TESTIMONY IN SUPPORT OF HB 1501-FN

House Judiciary (1/28/2026)

I. Introduction: The New Hampshire Way

Mr. Chairman, members of the Committee:

New Hampshire does not bow.

We did not bow to King George. We did not bow when we became the first colony to establish an independent government. We did not bow when John Stark – facing impossible odds at Bennington – rallied his men with words that became our motto: *Live Free or Die.*

Our forebears understood something essential: power, left unaccountable, becomes tyranny. It does not matter whether that power wears a crown or a robe. The principle is the same.

That is why our New Hampshire State Constitution – the oldest continuous constitution in the United States, older than the federal Constitution itself – contains provisions that would make modern lawyers blush. Article 8: the right of the people to hold government accountable. Article 10: the right to reform or abolish government that fails to serve the common benefit. Article 32: the right to petition for redress of grievances. Article 35: the right to an impartial tribunal.

HB 1501-FN stands squarely in this tradition. It does not create new law. It does not upend the judiciary. It does not – despite what you may hear – threaten the independence of judges performing their proper judicial functions.

What it does is far simpler: it takes existing law, handed down by the Supreme Court of the United States over decades, and makes that law *accessible* to the citizens and practitioners of New Hampshire.

Nothing more. Nothing less.

And yet, I suspect, you will hear opposition. Let us address that head-on.

II. The Law: What SCOTUS Has Already Decided

Let me be clear about what the law *already is* – not what HB 1501 would create, but what the highest court in the land has already established.

The Functional Approach: Judges Are Not Always "Judging"

In *Forrester v. White*, 484 U.S. 219 (1988), the Supreme Court held that a judge who fired a probation officer was *not* entitled to judicial immunity. Why? Because hiring and firing employees is an *administrative* act, not a *judicial* one. Justice O'Connor, writing for the Court, articulated the principle that governs:

> "[I]mmunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches."

Id. at 227.

The Fourth Circuit, applying this doctrine recently in *Gibson v. Goldston*, 85 F.4th 218 (4th Cir. 2023), put it even more plainly:

> "Issuing an order is a judicial function; carrying that order out is an executive one."

Id. at 224.

This is not radical. This is hornbook law.

The Jurisdictional Limit: No Immunity for Acts Beyond Authority

In *Stump v. Sparkman*, 435 U.S. 349 (1978), the Supreme Court addressed when immunity applies at all. The Court held that judicial immunity does not extend to acts taken in the "clear absence of all jurisdiction."

Read that again: *clear absence of all jurisdiction.*

A judge who orders the parties to perform their contract? Immune, even if wrong. A judge who orchestrates a financial scheme to benefit a friend or administrative subordinate? That is not a judicial act. There is no case or controversy. There is no jurisdiction. There is no immunity.

The Bar Admissions Rule: Administrative Functions Are Not Protected

In *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719 (1980), the Supreme Court held that judges acting in their capacity as *regulators* – promulgating bar admission rules – were not entitled to judicial immunity.

The common thread is unmistakable: **immunity protects the judicial function, not the judicial title.**

III. The Problem: Knowledge Is Power, and Power Is Hoarded

Here is the uncomfortable truth this Committee must confront: The judges know this law. The lawyers, by and large, do not.

Why? Because this doctrine is scattered across decades of Supreme Court opinions, interpreted by various federal circuits, rarely addressed by New Hampshire courts, and almost never taught in practical terms in law school. The average attorney learns

"judicial immunity is absolute" and moves on. They have mortgages to pay, cases to file, and judges they must appear before next week.

Meanwhile, the judges – protected *by* this doctrine – have every incentive to understand its precise contours. And every incentive not to correct misunderstandings.

This creates a profound asymmetry. A Harvard-trained appellate litigator who practices before SCOTUS may know to cite *Forrester* and *Gibson*. A solo practitioner in Berlin or Claremont, handling landlord-tenant disputes and misdemeanors, does not have time to research Fourth Circuit opinions from 2023. When that practitioner faces judicial misconduct – real misconduct, the administrative and extrajudicial kind that SCOTUS says is *not protected* – they do not raise the issue. Not because they lack a remedy, but because they do not know the remedy exists.

