordingly, we grant the

[4]Because we have concluded that the respondents' claims are not ripe for adjudication in the context of a declaratory-judgment action, we pretermit discussion as to whether the petitioner circuit judges are judicially immune from the respondents' claims.

petition for a writ of mandamus and direct the trial court to enter an order granting the petitioners' motion to dismiss.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Sellers and Mitchell, JJ., concur.

Bolin, Wise, Bryan, Mendheim, and Stewart, JJ., concur specially.

Shaw, J., concurs in the result.

MENDHEIM, Justice (concurring specially).

I fully concur with the main opinion. I write separately to address the fact that the respondents named as defendants in this action the circuit judges who will preside in the respondents' Rule 32, Ala. R. Crim. P., proceedings when the respondents file their Rule 32 petitions.[5]

The Attorney General has argued on behalf of the petitioner circuit judges that judicial immunity bars the respondents from asserting their claims for declaratory and injunctive relief against the petitioner circuit judges. In support of this argument, the Attorney General cites Ex parte City of Greensboro, 948 So. 2d 540, 542 (Ala. 2006), in which this Court stated: "Judges acting in an official judicial capacity are entitled to absolute judicial immunity under Alabama law ...."

The respondents counter that Greensboro involved a situation in which the plaintiff sought damages against a municipal-court clerk and magistrate, whereas they seek equitable relief: a judgment declaring the Fair Justice Act ("FJA") unconstitutional and an injunction preventing its

[5]This issue was pretermitted by the conclusion in the main opinion that this case is not ripe for adjudication.

enforcement against them. The respondents cite for support Pulliam v. Allen, 466 U.S. 522 (1984), a case in which the United States Supreme Court examined the common-law roots of judicial immunity and concluded that "judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity."[6] Id. at 541-42. Cf. Yeager v. Hurt, 433 So. 2d 1176, 1179 (Ala. 1983) (noting that the "doctrine of judicial immunity ... absolutely bars actions for damages against judges"). The Attorney General retorts that "'Congress responded to Pulliam in 1996 by amending § 1983 to abrogate its holding.' Justice Network, Inc. v. Craighead Cnty., 931 F.3d 753, 763 (8th Cir. 2019)." Petition, p. 28.

In my view, neither the petitioners nor the respondents have approached this issue correctly. It is true that Congress, in the Federal Courts Improvement Act of 1996, amended 42 U.S.C. § 1983 such that "injunctive relief against a judicial officer for an act or omission in his judicial capacity shall not be granted unless a declaratory decree was

[6]Federal law concerning judicial immunity is implicated here because most of the respondents' allegations assert that the FJA violates their federal constitutional rights.

violated or declaratory relief was unavailable." Bauer v. Texas, 341 F.3d 352, 357 (5th Cir. 2003). See also Pub.L. No. 104-317, § 309(c), 110 Stat. 3847 (codified at 42 U.S.C. § 1983); Kuhn v. Thompson, 304 F. Supp. 2d 1313, 1322-23 (M.D. Ala. 2004) (noting that, "[w]here a plaintiff does not allege and the record does not suggest that the judicial defendant violated a declaratory decree or that declaratory relief was unavailable, judicial immunity requires dismissal of claims against judicial officers for actions taken in their judicial capacity even when the claims seek prospective injunctive relief"); Ray v. Judicial Corr. Servs., Inc., No. 2:12-CV-02819-RDP, Oct. 9, 2014 (N.D. Ala. 2014) (not selected for publication in F.Supp.) (stating that "[i]t cannot be seriously disputed that, after the [Federal Courts Improvement Act], judicial immunity typically bars claims for prospective injunctive relief against judicial officials acting in their judicial capacity. Only when a declaratory decree is violated or declaratory relief is unavailable would plaintiffs have an end-run around judicial immunity"). Thus, even under the authority relied upon by the respondents, their claim for injunctive relief against the petitioner circuit

judges is barred by judicial immunity. This leaves, at most, the respondents' claim for declaratory relief as potentially viable against the petitioner circuit judges.

However, although the doctrine of judicial immunity may not bar a suit for declaratory relief against the petitioner circuit judges, the respondents' action fails for another reason that implicates jurisdiction: There is a lack of a justiciable controversy between the respondents and the petitioner circuit judges.

