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

ANN SAUNDERS; SABREEN SHARRIEF; and DOROTHY TRIPLETT

PLAINTIFFS

v. No. 25CH1:23-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

REPLY TO STATE OF MISSISSIPPI *EX REL.* ATTORNEY GENERAL LYNN FITCH'S RESPONSE IN OPPOSTITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND RESPONSE TO MOTION TO DISMISS

Plaintiffs write in further support of their Motion for Preliminary Injunction (Dkt. 10), in reply to the State of Mississippi *ex rel.* Attorney General Lynn Fitch's Response in Opposition to it (hereinafter "Opposition" or "Opp.") (Dkt. 29), and in response to the Attorney General's Motion to Dismiss. (Dkt. 39).

I. PLAINTIFFS HAVE DEMONSTRATED A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

The starting and ending point in determining the legality of H.B. 1020, and the judicial appointments made under Miss. Code § 9-1-105(2), is the Mississippi Constitution:

> Our Constitution is a sacred compact among the people of this State. Miss. Const. Art. 3, § 5. No single person or branch of this

> government can unilaterally amend our Constitution or ignore its dictates.

Reeves v. Gunn, 307 So.3d 436, 437 (Miss. 2020).

The Mississippi Constitution provides that "the judges of the circuit and chancery courts 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"). Defendants' arguments about Plaintiffs' likelihood of success on the merits boil down to nothing more than a plea for this court to ignore the words "shall be elected by the people." These arguments are without merit.

A. The Mississippi Constitution Does Not Permit Circuit Judges To Be Selected By Appointment.

Defendants begin their argument by mis-citing the Mississippi Constitution, declaring that it only 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.'" Opp. at 11 (citing Section 153). Section 153, however, *does not include* the word "permanent." There are no such things as "temporary" and "permanent" circuit court judges under the Mississippi Constitution, and inserting the word "permanent" into text where it does not exist cannot change that fact.

Instead, Section 165 of the Constitution provides the only means for appointing, rather than electing, circuit court judges. It provides that, if a judge of any district "shall, for any reason, *be unable or disqualified* to preside at any term of court," the Governor may commission another "to preside at such term or during such disability or disqualification *in the place of the judge or judges* so disqualified" Miss. Const. § 165 ("Section 165") (emphasis added). The exception established in Section 165 is narrow: it allows the appointment of a circuit judge *by the Governor* only when an elected judge is *unable or disqualified* from presiding. None of the elected circuit judges in Hinds County are unable or disqualified to preside, nor does H.B. 1020 even contemplate that the

Governor will play any role in appointing the judgeships it creates. Either one of these realities make the appointments under H.B. 1020 unconstitutional.

To avoid the clear language of the Constitution, Defendants attempt to invoke the principle that "the Legislature has all political power not denied it by the state or national constitutions." *Wheeler v. Shoemaker,* 57 So.2d 267, 280 (Miss. 1952). That principle has no applicability here because Section 153 denies to the legislature the power to select circuit judges. Moreover, Section 165 expressly provides the *only* grounds on which a circuit judge may be appointed (when a sitting judge is "unable or disqualified"), as well as the officeholder who can make the appointment (the Governor). *See Bittner v. United States*, 143 S. Ct. 713, 720 (2023) (describing the widely accepted canon of construction that "the inclusion of one thing is the exclusion of another").

Defendants also argue that H.B. 1020 can be saved because temporary appointed judges are permitted under Section 165 "for any reason." Opp. at 13. Again, that simply misstates the plain language of Section 165. The phrase "for any reason" refers to the grounds on which an elected judge has become "unable or disqualified." Section 165 does *not* allow an appointment to be made "for any reason"—only when a judge is "unable or disqualified" for any reason. Indeed, if the legislature believes that the number of judgeships on the circuit court needs to change, the legislature can provide for more elected judges. *See* Miss. const. art. VI, § 152 (allowing for creation of additional circuit court judgeships upon consideration of "population, the number of cases filed and other appropriate data."). Further, Defendants' misreading renders Section 165 superfluous: under Defendant's flawed reading, there would be no reason for Section 165 at all because the legislature could simply provide for unelected judges under any circumstances it wants. That is not the law.

