Summary of SC99257, *Karla K. Allsberry v. Patrick S. Flynn, in his individual capacity*
Appeal from the Lincoln County circuit court, Judge Richard Callahan
Submitted on briefs September 9, 2021; opinion issued September 14, 2021

Attorneys: Flynn was represented by Jesus A. Osete of the attorney general's office in Jefferson City, (573) 751-3321. Allsberry was represented by David M. Duree of David M. Duree & Associates PC in O'Fallon, Illinois, (618) 628-0186.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A circuit's presiding judge appeals a judgment finding he lacked the administrative authority to suspend an elected circuit clerk indefinitely; the elected circuit clerk cross-appeals asserting she is entitled to injunctive relief restoring her to her elected position. In a per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri affirms in part and reverses in part the circuit court's judgment and remands the case for the circuit court to enter the requested injunctive relief. The presiding judge's indefinite suspension of the circuit clerk constituted a *de facto* removal, which the presiding judge had no constitutional or statutory authority to do. The circuit court has the power to enter the injunctive relief the circuit clerk requests.

Facts: In 2018, Karla Allsberry was elected circuit clerk of Lincoln County, and Patrick Flynn was elected circuit court judge in Lincoln County, which is part of the 45th Judicial Circuit. Flynn is the circuit's presiding judge. Following the election, tensions escalated between Flynn and Allsberry, resulting in Flynn suspending Allsberry indefinitely in May 2019. In a letter, Flynn explained the suspension was pursuant to his authority as presiding judge and would be with pay and benefits. Allsberry was not permitted in the clerk's office or judicial hallways during the suspension. Allsberry sued for declaratory and injunctive relief, arguing Flynn lacked any authority to suspend her and asking the court to restore her to her elected position, prevent Flynn from barring her from the courthouse, and remove the administrative suspension. Flynn relied on section 478.240, RSMo, which gives the presiding judge general administrative authority over all judicial personnel and court officials in the circuit, to assert he had the authority to suspend Allsberry. The circuit court entered a judgment finding Flynn lacked authority to indefinitely suspend the elected circuit clerk; however, it denied Allsberry the injunctive relief she requested. Flynn appeals; Allsberry cross-appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) Flynn had no authority to suspend Allsberry indefinitely. However broad the presiding judge's general administrative authority may be under the Missouri Constitution or section 478.240, a presiding judge is not authorized to take any action that has the practical effect of removing an elected circuit clerk from office. By barring Allsberry from accessing her office and acting in her official capacity at any time, the suspension amounted to a *de facto* removal from office. Such an indefinite suspension of the elected circuit clerk's ability

to conduct any of her duties is an unconstitutional alternative to the procedures for removal of elected officials like Allsberry set out in the Missouri Constitution.

(2) Allsberry is entitled to injunctive relief, which the circuit court has the authority to grant. Granting Allsberry declaratory relief did not guarantee the wrong done by the indefinite suspension would be fixed; rather, injunctive relief provides the necessary mechanism by which Allsberry can enforce that declaration. When he suspended Allsberry, Flynn was acting in his administrative capacity, not his judicial capacity, and the circuit court always has the judicial power to grant relief as required, including injunctive relief. Accordingly, there was nothing prohibiting the circuit court from entering the requested injunctive relief.