IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

ANN SAUNDERS; SABREEN SHARRIEF; and DOROTHY TRIPLETT — **PLAINTIFFS**

VS. — **CIVIL ACTION NO. 23-cv-00421**

HONORABLE MICHAEL K. RANDOLPH, in his official capacity as Chief Justice of the Mississippi Supreme Court; ZACK WALLACE, in his official capacity as Circuit Clerk of the Circuit Court of Hinds County, Mississippi; and GREG SNOWDEN, in his official capacity as Director of the Administrative Office of Courts — **DEFENDANTS**

and

STATE OF MISSISSIPPI ex rel. ATTORNEY GENERAL LYNN FITCH — **DEFENDANT-INTERVENOR**

MEMORANDUM OF AUTHORITIES IN SUPPORT OF STATE OF MISSISSIPPI *EX REL.* ATTORNEY GENERAL LYNN FITCH'S MOTION TO DISMISS

INTRODUCTION

Plaintiffs' complaint should be dismissed pursuant to MISS. R. CIV. P. 12(b)(1) because this Court lacks subject matter jurisdiction. Alternatively, the Court should dismiss this action pursuant to MISS. R. CIV. P. 12(b)(6) because Plaintiffs cannot establish a violation of the Mississippi Constitution. Thus, they have stated no claim upon which relief can be granted.

This matter arises out of the much-publicized recent enactment of 2023 H.B. 1020. Plaintiffs seek to have this Court invalidate the Legislature's lawful enactment of measures designed to enhance public safety and alleviate the ongoing strain on Hinds County's overburdened criminal court system. Specifically, Plaintiffs claim that H.B. 1020's provisions requiring the appointment of temporary special circuit judges and the creation of a new inferior

court in Hinds County violate the Mississippi Constitution. They further claim that a decades-old statute, MISS. CODE ANN. § 9-1-105(2), likewise violates the state constitution to the extent it provides for the appointment of temporary special circuit judges. For a number of reasons discussed below, Plaintiffs' claims fail as a matter of law, and the complaint is ripe for dismissal.

Plaintiffs do not allege that they have suffered, or will suffer, any purported harm or injury that is different from that experienced by the general public—to the extent the general public is even harmed at all. Having alleged no facts sufficient to support any requisite adverse effect, Plaintiffs lack standing under controlling case law, and this Court lacks subject matter jurisdiction. Jurisdiction is further lacking to the extent Plaintiffs seek to have this Court invalidate the operation of judicial appointment orders issued by the Mississippi Supreme Court—relief this Court is powerless to provide.

Even if this Court determines that it has jurisdiction, Plaintiffs have failed to state a legally cognizable claim. Nothing in the Mississippi Constitution prohibits the Legislature from authorizing the Chief Justice of the Mississippi Supreme Court to appoint temporary special circuit judges. Nor does the state constitution in any way prohibit the creation of inferior courts. To the contrary—it expressly contemplates the creation of such courts, and state law provides the appellate mechanism that Plaintiffs erroneously claim is lacking. Most assuredly, Plaintiffs cannot show beyond all reasonable doubt that the challenged laws are unconstitutional.

For all these reasons, Plaintiffs' complaint should be dismissed.

STATEMENT OF FACTS

Legal Background. This action purports to implicate three sections of the Mississippi Constitution appearing in Article 6 governing the state judiciary. Section 153 provides that "The judges of the circuit . . . courts shall be elected by the people in a manner and at a time to be

provided by the legislature and the judges shall hold their office for a term of four years." MISS. CONST. art. VI, § 153.

Section 165 provides that "[w]henever any judge of . . . any district . . . shall, for any reason, be unable or disqualified to preside at any term of court, or in any case where the attorneys engaged therein shall not agree upon a member of the bar to preside in his place, the Governor may commission another, or others, of law knowledge, to preside at such term or during such disability or disqualification in the place of the judge or judges so disqualified." *Id.* § 165.

Section 172 provides that "The Legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient." *Id.* § 172.

