

The Burger Court Opinion Writing Database

Pulliam v. Allen

466 U.S. 522 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 1, 1984

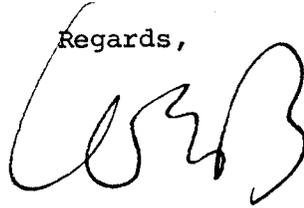
PERSONAL

Re: 82-1432 - Pulliam, etc. v. Allen et al.

Dear Lewis:

I have wanted to pass some thoughts to you that I see as compatible with your draft. With my various "extracurricular" events, it has not been possible. But be assured I will not be dissenting! In the earlier Virginia cases, I think we erred seriously.

Regards,



Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 1, 1984

Re: 82-1432 - Pulliam, etc. v. Allen et al.

Dear Lewis:

I join.

Regards,

A handwritten signature in cursive script, appearing to read 'W.P.', which stands for William H. Rehnquist, Justice Powell's name.

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 15, 1984

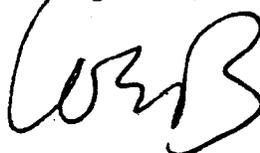
RE: No. 82-1432 - Pulliam, Etc. v. Allen, et al.

Dear Lewis:

I enclose a draft of concurrence in this case, as I indicated I might, in my memo to you February 1.

CHIEF JUSTICE: I join the Court's opinion, but I write separately to record my view that an award of attorney's fees against a judicial officer has the same economic and functional impact as an award of monetary damages. To say that an award of attorney's fees is any less a threat to the independence of the judiciary than an award of damages blinks the reality of the situation. See Supreme Court of Virginia v. Consumers Union, 103 S.Ct. 3124 (1983). Regardless of the propriety of the award of injunctive relief against petitioner Pulliam, I would hold that the award of attorney's fees against a judge was impermissible under established principles of judicial immunity. Judicial independence is gravely undermined if it does not afford protection against costs of litigation.

Regards,



Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

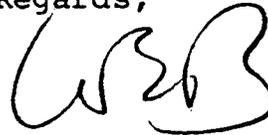
February 23, 1984

MEMORANDUM TO THE CONFERENCE

RE: No. 82-1432 - Pulliam v. Allen and Nicholson

It appearing that Harry's dissent has a' court,
the opinion is now reassigned to him.

Regards,



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SUPREME COURT U.S.
JUSTICE DEPARTMENT
84 FEB 23 P 3:53

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 26, 1984

Re: 82-1432 - Pulliam, etc. v. Allen, et al.

Dear Lewis:

I join your dissent.

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 11, 1983

No. 82-1432

Pulliam v. Allen

77
L

Dear Chief,

I will try my hand at the opinion
for the Court in the above.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 15, 1983

No. 82-1432

Pulliam v. Allen

Dear Byron, Harry and John,

We four are in dissent in the
above. Harry, would you be willing to
take the dissent?

Sincerely,



Justice White

Justice Blackmun

Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 14, 1984

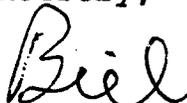
No. 82-1432

Pulliam, etc. v. Allen, et al.

Dear Harry,

Please join me in your dissent in
the above.

Sincerely,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 7, 1984

RECEIVED
SUPREME COURT OF THE U.S.
JUSTICE W. J. BRENNAN

'84 MAR -7 P3:40

No. 82-1432

Pulliam v. Allen and Nicholson

Dear Harry,

I agree.

Sincerely,

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 10, 1984

Re: 82-1432 - Pulliam v. Allen and Nicholson

Dear Lewis,

I shall await Harry's writing.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 14, 1984

Re: 82-1432 - Pulliam v. Allen and Nicholson

Dear Harry,

The sentence I referred to in our telephone conversation is the third sentence of the first paragraph of Part VII. I would feel better if it were made clear that the judge is not immune from criminal prosecution for corrupt action, nor from being held in contempt for refusal to follow the directions of an appellate court. These points would seem to help our case. But I shall leave the matter entirely to you. The dissent is very good.

Sincerely,



Justice Blackmun

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 14, 1984

Re: 82-1432 - Pulliam v. Allen and Nicholson

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 8, 1984

RECEIVED
SUPREME COURT
JUSTICE BYRON R. WHITE

'84 MAR -8 P12:47

Re: 82-1432 -
Pulliam v. Nicholson

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 14, 1984

Re: No. 82-1432-Pulliam v. Allen and Nicholson

Dear Harry:

Please join me in your dissent.

