

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

ANN SAUNDERS; SABREEN SHARRIEF;
and DOROTHY TRIPLETT

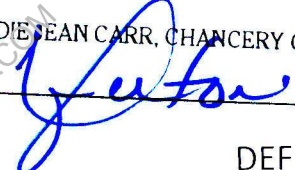
PLAINTIFFS

VS.

CIVIL ACTION NO. G2023-421 T/1

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

FILED
MAY 15 2023

EDDIE JEAN CARR, CHANCERY CLERK
BY  D.C.

DEFENDANTS

AND

STATE OF MISSISSIPPI *EX REL.*
ATTORNEY GENERAL LYNN FITCH

DEFENDANT-INTERVENOR

**MEMORANDUM OPINION AND FINDINGS OF FACT AND CONCLUSIONS OF LAW
DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND
SUPPORTING MEMORANDUM [MEC # 10] AND GRANTING STATE OF MISSISSIPPI
EX REL. ATTORNEY GENERAL LYNN FITCH'S MOTION TO DISMISS [MEC # 39],
DISMISSING PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF [MEC #2] AND DISMISSING PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION AND SUPPORTING MEMORANDUM [MEC #10] AND DISMISSING
PLAINTIFFS' AMENDED COMPLAINT FOR DECLARATOROY AND INJUNCTIVE
RELIEF [MEC #68]**

BEFORE THIS COURT is the Plaintiffs' *Motion for Preliminary Injunction and Supporting Memorandum* [MEC #10], the *State of Mississippi Ex Rel. Attorney General Lynn Fitch's Response in Opposition to Plaintiffs' Motion for Preliminary Injunction and Supporting Memorandum* [MEC #10] [MEC #29], the *State of Mississippi Ex Rel. Attorney General Lynn Fitch's Motion to Dismiss* [MEC #39], the *Memorandum of Authorities in Support of State of Mississippi Ex Rel. Attorney General Lynn Fitch's Motion to Dismiss* [MEC #40], the *State of Mississippi Ex Rel. Attorney General Lynn Fitch's Proposed Findings of Fact and Conclusions of Law* [MEC #46], the *Reply to State of Mississippi Ex Rel. Attorney General Lynn Fitch's Response in Opposition to Plaintiffs' Motion for Preliminary Injunction and Response to Motion to Dismiss* [MEC #48], the *Plaintiffs' Proposed Findings of Fact* [MEC #49] and *Plaintiffs' Supplemental Memorandum in Support of Motion for Preliminary Injunction and Withdrawal of Claim for Relief* [MEC #60]. This Court held full hearing on the matter on May 10, 2023, allowing all testimony and argument in support of and in opposition thereto. After careful consideration of all pleadings filed, all argument and testimony offered at hearing, as well as all relevant case and statutory law, this Court now renders its *Memorandum Opinion and Findings of Fact and Conclusions of Law* as follows:

I.
JURISDICTION

This Court finds that it has personal jurisdiction over the parties and subject matter jurisdiction of this action pursuant to Miss. Code Ann. Sections 9-5-81 and 11-45-1, and Mississippi Constitution Article VI, Section 159. This Court further finds that jurisdiction and venue are proper in this Court as Plaintiffs challenge the constitutionality of Mississippi statutory law, specifically House Bill 1020 and Section 9-1-105(2) of Miss. Code Ann., as amended, March 19, 2018.

II.
PROCEDURAL HISTORY

This lawsuit arises out of the controversial and much-publicized enactment of House Bill 1020 ("HB1020"), which was signed into law by the Governor of the State of Mississippi, the Honorable Tate Reeves, on April 21, 2023. On April 24, 2023, Plaintiffs herein instituted the current action by filing the *Complaint for Declaratory and Injunctive Relief* [MEC #2] challenging the constitutionality of HB1020; specifically, Plaintiffs object to the appointment of temporary special circuit judges under the act, the creation of a new inferior court ("the CCID court"), and the diversion of certain sales tax revenue from financial transactions conducted within the city limits of Jackson to the CCID Project Fund. In addition, Plaintiffs challenge the constitutionality of Section 9-1-105(2) of the Mississippi Code Annotated which grants the Chief Justice of the

Mississippi Supreme Court authority to appoint special judges by temporary appointment. On April 26, 2023, Plaintiffs filed their *Motion for Preliminary Injunction and Supporting Memorandum* [MEC #10].

