

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE HON. PAULINE NEWMAN,
Circuit Judge
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20005,

Plaintiff,

v.

THE HON. KIMBERLY A. MOORE,
in her official capacities as
Chief Judge of the U.S. Court of Appeals for the Federal Circuit,
Chair of the Judicial Council of the Federal Circuit, and
Chair of the Special Committee of the Judicial Council of the
Federal Circuit,
717 Madison Place, NW
Washington, DC 20005,

THE HON. SHARON PROST,
in her official capacity as
Member of the Special Committee of the Judicial Council of the
Federal Circuit,
717 Madison Place, NW
Washington, DC 20005,

THE HON. RICHARD G. TARANTO,
in his official capacity as
Member of the Special Committee of the Judicial Council of the
Federal Circuit,
717 Madison Place, NW
Washington, DC 20005,

and

THE JUDICIAL COUNCIL OF THE FEDERAL CIRCUIT,
717 Madison Place, NW
Washington, DC 20005,

Defendants.

NO. 1:23-cv-01334-CRC

**PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

PLAINTIFF'S MOITION FOR A PRELIMINARY INJUNCTION

Plaintiff, the Honorable Pauline Newman, United States Circuit Judge for the Federal Circuit respectfully moves for a preliminary injunction to enjoin unlawful and ongoing suspension, currently being carried out jointly and severally by all the named defendants, of said Pauline Newman from the duties and functions of her judicial office. As explained in detail in the accompanying memorandum, the suspension of Judge Newman from her judicial functions is unconstitutional because it is an unconstitutional attack on her judicial independence, it violates her rights under the Due Process Clause, and it further violates Congress' exclusive right to impeach and remove Article III judges. Furthermore, the suspension which was imposed during the pendency of the investigation into Judge Newman's alleged disability is *ultra vires*, because neither the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-64 ("the Disability Act"), nor the Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Conduct Rules") authorize such an action. This Court has jurisdiction to enjoin the unlawful conduct under 28 U.S.C. § 1331. The Disability Act, while foreclosing judicial review of "all orders and determinations" taken during and as a result of investigations into judicial misconduct, 28 U.S.C. § 357(c), does not oust this Court's jurisdiction over actions taken *contrary* to the Disability Act, nor does it oust jurisdiction for constitutional challenges to the Disability Act itself. *See Axon Enter., Inc. v. FTC*, 143 S. Ct. 890 (2023). Suspension of Judge Newman from the duties and functions of her judicial office constitutes an ongoing and irreparable harm not only to Plaintiff, but also to the rights of every Federal Circuit litigant—all of whom have a right to have their cases heard by a fair draw from the full complement of active judges confirmed and appointed to hold judicial office.

Accordingly, this Court should enjoin Defendants from suspending Judge Newman from, or otherwise interfering with, the duties and functions of the judicial office to which Plaintiff was confirmed by the United States Senate and appointed by the President of the United States.

June 27, 2023

Respectfully submitted,

/s/John J. Vecchione

JOHN J. VECCHIONE (DC Bar No. 431764)
Senior Litigation Counsel

*/s/Gregory Dolin**

GREGORY DOLIN, MD
Senior Litigation Counsel

NEW CIVIL LIBERTIES ALLIANCE
1225 19th Street NW, Suite 450
Washington, DC 20036
Telephone: (202) 869-5210
Facsimile: (202) 869-5238
john.vecchione@ncla.legal

**Admission Application Pending*

Counsel for Plaintiff