And even if they find it? The social cost of citing *Forrester v. White* against a sitting judge in a small state where everyone knows everyone is… considerable. Careers are built on referrals. Referrals depend on reputation. Reputation depends on not being seen as the lawyer who "goes after judges."

The doctrine exists. The practical access to that doctrine does not.

IV. The Solution: HB 1501-FN

This bill fixes the problem in the most elegant way possible.

It takes the holdings of *Forrester*, *Stump*, *Gibson*, and their progeny – scattered across federal reporters and legal databases – and codifies them into a single, readable provision of New Hampshire law:

> **RSA 490-L:2** – Judicial immunity shall not serve to indemnify or hold harmless judicial state actors from criminal prosecution or civil tort proceedings if a judicial state actor is alleged to have committed an action that **goes beyond the scope of their judicial duties** and constitutes either criminal conduct or an intentional tort, **or where the act is palpably in excess of the jurisdiction** of the judicial state actor and is done maliciously or corruptly.

That is it. Two carve-outs:

1. Acts beyond the scope of judicial duties (the *Forrester* functional test)
2. Acts in excess of jurisdiction done maliciously or corruptly (the *Stump* jurisdictional limit) This is not new law. This is not radical law. This is the law of the land, restated in plain English, placed in the RSA where every New Hampshire lawyer and judge can find it.

The transformation is practical, not doctrinal: *Before HB 1501:* "Your Honor, I'd like to raise an immunity issue, and if I may direct the court to a Fourth Circuit opinion from 2023 interpreting the functional approach first articulated by Justice O'Connor in a 1988 decision…" *After HB 1501:* "Your Honor, RSA 490-L:2."

That is the leveling effect. That is democratic access to law. That is the New Hampshire way.

V. The Challenge: A Word to Opponents

I anticipate opposition. Let me address it directly.

Objection: "This bill is unnecessary."

This is a legitimate objection. Reasonable people can disagree about whether the legislature should codify existing caselaw. If this is your only objection – that the bill is redundant – I respect that position, even if I disagree.

Legislative codification of judicial doctrine serves important purposes: accessibility, clarity, democratic legitimacy. But yes, one can argue the common law already does the job.

Any other objection, however, has a problem.

If you argue this bill is *dangerous* – you are arguing that the Supreme Court of the United States got it wrong in *Forrester* and *Stump*.

If you argue this bill *undermines judicial independence* – you are arguing that the Supreme Court undermined judicial independence when it held that administrative acts are not protected.

If you argue this bill will *cause chaos* – you are arguing that the settled doctrine of the federal courts, applied for decades, is chaotic.

HB 1501 does not invent these limitations. It *restates* them. To oppose this bill on substantive grounds – to claim it would change the law in dangerous ways – is to assert that the United States Supreme Court has been *wrong* about judicial immunity for forty years.

I invite any opponent to make that argument explicitly. To stand before this Committee and say: "*Forrester v. White* was wrongly decided. *Stump v. Sparkman* should be overturned. The functional approach to immunity is mistaken."

Make that argument. Let us debate it.

But do not tell this Committee that HB 1501 is "radical" while declining to acknowledge that every word of it derives from binding United States Supreme Court precedent.

VI. Conclusion: The Stakes

I return to where I began.

New Hampshire does not bow.

Our Constitution guarantees the people's right to hold their government accountable. Not just the executive. Not just the legislature. *All* officers of government – at *all* times. Part I, Article 8 does not contain an exception for robes.

HB 1501 is not an attack on judicial independence. It is a defense of judicial *accountability* – the accountability that the Supreme Court itself has recognized is essential to the rule of law.

Judges who perform judicial functions remain absolutely immune. That protection is untouched.

Judges who engage in administrative misconduct, who act beyond their jurisdiction maliciously or corruptly, who commit intentional torts or crimes under color of office – those judges were never entitled to immunity in the first place. HB 1501 simply ensures that every lawyer in New Hampshire, from the newest bar admission to the most seasoned practitioner, knows it.

This Committee has an opportunity to stand in that tradition. To say that in New Hampshire, no one – no one – is above the law.