Sincerely,

JM.
T.M.

Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 7, 1984

Re: No. 82-1432-Pulliam v. Allen and Nicholson

Dear Harry:

Please join me.

Sincerely,

T.M.
T.M.

Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 15, 1983

Re: No. 82-1432 - Pulliam v. Allen

Dear Bill:

I shall be happy to undertake the dissent in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice Brennan

cc: Justice White
Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 6, 1984

Re: No. 82-1432 - Pulliam v. Allen

Dear Lewis:

I shall undertake a dissent in this case in due course.

Sincerely,



Justice Powell

cc: The Conference

84 JAN -6 P2:09

RECEIVED
SUPREME COURT
JUSTICE HARRY A. BLACKMUN

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: FEB 14 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1432

GLADYS PULLIAM, MAGISTRATE FOR THE COUNTY
OF CULPEPER, VIRGINIA, PETITIONER *v.* RICH-
MOND R. ALLEN AND JESSE W. NICHOLSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[February —, 1984]

JUSTICE BLACKMUN, dissenting.

This case, from its very inception, has not been concerned with a *damages* award against a judicial officer. The complaint, see App. 6-14, asked only for declaratory and injunctive relief. It thus sought prospective assistance, not damages for past conduct. No departure, even in a suit under 42 U. S. C. § 1983, from the principle of judicial immunity from monetary liability established by *Pierson v. Ray*, 386 U. S. 547 (1967), and its progeny, is involved here. It is when the Court pronounces almost unlimited judicial immunity, beyond damages and up to and including prospective relief, that I find myself in disagreement with the Court. That conclusion appears to me to be undesirable as a matter of judicial policy, to be rooted in a misreading of the common-law precedents, to be contrary to the clearly expressed intent of Congress, and, surely, to be vastly and unnecessarily overprotective of those who sit on the judicial benches of this country. I therefore dissent.

I

The Court granted certiorari in this case to determine, as petitioner phrased the question, “[w]hether Judicial Immunity Bars the Award of Attorney’s Fees Pursuant to 42 U. S. C. § 1988 Against a Member of the Judiciary Acting in his Judicial Capacity.” See the initial leaf of the Petition for

February 15, 1984

Re: No. 82-1432 - Pulliam v. Allen

Dear Byron:

The suggestions you make in your letter of February 14 are good ones, and I shall accommodate you in the next draft.

Sincerely,

HAB

Justice White

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: MAR 6 1984

Recirculated: _____

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JUSTICE

'84 MAR -6 P12:48

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1432

GLADYS PULLIAM, MAGISTRATE FOR THE COUNTY
OF CULPEPER, VIRGINIA, PETITIONER *v.*
RICHMOND R. ALLEN AND
JESSE W. NICHOLSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[March —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case raises issues concerning the scope of judicial immunity from a civil suit that seeks injunctive and declaratory relief under § 1 of the Civil Rights Act of 1871, as amended, 42 U. S. C. § 1983 (1976 ed., Supp. V.), and from fee awards made under the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, as amended, 42 U. S. C. § 1988 (1976 ed., Supp. V.).

Petitioner Gladys Pulliam is a state magistrate in Culpeper County, Va. Respondents Richmond R. Allen and Jesse W. Nicholson were plaintiffs in a § 1983 action against Pulliam brought in the United States District Court for the Eastern District of Virginia. They claimed that Magistrate Pulliam's practice of imposing bail on persons arrested for nonjailable offenses under Virginia law and of incarcerating those persons if they could not meet the bail was unconstitutional. The District Court agreed and enjoined the practice. That court also awarded respondents \$7,691.09 in costs and attorney's fees under § 1988. The United States Court of Appeals for the Fourth Circuit rejected petitioner's claim that the award of attorney's fees against her should have been barred by principles of judicial immunity. We agree with the Court of Appeals and affirm the award.

11A0

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 7, 1984

Re: No. 82-1432 - Pulliam v. Allen

Dear John:

Thank you for your suggestions of March 6. On page 16, I shall change the "it" to "Congress." On page 18, I shall have the "whether" clause read "respondents had an adequate remedy at law, rendering equitable relief inappropriate,²²". And at the beginning of footnote 22, I shall add a cite to O'Shea.

