NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BARBARA JEAN MOORE, Plaintiff - Appellant, v. WAYNE E. YEHLING, in his official capacity as a Judge of the Arizona Superior Court for Pima County, Defendant - Appellee.	No. 25-6511 D.C. No. 4:25-cv-00299-JGZ MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
Jennifer G. Zipps, Chief District Judge, Presiding

Submitted June 10, 2026[**]
San Francisco, California

Before: GOULD, NGUYEN, and VANDYKE, Circuit Judges.

Barbara Jean Moore appeals from the district court's dismissal with prejudice of her suit against Judge Wayne Yehling of Arizona's Pima County

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Superior Court. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *see Name.Space, Inc. v. ICANN*, 795 F.3d 1124, 1129 (9th Cir. 2015), we modify the dismissal to be without prejudice and, as so modified, affirm.

"Article III of the Constitution affords federal courts the power to resolve only 'actual controversies arising between adverse litigants.'" *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021) (quoting *Muskrat v. United States*, 219 U.S. 346, 361 (1911)). A state court judge who rules against a civil litigant challenging a state statute "is not the plaintiff's adversary" because the judge "has no stake in upholding the statute." *Grant v. Johnson*, 15 F.3d 146, 148 (9th Cir. 1994). Consequently, "'no case or controversy' exists." *Whole Woman's Health*, 595 U.S. at 40 (quoting *Pulliam v. Allen*, 466 U.S. 522, 538 n.18 (1984)).

Pulliam, which Moore relies upon, does not establish that there is a case or controversy here because it was concerned not with justiciability, but immunity. "When the Supreme Court does not address a jurisdictional issue directly, any *sub silentio* assumption of jurisdiction in a case 'does not constitute binding authority' on the jurisdictional question." *Thompson v. Frank*, 599 F.3d 1088, 1090 n.1 (9th Cir. 2010) (per curiam) (quoting *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1363 (9th Cir. 1998)). Moreover, we have distinguished *Pulliam* from a case like this where the plaintiff sues "in order to test

the constitutionality of a state statute that [the state court judge] merely applied in a neutral fashion." *Grant*, 15 F.3d at 147.

Grant is materially indistinguishable from this case. Grant did not, as Moore contends, challenge the state statute's validity "in a more general, systemic sense," as opposed to in "a targeted effort to prevent a specific, threatened constitutional violation in a single ongoing proceeding." Grant sought to "enjoin [the statute's] future use against her" and "alleged that she faced an imminent probability that her mother would use the statute against her to obtain an ex-parte guardianship appointment in the future." *Id.*

Although the district court properly dismissed this action for lack of a case or controversy, the dismissal should have been without prejudice because Moore may continue to challenge Judge Yehling's rulings regarding the conservatorship statute in the state courts. *See Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988) (per curiam) ("Ordinarily, a case dismissed for lack of subject matter jurisdiction should be dismissed without prejudice . . . ."). Therefore, we modify the district court's dismissal to be without prejudice and affirm the judgment as modified. *See* 28 U.S.C. § 2106; *Wham-O-Mfg. Co. v. Paradise Mfg. Co.*, 327 F.2d 748, 753–54 (9th Cir. 1964).

AFFIRMED as MODIFIED.

Costs are awarded to appellee.