Factual Background. On April 21, 2023, Governor Tate Reeves signed into law H.B. 1020. Among other things, H.B. 1020 requires the Chief Justice of the Mississippi Supreme Court to appoint four temporary special circuit judges for the Hinds County Circuit Court. 2023 H.B. 1020, § 1(1).[1] It also creates an inferior court called the Capitol Complex Improvement District court ("CCID court") to function as a municipal court within the Capitol Complex Improvement District ("CCID"). *Id.* § 4(1)(a).

With regard to judicial appointments, H.B. 1020 specifically provides that "The Chief Justice of the Supreme Court shall appoint four (4) temporary special circuit judges for the Seventh Circuit Court District. No limitation whatsoever shall be placed upon the powers of the judges

[1] H.B. 1020 has not yet been codified. For the Court's ease of reference, a true and correct copy of H.B. 1020, as obtained from the Mississippi Legislature's website, legislature.ms.gov, is attached hereto as Ex. A. The attachment of H.B. 1020 to the State's instant motion to dismiss does not implicate MRCP 56 since H.B. 1020 is primary authority. Regardless, H.B. 1020 is both referred to throughout Plaintiffs' complaint and central to their claims. *See Breeden v. Buchanan*, 164 So. 3d 1057, 1068 (Miss. Ct. App. 2015) (reaffirming that in considering a motion to dismiss pursuant to MRCP 12(b)(6), trial court may consider "documents that are referred to in the complaint if they are central to the plaintiff's claim, even though they are not attached to the complaint"). Thus, without question, the Court may consider the attached copy of H.B. 1020 in ruling on the State's MRCP 12(b)(6) motion.

other than those provided by the Constitution and laws of this State. The term of the temporary special circuit judges shall expire on December 31, 2026." *Id.* § 1(1). H.B. 1020 further provides that the aforementioned temporary special circuit judges "shall be appointed no later than fifteen (15) days after the passage of this act according to applicable state laws. The Chief Justice of the Supreme Court may elect to reappoint circuit judges that are serving on a temporary basis as of the effective date of this act in the Seventh Circuit Court District." *Id.* § 1(2).

With regard to the creation of the CCID court, H.B. 1020 provides that "From and after January 1, 2024, there shall be created one (1) inferior court as authorized by Article 6, Section 172 of the Mississippi Constitution of 1890, to be located within the boundaries established in Section 29-5-203 for the Capitol Complex Improvement District, hereinafter referred to as 'CCID'. The CCID inferior court shall have jurisdiction to hear and determine all preliminary matters and criminal matters authorized by law for municipal courts that accrue or occur, in whole or in part, within the boundaries of the [CCID]; and shall have the same jurisdiction as municipal courts to hear and determine all cases charging violations of the motor vehicle and traffic laws of this state, and violation of the City of Jackson's traffic ordinance or ordinances related to the disturbance of the public peace that accrue or occur, in whole or in part, within the boundaries of the [CCID]." *Id.* § 4(1)(a). "The Chief Justice of the Mississippi Supreme Court shall appoint the CCID inferior court judge authorized by [H.B. 1020, § 4]." *Id.* § 4(2).

Except as otherwise provided in H.B. 1020, its provisions "shall take effect and be in force from and after July 1, 2023." *Id.* § 18.

H.B. 1020 is not the only legislative enactment to address the appointment of temporary special circuit judges. In 1989, the Legislature enacted MISS. CODE ANN. § 9-1-105. For over 30 years, § 9-1-105 has, without challenge, provided for judicial appointment of special judges. The

current version of the pertinent statutory text authorizes "the Chief Justice of the Mississippi Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court . . . to appoint a special judge to serve on a temporary basis in a circuit . . . court in the event of an emergency or overcrowded docket." MISS. CODE ANN. § 9-1-105(2). The statute further provides that "It shall be the duty of any special judge so appointed to assist the court to which he is assigned in the disposition of causes so pending in such court for whatever period of time is designated by the Chief Justice. The Chief Justice, in his discretion, may appoint the special judge to hear particular cases, a particular type of case, or a particular portion of the court's docket." *Id.*

Most recently, Chief Justice Mike Randolph appointed Hon. Frank G. Vollor, Hon. Betty W. Sanders, Hon. Stephen B. Simpson, and Hon. Andrew K. Howorth as temporary special circuit court judges in Hinds County, for the purpose of presiding over more than 200 criminal cases. Dkt. #2 at 21-43. The orders appointing these temporary special circuit judges (all of which orders were attached to Plaintiffs' complaint) reflect that they were appointed by Chief Justice Randolph, "with the advice and consent of a majority of the justices of the Mississippi Supreme Court," pursuant to MISS. CODE ANN. § 9-1-105(2). *See id.*