All of the members of this Committee are sworn to uphold the state and federal constitutions. If you believe this bill is unnecessary, we may respectfully agree to disagree.

But if you oppose this bill for other reasons – knowing what you now know about settled SCOTUS caselaw, and having full understanding of that caselaw?

You are violating your oath of office.

I urge your support for HB 1501-FN.

Respectfully submitted,

/s/ Dana Albrecht

131 Daniel Webster Hwy #235
Nashua, NH 03060
(603) 809-1097

Appendix: Key Cases Cited

- *Stump v. Sparkman*, 435 U.S. 349 (1978)
- *Forrester v. White*, 484 U.S. 219 (1988)
- *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719 (1980)
- *Pulliam v. Allen*, 466 U.S. 522 (1984)
- *Gibson v. Goldston*, 85 F.4th 218 (4th Cir. 2023)

484 U.S. 219 (1988)

FORRESTER
v.
WHITE

No. 86-761.

Supreme Court of United States.

Argued November 2, 1987
Decided January 12, 1988

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

220 *220 *Mary Anne Sedey* argued the cause and filed briefs for petitioner.

Rosalyn B. Kaplan, Assistant Attorney General of Illinois, argued the cause for respondent. With her on the brief were *Neil F. Hartigan,* Attorney General, and *Roma Jones Stewart,* Solicitor General.[*]

JUSTICE O'CONNOR delivered the opinion of the Court.[†]

This case requires us to decide whether a state-court judge has absolute immunity from a suit for damages under 42 U. S. C. § 1983 for his decision to dismiss a subordinate court employee. The employee, who had been a probation officer,
221 alleged that she was demoted and discharged on account of *221 her sex, in violation of the Equal Protection Clause of the Fourteenth Amendment. We conclude that the judge's decisions were not judicial acts for which he should be held absolutely immune.

I

Respondent Howard Lee White served as Circuit Judge of the Seventh Judicial Circuit of the State of Illinois and Presiding Judge of the Circuit Court in Jersey County. Under Illinois law, Judge White had the authority to hire adult probation officers, who were removable in his discretion. Ill. Rev. Stat., ch. 38, ¶ 204-1 (1979). In addition, as designee of the Chief Judge of the Seventh Judicial Circuit, Judge White had the authority to appoint juvenile probation officers to serve at his pleasure. Ill. Rev. Stat., ch. 37, ¶ 706-5 (1979).

In April 1977, Judge White hired petitioner Cynthia A. Forrester as an adult and juvenile probation officer. Forrester prepared presentence reports for Judge White in adult offender cases, and recommendations for disposition and placement in juvenile cases. She also supervised persons on probation and recommended revocation when necessary. In July 1979, Judge White appointed Forrester as Project Supervisor of the Jersey County Juvenile Court Intake and Referral Services Project, a position that carried increased supervisory responsibilities. Judge White demoted Forrester to a nonsupervisory position in the summer of 1980. He discharged her on October 1, 1980.

Forrester filed this lawsuit in the United States District Court for the Southern District of Illinois in July 1982. She alleged violations of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.,* and § 1 of the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U. S. C. § 1983. A jury found that Judge White had discriminated against Forrester on account of her sex, in violation of the Equal Protection Clause of the Fourteenth
222 Amendment. The jury awarded her $81,818.80 in *222 compensatory damages under § 1983. Forrester's other claims were dismissed in the course of the lawsuit.

After Judge White's motion for judgment notwithstanding the verdict was denied, he moved for a new trial. The District Court granted this motion, holding that the jury verdict was against the weight of the evidence. Judge White then moved for summary judgment on the ground that he was entitled to "judicial immunity" from a civil damages suit. This motion, too, was granted. Forrester appealed.

A divided panel of the Court of Appeals for the Seventh Circuit affirmed the grant of summary judgment. The majority reasoned that judges are immune for activities implicating the substance of their decisions in the cases before them, although they are not shielded "from the trials of life generally." 792 F. 2d 647, 652 (1986). Some members of a judge's staff aid in the performance of adjudicative functions, and the threat of suits by such persons could make a judge reluctant to replace them even after losing confidence in their work. This could distort the judge's decisionmaking and

thereby indirectly affect the rights of litigants. Here, Forrester performed functions that were "inextricably tied to discretionary decisions that have consistently been considered judicial acts." *Id.,* at 657. Unless Judge White felt free to replace Forrester, the majority thought, the quality of his own decisions might decline. The Court of Appeals therefore held that Judge White was absolutely immune from Forrester's civil damages suit. In view of this holding, the court found it unnecessary to decide whether the District Court had erred in granting Judge White's motion for a new trial.

