No. 13-5365 (C.A. No. 12-1916)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRET D. LANDRITH and SAMUEL K. LIPARI,
Plaintiff Appellants,
v.
CHIEF JUSTICE JOHN G. ROBERTS, JR. in his official capacity In his official capacity as head of the Judicial Conference of the United States
Defendant-Appellee.

Appeal from the US District Court for the District of Columbia, Hon. Amy Berman Jackson, United States District Court Judge

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APPELLANTS' MOTION FOR EN BANC REVIEW INVOLVING A UNITED STATES GOVERNMENT OFFICIAL UNDER FRAP RULES 35(c) AND 40(a)(1)

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August 28, 2014

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RULE 35(b)(1) STATEMENT

Plaintiff-Appellants Bret D. Landrith and Samuel K. Lipari seek en banc rehearing because the panel decision conflicts with multiple prior decisions of this Court, most acutely *WildEarth Guardians v. Jewell,* at 7 to 8 (D.C. Cir., 2013) where this court follows *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). En banc rehearing is therefore "necessary to secure and maintain uniformity of the court's decisions." F.R.A.P. 35(b)(1)(A). Additionally, en banc rehearing is warranted because the decision involves an issue of exceptional importance and squarely conflicts with decisions of the Supreme Court including the decision in *Supreme Court Of Virginia v. Consumers Union of United States, Inc*., 446 U.S. 719 at Syl. 2, 100 S. Ct. 1967, 64 L.Ed.2d 641 (1980) that a Supreme Court Chief Justice is a proper defendant in a suit for declaratory and injunctive relief over the exercise of his enforcement capacity. F.R.A.P. 35(b)(1)(B).

PARTIES AND AMICI CURIAE UNDER RULE 28(a)(1)(A)

The plaintiff-appellants certify that Bret D. Landrith, Samuel K. Lipari, and Chief Justice Roberts are all the parties, intervenors, and amici who have appeared before the district court, and are all the persons who are parties, intervenors, or amici in this court.

INTRODUCTION

The appellants were litigating in the US District Courts for the Districts of Kansas, and the Western District of Missouri to seek relief from antitrust

violations involving per se refusal to deal and allocation of market share in the nationwide market for hospital supplies since 2002 and including the following ten years. The United States Senate Judiciary Committee, Subcommittee on Antitrust held three different hearings on the misconduct of the hospital supply monopolist identified in the appellants' antitrust complaints and repeatedly sought testimony from the appellants' expert witness. Just before the third Senate hearing, the second of the two Assistant US Attorneys prosecuting the monopolist was found dead in her home by her colleagues following the New York Times disclosure that she had issued criminal subpoenas against the same hospital supply monopolist and the other cartel members identified in the appellants' antitrust complaints.

Despite separate actions against separate defendants alleged in the complaints to be part of the Sherman Act I conspiracy along with express allegations of concerted actions to obstruct competition in the market place identifying the "who, what, where, and when" of the prohibited restraint of trade and the injury to the appellants, US District court judges would rule contrary to controlling precedent for the jurisdiction and against express rulings of the US Supreme Court in materially identical factual circumstances to dismiss the appellants' actions under FRCP Rule 12(b)(6).

Timely appeals to the US Circuit Courts of Appeal for the Tenth Circuit and Eight Circuit led to circuit judges writing opinions misrepresenting the appellants' complaints in strained efforts to uphold the trial court judges and the sanctioning of the appellants for following the current controlling precedent for

both circuits and the Supreme Court. Additionally, the appellant Landrith was directed to be disbarred by the Chief Judge of the Kansas District Court in an ex parte telephone call to the State of Kansas Supreme Court over the pretext of his representation of an African American in a race based discrimination action and he was reciprocally disbarred by the Kansas District Court and the Western District of Missouri Court without a hearing. Later the civil rights case was reversed by the Tenth Circuit based on Landrith's brief after Landrith was no longer an attorney.

The appellants filed judicial ethical complaints identifying the ethical misconduct and criminal violations under Chief Justice Robert's change in the policy of the Judicial Conference of the United States where Chief Justice Roberts recognized from the report of his investigation committee that previous failure to adequately enforce judicial ethics violated the Due Process rights of litigants. Chief Justice Roberts changed the policy to require the publication of the judicial ethics complaints with the names of the judges redacted and directed the complaints to be available on the circuit courts of appeal web sites. However, the judicial ethics complaints by the appellants in both circuits were not acted upon.

Instead, the judges in the Tenth and Eight Circuits turned the appellants' names over to the Attorney General of the United States under a secret unpublished addendum to the USA PATRIOT ACT in a policy created by Chief Justice Roberts to have the Attorney General conduct warrantless wire taps to electronically surveil possible threats to the members of the nations' judiciary and to censor web site information posted on privately owned Internet web sites by

litigants. The appellants and the appellants' family members and business associates were subjected to surveillance by Chief Justice Roberts under Chief Justice Roberts' unpublished addendum to the USA PATRIOT ACT and directions to the Attorney General in his statutory duty to follow Chief Justice Roberts' directions in the administration of the courts.