Procedural Background. On April 24, 2023, three individuals who allege to be residents of Jackson filed a *Complaint for Declaratory and Injunctive Relief* against Chief Justice Randolph, Hinds County Circuit Clerk Zack Wallace, and Director of the Administrative Office of Courts Greg Snowden, all in their official capacities. Dkt. #2. Plaintiffs assert that the aforementioned provisions of H.B. 1020 and MISS. CODE ANN. § 9-1-105(2) violate Sections 153, 165, and 172 of the Mississippi Constitution. They seek a declaratory judgment that Sections 1 and 4 of H.B. 1020 and § 9-1-105(2) are unconstitutional. *Id.* at 18-19, ¶¶ A-C. They further seek a preliminary and

permanent injunction to enjoin Chief Justice Randolph from appointing temporary special circuit judges to the Hinds County Circuit Court pursuant to H.B. 1020 or § 9-1-105(2); to enjoin Chief Justice Randolph from appointing a judge to the CCID court; to enjoin Defendant Wallace from assigning cases to any appointed temporary special circuit judges; to enjoin the creation of the CCID court; and to enjoin Defendant Snowden from providing any funding in connection with any of the foregoing. *Id.* at 19, ¶¶ D-F, H-I. Additionally, Plaintiffs seek a preliminary and permanent injunction "requiring the termination of all judges appointed to the Hinds County Circuit Court pursuant to Miss. Code Ann. § 9-1-105(2)." *Id.* at 19, ¶ G.

On April 26, 2023, Plaintiffs filed a motion for preliminary injunction [Dkt. #10]. On May 2, 2023, this Court entered an agreed order [Dkt. #20] granting the State of Mississippi *ex rel.* Attorney General Lynn Fitch's ("the State") motion for leave to intervene to argue the constitutionality of the challenged laws. On May 3, 2023, the State filed its response in opposition to Plaintiffs' motion for preliminary injunction [Dkt. #29]. The State files the instant motion to dismiss Plaintiffs' complaint in its entirety.

STANDARD FOR DISMISSAL

Motions to dismiss for lack of subject matter jurisdiction predicated on lack of standing are brought pursuant to MRCP 12(b)(1). *See Doss v. Claiborne County Bd. of Supervisors*, 230 So. 3d 1100, 1104 (Miss. Ct. App. 2017). Where a party lacks standing to assert a given claim, subject matter jurisdiction does not exist over that claim, and that claim should be dismissed pursuant to MRCP 12(b)(1). *See Schmidt v. Catholic Diocese of Biloxi*, 18 So. 3d 814, 826-29 (Miss. 2009). *See also Davis v. City of Jackson*, 240 So. 3d 381, 384-85 (Miss. 2018).

Motions to dismiss constitutional challenges are otherwise properly brought pursuant to MRCP 12(b)(6). *See Hemba v. Miss. Dep't of Corr.*, 998 So. 2d 1003, 1005 (Miss. 2009); *Wells*

by Wells v. Panola County Bd. of Educ., 645 So. 2d 883, 888 (Miss. 1994). An MRCP 12(b)(6) motion is reviewed "on the face of the pleadings alone." *Walton v. Walton*, 52 So. 3d 468, 471 (Miss. Ct. App. 2011). The factual allegations in the complaint "must be taken as true." *Rose v. Tullos*, 994 So. 2d 734, 737 (Miss. 2008). However, "[c]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to defeat a motion to dismiss." *Id.* at 739.

ARGUMENT

I. PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED BECAUSE THIS COURT LACKS SUBJECT MATTER JURISDICTION.

A. Plaintiffs lack standing to assert any of the claims sought to be advanced in this action; therefore, this Court lacks subject matter jurisdiction over this matter.