There is no case that Defendants can rely on to justify the legislature's effort through H.B. 1020 and § 9-1-105(2) to transfer by fiat a constitutional power from one branch of government to another. One case, *McDonald v. McDonald*, comments in dicta on a different statute that empowers the Chief Justice to appoint only when the Governor fails to appoint in the first instance. 850 So.2d 1182, 1187 (Miss. Ct. App. 2002), *aff'd*, 876 So.2d 296 (Miss. 2004) (involving disqualification due to recusal which is not the issue here). That case is inapposite, because unlike both H.B. 1020 and § 9-1-105(2), the statute at issue in *McDonald* preserved the initial power to make appointments with the Governor. *Id.* Indeed, the court in *McDonald* emphasized that the Chief Justice cannot wholly displace the Governor's constitutional authority to make judicial appointments. 850 So.2d at 1187, *aff'd*, 876 So.2d at 296.

Defendants' reliance on *Vinson v. Prather*, 879 So.2d 1053, 1056–57 (Miss. Ct. App. 2004), is also unavailing. There, the Court of Appeals considered a due process challenge to the appointment of a special chancellor to hear certain issues. But the court said nothing about the constitutionality of § 9-1-105. Rather, the court merely noted that "[t]here was no allegation that [9-1-105] [was] unconstitutional" and, therefore, declined to reach that constitutional question. *Id.* By contrast, in this case the constitutionality of § 9-1-105(2) *is* directly at issue. The answer is clear – it violates Sections 153 and 165 of the Mississippi Constitution.

Finally, Defendants argue that appointing additional Hinds County circuit judges does not "dilute" the power of the elected judges who sit on the court. Opp. at 14. Even if that were true, it would not justify the legislature's disregard of the rights of *Hinds County voters* to elect their circuit judges pursuant to Section 153 and Section 165. The Mississippi Constitution preserves to "the people" the right to elect these judges, and the legislature has no power to take away that right.

B. No Right Of Appeal Applies To The CCID Court.

The constitution requires that inferior courts must have a right of appeal. Miss. const. § 172; *Drummond v. State*, 185 So. 207 (Miss. 1938) ("If the Constitution requires an appeal when granted to be to a particular court, this requirement must be obeyed by the legislature.").

For other inferior courts in Mississippi, the constitutionally-required statutory right of appeal exists in the originating statute. *See* Miss. Code § 43-21-651(1) (providing appeal from youth courts); Miss. Code § 9-4-3(2) (providing appeal from the courts of appeal); Miss. Code § 11-51-79 (providing appeal from county courts); Miss. Code § 99-39-1 (providing appeal from justice courts and municipal courts). By contrast, in H.B. 1020, the legislature deliberately excluded a right of appeal. In fact, the legislature included a right of appeal in an earlier draft, but later removed it. The purpose is clear: to deny litigants a right to appeal from the CCID court.

Defendants ignore this and instead go looking for an appeal elsewhere in the code. They point to three bases for appeal, but all fail. The first two bases fail because they provide appeals from *municipal courts*, and the CCID court is not a municipal court. The final basis fails because it is discretionary. In the alternative, if this Court determines that the CCID court is inferior, it should clarify that a non-discretionary right of appeal exists for litigants in the CCID court.

i. The CCID court is not a municipal court, and so appeal rights from municipal courts are irrelevant.

Decisions by municipal courts may be appealed under Mississippi law, but the CCID court is not a municipal court. Accordingly, the laws that Defendants cite which provide appeals from municipal courts are irrelevant. The CCID court is not a "municipal court" for at least three reasons.

First, municipal courts exist in municipalities. Miss Code § 21-23-1 ("There shall be a municipal court in all municipalities of this state."). Municipalities are creatures of statute, Miss.

Code § 21-1-1, and must meet certain requirements, including being chartered, Miss Code § 21-3-1. However, the Capitol Complex Improvement District is not a municipality. *See generally* Miss. Code § 29-5-201 through 217 (establishing the CCID). It was created to "establish regular funding and administration of infrastructure projects within a defined area of Jackson."[1] Statutory language and common sense confirm that the CCID is not a municipality, and so the CCID court is not a municipal court.