The appellants brought a complaint and amended complaint against Chief Justice Roberts for prospective injunctive relief from the ongoing violations of their rights as litigants and the denial of their property rights in the pursuit of their trades and calling as foreseeable injuries resulting from Chief Justice Roberts' secret unpublished addendum to the USA PATRIOT ACT and from the continuing failure of the to procedure on conduct complaints to adequately enforce judicial ethics violated the Due Process rights of litigants where Chief Justice Roberts did not have the ethics complaints published with the names of the judges.

The US Department of Justice conducted Chief Justice Roberts' defense of his policies with District of Columbia Assistant US Attorneys. However, Attorney General Eric Holder redoubled the electronic surveillance of the appellants and the injury to the appellants' family members and their property rights, all without warrants and increased the intensity in which the appellants' publications were censored on the Internet in an extra judicial and naked prior restraint of political speech following Chief Justice Roberts' secret unpublished addendum to the USA PATRIOT ACT policy which the appellants had brought their complaint to the District of Columbia court over.

The appellants repeatedly asked Chief Justice Roberts' counsel in emails and letters to stop the increased violation of the appellants' constitutional rights as identified in the complaints, but Chief Justice Roberts refused to do so. The appellants sought leave of the court to amend their complaint a second time to include counts for prospective injunctive relief against Attorney General Eric Holder for following the unlawful policies of Chief Justice Roberts under the secret unpublished addendum to the USA PATRIOT ACT. Hon. Judge Amy Berman Jackson, United States District Court Judge for the District of Columbia refused to do so. The appellants are unable to enforce any constitutional rights in court due to the identified policies of Chief Justice Roberts and are unable to pursue their trades in a continuing deprivation of their constitutional right to property.

ARGUMENT

The panels finding that the district court correctly determined that counts I and II of appellants' first amended complaint failed to demonstrate an injury fairly traceable to appellee's conduct, or likely to be redressed by a favorable decision, (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)) must be reversed.

Similarly, the panel must be reversed in its finding that Hon. Judge Amy Berman Jackson did not abuse her discretion in denying their motion for leave to file a second amended complaint. The appellants second amended complaint (like the original and first amended complaints met the standard for pleading an

ongoing constitutional violation of their clearly established rights to be free from warrantless electronic surveillance and prior restraint of their political speech through extra judicial means under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) where Attorney General Eric Holder is identified as enforcing an unlawful policy violating the appellants' clearly established rights despite knowledge of the criminal injury to the appellants and the appellants sought to enjoin him from continuing to do so. The panel's reference to *In re Interbank Funding Corp. Sec. Litig.*, 629 F.3d 213, 218 (D.C. Cir. 2010) is wholly inapplicable.

The appellant-plaintiffs have standing against Chief Justice Roberts and Attorney General Eric Holder:

> "the well-established principle that standing will lie where 'a plaintiff demonstrates that the challenged agency action authorizes the conduct that allegedly caused the plaintiff's injuries, if that conduct would allegedly be illegal otherwise,'"

Am. Trucking Assocs., Inc. v. Fed. Motor Carrier Safety Admin. At pg. 8 (D.C. Cir., 2013) citing *Animal Legal Def. Fund, Inc. v. Glickman,* 154 F.3d 426, 440 (D.C. Cir. 1998).

Unlike the plaintiffs in *Clapper v. Amnesty Int'l United States*, 133 S.Ct. 1138, 185 L.Ed.2d 264, 81 USLW 4121 (2013) who complained of the possibility that in the future wire taps would be made against their communications to foreign contacts, an allegation the Supreme Court found too speculative to confer standing, the plaintiff-appellantss have alleged that the unpublished USA PATRIOT Act policy implemented by Justice John G. Roberts and executed by

AG Eric Holder at Justice Roberts' direction caused the appellants' telephone, email, and Internet publishing communications to be subject to warrantless electronic surveillance in violation of the plaintiffs' clearly established Fourth Amendment right to be free from warrantless wire tapping and expressly for the purpose of facilitating USDOJ officials at the direction of AG Holder and under the unpublished USA PATRIOT Act policy implemented by Justice John G. Roberts and executed by AG Eric Holder to take the appellants' property in violation of the Fifth Amendment and to extra-judicially impose a prior restraint of speech in violation of the plaintiffs' First Amendment Rights in conduct that occurred prior to the plaintiffs' filing the present action in the district court. The Am. Complaint R. 11 details how these rights violations were intensified by AG Holder and USDOJ officials to include violations of the rights of the plaintiffs' intimate associates to retaliate against the plaintiffs for filing the present action and in coordination with the misconduct of USDOJ counsel Ronald C. Machen Jr.; R. Craig Lawrence; And Claire Whitaker before the District of Columbia Court.

> "No one here denies that the Government's interception of a private telephone or e-mail conversation amounts to an injury that is "concrete and particularized." Moreover, the plaintiffs, respondents here, seek as relief a judgment declaring unconstitutional (and enjoining enforcement of) a statutory provision authorizing those interceptions; and, such a judgment would redress the injury by preventing it."

