[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 19-13368

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D.C. Docket No. 2:17-cv-01791-ACA

CATHERINE REGINA HARPER,
on behalf of herself and those similarly situated,
JENNIFER ESSIG,
SHANNON JONES,

Plaintiffs - Appellants,

versus

PROFESSIONAL PROBATION SERVICES INC,

Defendant - Appellee,

CITY OF GARDENDALE, ALABAMA THE,
a municipal corporation, et al.,

Defendants.

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Appeal from the United States District Court
for the Northern District of Alabama

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(September 25, 2020)

Before NEWSOM and BRANCH, Circuit Judges, and BAKER,* District Judge.

NEWSOM, Circuit Judge:

Pursuant to a contract with a municipal court, a private probation company earned a fee for every month that a misdemeanor offender remained under its supervision. We must decide whether the company violated the Fourteenth

[the] sentenced offenders" themselves. In particular, PPS collected $40 service fees from its supervisees for every month that they remained on probation.

The mechanics of probation in PPS-era Gardendale worked like this: Following a defendant's conviction, a municipal judge sentenced her to probation by signing an "Order of Probation" form, which specified

signed

As relevant here, the Due Process Clause "entitles a person to an impartial and disinterested tribunal in both civil and criminal cases"—or, stated differently, it imposes a "requirement of neutrality in adjudicative proceedings." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). This rule of impartiality derives from the common law, which has long recognized the principle that "[n]o man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." *The Federalist* No. 10, at 59 (J. Cooke ed. 1961); *see also, e.g.*, Edward Coke, 1 *Institutes of the Laws of England* 141 (12th ed. 1738). The Due Process Clause constitutionalizes the judicial-impartiality requirement because, the Supreme Court has explained, it is among "those settled usages and modes of proceeding" that comprise "due process of law." *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). Accordingly, it is by now well-settled that any judge—or, as we will explain below, anyone discharging a judicial function—must be impartial.

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*Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 n.8 (1999); *Burch v. Apalachee Cmty. Mental Health Servs., Inc.*, 840 F.2d 797, 803 (11th Cir. 1988) (same), *aff'd sub nom. Zinermon v. Burch*, 494 U.S. 113 (1990). State action includes "the exercise by a private entity of powers traditionally exclusively reserved to the [s]tate." *Jackson v. Metro. Iach. 1 ([)Tj 16.4 0 Td (s)a (r)3 (c)4 (r)-1*

So far, so good—and unremarkable. To decide the case before us, however, we must answer three subsidiary questions: (1) Exactly what does the obligation of judicial impartiality entail? (2) Does that obligation apply to PPS? And (3) if so, did PPS violate it here? We will address those questions in turn.

**A**

First, what does the judicial-impartiality requirement entail? At a bare minimum, the Supreme Court has held that it forbids a judge from adjudicating a case in which he has a "direct, personal, substantial, pecuniary interest." *Id.*; *see also* Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* *411 (2d ed. 1871). It thus follows, of course, that a judge's income can't directly depend on how he decides matters before him. *See Tumey*, 273 U.S. at 523; *Brown v. Vance*, 637 F.2d 272, 282 (5th Cir. 1981).

The Supreme Court has applied the impartiality requirement to invalidate convictions and sentences even when the decisionmaker's financial interest "was less than what would have been considered personal or direct at common law." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 877 (2009). In *Tumey*, for instance, the Court voided convictions arising from a municipal court in which a mayor (sitting as a judge) imposed fines that both funded his salary—he received a salary bump only if he convicted the defendant—and generated sums that went into the town's general treasury for repairs and improvements. 273 U.S. at 520–21. That regime violated the Due Process Clause, the Court held, "both because of [the mayor-judge's] direct pecuniary interest in the outcome, and because of his official motive to convict and to graduate the fine to help the financial needs of the village." *Id.* at 535. So too in *Ward*, the Court invalidated convictions imposed by another mayor-

So, long story short: The Due Process Clause forbids adjudication by a judge who has a financial interest in the outcome of his decisions, provided that the interest—personal or otherwise—is substantial enough to give him a "possible temptation" to forsake his obligation of impartiality. *Id.*

**B**

Having outlined the judicial-impartiality requirement, we must next decide to whom it applies—and, in particular, whether it applies to PPS. PPS, after all, is not a judge. But as the Supreme Court has repeatedly explained, the obligation of impartiality governs not just judges, but anyone acting in a "judicial or *quasi judicial* capacity." *Tumey*, 273 U.S. at 522 (emphasis added); *Marshall*, 446 U.S. at 238 (quoting *Scott*, 405 U.S. at 5Tai

We hold that it was. Our analysis begins and ends with the uncontroversial proposition that whatever else the judicial function entails, it includes the power to impose a binding sentence. *See, e.g.*, *Tumey*, 273 U.S. at 533; *United States v. Heath*, 419 F.3d 1312, 1315 (11th Cir. 2005) ("The Supreme Court has made it [illegible]

hook. In the eyes of the law, it couldn't determine probation sentencing matters impartially.[10]

## III

To recap, we hold that PPS was acting in a quasi-judicial capacity because it performed a judicial function when it imposed binding sentence enhancements. We further hold that PPS was not impartial because its revenue depended directly and materially on whether and how it made sentencing decisions. Accordingly, we hold that the plaintiffs have adequately stated a claim under the Due Process Clause. We reverse the district court's dismissal of the plaintiffs' due-process claim and remand for further proceedings.

Having rejected the lone basis on which the district court dismissed the state-law claim—that because the plaintiffs' federal claim failed as a matter of law,

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[10] There is one loose end, which the parties haven't raised on appeal but which is necessary to resolving the plaintiffs' due-process claim: When suing a corporate entity under § 1983, a plaintiff must show that the entity itself committed or caused the constitutional violation. *See Howell v. Evans*, 922 F.2d 712, 724 (11th Cir. 1991); *Ort v. Pinchback*, 786 F.2d 1105, 1107 (11th Cir. 1986). Because § 1983 doesn't hold employers vicariously liable for the acts of their employees, the plaintiffs here must demonstrate that the unconstitutional actions of PPS's employees were taken pursuant to a "policy or custom . . . made . . . by those whose edicts or acts may fairly be said to represent official policy." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). A "policy or custom" may be established, among other things, by a "pattern of similar constitutional violations." *Connick v. Thompson*, 563 U.S. 51, 62 (2011).

At the motion-to-dismiss stage, the plaintiffs have alleged a sufficient basis to conclude that PPS's "policy or custom" caused their injuries. PPS, they say, "typically" (and "often") extended probation sentences from 12 to 24 months and "[g]enerally" added substantive terms of probation. They further contend that PPS's conduct was part of "one central scheme" that it operated "in materially the same manner every day, with every person assigned to PPS." And, of course, they assert that PPS subjected each of them to similar constitutional violations on different occasions.

the court had discretion to decline to consider their state-law claim—we likewise reverse the dismissal of that claim and remand for further proceedings.

**REVERSED** and **REMANDED**.

**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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September 25, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 19-13368-AA

ll issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under tPursuant to Fed.R.App.P. 39, costs taxed against the appellee.

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Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call T. L. Searcy, AA at (404) 335-6180.

Sincerely,