Tellingly, H.B. 1020 does not even *call* the CCID court a municipal court, and there is already a municipal court in Jackson, which will continue to have jurisdiction over the geographic area covered by the CCID court.[2] Moreover, the municipal courts and the CCID court need not compensate judges at the same rate, *id*. at § 4(3), and may exercise jurisdiction over different types of cases, *id*. at § 4(1)(a).

Second, no municipal court is empowered to send people to state prison.[3] *See generally* Miss. Code § 21-23 (describing municipal courts). In contrast, under H.B. 1020, the CCID court has jurisdiction over certain misdemeanors like other municipal courts. However, people convicted by the CCID court can be sent directly to state prison at the Central Mississippi Correctional Facility. H.B. 1020 § 4(1)(b).

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[1] *See* Mississippi Department of Finance and Administration, Capitol Complex Improvement District Master Plan (2019), https://www.dfa.ms.gov/sites/default/files/CCID%20Home/Master%20Plan%20Documents/ccid-master-plan_march2019.pdf.

[2] The City of Jackson, Jackson Municipal Court, https://www.jacksonms.gov/jackson-municipal-court/.

[3] The Central Mississippi Correctional Facility is currently under federal investigation for allegedly incarcerating people in unconstitutional conditions. *See* https://www.justice.gov/opa/pr/justice-department-finds-conditions-mississippi-state-penitentiary-violate-constitution.

Third, municipal court judges must be appointed by an official who governs that municipality. Miss Code § 21-23-3 (providing judges "shall be appointed by the governing authorities of the municipality"). But the Chief Justice of the Supreme Court of Mississippi—a member of Mississippi's judicial branch elected by voters statewide—plays no direct role in governing Jackson and, therefore, is not a "governing authorit[y]" as this statute contemplates.

In response to Plaintiffs' argument that the CCID court fails to provide litigants with a right to appeal, Defendants point to the two grounds for appealing municipal court decisions. But neither applies here.

The first basis is Mississippi Rule of Criminal Procedure 29.1(a) which provides that "Any person adjudged guilty of a criminal offense **by a justice or municipal court** may appeal to county court or, if there is no county court, to circuit court, by filing simultaneously a written notice of appeal . . ." MRCrP 29.1(a) (emphasis added). But this rule applies to municipal courts and justice courts alone. Further, the MRCrP are promulgated by the state courts, not by the legislature. *See* MRCrP Adopting Order. Any right to appeal must be explicitly granted in statute by the legislature. *Drummond v. State*, 185 So. 207 (Miss. 1938). And so, even if this rule provided an appeal from the CCID court, that would not redeem H.B. 1020. Indeed, this rule does not even purport to create a right of appeal—something that is done by statute—and instead merely describes the procedures and paperwork required to "notice" an appeal.

Defendants' second alleged statutory basis for appeal is Miss. Code § 11-51-81, which states that: "All appeals from **courts of justices of the peace, special and general, and from all municipal courts** shall be to the county court under the same regulations as are provided on appeals to the circuit court, but appeals from orders of the board of supervisors, municipal boards, and other tribunals other than courts of justice of the peace and municipal courts, shall be direct to

the circuit court as heretofore." *See Jones v. City of Ridgeland*, 48 So.3d 530 (Miss. 2010) (declaring that statute unconstitutional in part). This statute again fails to save the CCID court. This provision cited by Defendants applies to municipal courts, justices of the peace, and tribunals, and the CCID court is none of the above. Even if it were, a nondiscretionary right of appeal is only ever located in the originating statutes under Mississippi law, and the legislature deliberately excluded that right of appeal in H.B. 1020. *See also Alexander*, 441 So.2d at 1339 (citing *INS v. Chadha*, 462 U.S. 919, 944 (1983) ("The fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution.")

ii. Appeals by writ of certiorari are discretionary and so do not fix the constitutional infirmity.

Finally, Defendants point to the writ of certiorari under Miss. Code § 11-51-93 (providing for appeal of "all cases decided by a justice of the peace") and § 11-51-95 (defining appellate procedures for "like proceedings as provided in Section 11-51-93") to the circuit court. That argument fails for the simple reason that the writ of certiorari is discretionary. "Because a petition for a writ of certiorari is a form of discretionary review, it is not the equivalent of a statutory right of appeal and is not a full, plain, complete, and adequate remedy at law." *Mississippi Div. of Medicaid v. Alliance Health Center*, 174 So.3d 254 (Miss. 2015). It is not enough that the circuit court has discretion to hear an appeal if it wants—the appeal must exist as of right.