> "The seminal case on the subject is In re Justices of The Supreme Court of Puerto Rico, 695 F.2d 17 (1st Cir. 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. See id. at 19. Prior to the suit, the bar association had filed disciplinary complaints against some, but not all, of the attorney plaintiffs for non-payment of their dues. The Commonwealth's Supreme Court had determined that the bar requirements were valid. See id. When the attorney-plaintiffs filed suit against the justices, the justices immediately sought a writ of mandamus from the court of appeals ordering the district court to dismiss the complaint. See id. at 21.
>
> "In support of their request for mandamus, the justices argued that the district court lacked jurisdiction over the matter under Article III because no 'case or controversy' existed between the

> justices and the attorneys. In this connection, 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. (emphasis added)."

Brandon E. v. Reynolds, 201 F.3d 194, 197-98 (3d Cir. 2000). Rather than deciding the case based on Article III of the United States Constitution, "the Court of Appeals for the First Circuit simply held that the justices were not proper parties under § 1983." Brandon E., 201 F.3d at 198.

> "We ... agree 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. Judges sit as arbiters without a personal or institutional stake on either side of the constitutional controversy. ... 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). In part 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. One typically does not sue the court or judges who are supposed to adjudicate the merits of the suit that the enforcement official may bring."

In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 21-22 (1st Cir. 1982). In short, "[t]he requirement of a justiciable controversy is not satisfied where a judge acts in his adjudicatory capacity." Bauer v. Texas, 341 F.3d at 359.

Under this understanding, the petitioner circuit judges in their role of presiding over the respondents' Rule 32 proceedings are not inherently antagonistic to the respondents' constitutional claims concerning the FJA. The only way the required adverseness[7] could exist is if the petitioner circuit judges were viewed strictly as administrators or enforcers of Rule 32, but that would be a misunderstanding of a circuit judge's role in a Rule 32 proceeding. An illustrative case is Mendez v. Heller, 530 F.2d 457 (2d Cir. 1976). In Mendez, the appellant Louisa Roman married Thomas Roman in Puerto Rico on March 31, 1973. Roman left her husband in California in June 1974, and she moved to New York the following month. Roman wanted a

[7]Under Alabama law, "'[t]here must be a bona fide justiciable controversy in order to grant declaratory relief. If no justiciable controversy exists when the suit is commenced, then the court lacks jurisdiction.'" Gulf Beach Hotel, Inc. v. State ex rel. Whetstone, 935 So. 2d 1177, 1182 (Ala. 2006) (quoting Durham v. Community Bank of Marshall Cnty., 584 So. 2d 834, 835 (Ala. 1991)).

divorce, but she did not satisfy the applicable two-year residency requirement under New York law to obtain a divorce. See N.Y. Dom. Rel. Law § 230(5) (McKinney Supp. 1975). Roman sought relief in federal court, contending that § 230(5) violated her federal constitutional rights to due process and travel. Roman named New York state judge Louis B. Heller as one of the defendants in her action under the theory that Justice Heller would be responsible for granting or rejecting her complaint for divorce under New York law. See Mendez, 530 F.2d at 458. The United States Court of Appeals for the Second Circuit agreed with the federal district court's conclusion that Justice Heller lacked

> "a legal interest sufficiently adverse to Roman to create a justiciable controversy. [Mendez v. Heller,] 380 F. Supp. [985,] 989-93 [(E.D.N.Y. 1974)]. This conclusion rested in substance upon its finding that, if a divorce action were commenced, defendant Heller, a Justice of the New York Supreme Court, would be called upon to determine the constitutional validity of § 230(5) and, in so doing, would be acting in a judicial capacity. In this adjudicatory role, Justice Heller could not take any position on the merits of Roman's claim prior to his ruling thereon; hence, 'his posture would be that of an entirely disinterested judicial officer and not in any sense the posture of an adversary to the contentions made on either side of the case.' Id. at 990.

"Roman does not seriously contend that Justice Heller could be considered her adversary in making this ruling. Rather, she seeks to avoid the affect of the decision below by claiming that Justice Heller is sued, not in his judicial capacity, but rather as the administrative superior of the defendant Clerk. Appellant reasons as follows: The Clerk, who initially screens divorce complaints for compliance with § 230(5), would reject her complaint. Unlike a ruling on the statute's constitutionality, the Clerk's action would be a purely administrative act, similar to the rejection of divorce complaints for failure to tender filing fees in Boddie v. Connecticut, 286 F. Supp. 968, 971—72 (D. Conn. 1968) (three-judge court), aff'd on other grnds., 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). As presiding Justice, defendant Heller controls and is responsible for the administrative acts of the Clerk. Because Justice Heller is sued only in this administrative capacity, he is a proper party defendant. Boddie, supra.