I hope that these changes will meet your concerns.

Sincerely,



Justice Stevens

STYLISTIC CHANGES
PP. 16 + 18

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

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'84 MAR -8 A9:26
2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1432

GLADYS PULLIAM, MAGISTRATE FOR THE COUNTY
OF CULPEPER, VIRGINIA, PETITIONER *v.*
RICHMOND R. ALLEN AND
JESSE W. NICHOLSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[March —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case raises issues concerning the scope of judicial immunity from a civil suit that seeks injunctive and declaratory relief under § 1 of the Civil Rights Act of 1871, as amended, 42 U. S. C. § 1983 (1976 ed., Supp. V), and from fee awards made under the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, as amended, 42 U. S. C. § 1988 (1976 ed., Supp. V).

Petitioner Gladys Pulliam is a state magistrate in Culpeper County, Va. Respondents Richmond R. Allen and Jesse W. Nicholson were plaintiffs in a § 1983 action against Pulliam brought in the United States District Court for the Eastern District of Virginia. They claimed that Magistrate Pulliam's practice of imposing bail on persons arrested for nonjailable offenses under Virginia law and of incarcerating those persons if they could not meet the bail was unconstitutional. The District Court agreed and enjoined the practice. That court also awarded respondents \$7,691.09 in costs and attorney's fees under § 1988. The United States Court of Appeals for the Fourth Circuit rejected petitioner's claim that the award of attorney's fees against her should have been barred by principles of judicial immunity. We agree with the Court of Appeals and affirm the award.

pp. 15 & 19

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

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Recirculated: MAY 1 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1432

GLADYS PULLIAM, MAGISTRATE FOR THE COUNTY
OF CULPEPER, VIRGINIA, PETITIONER *v.*
RICHMOND R. ALLEN AND
JESSE W. NICHOLSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[May —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case raises issues concerning the scope of judicial immunity from a civil suit that seeks injunctive and declaratory relief under § 1 of the Civil Rights Act of 1871, as amended, 42 U. S. C. § 1983 (1976 ed., Supp. V), and from fee awards made under the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, as amended, 42 U. S. C. § 1988 (1976 ed., Supp. V).

Petitioner Gladys Pulliam is a state magistrate in Culpeper County, Va. Respondents Richmond R. Allen and Jesse W. Nicholson were plaintiffs in a § 1983 action against Pulliam brought in the United States District Court for the Eastern District of Virginia. They claimed that Magistrate Pulliam's practice of imposing bail on persons arrested for nonjailable offenses under Virginia law and of incarcerating those persons if they could not meet the bail was unconstitutional. The District Court agreed and enjoined the practice. That court also awarded respondents \$7,691.09 in costs and attorney's fees under § 1988. The United States Court of Appeals for the Fourth Circuit rejected petitioner's claim that the award of attorney's fees against her should have been barred by principles of judicial immunity. We agree with the Court of Appeals and affirm the award.

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December 21, 1983

82-1432 Pulliam v. Allen

Dear Sandra:

Here is a first draft (identified as a Chambers draft) of an opinion in this case. As I need you for a Court, and also because of your experience and special interest, I send the draft to you before circulating it.

I had in mind, of course, the two concerns that you have expressed to me: (i) that the common law we inherited from England may have limited judicial immunity to suits seeking damages; and (ii) that we should make clear that the immunity doctrine does not extend to writs of mandamus and prohibition.

My clerk, Cammie Robinson, has made a careful examination of the English common law. She found no case in which a distinction was made between a suit for damages and one for prospective relief. Nor did she find any evidence that judicial immunity should be limited to cases in which damages are sought. On the contrary, the rationale of the judicial immunity doctrine, dating back for centuries, is equally applicable in both types of suits. This is made clear, I think, in my opinion.

I have said less about mandamus and prohibition, as I really do not think these are implicated. They are procedures quite different from private §1983 suits to vindicate deprivation of rights under the Constitution and laws of the United States. I do address briefly the distinction between these remedies in footnote 15. Injunctions and mandamus, of course, are two completely different remedies: mandamus will issue to command performance of a clear legal duty and is directed only to one specific act; an injunction demands continuous conduct over a period of time and often involves an extended period of judicial oversight and supervision.