Nor can Defendants point to a possible writ of certiorari to the chancery court as a substitute. Cf. *Mississippi Div. of Medicaid*, 174 So.3d 254 (Miss. 2015). That is because the chancery court does not have authority over misdemeanor prosecutions which will be heard by the CCID court. *See* Miss. Const. § 159 (describing the jurisdiction of the chancery court). Even if this

Court could read into H.B. 1020 a right of appeal to the chancery court, that appeal would be to a court without jurisdiction to hear it.

If the legislature wanted to provide for an appropriate right of appeal, it could have done so. But it did not, and the CCID court must therefore be enjoined. Otherwise, if this Court finds that the CCID court is inferior, it must clarify that a nondiscretionary right of appeal to an appropriate superior court exists to ensure that litigants are not deprived their constitutional rights.

II. PLAINTIFFS SATISFY THE OTHER REQUIREMENTS FOR PRELIMINARY INJUNCTIVE RELIEF – THEY WILL SUFFER IRREPARABLE INJURY THAT OUTWEIGHS ANY THREATENED HARM TO DEFENDANTS, AND AN INJUNCTION IS IN THE PUBLIC INTEREST.

Consistent with precedent, the court notes in its order that "the violation of constitutional rights asserted, if proven, would be irreparable harm." Dkt. 34. Constitutional violations "for even minimal periods of time[] unquestionably constitute irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1975). The threat of irreparable harm justifies a preliminary injunction in this case.

Plaintiffs have established that an injunction in this case will serve the public interest. Defendants cite no authority contradicting the fact that "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Campaign for S. Equal. v. Miss. Dep't of Hum. Servs.,* 175 F. Supp. 3d 691, 711 (S.D. Miss. 2016); *see also Littleton v. McAdams,* 60 So.3d 169, 171 (Miss. 2011) (finding it in the public interest to enjoin a city attorney from holding office because doing so "prevented [the official] from illegally taking actions on the city's behalf"). Defendants instead rely on the assertion that their disregard of the constitution is justified by overcrowded criminal dockets in Hinds County. This assertion is legally flawed, because Defendants can address overcrowded dockets without violating the Mississippi Constitution. It is also factually flawed because this record does not show that Hinds County criminal dockets are significantly more overcrowded than those in other counties in Mississippi.

The Defendants also argue that an injunction should be denied in the public interest because it might call into question the past rulings of temporary special circuit judges appointed under § 9-1-105(2). That consideration, however, only reinforces why an injunction *should* be granted here. If the Mississippi Constitution forbids appointment of circuit judges by the Chief Justice, it cannot serve the public interest to have a new set of unlawfully appointed judges issue still more rulings while this case is pending. Instead, Defendants' concern about potential attacks on the rulings of such judges is a strong argument for an injunction to forestall further rulings that will be subject to those concerns.

III. THIS COURT HAS SUBJECT MATTER JURISDICTION.

A. Plaintiffs Have Standing As Voters To Challenge Unconstitutional Judicial Appointments.

Plaintiffs have standing when they suffer an adverse impact from the action they are challenging. *Reeves v. Gunn*, 307 So.3d 436 (Miss. 2020). H.B. 1020 would deny the Plaintiffs the right to vote for the persons who exercise authority as circuit and chancery judges in Hinds County, a right expressly guaranteed by Section 153 of the Mississippi Constitution. Again, the denial of a constitutional right, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). This is especially true of the right to vote, which is "preservative of all rights." *Yick Wo v. Hopkins,* 118 U.S. 365, 370 (1886); *see also Evans v. Cornman,* 398 U.S. 419, 422 (1970).