"Standing is a jurisdictional issue" that is particularly important where "a constitutional interpretation is sought." *Initiative Measure No. 65: Mayor Butler v. Watson*, 338 So. 3d 599, 605 (Miss. 2021) (internal quotation marks omitted). It is well settled that a "lack of standing robs the court of jurisdiction to hear the case." *BancorpSouth Bank v. Bruce Sweet Potato, Inc.*, 296 So. 3d 143, 149 (Miss. Ct. App. 2020) (quoting *Schmidt v. Catholic Diocese of Biloxi*, 18 So. 3d 814, 826 (Miss. 2009)) (internal quotation marks omitted).

In the pivotal standing case of *Reeves v. Gunn*, 307 So. 3d 436 (Miss. 2020), the Mississippi Supreme Court "abandoned the 'colorable interest' standard for establishing standing." *Initiative Measure No. 65*, 338 So. 3d at 605. "However, the traditional articulation of 'adverse impact' to describe when a party can assert standing to bring a suit survives." *Id.* (internal quotation marks omitted). Under the surviving "adverse impact" standard, the plaintiff must show that it "experience[s] an adverse effect from the conduct of the defendant." *Hotboxxx, LLC v. City of Gulfport*, 154 So. 3d 21, 27 (Miss. 2015) (internal quotation marks omitted). "[T]he adverse effect suffered by the challenger must be different than the adverse effect suffered by the general public."

Crook v. City of Madison, 168 So. 3d 930, 935 (Miss. 2015). *See also Araujo v. Bryant*, 283 So. 3d 73, 77 (Miss. 2019) (same). Vague allegations of "immediate and irreparable" harm are insufficient to satisfy the "adverse impact" standard. *See Foster v. Sunflower County Consol. Sch. Dist.*, 311 So. 3d 705, 712 (Miss. Ct. App. 2021).

In the case at bar, Plaintiffs purport to be three taxpaying citizens of Jackson who are registered voters in Hinds County. Dkt. #2 at 4, ¶ 10. They do not claim any involvement with the judicial system. They do not claim any past, present, or anticipated future status as a civil litigant, a criminal defendant, or any other party to any proceeding pending in Hinds County Circuit Court or the newly-created CCID court. Plaintiffs have neither shown nor alleged that they have in fact experienced—or will experience—any adverse effects arising from the challenged judicial appointments or the creation of the CCID court. They have certainly not shown that they have experienced—or will experience—any adverse effect that is different in kind or degree from that experienced by the general public, to the extent the public is harmed at all. Accordingly, Plaintiffs do not meet the standing requirements articulated in *Initiative Measure No. 65*, *Reeves*, *Hotboxxx*, *Crook*, or *Araujo*, *supra*.

Instead, Plaintiffs contend that (1) standing should be presumed because they have alleged a deprivation of a "constitutionally protected right"; and (2) they have standing solely by virtue of being taxpayers. Dkt. #10 at 17-20. Both of these arguments must fail.

First, Plaintiffs have not alleged any deprivation of a personal right or freedom guaranteed by the Mississippi Constitution. The constitutional provisions at issue do not speak to individual rights, freedoms, or liberties, but rather to the administrative functioning of the judicial branch of state government. Plaintiffs have cited no authority that standing is or can be presumed in this context.

Second, Plaintiffs' attempt to invoke "taxpayer standing" fails because Plaintiffs have not shown how their asserted interests are any different than those of any other taxpayer. "[A] taxpayer cannot rely on a claim 'that he suffers in some indefinite way in common with people generally.'" *Doss v. Claiborne County Bd. of Supervisors*, 230 So. 3d 1100, 1105 (Miss. Ct. App. 2017) (quoting, with approval, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 345 (2006)). *See also Araujo*, 283 So. 3d at 78 (reaffirming that "taxpayer standing" can only exist where plaintiffs are "not simply general taxpayers"); *Pascagoula-Gautier Sch. Dist. v. Bd. of Supervisors of Jackson County*, 212 So. 3d 742, 749 (Miss. 2016) (reaffirming that "taxpayer standing" can only exist where plaintiffs "experience . . . an adverse effect [that] is different from that experienced by the general public"). Pursuant to H.B. 1020, the only taxpayer funds used to finance the challenged judicial appointments and CCID court are state—not local—tax revenues. *See* H.B. 1020, §§ 1(3)(b), 4(3), 6(3). Plaintiffs have not alleged that they have experienced, or will experience, any purported adverse effect as taxpayers that is different from that experienced by any other state taxpayers in Hinds County or elsewhere in the state. Thus, they do not qualify for so-called "taxpayer standing" under Mississippi law.