"This argument is untenable and factually unwarranted. Unlike the situation in Boddie, 286 F. Supp. at 970, Roman cannot base her federal suit on the rejection of her divorce complaint for failure to meet statutory requirements, for she has made no attempt to secure a divorce. Compare Sosna v. Iowa, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975); Larsen v. Gallogly, 361 F. Supp. 305 (D.R.I.1973) (three-judge court), vacated as moot, 420 U.S. 904, 95 S.Ct. 819, 42 L.Ed.2d 831 (1975); Wymelenberg v. Syman, 328 F. Supp. 1353 (E.D. Wis. 1971) (three-judge court). Appellant's position rests on the hypothetical assumption that, if she sued for divorce, her complaint would be rejected pro forma, without consideration of the constitutional issues she presents here. We are unwilling, nor are we constitutionally able, to speculate that this would be the response of the State courts. See Longshoremen's Local 37 v. Boyd, 347 U.S. 222, 74 S.Ct. 447, 98 L.Ed. 650 (1954).

> "Moreover, we do not believe that Justice Heller's official responsibilities can be compartmentalized in the manner suggested by appellant. Clearly, if Roman had filed a divorce complaint which questioned the validity of § 230(5), Justice Heller's consideration thereof would not have been restricted to determining whether she had been a New York resident for two years. Appellant's bifurcated conception of Justice Heller's duties simply does not comport with adjudicatory reality. Neither does her emphasis on the allegedly administrative role performed by Justice Heller comport with the gravamen of her complaint. Roman does not allege that she meets the requirements of § 230(5) but has not been permitted to file for a divorce; rather, she claims that a two-year durational residency requirement is an unconstitutional means by which to determine divorce jurisdiction. In contrast to the traditionally administrative task of fee collection, Boddie, supra, a court's investigation of its jurisdiction is eminently a judicial function. Thus, as between appellant and Justice Heller, this case does not present the 'honest and actual antagonistic assertion of rights,' Chicago & Grand Trunk R. Co. v. Wellman, 143 U.S. 339, 345, 12 S.Ct. 400, 402, 36 L.Ed. 176 (1892), 'indispensable to adjudication of constitutional questions ....' United States v. Johnson, 319 U.S. 302, 305, 63 S.Ct. 1075, 1076, 87 L.Ed. 1413 (1943) (per curiam)."

Mendez, 530 F.2d at 459-60 (footnote omitted; emphasis added).

Just as in Mendez the plaintiff inappropriately assumed that Justice Heller would not consider a constitutional challenge to New York's residency requirement for seeking a divorce, in this case the respondents assume that the petitioner circuit judges either would not be able or willing

to entertain the respondents' challenges to the constitutionality of FJA, even though no such assumption is warranted. Likewise, just as Justice Heller's responsibilities with respect to divorce complaints could not be compartmentalized as solely administrative, the petitioner circuit judges' roles in Rule 32 proceedings cannot be cabined as simply "enforcers" of Rule 32's procedural requirements; their primary task is to be "neutral adjudicators" between the Rule 32 petitioners and the State as represented by the Attorney General. The petitioner circuit judges are not presumed to take positions on the merits of the respondents' Rule 32 claims before the petitions have been filed. Consequently, there is no adverseness between the respondents and the petitioner circuit judges that would present a justiciable controversy. Without a justiciable controversy, the declaratory-judgment action against the circuit judges must be dismissed.

I must also note that additional problems are created by the respondents naming the petitioner circuit judges as defendants. As the Attorney General has observed in the petition, one of those problems already has manifested itself:

> "Petitioner Judge Hatcher has already been required to make a ruling in Respondents Young and Capote's Rule 32 proceedings while simultaneously being subject to suit in this proceeding. If Respondents' civil suit proceeds on the merits, the Petitioner Judges will find themselves in the untenable position of impartially presiding over Respondents' Rule 32 proceedings while simultaneously responding to the merits of Respondents' constitutional challenges to the FJA in this proceeding."