In sum, the more I have worked on this case the more apparent it has become - at least for me - that no principled distinction can be made between suits for damages and for injunctive and declaratory relief. Any such suit subjects a judge to harassment, expense, and even indignity. Such a personal suit, whatever the remedy claimed, may affect the independence of the judge, as well as public confidence in him or her.

I nevertheless will welcome your thoughts. Jo and I will be in Richmond leaving today, but I will return on Monday.

Sincerely,

Justice O'Connor

lfp/ss

01/05

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: JAN 6 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1432

GLADYS PULLIAM, MAGISTRATE FOR THE COUNTY OF CULPEPER, VIRGINIA, PETITIONER *v.* RICHMOND R. ALLEN AND JESSE W. NICHOLSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[January —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents questions concerning the scope of judicial immunity from civil suits seeking injunctive and declaratory relief under Section 1 of the Civil Rights Act of 1871, 42 U. S. C. 1983, and from fee awards under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U. S. C. 1988.

I

Respondents Richmond Allen and Jesse Nicholson filed suit under §1983 in United States District Court for the Eastern District of Virginia against petitioner Gladys Pulliam, a magistrate in Culpeper County, Virginia. The suit challenged the constitutionality of petitioner's bail determinations under Va. Code § 19.2-74.1.¹ That section prohibited the pretrial detention of any person arrested for a misdemeanor that was punishable only by fine. It excepted from this prohibition any person arrested for profane swearing or public drunkenness, a Class 4 misdemeanor under Va. Code § 18.2-388 carrying a maximum penalty of \$100 fine. A judicial officer could authorize the pretrial detention of such persons after a probable cause determination that the arrestee

¹Section 19.2-74.1 has since been repealed. See Va. Code § 19.2-74.1 (Cum. Supp. 1982).

W. J. ...
[Handwritten initials]

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04/24

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: APR 24 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1432

GLADYS PULLIAM, MAGISTRATE FOR THE COUNTY
OF CULPEPER, VIRGINIA, PETITIONER *v.*
RICHMOND R. ALLEN AND
JESSE W. NICHOLSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[April —, 1984]

JUSTICE POWELL, dissenting.

The Court today reaffirms the rule that judges are immune from suits for damages, but holds that they may be sued for injunctive and declaratory relief and held personally liable for money judgments in the form of costs and attorneys fees merely on the basis of erroneous judicial decisions. The basis for the Court's distinction finds no support in common law and in effect eviscerates the doctrine of judicial immunity that the common law so long has accepted as absolute.

The Court recognizes that the established principle of judicial immunity serves as the bulwark against threats to "independent judicial decisionmaking," *ante*, at 8. Yet, at the same time it concludes that judicial immunity does not bar suits for injunctive or declaratory relief with the attendant claims for costs and attorney's fees. The Court reasons that "[f]or the most part, injunctive relief against a judge raises concerns different from those addressed by the protection of judges from damages awards." *Ante*, at 14. This case illustrates the unsoundness of that reasoning. The Court affirms a \$7,691 money judgment awarded against a state magistrate on the determination that she made erroneous judicial decisions with respect to bail and pretrial detentions. Such a judgment poses the same threat to independent judicial deci-

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05/09

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

Changes at 1, 11-13

From: Justice Powell

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1432

GLADYS PULLIAM, MAGISTRATE FOR THE COUNTY
OF CULPEPER, VIRGINIA, PETITIONER *v.*
RICHMOND R. ALLEN AND
JESSE W. NICHOLSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[May —, 1984]

JUSTICE POWELL, with whom CHIEF JUSTICE BURGER,
JUSTICE REHNQUIST, and JUSTICE O'CONNOR join,
dissenting.

The Court today reaffirms the rule that judges are immune from suits for damages, but holds that they may be sued for injunctive and declaratory relief and held personally liable for money judgments in the form of costs and attorneys fees merely on the basis of erroneous judicial decisions. The basis for the Court's distinction finds no support in common law and in effect eviscerates the doctrine of judicial immunity that the common law so long has accepted as absolute.