For all these reasons, Plaintiffs lack standing. Therefore, this Court lacks subject matter jurisdiction over Plaintiffs' claims, and the complaint should be dismissed.

B. <u>This Court is without jurisdiction to review or invalidate any order of the Mississippi Supreme Court appointing temporary special circuit judges.</u>

As set forth above, Plaintiffs seek to have this Court "[i]ssue a preliminary and permanent injunction requiring the termination of all judges appointed to the Hinds County Circuit Court pursuant to Miss. Code Ann. § 9-1-105(2)." Dkt. #2 at 19, ¶ G. All four orders appointing the most recent group of temporary special circuit judges pursuant to § 9-1-105(2) were issued by Chief Justice Randolph, "with the advice and consent of a majority of the justices" of the

Mississippi Supreme Court. Dkt. #2 at 21-43. All four orders were entered on the docket of the Mississippi Supreme Court and bear its cause numbers. *See id.* Plaintiffs now ask this Court to declare the actions of the Supreme Court to be unconstitutional, and to issue an injunction retroactively invalidating the Supreme Court's aforementioned orders. It is axiomatic that this Court has no jurisdiction to review orders of the Supreme Court or its Justices, nor does it possess the power to enjoin or invalidate the actions of the Supreme Court. That power is vested in the Supreme Court alone. Nor does this Court—a chancery court—have jurisdiction to issue any order that interferes with proceedings in circuit court. *See* MISS. CONST. §§ 159-60.

Thus, to the extent the Court does not dismiss this action in its entirety for lack of subject matter jurisdiction given Plaintiffs' lack of standing, see *supra*, it should dismiss Plaintiffs' claim for injunctive relief to "terminat[e] . . . all judges appointed to the Hinds County Circuit Court," *id.* at 19, ¶ G, pursuant to § 9-1-105(2), as well as Plaintiffs' related claim for declaratory relief. To hold otherwise would turn the entire concept of appellate jurisdiction on its head.

II. ALTERNATIVELY, PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED BECAUSE PLAINTIFFS CANNOT ESTABLISH A CONSTITUTIONAL VIOLATION.

Even if this Court finds that it has jurisdiction, which it does not, Plaintiffs cannot meet their extremely heavy burden to show beyond a reasonable doubt that that the challenged laws violate the Mississippi Constitution. For this additional reason, their complaint should be dismissed.

It is well settled that laws duly enacted by the Legislature enjoy a "strong presumption of constitutionality." *Clark v. Bryant*, 253 So. 3d 297, 300 (Miss. 2018). The burden is on the party challenging the law's constitutionality "to prove [it] is unconstitutional beyond a reasonable doubt." *Id.* "[A]ll doubts are resolved in favor of a statute's validity." *Id.* A court "may strike

down an act of the legislature only where it appears beyond all reasonable doubt that the statute violates the clear language of the constitution." *Araujo*, 283 So. 3d at 78 (internal quotation marks omitted). "In other words, to state that there is doubt regarding the constitutionality of an act is to essentially declare it constitutionally valid." *Id.* at 78-79 (internal quotation marks omitted). Here there is more than doubt—there is clear legal authority to support that the challenged laws are constitutional.

A. <u>The challenged judicial appointment provisions of H.B. 1020 and MISS. CODE ANN. § 9-1-105(2) do not violate the Mississippi Constitution.</u>

The Mississippi Constitution provides that permanent circuit court judges "shall be elected by the people in a manner and at a time to be provided by the legislature." MISS. CONST. art. VI, § 153. Section 153 does not apply to temporary special circuit judges, as confirmed by MISS. CONST. art. VI, § 165. Section 165 provides that "[w]henever any judge of . . . any district . . . shall, for any reason, be unable or disqualified to preside at any term of court, or in any case where the attorneys engaged therein shall not agree upon a member of the bar to preside in his place, the Governor may commission another, or others, of law knowledge, to preside at such term or during such disability or disqualification in the place of the judge or judges so disqualified." MISS. CONST. art. VI, § 165.