To argue that H.B. 1020 does not deprive Plaintiffs of any personal right or freedom guaranteed by the Mississippi Constitution, the state engages in wordplay. It contends that Section 153, in providing that chancery and circuit judges shall be "elected by the people," creates no personal rights but instead speaks solely to "the administrative functioning of the judicial branch of state government." Opp. at 20. This is specious. Under this logic, there would be no right

implicated if the legislature abolished all elected circuit court judges in Hinds County. After all, this too would affect "the administrative functioning of the judicial branch of state government." Rights cannot be made to disappear by such sleight of hand.[4]

Indeed, there is no question that voters have standing to challenge the elimination of elected positions, *see Allen v. State Bd. of Elections*, 393 US 544, 560-70 (1969), or discriminatory appointment systems, *see Turner v. Fouche*, 396 U.S. 346 (1970); *Searcy v. Williams*, 656 F.2d 1003, 1007 (5th Cir. 1981). For the same reasons, Plaintiffs have standing to challenge Miss. Code § 9-1-105(2), and H.B. 1020's judicial appointments and CCID court. Plaintiffs here have standing because they suffer a personal, actionable injury by being deprived of rights guaranteed by the Mississippi Constitution—in particular, the right to elect judges to the circuit court, absent a narrow exception. It is no answer that the legislature has chosen to deny Plaintiffs' rights with respect to *some* judges on the Hinds County Circuit Court—approximately half—rather than all of them. Surely, if the legislature provided that only one of the two United States Senators were elected (and the other appointed), Plaintiffs would have standing to challenge that law. Here, the constitutional injury likewise gives Plaintiffs standing to seek redress in this Court.

B. Plaintiffs Have Standing As Taxpayers To Challenge An Illegitimate Court and Unconstitutional Judicial Appointments.

Plaintiffs also have standing as taxpayers. Defendants claim that taxpayer standing is not available because plaintiff-taxpayers are situated no differently than other taxpayers across Mississippi. Opp. at 8. But that is not the legal standard. Indeed, standing in Mississippi remains liberal, and that is especially true of taxpayer standing. *Prichard v. Cleveland*, 414 So.2d 729

[4] To the extent the state argues that the Mississippi Constitution does not, in fact, establish a right to vote for chancery and circuit court judges, that is an argument about the merits and is not to be resolved on standing grounds.

(Miss. 1975); *Canton Farm Equipment, Inc. v. Richardson*, 501 So.2d 1098 (Miss. 1987). The purpose of taxpayer standing under Mississippi law is to allow taxpayers to challenge unconstitutional or unauthorized legislative appropriations. *City of Picayune v. S. Reg'l Corp.*, 916 So.2d 510, 526 (Miss. 2005) (confirming "different standing requirements are accorded to different areas of the law"). That is what Plaintiffs seek to do here.

Even accepting Defendants' standard, Plaintiffs still meet that bar. This is because Plaintiffs are situated differently than other Mississippi taxpayers. *See Pascagoula*, 91 So.3d 598, 604 (granting taxpayer standing because the law "affects the rights of all taxpayers in [a particular] county"). Plaintiffs are situated differently for two reasons. First, Plaintiffs are Hinds County taxpayers whose tax dollars flow directly into the Jackson-only CCID Project Fund. *See* H.B. 1020 §9(1)(c) (providing that "nine percent of total sales tax revenue . . . on business activities within the corporate limits of the City of Jackson . . . shall be deposited into the [CCID] Project Fund."); Miss. Code § 29-5-215 (describing the fund).[5] On information and belief, those funds will be used to finance the illegal CCID court and illegal appointments to the Hinds County Circuit Court in Jackson (of course, for purposes of ruling on the Attorney General's Motion to Dismiss, the allegations contained in Plaintiffs' Complaint must be accepted as true). By its plain text, H.B. 1020 uses local taxpayer dollars to finance this constitutional deprivation. The state cannot sidestep the doctrine of taxpayer standing by routing tax revenues from Hinds County taxpayers (collected to deprive Plaintiffs of their rights) through the state general fund. That would permit the state to close the courthouse doors with little more than a financing trick, and that is not the law.

[5] To the extent that Defendants dispute this financing process, that is a matter for discovery—not a reason to dismiss the lawsuit. Regarding a motion to dismiss on standing grounds, factual allegations in the complaint "must be taken as true." *Rose v. Tullos*, 994 So.2d 734, 737 (Miss. 2008).

