

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

Honorable Wendell Griffen,)
)
 Plaintiff,)
)
 vs.)
)
 The Supreme Court of Arkansas,)
)
 Honorable John Dan Kemp, in his official)
 capacity as Chief Justice of the Supreme Court)
 of Arkansas,)
)
 Honorable Robin F. Wynne, in his official)
 capacity as Associate Justice of the Supreme)
 Court of Arkansas,)
)
 Honorable Courtney Hudson Goodson, in her)
 official capacity as Associate Justice of the)
 Supreme Court of Arkansas,)
)
 Honorable Josephine L. Hart, in her official)
 capacity as Associate Justice of the Supreme)
 Court of Arkansas,)
)
 Honorable Shawn A. Womack, in his official)
 capacity as Associate Justice of the Supreme)
 Court of Arkansas,)
)
 Honorable Karen R. Baker, in her official)
 capacity as Associate Justice of the Supreme)
 Court of Arkansas, and)
)
 Honorable Rhonda K. Wood, in her official)
 capacity as Associate Justice of the Supreme)
 Court of Arkansas,)
)
 Defendants.)
)

FILED
 U.S. DISTRICT COURT
 EASTERN DISTRICT ARKANSAS
 OCT 05 2017
 JAMES W. McORMACK, CLERK
 By: [Signature] DEP. CLERK

****JURY TRIAL DEMANDED**

Case No. 4:17cv639-DPM

This case assigned to District Judge Marshall
and to Magistrate Judge Harris

COMPLAINT

Plaintiff, the Honorable Wendell Griffen (“Judge Griffen”), Judge for the Sixth Judicial Circuit (Fifth Division) in Pulaski County, Arkansas, hereby files this Complaint against Defendants, the Supreme Court of Arkansas and its seven Justices, to remedy the following: Defendants’ unconstitutional deprivations of Judge Griffen’s rights to freedom of speech, freedom of assembly, and freedom of religion and religious exercise that are guaranteed by the First Amendment to the Constitution of the United States; Judge Griffen’s rights to due process of law and equal protection under the law that are guaranteed by the Fourteenth Amendment to the Constitution of the United States; Defendants’ violation of Judge Griffen’s rights to exercise his calling as an ordained member of the clergy and follower of Jesus’ religion, which is prohibited by the Arkansas Religious Freedom Restoration Act; and Defendants’ conspiracy among themselves and with others based on discriminatory animus for the purpose of depriving, directly or indirectly, Judge Griffen’s right to equal protection under the law in violation of 42 U.S.C. § 1985, with the object of that conspiracy being to prevent Judge Griffen from being assigned to and presiding over civil and criminal cases involving the death penalty or the method of execution in Arkansas. Judge Griffen seeks an injunction against Defendants’ permanent reassignment of all such cases away from Judge Griffen, among other relief as set forth below. In support of this Complaint, Judge Griffen states as follows:

JURISDICTION AND VENUE

1. This Court possesses subject matter jurisdiction over this case because the actions alleged herein arise under the Constitution and laws of the United States. *See* 28 U.S.C. § 1331.

2. This Court possesses supplemental jurisdiction over state law claims that are so related to the claims within the original jurisdiction of this Court that they constitute part of the same case or controversy. *See* 28 U.S.C. § 1367(a).

3. This Court possesses personal jurisdiction over Defendants, who are all citizens of Arkansas.

4. Venue is proper in this district because multiple defendants reside in this district and because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this district. *See* 28 U.S.C. § 1391(b)(1), (2).

PARTIES

5. Judge Griffen is the duly elected Circuit Judge for the Fifth Division of the Sixth Judicial Circuit of Arkansas and an adult citizen of the State of Arkansas.

6. The Supreme Court of Arkansas is the highest court in the judicial system of the State of Arkansas, has authority over assignment of cases to the judges of the Arkansas Courts, and is responsible for promulgating rules concerning the conduct of Arkansas judges.

7. Each individual defendant named herein is a sitting justice of the Supreme Court of Arkansas, an adult citizen of the State of Arkansas, a person of white racial identity and ancestry, and is sued in his or her official capacity.

STATEMENT OF FACTS

8. In 2010, Judge Griffen—a person of African-American ancestry and racial identity—was elected to a six-year term as Circuit Judge for the Fifth Division of the Sixth Judicial Circuit of Arkansas. He was reelected in 2016.

9. Judge Griffen has been a baptized follower of Jesus since 1960. He was ordained in 1988 to the work of the gospel ministry by authority and order of the Mount Pleasant Missionary Baptist Church of Little Rock, Arkansas.

10. Since May 2009, Judge Griffen has served as pastor of New Millennium Church, a congregation affiliated with the Cooperative Baptist Fellowship, the Cooperative Baptist Fellowship of Arkansas, the Samuel DeWitt Proctor Conference, and the Association of Welcoming and Affirming Baptists.