Clapper (dissent) 133 S.Ct. 1138 at 1155-6.

The plaintiffs Am. Complaint R. 11 alleges ongoing violations of the plaintiffs' constitutional rights by the defendant that are absolute dangers to their

rights if the court does not take action and a literal certainty will result in new and additional violations to the plaintiffs' First, Fourth, Fifth, Sixth Amendment and Due Process rights under *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979).

The Am. Complaint R. 11 and the 2nd Am. Complaint 17-3 allege a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant Justice Roberts in creating a secret USA PATRIOT Act policy and in withholding the names of judges from published complaints.

Neither Justice Roberts or AG Holder are immune from prospective injunctive relief directly under the constitution. The controlling Supreme Court precedent is *Bell v. Hood*, 327 U.S. 678, 681-83 (1946) that federal courts have jurisdiction to entertain complaints seeking redress directly under the Constitution. This circuit is bound by the mandate to the District of Columbia court in *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954) holding that prospective injunctive relief was available directly under the Fifth Amendment.

In actuality, the panel is following Chief Justice Roberts' repeated arguments (and Hon. Judge Amy Berman Jackson's error) to rule in square conflict with decisions of the Supreme Court in *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60, 1 Cranch 137 (U.S., 1803) regarding the jurisdiction of the trial court; and the power of the trial court to grant the requested injunctive relief against ongoing constitutional deprivation; and against the finding of the court in *Pulliam*

v. Allen, 466 U.S. 522 (1984) that judges can be subjected to prospective injunctive relief; and against the long established rule that judicial immunity does not apply to non judicial function conduct in *Stump v. Sparkman*, 435 U.S. 349, 362-63, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).

A supreme court chief justice is a proper defendant in a suit for declaratory and injunctive relief over the exercise of his enforcement capacity as the plaintiff-appellants assert against Chief Justice Roberts over his enforcement of the judicial conduct complaint procedure and against Chief Justice Roberts over his enforcement of an unpublished judicial policy to utilize the USA PATRIOT Act to violate the rights of the appellants. *Supreme Court Of Virginia v. Consumers Union of United States, Inc*., 446 U.S. 719 at Syl. 2, 100 S. Ct. 1967, 64 L.Ed.2d 641 (1980).

CONCLUSION

Whereas due to the panel judgment conflicting with the controlling and prior precedent for this circuit, the appellants respectfully request that the panel be reversed on each of its findings and that the action be returned to the district court for the prosecution of Chief Justice Roberts and Attorney General Eric Holder.

Respectfully submitted,

S/ Samuel K. Lipari
Samuel K. Lipari
Appellant, pro se

S/Bret D. Landrith
Bret D. Landrith
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CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the above was sent to the appellee's counsel at the address below via U.S. Mail, postage pre paid

on the 28th of August, 2014

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-5365 **September Term, 2013**

1:12-cv-01916-ABJ

Filed On: June 19, 2014

Bret D. Landrith and Samuel K. Lipari,
Appellants

v.

John G. Roberts, Jr., Chief Justice of the United States - in his official capacity as head of the Judicial Conference of the United States,
Appellee

BEFORE: Rogers, Brown, and Kavanaugh, Circuit Judges

O R D E R

Upon consideration of the motion to dispense with an appendix; the motion for summary affirmance, the response thereto, and the reply; and the motion for summary reversal, the response thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted and the motion for summary reversal be denied. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court correctly determined that counts I and II of appellants' first amended complaint failed to demonstrate an injury fairly traceable to appellee's conduct, or likely to be redressed by a favorable decision, see Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992), and appellants have not challenged the dismissal of count III as moot. In addition, appellants have failed to demonstrate the district court abused its discretion in denying their motion for leave to file a second amended complaint, see In re Interbank Funding Corp. Sec. Litig., 629 F.3d 213, 218 (D.C. Cir. 2010) ("[A] district court may properly deny a motion to amend if the amended pleading would not survive a motion to dismiss."), or in denying their motion for sanctions against appellee and his counsel, see generally Lucas v. Duncan, 574 F.3d 772, 775 (D.C. Cir. 2009) (district court's Rule 11 determinations are reviewed for abuse of discretion). It is

United States Court of Appeals

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FURTHER ORDERED that the motion to dispense with an appendix be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-5365 **September Term, 2014**

1:12-cv-01916-ABJ

Filed On: November 21, 2014

Bret D. Landrith and Samuel K. Lipari,

Appellants

v.

John G. Roberts, Jr., Chief Justice of the United States - in his official capacity as head of the Judicial Conference of the United States,

Appellee

BEFORE: Garland, Chief Judge, and Henderson, Rogers, Tatel, Brown, Griffith, Kavanaugh, Srinivasan, Millett, Pillard, and Wilkins, Circuit Judges

O R D E R

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Jennifer M. Clark
Deputy Clerk