Plaintiffs argue that § 165 invalidates H.B. 1020 and § 9-1-105(2) because, according to Plaintiffs, the challenged laws "create *new judgeships*" as opposed to providing a means for appointing temporary special circuit judges. Dkt. #10 at 8-9 (italics in original). As discussed in greater detail below, the challenged provisions authorize temporary special judicial appointments—not permanent judgeships. Regardless, nothing in § 165 purports to curtail, or even address, the Legislature's authority to provide for additional "judgeships" within a given circuit court district. *See* MISS. CONST. art. VI, § 165. Section 152 of the Mississippi Constitution

vests the Legislature with authority to determine "the number of judges" in any circuit court district upon consideration of "population, the number of cases filed and other appropriate data." *Id.* § 152. *See also* MISS. CODE ANN. § 9-7-25(1) (confirming Legislature's authority to control number of circuit judges in Hinds County). Even assuming for the sake of argument that the laws at issue "create new judgeships" as Plaintiffs contend, Plaintiffs have not pointed to any constitutional provision prohibiting the Legislature from doing as much here. Regardless, this case does not involve the creation of additional permanent circuit judgeships; rather, its focus is limited to the appointment of temporary special circuit judges.

Plaintiffs further argue that the challenged laws are unconstitutional because they permit judicial appointments that are made (1) by the Chief Justice of the Mississippi Supreme Court and not by the Governor; (2) for periods of time that Plaintiffs do not view as "temporary"; and (3) for reasons other than disqualification or disability. Dkt. #10 at 9-11. Plaintiffs contend that all three of these purported defects violate § 165, which they read as the exclusive means of appointing temporary special circuit judges. They are wrong.

Plaintiffs' interpretation of § 165 fails to adhere to the longstanding principle that the "State Constitution does not grant specific legislative powers, but limits them." *Moore v. Grillis*, 39 So. 2d 505, 509 (Miss. 1949). Said differently, "the Legislature has all political power not denied it by the state or national constitutions." *Wheeler v. Shoemake*, 57 So. 2d 267, 280 (Miss. 1952). Section 165 contemplates judicial appointments of special circuit judges on a temporary basis, but nothing in that section denies the Legislature the ability to provide for such appointments on different terms than those delineated in § 165. In the absence of such a limitation—and since the default is to legislative discretion, see *Moore*, *Wheeler*, *supra*—there is no constitutional

prohibition of the Legislature's enactment of laws providing for temporary special circuit judges on terms that differ from those in § 165.

Not only is Plaintiffs' view of the Mississippi Constitution wrong in the general sense, but their view of § 165 is not in keeping with the construction that Mississippi appellate courts have given that specific section of the Constitution. First, the Mississippi Court of Appeals has recognized that § 165 "is not 'the exclusive mechanism for the selection of special judges'" and need not be interpreted as such. *See Vinson v. Prather*, 879 So. 2d 1053, 1056 (Miss. Ct. App. 2004) (quoting *McDonald v. McDonald*, 850 So. 2d 1182, 1187 (Miss. Ct. App. 2002)) (emphasis added). *Vinson* confirms that the Chief Justice's appointment power pursuant to MISS. CODE ANN. § 9-1-105 is a permissible alternative to the gubernatorial-appointment mechanism provided for in § 165. *See Vinson*, 879 So. 2d 1053, 1056-57. That view is equally applicable to the judicial appointment mechanism provided for in H.B. 1020, § 1. Even on its face, § 165 contemplates an alternative to gubernatorial appointments—namely, that the attorneys practicing in the district may agree upon a member of the bar to serve as a temporary judge. *See* MISS. CONST. art. VI, § 165.

Second, Plaintiffs' unfounded assertions to the contrary notwithstanding, neither of the challenged laws creates any permanent judgeships. H.B. 1020 authorizes the Chief Justice of the Mississippi Supreme Court to "appoint four (4) temporary special circuit judges for the Seventh Circuit Court District." 2023 H.B. 1020, § 1(1) (Ex. "A") (emphasis added). This appointment power automatically stands repealed on December 31, 2026. *Id.* § 1(4). Similarly, MISS. CODE ANN. 9-1-105(2) "does not provide for the creation of additional permanent judgeships." *Prewitt v. Moore*, 840 F. Supp. 428, 435 (N.D. Miss. 1993). Rather, it allows for appointments of special circuit judges "to serve on a temporary basis . . . in the event of an emergency or overcrowded docket." MISS. CODE ANN. 9-1-105(2) (emphasis added).