The Court recognizes that the established principle of judicial immunity serves as the bulwark against threats to "independent judicial decisionmaking," *ante*, at 8. Yet, at the same time it concludes that judicial immunity does not bar suits for injunctive or declaratory relief with the attendant claims for costs and attorney's fees. The Court reasons that "[f]or the most part, injunctive relief against a judge raises concerns different from those addressed by the protection of judges from damages awards." *Ante*, at 14. This case illustrates the unsoundness of that reasoning. The Court affirms a \$7,691 money judgment awarded against a state magistrate on the determination that she made erroneous judicial deci-

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 9, 1984

Re: No. 82-1432 Pulliam v. Allen

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

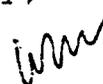
April 26, 1984

Re: No. 82-1432 Pulliam v. Allen

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 6, 1984

Re: 82-1432 - Pulliam v. Allen

Dear Lewis:

Although I agree with part II of your opinion, I continue to have doubts about the immunity question discussed in part III and therefore will await Harry's writing.

Respectfully,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

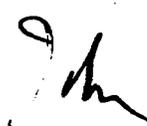
February 15, 1984

Re: 82-1432 - Pulliam v. Allen

Dear Harry:

Please join me in all of your dissenting opinion except Part I. As I believe I voted at conference, I am persuaded that it is proper for the Court to consider the judicial immunity question before deciding the question concerning attorney's fees.

Respectfully,



Justice Blackmun

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 6, 1984

Re: 82-1432 - Pulliam v. Allen

Dear Harry:

Your opinion is first rate and I have no hesitation in joining it. I have these two flyspecks for you to consider if you wish:

On page 18 toward the bottom of the page, the reference to "whether other remedies were available" immediately preceding footnote peg 22 made me wonder if you were talking about an exhaustion requirement. You might want to consider substituting something like "whether there was a violation of due process."

On page 16 five lines from the bottom of the page, you refer to a remedy "it" provided in § 1983. The sentence is probably perfectly clear, but there may be some danger that the reader would think the antecedent of "it" is "the Court" rather than Congress. ✓

Of much greater importance than these flyspecks, I congratulate you on preventing this case from becoming what might have been a most unfortunate precedent.

Respectfully,



Justice Blackmun



CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Supreme Court of the United States
Washington, D. C. 20543

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JUSTICE JOHN PAUL STEVENS

'84 MAR -7 A9:16

March 6, 1984

Re: 82-1432 - Pulliam v. Allen

Dear Harry:

Please join me.

Respectfully,

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 10, 1983

No. 82-1432 Pulliam v. Allen

MEMORANDUM TO THE CONFERENCE

At our Conference, I voted tentatively to DIG the case or to affirm on the narrow issue of attorneys' fees assuming the question of judicial immunity from equitable relief was not addressed. There were not enough votes to dismiss and it appears we will be reaching the merits.

My vote on the merits is still tentative. But if an opinion were to address the underlying issue of judicial immunity from equitable relief and conclude that such immunity exists, I am presently disposed to think I would join it.

Sincerely,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 1, 1983

No. 82-1432 Pulliam v. Allen

Dear Lewis,

This letter is to follow-up on our brief discussion concerning this case. I am still uneasy about holding that judicial immunity extends to prospective injunctive and declaratory relief under 42 U.S.C. §1983. I simply am not confident that a well-established and explicit common law doctrine absolutely insulating judges from such relief exists. I am persuaded, however, that such suits should be discouraged and that attorneys fees should not be made available as a carrot to stimulate such suits. Therefore, I wonder whether we can dispose of the case in the following manner.

I think we are all agreed that §1983 is not itself a source of substantive rights. Section 1983 imposes civil liability on, and authorizes injunctive relief against, only one who deprives another of a right "secured by the Constitution and laws." If there has been no such "deprivation," the threshold requirement of §1983 has not been satisfied and the jurisdictional predicate for awarding attorneys fees under §1988 does not exist.

In this case, respondents alleged that petitioner had violated their rights under the Sixth, Eighth, and Fourteenth Amendments by incarcerating them for non-incarcerable offenses. The District Court granted the requested §1983 relief, but limited its finding of "constitutional deprivation" to respondents' Fourteenth Amendment due process and equal protection claims. See App. 24. I do not believe that our cases support finding a "deprivation" under either the Due Process or Equal Protection Clauses, and thus I think the §1988 attorneys fee award was without a proper jurisdictional predicate.