Petition, p. 30. In short, this action against the petitioner circuit judges renders it difficult for those circuit judges to neutrally apply the FJA's procedures in Rule 32 proceedings filed by the respondents. Thus, allowing such an action would create the specter of circuit judges needing to recuse themselves from participating in Rule 32 proceedings because Rule 32 petitioners have named them as party defendants in declaratory-judgment actions asserting constitutional claims. This action creates an unnecessary conflict for the petitioner circuit judges, given that these same constitutional arguments can be raised in the respondents' Rule 32 proceedings.

A final problem that arises from permitting the petitioner circuit judges to be party defendants in this action is that it purports to give the Montgomery Circuit Court some supervisory power over the petitioner circuit

judges' subsequent Rule 32 proceedings involving the respondents. The circuit courts of this state are courts of general jurisdiction, but that jurisdiction for each circuit court is limited by the geographic territory of the circuit.

> "All the Circuit Courts have concurrent jurisdiction of the subject-matter. But the constitution does not grant jurisdiction of the case, or of the person. The cases, arising under the constitutional grant, are distributed by the General Assembly among the different Circuit Courts according to locality, and jurisdiction of the person is acquired by proper service of legal process, or by consent; and such jurisdiction, when acquired, is exclusive. The distinction between jurisdiction of the subject-matter, and the exercise of the jurisdiction, must be observed. While the jurisdiction of the subject-matter is co-extensive with the State, the territorial limits in which it may be exercised is left for legislative creation and regulation."

Dunbar v. Frazer, 78 Ala. 529, 530 (1885). See also Art. IV, § 142, Ala. Const. 1901 (providing that "[t]he state shall be divided into judicial circuits," that "[f]or each circuit, there shall be one circuit court," and that "[t]he circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law"). Within their territorial jurisdictions, the circuit courts have supervisory authority over inferior tribunals, but the limitations on their jurisdiction necessarily mean that the circuit courts do

not have supervisory jurisdiction over one another. See, e.g., Brogden v. Employees' Ret. Sys., 336 So. 2d 1376, 1379 (Ala. Civ. App. 1976) (observing that "there are two aspects of jurisdiction in a circuit court: that general subject matter jurisdiction granted by the constitution and the supervisory jurisdiction over inferior judicial bodies or officers located and acting within its territorial boundaries granted by statute" (emphasis added)); Ex parte Alabama Textile Prods. Corp., 242 Ala. 609, 613, 7 So. 2d 303, 306 (1942) (explaining that "[i]t is said in Dunbar v. Frazer, 78 Ala. 529 [(1885)], that if the legislature confers appellate and supervisory power on the circuit court, it is reasonable to infer that the intention is that the exercise of such authority shall be confined within the limits which restrict the exercise of its original jurisdiction"). In short, the Montgomery Circuit Court has no constitutional or statutory authority to exercise jurisdiction over other circuit courts of this state, including the Colbert, Escambia, Madison, Mobile, and Tuscaloosa Circuit Courts -- the circuit courts in which the respondents have possibly filed or will file their

Rule 32 petitions.[8] If this action against the petitioner circuit judges was permitted to proceed, the Montgomery Circuit Court could enter rulings on the respondents' constitutional claims that potentially may conflict with the rulings of the circuit courts that have exclusive jurisdiction over the respondents' Rule 32 proceedings, but the Montgomery Circuit Court's rulings would have no binding effect on the petitioner circuit judges because of the limits on a circuit court's jurisdiction. Thus, it appears that the Montgomery Circuit Court cannot provide effective relief to the respondents. This is yet another reason that the subject action is due to be dismissed. See, e.g., Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220, 224 (Ala. 2003) (noting that "'[w]e have recognized that a justiciable controversy is one that is "definite and concrete, touching the legal relations of the parties in adverse legal interest, and it must be a real and substantial controversy admitting of specific relief through a [judgment]"'" (quoting MacKenzie v. First Alabama Bank, 598 So. 2d 1367, 1370 (Ala. 1992), quoting

[8]Rule 32.5, Ala. R. Crim. P., provides that a Rule 32 petition "shall be filed in and decided by the court in which the petitioner was convicted."

in turn Copeland v. Jefferson Cnty., 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969)) (emphasis added)).

In sum, I believe that the strategy of naming the petitioner circuit judges as defendants in this action is ill-conceived and ultimately impermissible because of multiple jurisdictional defects. Thus, even if the action as a whole was ripe for adjudication (which it is not), the petitioner circuit judges would have to be dismissed from the suit.

Bolin, Wise, Bryan, and Stewart, JJ., concur.