11. Judge Griffen's convictions as a follower of Jesus are central to his identity. As a follower of Jesus and as pastor of New Millennium Church, Judge Griffen's religious convictions compel him to speak, write, preach, and engage in other conduct arising from his understanding of the religion of Jesus and its prophetic traditions concerning love, truth, peace, justice, and redemptive hope.

12. In his personal life and his capacity as a pastor, Judge Griffen has expressed his personal religious and moral views on the death penalty. As an exercise of his religious expression, he also has participated in prayer vigils. Judge Griffen has always conducted his religious activities outside the auspices of his judicial role.

13. Indeed, notwithstanding his personal religious and moral views about the death penalty, Judge Griffen has always attempted to interpret Arkansas law on the death penalty fairly, without predisposition, and according to law and precedent. Judge Griffen has never made a public statement that has committed him to rule for or against any party in any case before him involving the death penalty.

14. In the most recent case in which Judge Griffen was called upon to rule on the death penalty, he expressly demonstrated his ability to follow the law and precedent without regard to

his personal religious and moral beliefs. In *Johnson v. Kelley*, Case No. 60CV-15-2921 (“*Johnson*”), Judge Griffen **dismissed** nine death row inmates’ complaint challenging the constitutionality of their method of execution and **denied** the inmates’ request for leave to amend, thereby allowing their executions to go forward.

15. In that case, Judge Griffen held, “This Court must and will abide by the ruling issued by the Arkansas Supreme Court” precluding the inmates’ challenge to their execution method.

16. In an April 10, 2017 blog post about religious faith and the Holy Week, at a time when neither the *Johnson* case, the *McKesson* case (described below), nor any other case involving the death penalty or the state’s execution protocol was pending before Judge Griffen, Judge Griffen expressed his personal view that the death penalty is “**morally**”—not legally—unjustifiable.

17. Judge Griffen has been open and forthright in his personal and religious life concerning his religious and moral views about the death penalty, while at the same time, demonstrating his commitment to follow the law when fulfilling his judicial duties. He renders to the law the things that are the law’s, and to his God the things that are God’s.

Good Friday Prayer Vigil

18. On Good Friday, April 14, 2017 (the Friday before Easter Sunday), Judge Griffen—acting in his personal rather than in any official capacity—attended, but did not publicly address, a peaceful rally organized to demonstrate opposition to the death penalty on the steps of the Arkansas Capitol. Later that day, he also attended a prayer vigil with other members of New Millennium Church outside the Arkansas Governor’s Mansion. During the prayer vigil, Judge Griffen laid on a cot in solidarity with Jesus, who, according to the New Testament Gospels of the Bible, was crucified by the Roman Empire by order of Roman governor Pontius Pilate.

19. Judge Griffen did not wear a judicial robe or any other accoutrements of his judicial office, did not state that he was a member of the judiciary, and did not exercise any judicial duties while he was engaged in quiet prayer during the prayer vigil in front of the Arkansas Governor's Mansion.

20. Judge Griffen's attendance and participation in these gatherings was peaceful, orderly, respectful of the rights of all other persons, and a constitutionally-protected expression of his deeply held religious beliefs as a follower of Jesus who, according to the New Testament Gospels, was publicly put to death by crucifixion on what followers of Jesus commonly refer to as Good Friday (*See Matthew 27:15-50, Mark 15:1-37, Luke 23:13-46, John 19:1-30*).

Judicial Proceedings

21. Also on April 14, 2017, McKesson Medical-Surgical Inc. ("McKesson"), a distributor of the drug vercuronium bromide, filed a lawsuit against the State of Arkansas, Arkansas Governor Asa Hutchinson, the Arkansas Department of Corrections, and the Director of the Arkansas Department of Corrections, *McKesson Medical-Surgical Inc. v. State of Arkansas, et al.*, Case No. 60CV-17-1921 ("*McKesson I*").

22. In *McKesson I*, McKesson alleged that defendants had defrauded McKesson and obtained vercuronium bromide from McKesson under false pretenses by intentionally failing to disclose that the State intended to use the vercuronium bromide in upcoming executions.

23. Vercuronium bromide is one of the pharmaceuticals in the multi-pharmaceutical "cocktail" used as part of Arkansas's lethal injection death-penalty regimen.

24. When it filed its Complaint in *McKesson I*, McKesson sought a temporary restraining order (TRO) against defendants that would prevent the State from using the vercuronium bromide while McKesson's replevin claim, seeking return of the pharmaceutical, was

pending. By verified complaint supported by exhibits, McKesson provided evidence that its property had been wrongfully obtained through deception and was in imminent risk of being disposed of by the respondent parties.