To establish a valid due process claim, respondents had to show that: (1) petitioner was acting under color of state law; (2) respondents were deprived of life, liberty, or property; and (3) the deprivation was "without due process

of law." Petitioner was a state employee and, after our decision in Monroe v. Pape, 365 U.S. 167 (1961), was certainly acting under color of state law. Respondents were incarcerated for offenses not punishable by incarceration, and thus were certainly deprived of their liberties. But where the state affords a procedure capable of providing meaningful relief at a meaningful time for unauthorized and random acts of state employees, a "deprivation" cannot be said to be "without due process of law." Parratt v. Taylor, 451 U.S. 527 (1981). Here, Virginia law makes available a state procedure by which pretrial detention orders may be appealed, see Brief for Petitioners 3, and n. 2, and in the absence of an explicit judicial finding to the contrary, this procedure must be deemed adequate to remedy the alleged "deprivation."

This reasoning is directly supported by our decision in Baker v. McCollan, 443 U.S. 137 (1979). In McCollan, we found no "deprivation" where state employees exercised a valid warrant against the wrong person and wrongfully detained that person in jail. We were unwilling to transform McCollan's false imprisonment claim into a due process claim because an adequate tort remedy existed at state law. Similarly, your excellent opinion for the Court in Ingraham v. Wright, 430 U.S. 651 (1977), cited for this point in Parrat, concluded that deprivations of liberty caused by corporal punishment in public schools do not violate the Fourteenth Amendment because state common-law remedies are sufficient to satisfy due process concerns.

The equal protection claim is a bit more slippery, but only because it is a white elephant. Substantively, Williams v. Illinois, 399 U.S. 235 (1970), and Tate v. Short, 401 U.S. 396 (1971), are not on point, and our cases have cut-back considerably on the Equal Protection rationales embodied in them. See, e. g., Fuller v. Oregon, 417 U.S. 40 (1974); Marshall v. United States, 414 U.S. 417 (1974). I think your opinion in McGinnis v. Royster, 410 U.S. 263 (1973), is particularly telling on this issue. But even if their rationales are still the prevailing law, the facts of this case would not make out an equal protection claim under them. Furthermore, Virginia amended its Code to prohibit the retention in custody of any person for a misdemeanor for which he could not receive a jail sentence. See Va. Code. §18.2-388. This amendment essentially mooted any equal protection claim. Respondents' remaining equal protection argument basically was that petitioner was continuing to detain persons where the

statute did not authorize the detention. Of course, this is respondents' due process argument dressed up in equal protection garb, and my analysis would be the same as I have set out above. Thus, I would not find that respondents' established a jurisdictional predicate for §1983 relief or §1988 attorneys fees under the Equal Protection Clause.

I realize that disposing of the case in this fashion would not eliminate the potential for injunctive suits against magistrates and judges. But I believe that it would take most such suits out of the federal courts and return them, where I believe they belong, to the state courts. Furthermore, it would remove, in many cases, the incentive for bringing such suits--the §1988 attorney fee awards. Thus, we indirectly accomplish two very worthwhile goals, and we directly dispose of what I consider to be a very unfortunate certiorari grant.

Let me know if you think this merits consideration after you have had a chance to think about it.

Sincerely

A handwritten signature in cursive script, appearing to read "Sandra".

Justice Powell

82-1432

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

DEC 28 1983

Dear Lewis,

I have read your draft of *Pelliam v. Allen* with interest but have not yet studied it carefully. My initial reaction is that you have done a fine job. If it is all right with you, I will respond more fully and definitively on my return from Phoenix.

Sincerely,
Sandra

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 3, 1984

No. 82-1432 Pulliam v. Allen

Dear Lewis,

This will confirm that I will be able to join your proposed opinion in this case. You have handled it very well and I am relieved to see a solution to this difficult case.

Sincerely,



Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 9, 1983

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

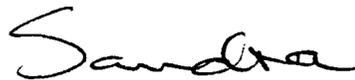
'84 JAN -9 P2:34

No. 82-1432 Pulliam v. Allen and Nicholson

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

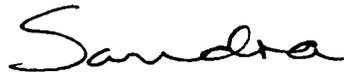
April 26, 1984

No. 82-1432 Pulliam v. Allen and Nicholson

Dear Lewis,

Please join me in your dissent.

Sincerely,



Justice Powell

Copies to the Conference