In dissent, Judge Posner argued that judicial immunity should protect only adjudicative functions, and that employment decisions are administrative functions for which judges should not be given absolute immunity.

223 In *Goodwin* v. *Circuit Court of St. Louis County, Mo.*, 729 F. 2d 541, 549, cert. denied, 469 U. S. 828 (1984), the United *223 States Court of Appeals for the Eighth Circuit held that a judge was not immune from civil damages for his decision to demote a hearing officer. We granted certiorari, 479 U. S. 1083 (1987), to resolve the conflict.

II

Suits for monetary damages are meant to compensate the victims of wrongful actions and to discourage conduct that may result in liability. Special problems arise, however, when government officials are exposed to liability for damages. To the extent that the threat of liability encourages these officials to carry out their duties in a lawful and appropriate manner, and to pay their victims when they do not, it accomplishes exactly what it should. By its nature, however, the threat of liability can create perverse incentives that operate to *inhibit* officials in the proper performance of their duties. In many contexts, government officials are expected to make decisions that are impartial or imaginative, and that above all are informed by considerations other than the personal interests of the decisionmaker. Because government officials are engaged by definition in governing, their decisions will often have adverse effects on other persons. When officials are threatened with personal liability for acts taken pursuant to their official duties, they may well be induced to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct. In this way, exposing government officials to the same legal hazards faced by other citizens may detract from the rule of law instead of contributing to it.

Such considerations have led to the creation of various forms of immunity from suit for certain government officials. Aware of the salutary effects that the threat of liability can have, however, as well as the undeniable tension between official immunities and the ideal of the rule of law, this Court has been cautious in recognizing claims that government
224 officials *224 should be free of the obligation to answer for their acts in court. Running through our cases, with fair consistency, is a "functional" approach to immunity questions other than those that have been decided by express constitutional or statutory enactment. Under that approach, we examine the nature of the functions with which a particular official or class of officials has been lawfully entrusted, and we seek to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions. Officials who seek exemption from personal liability have the burden of showing that such an exemption in justified by overriding considerations of public policy, and the Court has recognized a category of "qualified" immunity that avoids unnecessarily extending the scope of the traditional concept of absolute immunity. See, *e. g., Scheuer* v. *Rhodes,* 416 U. S. 232 (1974); *Butz* v. *Economou,* 438 U. S. 478 (1978); *Harlow* v. *Fitzgerald,* 457 U. S. 800 (1982).

This Court has generally been quite sparing in its recognition of claims to absolute official immunity. One species of such legal protection is beyond challenge: the legislative immunity created by the Speech or Debate Clause, U. S. Const., Art. I, § 6, cl. 1. Even here, however, the Court has been careful not to extend the scope of the protection further than its purposes require. See, *e. g., Gravel* v. *United States,* 408 U. S. 606, 622-627 (1972); see also *Hutchinson* v. *Proxmire,* 443 U. S. 111, 123-133 (1979); *Doe* v. *McMillan,* 412 U. S. 306 (1973); *United States* v. *Brewster,* 408 U. S. 501 (1972); *United States* v. *Johnson,* 383 U. S. 169 (1966); *Kilbourn* v. *Thompson,* 103 U. S. 168 (1881). Furthermore, on facts analogous to those in the case before us, the Court indicated that a United States Congressman would not be entitled to absolute immunity, in a sex-discrimination suit filed by a personal aide whom he had fired, unless such immunity was afforded by the Speech or Debate Clause. *Davis* v. *Passman,* 442 U. S. 228, 246 (1979); see also *id.,* at 246, n. 25 (reserving question of qualified immunity).