25. *McKesson I* was assigned to Judge Griffen.

26. Applying well-settled Arkansas property and contract law, Judge Griffen ruled that McKesson had demonstrated it was threatened by conduct causing imminent irreparable harm unless a TRO was issued and that McKesson was likely to succeed on the merits of its claim. He issued a TRO prohibiting defendants from “us[ing] the vercuronium bromide obtained from Plaintiff until ordered otherwise by this Court.”

27. Judge Griffen set a hearing for the following Tuesday, April 18, which was the first date the parties indicated they were available, but invited the parties to apply to the Court “should Defendant desire an earlier hearing.”

28. Choosing not to ask Judge Griffen to recuse himself, on Saturday, April 15, the Arkansas Attorney General filed an emergency petition for writ of mandamus, writ of certiorari, or supervisory writ with the Arkansas Supreme Court seeking to vacate the *McKesson* TRO and remove Judge Griffen from the *McKesson* case.

29. On April 17, 2017, without any notice to Judge Griffen, and in violation of its own rules concerning *ex parte* proceedings, the Supreme Court of Arkansas considered and ruled on the writ petition *ex parte*.

30. The Supreme Court, going beyond the relief sought by the Attorney General, issued Order No. 17-155, in which it “immediately reassign[ed] all cases in the Fifth Division [*i.e.*, the cases assigned to Judge Griffen] that involve the death penalty or the state’s execution protocol,

whether civil or criminal.” The Court ruled that this was to be a “permanent reassignment” not just of any present cases, but all “future cases involving this subject matter,” for all time.

31. Although Order No. 17-155 did not explain the reasoning for the decision to remove Judge Griffen from the cases, the court stated that its decision was necessary “[t]o protect the integrity of the judicial system.”

32. The Arkansas Supreme Court provided no notice to Judge Griffen about the possibility of entering Order No. 17-155 prior to its entry, nor did the Court provide Judge Griffen with a forum to be heard prior to its entry of that Order. The Court gave no notice whatsoever that it was considering reassignment from Judge Griffen of all cases involving the death penalty for all time.

33. At the time Order No. 17-155 was entered, Judge Griffen was not presiding over nor assigned to hear any death penalty cases. He was presiding over and assigned to hear *McKesson I*, a property law case.

34. By the time Order No. 17-155 was entered, McKesson had filed a motion to vacate the TRO Judge Griffen had entered in *McKesson I* and to voluntarily dismiss the case. By that time, a parallel injunction had been entered in the United States District Court for the Eastern District of Arkansas (Little Rock Division) in *Jason McGehee et al. v. Asa Hutchinson et al*, Case No. 4:17-cv-00179 KGB that had the practical effect of rendering the state court proceedings moot.

35. Accordingly, at the time Order No. 17-155 was entered, the Arkansas Supreme Court had no legitimate and compelling reason to enter the Order, certainly not without providing notice and an opportunity to be heard to Judge Griffen.

36. On April 18, 2017, the day after the Arkansas Supreme Court entered Order No. 17-155, *McKesson I* was dismissed by Judge Alice Gray.

37. On April 19, 2017, McKesson filed another state court lawsuit against the same defendants and making the same allegations as in *McKesson I* (See Case No. 60-CV-17-1960) ("*McKesson II*"), which case was also assigned to Judge Gray.

38. On April 20, 2017, Judge Gray entered a preliminary injunction in *McKesson II* that had substantially the same effect as the TRO Judge Griffen had entered in *McKesson I*. The preliminary injunction prohibited defendants "from using or disposing of the vercuronium bromide they obtained from plaintiff until further order of the Court." Neither the Arkansas Supreme Court nor anyone else has explained how or why Judge Griffen allegedly did not interpret and apply Arkansas property and contract law in the *McKesson I* TRO order, nor has the Court explained how Judge Griffen could have failed to follow the law in the *McKesson I* order when the judge who replaced him on the case ruled the same way he did.

39. Just three days after issuing Order No. 17-155, the Arkansas Supreme Court denied the death row inmates' stay of execution in *Johnson*, the same case in which Judge Griffen committed to follow the law as governed by Arkansas Supreme Court precedent. The Arkansas Supreme Court made no comment in that order about Judge Griffen's ability to impartially adjudicate death penalty cases.

40. On information and belief, the Arkansas Supreme Court entered Order No. 17-155 in retaliation for Judge Griffen's exercise of his religious freedom through attendance at the Good Friday prayer vigil and gathering and out of discriminatory racial animus toward him as a person of African-American ancestry and racial identity. In the history of Arkansas, no white member of the Arkansas judiciary has ever been summarily banned from hearing an entire category of cases

based on his or her exercise of the First Amendment protected freedoms of speech, peaceful assembly, religion, and exercise of religion. No white member of the Arkansas judiciary has ever been pre-emptively, prospectively, and indefinitely barred from hearing any category of cases based on the exercise of First Amendment liberties. No white member of the Arkansas judiciary has ever been denied notice and an opportunity to be heard before being pre-emptively, prospectively, and indefinitely barred from hearing any category of cases based on the exercise of those First Amendment liberties.