Third, § 165 provides that an inability—"for any reason"—of existing judges to preside over cases shall constitute a sufficient reason for appointing temporary special circuit judges. *See* MISS. CONST. art. VI, § 165. Consistent with this provision, MISS. CODE ANN. § 9-1-105(2) limits the appointment of temporary special circuit judges to circumstances in which elected permanent circuit court judges face "an emergency or overcrowded docket," § 9-1-105(2), and are thereby unable—as a practical matter—to preside over their entire docket. Similarly, it cannot be denied that a major purpose underlying the enactment of H.B. 1020 was to assist in alleviating overcrowded and backlogged criminal court dockets in Hinds County, the most populous county in the state and one in which the need for an efficient criminal docket is especially pronounced given the ever-increasing crime rate.

Additionally, Plaintiffs argue that unless the challenged appointment provisions of H.B. 1020 and § 9-1-105(2) are declared unconstitutional, "[t]he Legislature could dilute the power of duly elected judges across the state." Dkt. #10 at 13-14. But the challenged provisions do not in fact "dilute" the power of any elected permanent circuit court judge. Each of the elected permanent circuit court judges in Hinds County retains, and will continue to retain, exactly the same powers that he or she enjoyed prior to the enactment of the challenged laws. Plaintiffs have cited no authority to support the notion that the challenged laws have resulted, or will result, in any diminution or dilution of any extant judicial power. Nor have they cited any authority providing that judicial power is anything other than *qualitative*, as opposed to *quantitative*. A circuit judge has no entitlement to a docket of any particular size in terms of the number of cases over which he/she presides, nor does the judge's judicial power turn on the size of the docket over which he/she presides. For all these reasons, the challenged judicial appointment provisions of H.B. 1020

and MISS. CODE ANN. § 9-1-105(2) do not "dilute" judicial power and are constitutionally permissible. Plaintiffs cannot meet their heavy burden to show otherwise.

B. The creation of the CCID court does not violate the Mississippi Constitution.

Plaintiffs contend that the CCID court provided for in Section 4 of H.B. 1020 violates § 172 of the Mississippi Constitution because H.B. 1020 does not expressly provide for a right of appeal, and—according to Plaintiffs—"the Court may not read into the statute a right of appeal to redeem it." Dkt. #10 at 17. Plaintiffs argument fails as a matter of law because state law *does* in fact provide a mechanism for appeals from the CCID court to the constitutionally-created circuit court.

Section 172 of the Mississippi Constitution provides that "[t]he Legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient." MISS. CONST. art. VI, § 172. Section 172 says nothing of any requirement that an appellate mechanism need expressly appear in the court's originating statute for the court to pass constitutional muster as an "inferior court." Nor have Plaintiffs cited any controlling authority to that effect. For a court to be deemed constitutionally authorized as an "inferior court" pursuant to § 172, it is enough that the "court must be inferior in ultimate authority to the constitutionally created court which exercises the same jurisdiction. This superiority is shown by giving the constitutional court controlling authority over the legislative court, by appeal or certiorari, for example." *Marshall v. State*, 662 So. 2d 566, 570 (Miss. 1995) (emphasis added).

The CCID court is constitutional because it is established to operate on par with a municipal court. H.B. 1020 expressly grants the CCID court "jurisdiction to hear and determine all preliminary matters and criminal matters authorized by law for municipal courts." 2023 H.B. 1020, § 4(1)(a) (Ex. "A") (emphasis added). It further provides that the CCID court "shall have

the same jurisdiction as municipal courts to hear and determine" certain motor vehicle, traffic, and disturbing the peace offenses. *Id.* (emphasis added). "The judge shall possess all qualifications required by law for municipal court judges." *Id.* § 4(2) (emphasis added). Furthermore, the judge's "compensation shall not be in an amount less than the compensation paid to municipal court judges and their support staff in the City of Jackson." *Id.* § 4(3) (emphasis added).