Second, Plaintiffs are Hinds County residents who live in the county where the illegal CCID court will exercise jurisdiction. Accordingly, Plaintiffs suffer harm under H.B. 1020 that is not shared by voters elsewhere. Indeed, Plaintiffs here are not merely residents of Hinds County; they are also qualified electors and registered voters. The legislature has singled out Hinds County voters for disrespect by denying them the right to vote for judicial officers—a right enjoyed by all other Mississippians—and by enacting an illegal court with jurisdiction in the county where they live. That is part of what makes H.B. 1020 so insidious. *See Apache Bend Apts., Ltd. v. United States*, 964 F.2d 1556, 1561 (5th Cir. 1992) ("When a plaintiff alleges that he has been personally denied equal treatment — that he has been denied a particular benefit accorded to others who are similarly situated — he has alleged an equal protection injury.") (cleaned up).

While taxpayers in other counties receive the benefit of legitimate courts, misdemeanor judges appointed by local elected officials, and duly elected circuit court judges, residents of Hinds County receive something very different for their tax dollars. They alone are the recipients of the one-of-a-kind CCID court where misdemeanor offenders face state prison and the judge is appointed by the Chief Justice (who, although elected, is chosen by people outside the CCID, owes not duty to any municipality, and has no particular obligation to those appearing in the CCID court). Hinds County taxpayers alone receive a circuit court where half of the judges are appointed rather than elected.

This nexus between the taxes paid by Plaintiffs and the local harm is consistent with several cases finding taxpayer standing. *See, e.g., State v. Quitman County*, 807 So.2d 401 (Miss. 2001) (finding taxpayer standing where the state required the county to fund the representation of indigent criminal Defendants and refusing to require plaintiffs to themselves use state-funded representation). By contrast, Defendants cite only three cases, and all three are unavailing. The

first involves a tax break to a company that the plaintiff alleged may have indirectly raised her own taxes. *Doss v. Claiborne Cty. Bd. of Supervisors*, 230 So.3d 1100, 1105 (Miss. Ct. App. 2017) (alleging possible downstream harm from a corporate tax *break* rather than an actual tax increase, and alleging no harm caused by the company). By contrast, here, taxes paid by Plaintiffs will finance a scheme that violates the constitution. The other two cases Defendants cite actually *found* taxpayer standing. *Araujo v. Bryant,* 283 So.3d 73 (Miss. 2017) (finding standing); *Pascagoula-Gautier Sch. Dist. v. Bd. of Supervisors of Jackson County,* 212 So.3d 742, 749 (Miss. 2016) (same). Likewise, the court should find taxpayer standing here.

C. This Court Has Subject Matter Jurisdiction Over This Claim.

The Chancery Court is a constitutional court with full power to decide this issue. Chancery Courts "shall have full jurisdiction" over "all matters in equity" and "all cases of which the said court had jurisdiction under the laws in force when this Constitution is put in operation." Miss. Const. §159. That covers this case. Statutes confirm this: "[a]ny person having a claim against the State of Mississippi . . . may, where it is not otherwise provided, bring suit therefor against the state, in the court having jurisdiction of the subject matter which holds its sessions at the seat of government." Miss. Code § 11-45-1. Even the State of Mississippi's own website confirms that "Chancery Courts have jurisdiction over . . . challenges to [the] constitutionality of state laws."[6]

Defendants make a sweeping claim that this court cannot enjoin the Chief Justice or orders of the Supreme Court, but they cite no authority at all. The only authority they cite—Miss. Const. § 159, which gives this Court power over "all cases in equity"—suggests the opposite. Indeed, they barely make an argument. After all, if this court is powerless to review the constitutionality

[6] State of Mississippi Judiciary, Administrative Office of the Courts, *About the Courts* (last accessed May 7, 2023), https://www.courts.ms.gov/aboutcourts/aboutthecourts.php.

of this statute, then what court can provide relief? If no lower state court has power to review an unconstitutional law (particularly when that law commands the Supreme Court or one of its Justices to take an illegal action) judicial review would be hollow. That would hobble not only the authority of this Court, but the authority of the entire state judiciary. What's more, Defendants' position would mean that laws commanding the Supreme Court to take actions beyond what is authorized by the Mississippi Constitution are unreviewable, and that cannot be the case.[7]

IV. THE STATE'S ATTACKS ON JACKSON ARE FACTUALLY WRONG, LEGALLY IRRELEVANT, PATERNALISTIC, AND DEMEANING.

Defendants also use their opposition brief to insult the people of Jackson. They call on this Court to take "judicial notice" that the City of Jackson is affected by "violent crime," "crises of leadership," "urban blight," "ubiquitous potholes," (Opp. at 19) and a "backlog of criminal cases" (*id*. at 20) that supposedly can only be addressed by denying Hinds County citizens the right to vote for circuit judges. Plaintiffs urge the Court to reject this effort to demean the people of this city and county.