41. In fact, as set forth in detail below, multiple white judges in Arkansas who admitted to engaging in criminal behavior have been treated more favorably for conduct much more abhorrent than Judge Griffen's attendance at a prayer vigil. For example, Judge William Pearson, who is white, pleaded guilty on April 17, 2017 to charges of driving while intoxicated and reckless driving after blowing through a police sobriety checkpoint and leading officers on a high-speed car chase. The Arkansas Supreme Court reinstated Judge Pearson after he agreed to refrain from presiding over any driving while intoxicated cases for eight months, until December 31, 2017. African-American Judge Griffen, on the other hand, is barred for life from presiding over any cases involving the death penalty or Arkansas' method of execution, as punishment for exercising his First Amendment right to pray silently on his own time. There is no possible excuse for this disparate treatment.

42. As a result of Order 17-155, Judge Griffen has been preemptively, prospectively, and indefinitely barred from adjudicating any cases involving capital punishment, the death penalty, and the method of execution in Arkansas because of his identity as a jurist of African-American ancestry and racial identity who engaged in peaceful public conduct in the exercise of his convictions as a follower of Jesus on Good Friday, 2017. As a result of Defendants' conduct,

Judge Griffen's reputation for judicial integrity, impartiality, and competence has been impugned. As a result of Defendants' conduct, Judge Griffen has no recourse aside from pursuing litigation in this forum to seek and obtain relief from the permanent ban imposed by Order 17-155.

43. Under the Arkansas Constitution, "Circuit Courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution." Ark. Const. Amend. 80, § 6(A). Among the justiciable matters assigned to the circuit court pursuant to the Arkansas Constitution are matters involving Arkansas's death penalty.

44. Since Defendants issued Order 17-155 banning Judge Griffen from assignment to cases involving capital punishment, the death penalty, and the method of execution in Arkansas, and as a result of that Order, Judge Griffen has been disqualified from assignment to such cases. Pursuant to Order 17-155, Judge Griffen was disqualified from assignment to the following criminal cases: *State of Arkansas v. Corey Williams* (60CR-17-1623, filed May 17, 2017); *State of Arkansas v. Nathaniel Brian Clark* (60CR-17-2463, filed July 18, 2017); and *State of Arkansas v. Shaun Malik Rushing* (60CR-17-2487). Pursuant to Order 17-155, Judge Griffen was also disqualified for assignment to the following civil case involving application of the Arkansas Freedom of Information Act to the confidentiality provisions of the Arkansas Method of Execution Act: *Steven Shults v. Arkansas Department of Correction* (60CV-17-4931). And pursuant to Order 17-155, the case of *Steven Shults v. Arkansas Department of Correction* (60CV-17-1419) – another case involving application of the Arkansas Freedom of Information Act to the confidentiality provisions of the Arkansas Method of Execution Act – was re-assigned from Judge Griffen to a different Circuit Judge on April 17, 2017. The only reason Judge Griffen has not been considered for assignment to the new cases and has been removed from assignment in 60CV-17-1419 is because he was disqualified based on Defendants' Order No. 17-155. As a Circuit Judge

for the Sixth Judicial Circuit of Arkansas, Judge Griffen is otherwise authorized to be considered for assignment to, hear, and preside over those cases.

45. As a result of the Arkansas Supreme Court's Order No. 17-155, the Sixth Judicial Circuit amended its Case Assignment Plan, over Judge Griffen's objection, and instructed the Circuit Clerk of Pulaski County Arkansas to immediately reassign all cases that involve the death penalty or the state's execution protocol, civil or criminal.

46. Judge Griffen has been materially harmed by the loss of prestige, job satisfaction, and job duties suffered as a result of the Arkansas Supreme Court's Order, by virtue of being barred and disqualified, forever, from hearing the most serious cases a judge can hear in Arkansas. Voters and citizens of Judicial Subdistrict 6.1 in the Sixth Judicial District have also been deprived of their choice of elected judge hearing all the matters that such judges hear under the Arkansas Constitution. This Arkansas Supreme Court may not usurp the will of the people, without any evidence that Judge Griffen committed himself to rule for a particular party appearing before him and in direct contradiction of conclusive evidence that he follows the law in death penalty cases.