Municipal courts are creatures of statute. *See* MISS. CODE ANN. § 21-23-1. They "do not handle civil cases"—only criminal cases. *See Miss. Comm'n on Judicial Performance v. Moore*, 356 So. 3d 122, 127 n.2 (Miss. 2023). State law expressly provides that "[a]ny person adjudged guilty of a criminal offense by a . . . municipal court may appeal to county court or, if there is no county court, to circuit court." MRCrP 29.1(a). *See also* MISS. CODE ANN. § 11-51-81 ("All appeals from . . . all municipal courts shall be to the county court under the same rules and regulations as are provided on appeals to the circuit court"). State law thus provides municipal court defendants with a right of appeal to the county court and ultimately to the circuit court, see *id.* § 11-1-59, which is a constitutionally-created court, see MISS. CONST. art. VI, § 152. Therefore, consistent with *Marshall*, *supra*, it is beyond question that inasmuch as municipal courts enjoy a degree of concurrent jurisdiction with circuit courts, "[m]unicipal courts are validly established inferior courts." *Miss. Judicial Performance Comm'n v. Thomas*, 549 So. 2d 962, 964 (Miss. 1989) (emphasis added). Because the CCID court is established to function as a municipal court, it is subject to the same appeal mechanism, and there is no "lack of appeal," Dkt. #10 at 17, as asserted by Plaintiffs.

Even if the Court were to find that no express appeal right exists by virtue of the foregoing, a right of appeal is nevertheless provided by law. There can be no question that the CCID court is inferior to the circuit court. H.B. 1020 expressly states that the CCID court is an "inferior court as

authorized by . . . Section 172 of the Mississippi Constitution of 1890" and equates its jurisdiction to that of a municipal court, as set forth *supra*. 2023 H.B. 1020, § 4. Accordingly, even if the CCID court were not a municipal court per se, state law nevertheless provides an appellate mechanism that comports with *Marshall*—namely, the writ of certiorari to the circuit court. *See* MISS. CODE ANN. § 11-51-95. "Writs of certiorari are familiar tools, used by one court to review the decisions of an inferior court." *Town of Terry v. Smith*, 48 So. 3d 507, 509 (Miss. 2010). Section 11-51-95 "extends that review 'to all tribunals inferior to the circuit court.'" *Id.*

Thus, because a "constitutional court [i.e., the circuit court] [has] controlling authority over" the CCID court, "by appeal or certiorari," see *Marshall*, 662 So. 2d at 570, the CCID court is an inferior court within the ambit of MISS. CONST. art. VI, § 172, and the challenged provisions of H.B. 1020 are constitutionally permissible. Here again, Plaintiffs cannot meet their heavy burden to show otherwise.

Plaintiffs cannot show "beyond all reasonable doubt," *Araujo*, 283 So. 3d at 78, that the challenged provisions of H.B. 1020 or MISS. CODE ANN. § 9-1-105(2) violate the Mississippi Constitution. As a matter of law, see *id.*, even if there were *some* doubt regarding the constitutionality of these laws—and there is not—this Court has no alternative but to uphold the laws as constitutional under the controlling standard by which a constitutional challenge is judged.

For all these reasons, Plaintiffs' complaint fails to establish a violation of the Mississippi Constitution. Thus, Plaintiffs have stated no claim upon which relief can be granted, and their complaint should be dismissed with prejudice in its entirety.

CONCLUSION

For all these reasons, Plaintiffs' complaint should be dismissed.

THIS the 5th day of May, 2023.

Respectfully submitted,

STATE OF MISSISSIPPI *EX REL.* ATTORNEY GENERAL LYNN FITCH, DEFENDANT-INTERVENOR

By: LYNN FITCH, ATTORNEY GENERAL FOR THE STATE OF MISSISSIPPI

By: s/Rex M. Shannon III
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ATTORNEYS FOR STATE OF MISSISSIPPI *EX REL.* ATTORNEY GENERAL LYNN FITCH, DEFENDANT-INTERVENOR

CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and one of the attorneys for Defendant-Intervenor State of Mississippi *ex rel.* Attorney General Lynn Fitch, do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's MEC filing system, which sent notification of such filing to all counsel of record.

THIS the 5th day of May, 2023.

s/Rex M. Shannon III
REX M. SHANNON III