225 *225 Among executive officials, the President of the United States is absolutely immune from damages liability arising from official acts. *Nixon* v. *Fitzgerald,* 457 U. S. 731 (1982). This immunity, however, is based on the President's "unique position in the constitutional scheme," *id.,* at 749, and it does not extend indiscriminately to the President's personal aides, see *Harlow, supra,* or to Cabinet level officers, *Mitchell* v. *Forsyth,* 472 U. S. 511 (1985). Nor are the highest executive officials in the States protected by absolute immunity under federal law. See *Scheuer* v. *Rhodes, supra*.

III

As a class, judges have long enjoyed a comparatively sweeping form of immunity, though one not perfectly well defined. Judicial immunity apparently originated, in medieval times, as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error. See Block, *Stump* v. *Sparkman* and the History of Judicial Immunity, 1980 Duke L. J. 879. More recently, this Court found that judicial immunity was "the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country." *Bradley* v. *Fisher,* 13 Wall. 335, 347 (1872). Besides protecting the finality of judgments or discouraging inappropriate collateral attacks, the *Bradley* Court concluded, judicial immunity also protected judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants. *Id.,* at 348.

In the years since *Bradley* was decided, this Court has not been quick to find that federal legislation was meant to diminish the traditional common-law protections extended to the judicial process. See, *e. g., Pierson* v. *Ray,* 386 U. S. 547 (1967). On the contrary, these protections have been held to extend to Executive Branch officials who perform
226 quasi-judicial functions, see *Butz* v. *Economou, supra,* at 513-514, *226 or who perform prosecutorial functions that are "intimately associated with the judicial phase of the criminal process," *Imbler* v. *Pachtman,* 424 U. S. 409, 430 (1976). The common law's rationale for these decisions — freeing the judicial process of harassment or intimidation — has been thought to require absolute immunity even for advocates and witnesses. See *Briscoe* v. *LaHue,* 460 U. S. 325 (1983); *Butz* v. *Economou,* 438 U. S., at 512.

One can reasonably wonder whether judges, who have been primarily responsible for developing the law of official immunities, are not inevitably more sensitive to the ill effects that vexatious lawsuits can have on the judicial function than they are to similar dangers in other contexts. Cf. *id.,* at 528, n. (REHNQUIST, J., concurring in part and dissenting in part). Although Congress has not undertaken to cut back the judicial immunities recognized by this Court, we should be at least as cautious in extending those immunities as we have been when dealing with officials whose peculiar problems we know less well than our own. At the same time, we cannot pretend that we are writing on a clean slate or that we should ignore compelling reasons that may well justify broader protections for judges than for some other officials.

The purposes served by judicial immunity from liability in damages have been variously described. In *Bradley* v. *Fisher, supra,* at 348, and again in *Pierson* v. *Ray, supra,* at 554, the Court emphasized that the nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people can have. As Judge Posner pointed out in his dissenting opinion below, this is the principal characteristic that adjudication has in common with legislation and with criminal prosecution, which are the two other areas in which absolute immunity has most generously been provided. 792 F. 2d, at 660. If judges were personally liable for erroneous decisions, the
227 resulting avalanche of suits, most of them frivolous but vexatious, *227 would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. *Id.,* at 660-661. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful sideeffects inevitably associated with exposing judges to personal liability.

When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges. Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches.

This Court has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity. The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform. Thus, for example, the informal and *ex parte* nature of a proceeding has not been thought to imply that an act otherwise within a judge's lawful jurisdiction was deprived of its judicial character. See *Stump* v. *Sparkman,* 435 U. S. 349, 363, n. 12 (1978). Similarly, acting to disbar an attorney as a sanction for contempt of court, by invoking a power "possessed by all courts which have authority to admit attorneys to practice," does not become less judicial by virtue of an allegation of malice or corruption
228 of motive. *Bradley* v. *Fisher,* 13 Wall., at 354. *228 As the *Bradley* Court noted: "Against the consequences of [judges'] erroneous or irregular action, from whatever motives proceeding, the law has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort." *Ibid.*

Administrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as judicial acts. In *Ex parte Virginia,* 100 U. S. 339 (1880), for example, this Court declined to extend immunity to a county judge who had been charged in a criminal indictment with discriminating on the basis of race in selecting trial jurors for the county's courts. The Court reasoned:

> "Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance. The duty of selecting jurors might as well have been committed to a private person as to one holding the office of a judge. . . . That the jurors are selected for a court makes no difference. So are court-criers, tipstaves, sheriffs, &c. Is their election or their appointment a judicial act?" *Id.,* at 348.