47. As set forth herein in Count V, Defendants' Order No. 17-155 violates the provisions of the consent decree in the case of *Eugene Hunt et al. v. State of Arkansas et al.*, No. PB-C-89-0406 (E.D. Ark.)—hereafter termed “the *Hunt Decree*”—that was entered November 7, 1991. The *Hunt Decree* requires that the judges serving in the majority black voter judicial subdistricts prescribed by that decree shall exercise the same powers as all other judges. Because Defendants' Order No. 17-155 disqualifies Judge Griffen from exercising the same rights to be assigned to cases involving capital punishment, the death penalty, and the method of execution in Arkansas, Order No. 17-155 denies Judge Griffen equal protection under the law, as set forth in further detail below. Because Order No 17-155 disqualifies Judge Griffen from exercising the

same rights to be assigned cases involving capital punishment, the death penalty, and the method of execution in Arkansas, Order No. 17-155 denies voters within Judicial Subdistrict 6.01 the right to have the judge elected by their votes to be assigned to, hear, and decide cases and controversies that are ordinarily assigned to, heard, and decided by persons elected to the office of Circuit Judge in Arkansas.

COUNT I

First Amendment Retaliation on the Basis of Speech

48. Judge Griffen restates and incorporates the foregoing paragraphs as if set forth here in full.

49. Judge Griffen's attendance at the Good Friday prayer vigil and gathering and his expression of his religious views in blog posts were protected by the First Amendment's guarantees of freedom of speech, freedom of assembly, and free exercise of religion.

50. Further, Judge Griffen's expression of his views regarded a matter of public concern.

51. Public employees have a constitutional right under the First Amendment to speak on matters of public concern and to peaceably assemble free from retaliation.

52. By engaging in the above-described activities, Judge Griffen exercised those rights.

53. In permanently disqualifying Judge Griffen from "all cases . . . that involve the death penalty or the state's execution protocol, whether civil or criminal," Defendants retaliated against Judge Griffen for exercising his First Amendment right to free speech.

54. In entering the permanent reassignment in Order No. 17-155, Defendants acted under color of state law.

55. Judge Griffen's participation in the prayer vigil and gathering and his expression of his personal religious and moral beliefs were a motivating factor in Defendants' decision to enter the permanent reassignment in Order No. 17-155.

56. Judge Griffen has suffered and will continue to suffer harm by virtue of having his judicial authority curtailed and his reputation impugned as a result of the permanent reassignment in Order No. 17-155.

COUNT II

First Amendment Retaliation on the Basis of Religious Exercise

57. Judge Griffen restates and incorporates the foregoing paragraphs as if set forth here in full.

58. Public employees have a constitutional right to the free exercise of religion under the First Amendment.

59. By attending the prayer vigil and gathering, Judge Griffen engaged in constitutionally protected religious expression.

60. Judge Griffen's private religious exercise does not affect his ability to discharge his responsibilities under the Arkansas Constitution.

61. The permanent reassignment in Order No. 17-155 chills Judge Griffen's religious exercise. It also sends a message to members of the Arkansas judiciary that they may not pray or express personal views on topics of public concern unless those prayers and personal views are in line with those of the Justices on the Arkansas Supreme Court.

62. The permanent reassignment in Order No. 17-155 creates government-imposed coercive pressure on Judge Griffen to violate or change his beliefs.

63. The permanent reassignment in Order No. 17-155 substantially burdens Judge Griffen by depriving him of his constitutional duties as an elected official.

64. Defendants promulgated the permanent reassignment in Order No. 17-155 to suppress Judge Griffen's religious exercise.

65. Defendants have no compelling governmental interest to punish Judge Griffen on account of his private religious exercise.

66. The permanent reassignment in Order No. 17-155 is not narrowly tailored to achieve any compelling interest in a way that is least restrictive to Judge Griffen's rights.

67. In entering the permanent reassignment in Order No. 17-155, Defendants acted under color of state law.

68. Absent injunctive and declaratory relief against Defendants, Judge Griffen has been and will continue to be harmed.

COUNT III

Violation of the Arkansas Religious Freedom Restoration Act

69. Judge Griffen restates and incorporates the foregoing paragraphs as if set forth here in full.

70. The Arkansas Religious Freedom Restoration Act, Ark. Code Ann. § 16-123-402 et seq., prohibits public employers from substantially burdening an employee's free exercise of religion unless such burden is the least restrictive means of furthering a compelling governmental interest.

71. Judge Griffen expressed sincerely held religious beliefs about the death penalty.

72. By attending the Good Friday prayer vigil and gathering and by writing about the death penalty on his blog, Judge Griffen exercised his religion.

73. Judge Griffen's private religious exercise does not affect his ability to discharge his responsibilities under the Arkansas Constitution. Although it is not his burden to prove this, it is conclusively proven by, among other things, his dismissal of nine death row inmates' complaint

challenging the constitutionality of their method of execution and denial of the inmates' request for leave to amend in *Johnson*, thereby allowing their executions to go forward.