The function of judicial notice is not to provide license for sweeping condemnations of disfavored citizens or perceived political foes, unsupported by any facts of record. The kinds of facts subject to judicial notice under Miss. R. Evid. 201(b) are those "not subject to reasonable dispute" because they are "generally known" or "capable of accurate and ready determination by

[7] Courts regularly issue injunctions in similar circumstances. *See, e.g., League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 837 (5th Cir. 1993) (properly suing a judge to challenge the lawfulness of a state statute); *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003) (properly suing and enjoining the Chief Justice of Alabama for unlawfully exercising his duties); *Amato v. Wilentz*, 952 F.2d 742, 744 (3rd Cir. 1991) (properly suing the Chief Justice regarding the administration of his duties); *Opala v. Watt*, 454 F.3d 1154, 1155 (10th Cir. 2006) (properly suing the Chief Justice regarding an allegedly unconstitutional practice); *Abrahamson v. Neitzel*, 120 F. Supp. 3d 905, 910 (W.D. Wis. 2015) (properly suing a judge about the interpretation of a statute regarding judicial duties).

resort to sources whose accuracy cannot reasonably be questioned."[8] No such showing supports the Defendants' demand for judicial notice here. To the contrary, their vilification of Jackson misrepresents the facts. To take just one example, Defendants ask for judicial notice that Hinds County requires additional unelected judges because of its unique backlog of criminal cases. Opp. at 14. But MEC data suggests that the backlog in Hinds County is comparable to or smaller than backlogs in other jurisdictions across the state.[9]

More importantly, Defendants' disapproval of the management of Jackson's affairs is legally irrelevant to the constitutional issues presented here. The legislature cannot disregard the mandates of the Mississippi Constitution merely because it thinks that the city would be better off with judges appointed by the Chief Justice rather than elected by the people. The Court "must enforce the articles of the Constitution as written." *Pro-Choice Miss. v. Fordice*, 716 So.2d 645, 652 (Miss. 1998); *accord, In re Initiative Measure No. 65 v. Watson*, 338 So.3d 599 (Miss. 2021). Any concerns about the capacity of the courts can be addressed by means consistent with the Constitution: the legislature may adjust the number of *elected* judges under Miss. Code § 9-7-3(3), or provide for special masters to assist with case management, *Sullivan v. Maddox*, 283 So.3d 222,

[8] Judicial notice may be taken, for example, that "a certain town or city is within a certain county," *Jackson v. State*, 556 So.2d 335, 336-37 (Miss. 1990), or of the fact that 11:00 p.m. does not occur "in the daytime" within the limitations of a search warrant, *Strange v. State*, 530 So.2d 1336, 1339 (Miss. 1988), and the like.

[9] Mina Corpuz, *Does a backlog in Hinds County courts justify appointing five judges? Other counties could be far worse,* MISSISSIPPI TODAY (March 6, 2023), available at https://mississippitoday.org/2023/03/06/hinds-county-court-backlog-docket/. MEC data suggests that the Seventh Circuit Court District, including Hinds County, has 627 pending cases per judge while the First Circuit Court District has 2,130 pending cases per judge – more than three times the backlog in Hinds County.

238 (Miss. Ct. App. 2019). What it may not do is deprive the people of Hinds County of their constitutional right to elect the judges of the circuit courts.

Accordingly, Plaintiffs' Motion for a Preliminary Injunction should be GRANTED in full and the Attorney General's Motion to Dismiss should be DENIED.

RESPECTFULLY SUBMITTED, this 9th day of May, 2023.

*/s/ Cliff Johnson_*

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CERTIFICATE OF SERVICE

I, Cliff Johnson, attorney for Plaintiffs, do hereby certify that I have this day filed the foregoing document with the Court's electronic case filing system, which sent a true and correct copy to all counsel of record.

Dated: May 9, 2023

/s/ Cliff Johnson
Cliff Johnson