Although this case involved a criminal charge against a judge, the reach of the Court's analysis was not in any obvious way confined by that circumstance.

Likewise, judicial immunity has not been extended to judges acting to promulgate a code of conduct for attorneys. *Supreme Court of Virginia* v. *Consumers Union of United States, Inc.,* 446 U. S. 719 (1980). In explaining why legislative, rather than judicial, immunity furnished the appropriate standard, we said: "Although it is clear that under Virginia law the issuance of the Bar Code was a proper function of the Virginia Court, propounding the Code was not an act of adjudication but one of rulemaking." *Id.,* at 731. Similarly, in the same case, we held that judges acting to enforce
229 the Bar Code would be treated like prosecutors, and thus would *229 be amenable to suit for injunctive and declaratory relief. *Id.,* at 734-737. Cf. *Pulliam* v. *Allen,* 466 U. S. 522 (1984). Once again, it was the nature of the function performed, not the identity of the actor who performed it, that informed our immunity analysis.

IV

In the case before us, we think it clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester. Those acts — like many others involved in supervising court employees and overseeing the efficient operation of a court — may have been quite important in providing the necessary conditions of a sound adjudicative system. The decisions at issue, however, were not themselves judicial or adjudicative. As Judge Posner pointed out below, a judge who hires or fires a probation officer cannot meaningfully be distinguished from a district attorney who hires and fires assistant district attorneys, or indeed from any other Executive Branch official who is responsible for making such employment decisions. Such decisions, like personnel decisions made by judges, are often crucial to the efficient operation of public institutions (some of which are at least as important as the courts), yet no one suggests that they give rise to absolute immunity from liability in damages under § 1983.

The majority below thought that the threat of vexatious lawsuits by disgruntled ex-employees could interfere with the quality of a judge's decisions:

> "The evil to be avoided is the following: A judge loses confidence in his probation officer, but hesitates to fire him because of the threat of litigation. He then retains the officer, in which case the parties appearing before the court are the victims, because the quality of the judge's decision-making will decline." 792 F. 2d, at 658.

230 There is considerable force in this analysis, but it in no way serves to distinguish judges from other public officials who *230 hire and fire subordinates. Indeed, to the extent that a judge is less free than most Executive Branch officials to delegate decisionmaking authority to subordinates, there may be somewhat less reason to cloak judges with absolute immunity from such suits than there would be to protect such other officials. This does not imply that qualified immunity, like that available to Executive Branch officials who make similar discretionary decisions, is unavailable to judges for their employment decisions. See, *e. g., Scheuer* v. *Rhodes,* 416 U. S. 232 (1974); *Davis* v. *Scherer,* 468 U. S. 183 (1984). Cf. *Harlow* v. *Fitzgerald,* 457 U. S., at 818. Absolute immunity, however, is "strong medicine, justified only when the danger of [officials' being] deflect[ed from the effective performance of their duties] is very great." 792 F. 2d, at 660 (Posner, J., dissenting). The danger here is not great enough. Nor do we think it significant that, under Illinois law, only a judge can hire or fire probation officers. To conclude that, because a judge acts within the scope of his authority, such employment decisions are brought within the court's "jurisdiction," or converted into "judicial acts," would lift form above substance. Under Virginia law, only that State's judges could promulgate and enforce a Bar Code, but we nonetheless concluded that neither function was judicial in nature. See *Supreme Court of Virginia* v. *Consumers Union, supra*.

We conclude that Judge White was not entitled to absolute immunity for his decisions to demote and discharge Forrester. In so holding, we do not decide whether Judge White is entitled to a new trial, or whether he may be able to

claim a qualified immunity for the acts complained of in Forrester's suit. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

[*] *Brian L. Crowe* filed a brief for the Illinois Judges Association as *amicus curiae* urging affirmance.

[†] JUSTICE BLACKMUN joins in all but Part II of this opinion.