74. The permanent reassignment in Order No. 17-155 creates government-imposed coercive pressure on Judge Griffen to violate his beliefs.

75. The permanent reassignment in Order No. 17-155 also substantially burdens Judge Griffen by depriving him of his constitutional duties as an elected official.

76. Defendants have no compelling governmental interest to punish Judge Griffen on account of his private religious exercise.

77. The permanent reassignment in Order No. 17-155 is not narrowly tailored to achieve any compelling interest in a way that is least restrictive to Judge Griffen's rights.

78. Absent injunctive and declaratory relief against the Defendants, Judge Griffen has been and will continue to be harmed.

COUNT IV
Denial of Procedural Due Process

79. Judge Griffen restates and incorporates the foregoing paragraphs as if set forth here in full.

80. The Fourteenth Amendment of the United States Constitution prohibits a state from depriving a citizen of liberty or property without due process of law.

81. Judge Griffen possesses a constitutionally-protected property interest in his ability to discharge those aspects of his position that are set forth in the Arkansas Constitution and that voters elected him to discharge.

82. Judge Griffen possesses a constitutionally-protected liberty interest in his reputation and his good name as it relates to his duties as an elected circuit court judge.

83. Defendants issued the permanent reassignment in Order 17-155 without notice to Judge Griffen or affording Judge Griffen the opportunity to be heard.

84. Although Judge Griffen received service of a copy of the Attorney General's writ application seeking his disqualification from the *McKesson I* case only, the Defendants issued an order disqualifying him from all cases involving the death penalty. Defendants did so without any notice or opportunity to be heard, just two days after receiving the writ application.

85. There was no urgency to the Defendants' Order because, by the time the order was entered, United States District Judge Kristine Baker of the United States District Court for the Eastern District of Arkansas had already issued a preliminary injunction that operated to stay the scheduled executions by lethal injection in favor of condemned inmates who had been scheduled for execution in the coming days, and McKesson had sought voluntary dismissal of its state court action in *McKesson I*.

86. Defendants had no justification for failing to provide an opportunity for Judge Griffen to respond.

87. By depriving Judge Griffen of his constitutionally defined duties under the Arkansas Constitution, and by publicly stating such actions were necessary "[t]o protect the integrity of the judicial system," Defendants have deprived Judge Griffen of a constitutionally protected liberty interest without providing any process.

88. Defendants had no legitimate basis for depriving Judge Griffen of his liberty or property interests without a pre-deprivation hearing.

89. Judge Griffen has no administrative remedies available to him. The decision banning Judge Griffen from assignment to civil or criminal cases involving the death penalty,

capital punishment, or the method of execution is not susceptible to reversal by any administrative agency or body in Arkansas.

90. No state law or state forum provides adequate relief from the deprivation of rights and liberties suffered by Judge Griffen described herein.

COUNT V
Violation of the Equal Protection Clause

91. Judge Griffen restates and incorporates the foregoing paragraphs as if set forth here in full.

92. On July 27, 1989, a group of African-American plaintiffs, led by Eugene Hunt, a Pine Bluff, Arkansas lawyer, filed a voting rights case alleging violations of the Fourteenth and Fifteenth Amendments to the United States Constitution. *See Eugene Hunt et al. v. State of Arkansas et al.*, United States District Court No. PB-C-890406.

93. In the above referenced lawsuit, the plaintiff alleged that “[t]he use of a system of electing judges to the courts of general jurisdiction that features at-large, multimember districts from which judges run for numbered posts in staggered terms violates the Voting Rights Act in that it denies African-Americans equal opportunity to participate in the political process and to elect candidates of their choice.”

94. On November 7, 1991, the court entered a consent decree, whereby the parties to the litigation agreed to certain terms.

95. The consent decree created judicial or electoral sub-districts within the First, Second, Sixth, Tenth and Eleventh West Judicial Districts for the purposes of elections only.

96. The consent decree created majority African-American sub-districts within the First, Second, Sixth, Tenth, and Eleventh West Judicial Districts.

97. Prior to the entry of the consent decree, only one African-American judge had been elected in the State of Arkansas post-reconstruction, that being Pulaski County Juvenile Justice Joyce Williams Warren.

98. After the entry of the consent decree in November 1991, African-American voters, in these judicial sub-districts, have been able to elect several African-American judges (“*Hunt* Judges”) of their choice, thus fulfilling the goals of the Voting Rights Act.

99. Judge Wendell Griffen is a *Hunt* Judge, having been twice elected (in 2010 and 2016) to his current office by the voters in Judicial Subdistrict 6.1 of the Sixth Judicial District of Arkansas.

100. The actions taken by the Arkansas Supreme Court have violated Judge Griffen’s rights as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in that he has been afforded less favorable terms and conditions of his employment as a state circuit court judge on the basis of his race (African-American).

101. Despite the fact that there have been multiple instances where white Circuit Court Judges have been accused of and have admitted to committing criminal acts, the Arkansas Supreme Court did not take the extraordinary steps against these white judges as it has against Judge Griffen, as set forth in the following examples.

Judge William Pearson

102. Judge William Pearson is a white male, who is the Circuit Judge for the Fifth Judicial District, covering Pope, Johnson, and Franklin Counties in the State of Arkansas.

103. On January 20, 2017, Judge Pearson was operating his vehicle while intoxicated.

104. According to the Arkansas State Police, Judge Pearson drove his vehicle in a reckless manner through a sobriety check point, which resulted in several police agencies giving pursuit at high speeds.

105. Judge Pearson was charged with the following offenses: a) Driving While Intoxicated; b) Reckless Driving; c) Refusal to Submit to a Chemical Test; and d) Fleeing.

106. On April 17, 2017, Judge Pearson entered a plea of guilty to the charges of Driving While Intoxicated and Reckless Driving.

107. Judge Pearson maintains 100% of the criminal dockets for all three counties listed above, and he was reinstated by the Arkansas Supreme Court after agreeing not to preside over any driving while intoxicated cases through December 31, 2017.

108. Unlike Judge Pearson, Judge Griffen has not been accused, pled guilty to, nor convicted of any crime. However, Defendants have barred Judge Griffen from being assigned to and presiding over cases involving capital punishment, the death penalty, and the method of execution in Arkansas.

Michael Maggio

109. Former judge Michael Maggio served as Circuit Judge of the Twentieth Judicial District for thirteen years, from January 2001 until his suspension with pay until the end of his term effective December 31, 2014.

110. Michael Maggio is a white male.

111. Maggio was indicted for bribery, was suspended with pay pending his prosecution, and went to federal prison for bribery, due to events that took place in his handling of a case styled *The Estate of Martha Bull v. Greenbrier Nursing and Rehabilitation Center, et al.* The Arkansas Supreme Court removed him from the bench on September 11, 2014.

112. Judge Griffen did not engage in criminal behavior by participating in a prayer vigil on Good Friday, 2017. However, the action by the Arkansas Supreme Court to disqualify him from hearing civil or criminal cases involving capital punishment, the death penalty, and the method of execution in Arkansas has the same practical effect for that body of litigation as did the suspension, with pay, of Michael Maggio's docket pending the outcome of the criminal prosecution against Maggio for bribery. In this regard, Defendants have subjected Judge Griffen to the sort of treatment that they accorded former Judge Maggio despite knowing that Judge Griffen did not engage in unlawful behavior.

Joseph Boeckmann Jr.

113. Former judge Joseph Boeckmann Jr. is a white male, who was District Judge in Cross County, Arkansas.

114. Boeckmann was allowed to resign from office on May 9, 2016, after several allegations of inappropriate sexual acts in which Boeckmann was accused of participating with male criminal defendants who appeared in his courtroom. Further, Boeckmann was found to be in possession of sexually explicit and sexually suggestive photographs of certain male criminal defendants.

115. By participating in the Good Friday 2017 prayer vigil, Judge Griffen did not engage in conduct that was remotely similar to that allegedly committed by Judge Boeckmann. Nevertheless, Defendants acted to remove Judge Griffen from hearing civil and criminal cases involving the death penalty, capital punishment, and the method of execution in Arkansas.

Timothy Parker

116. Former judge Timothy Parker is a white male who since 2013 served as the District Court Judge in Carroll County, Arkansas (Eureka Springs).

117. Parker was accused of, and admitted to, providing judicial favors for friends and former clients, by lowering bail or allowing releases on defendants' own recognizance. Parker was accused of lowering bail or allowing releases on own recognizance in exchange for sexual favors. Parker was also accused of having sexual relations with a number of females who appeared before him as defendants.

118. Parker was allowed to resign at the end of his term, which was December 31, 2016.

119. By attending and participating in the Good Friday 2017 prayer vigil, Judge Griffen did not commit any action that was even remotely similar to what was allegedly committed by former judge Parker. However, Defendants have effectively banned Judge Griffen from being assigned to and presiding over civil and criminal cases involving the death penalty, capital punishment, and the method of execution in Arkansas.

120. Judge Griffen has been deprived of his rights of equal protection under the law, on account of his race, in violation of the Fourteenth Amendment to the United States Constitution, in that he has been afforded less favorable terms and conditions of his employment with the State of Arkansas on account of his race, than similarly situated white judges.

121. The above mentioned acts of discrimination were committed by the defendants while acting under color of law, making this cause of action enforceable pursuant to 42 U.S.C. § 1983.

COUNT VI
Civil Conspiracy in Violation of 42 U.S.C. § 1985

122. Judge Griffen restates and incorporates the foregoing paragraphs as if set forth here in full.

123. In various instances between Friday, April 14, 2017 and continuing into Monday, April 18, 2017, Defendants conspired among themselves and with others for the purpose of

depriving, directly or indirectly, Judge Griffen of equal protection under the law with the intent to prevent Judge Griffen from being assigned to and preside over civil and criminal cases involving capital punishment, the death penalty, and the method of execution in Arkansas.

124. In furtherance of that conspiracy, Defendants engaged in oral, written, and electronic communications among themselves and with others about how to strip Judge Griffen of the power to hear and decide cases involving capital punishment, the death penalty, and the method of execution in Arkansas.

125. In furtherance of that conspiracy, Defendants also participated in discussions among themselves and with others about impeachment of Judge Griffen.

126. In furtherance of that conspiracy, Defendants issued Order 17-155, the per curiam order barring the assignment of any cases involving capital punishment, the death penalty, and the method of execution in Arkansas to Judge Griffen.

127. In furtherance of that conspiracy, Defendants in Order 17-155 directed the Administrative Judge of the Sixth Judicial District to immediately submit an amendment to the Case Assignment Plan for the Sixth Judicial District of Arkansas that barred assignment of any cases involving capital punishment, the death penalty, and the method of execution in Arkansas to Judge Griffen.

128. In furtherance of that conspiracy, Defendants refused to provide Judge Griffen any notice of their intent to bar assignment of any cases involving capital punishment, the death penalty, and the method of execution in Arkansas to Judge Griffen.

129. As a result of that conspiracy, Judge Griffen has suffered and continues to suffer injury to his right to equal protection of the law by being barred from exercising the powers of his

office as a duly elected Circuit Judge for the Sixth Judicial District of Arkansas concerning cases involving capital punishment, the death penalty, and the method of execution in Arkansas.

130. As a result of that conspiracy, Judge Griffen has suffered injury to his reputation for competence and ethical conduct as a Circuit Judge for the Sixth Judicial District of Arkansas concerning cases involving capital punishment, the death penalty, and the method of execution in Arkansas.

131. As a result of that conspiracy, Judge Griffen has been subjected to the threat of impeachment as a Circuit Judge for the Sixth Judicial District of Arkansas.

132. Defendants conspired together to deprive Judge Griffen of equal protection of the laws as alleged in this Complaint based on racial animosity toward Judge Griffen as a black person.

133. Defendants also conspired together to deprive Judge Griffen of equal protection of the laws as alleged in this Complaint based on religious animosity toward Judge Griffen as a liberation-minded follower of the religion of Jesus.

134. Judge Griffen reserves the right to supplement these allegations during discovery.

PRAYER FOR RELIEF

WHEREFORE, Judge Griffen respectfully requests that this Court:

a. Declare that the permanent reassignment of him from all cases relating to the death penalty or Arkansas' methods of execution in Order No. 17-155 violates the First and Fourteenth Amendments of the United States Constitution and the Arkansas Religious Freedom Restoration Act;

b. Preliminarily and permanently enjoin the enforcement of the permanent reassignment in Order No. 17-155 by Defendants or any of their officers, members, agents, or others acting in concert with them;

c. Award Plaintiff the costs of this action and reasonable attorney's fees; and

d. Award all such further relief as this Court deems proper.

JURY DEMAND

Plaintiff requests a trial by jury on all issues so triable.

Dated: October 5, 2017

Respectfully submitted,

By:  _____

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*Attorneys for Plaintiff,
Honorable Wendell Griffen*

CIVIL COVER SHEET

JS 44 (Rev. 06/17)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

4:17cv639-DPM

I. (a) PLAINTIFFS
 Honorable Wendell Griffen

(b) County of Residence of First Listed Plaintiff Pulaski
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Austin Porter Jr., PORTER LAW FIRM, 323 Center Street, Suite 1035
 Little Rock, Arkansas 72201, 501-244-8200, Aporte5640@aol.com

DEFENDANTS
 The Supreme Court of Arkansas, Honorable John Kemp, et al.

County of Residence of First Listed Defendant Pulaski
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
 (For Diversity Cases Only)

	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Equal Protection Clause of the Fourteenth Amendment, 42 U.S.C. Sec. 1985, and 1st Amendment

Brief description of cause:
Denial of Equal Protection under the Fourteenth Amendment to the United States Constitution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 10/05/2017

SIGNATURE OF ATTORNEY OF RECORD: Austin Porter Jr.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____