Plaintiffs instituted this action against the 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. On April 26, 2023, the *State of Mississippi Ex Rel. Attorney General Lynn Fitch's Motion for Leave to Intervene to Argue Constitutionality of 2023 H.B. 1020 and Miss. Code Ann. § 9-1-105(2)* [MEC #11] was filed. Thereafter, all parties agreed and an *Agreed Order Granting State of Mississippi Ex Rel. Attorney General Lynn Fitch's Motion for Leave to Intervene to Argue Constitutionality of 2023 H.B. 1020 and Miss. Code Ann. § 9-1-105(2)* was signed and entered allowing intervention.

On May 2, 2023, this Court held a status conference on the record in open court; counsel for all parties were present in attendance. At said conference, this Chancellor advised all counsel of potential conflicts concerning his hearing of this matter. Specifically, this Chancellor advised counsel that he had actively objected to the original proposed HB1020, including signing a public statement with other Hinds County judges challenging the constitutionality of the same. This Chancellor further disclosed his personal friendship with certain parties and counsel involved. In closing, this Chancellor indicated that all parties should consider the same and determine whether a recusal was desired. On May 3, 2023, each party individually filed their

Notice Regarding Judicial Assignment [MEC #21, 22, 23, 24 and 25] seeking to have this Chancellor retain assignment and hear this matter despite the full disclosures presented. On that same date, Plaintiffs filed their *Motion for Leave to Amend Complaint and Add Additional Parties* [MEC #26] to which Defendants objected. On May 10, 2023, this Court entered its *Order Allowing Plaintiffs to Amend Their Complaint to Add Defendants* [MEC #58]. On May 12, 2023, Plaintiffs filed their *Amended Complaint for Declaratory and Injunctive Relief* [MEC #68].

On May 4, 2023, this Court held hearing on the matter; the Court expressed its concerns regarding the voluminous filings made late on May 3, 2023, and the extreme importance of understanding such filings. At the conclusion of hearing, the Court entered its *Preliminary Injunction Temporarily Restraining Effectuation of Provisions of House Bill 1020* [MEC #34]. The same stayed the provisions of HB1020 until a full hearing on the matter could be had on May 10, 2023. On May 10, 2023, this Court held full hearing on all issues in this matter, including motions by Defendant Randolph and Defendant Wallace seeking dismissal from the action. On May 11, 2023, this Court entered its *Memorandum Opinion and Findings of Fact and Conclusions of Law Granting Motion to Dismiss Zack Wallace as a Defendant* [MEC #42] [MEC #61] and the corresponding *Final Judgment* [MEC #62]. This Court determined that Defendant Wallace was not a necessary and proper party. This Court further determined that it had granted Plaintiffs' *Motion* seeking to amend and add the proper Plaintiffs, thereby providing the proper avenue for relief. The Court also entered its *Memorandum Opinion and Findings of Fact and Conclusions of Law Granting Motion to Dismiss on Behalf of Defendant, Honorable Michael*

K. Randolph, In His Official Capacity as Chief Justice of the Mississippi Supreme Court [MEC #16] [MEC #63] and the corresponding *Final Judgment* [MEC #64]. This Court determined that the appointment of special judges is a judicial act under Mississippi law and that the same is thereby entitled to judicial immunity. Finding that the actions for which Plaintiffs sought relief from the Chief Justice were covered by judicial immunity, this Court dismissed Defendant Randolph.

III.
FINDINGS OF FACT

On April 21, 2023, Governor Tate Reeves signed into law HB1020. Among other things, HB1020 requires the Chief Justice of the Mississippi Supreme Court to appoint four (4) temporary special circuit judges for the Hinds County Circuit Court. 2023 H.B. 1020, § 1(1). HB1020 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 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). HB1020 further provides that the 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). Section 1 of HB1020 also provides that “[t]he Administrative

Office of Courts shall establish personnel policies to compensate the support staff for each temporary special circuit judge.” Section 15 of HB1020 provides that “[t]he Chief Justice of the Supreme Court, in consultation with the Administrative Office of Courts shall appoint a court administrator whose primary duty is to manage the caseload of the special judges appointed in Section 1 of this act. The Chief Justice of the Supreme Court, in consultation with the Administrative Office of Courts, shall set the compensation for the court administrator authorized in this section.”

Section 4 of HB1020 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 the creation of the CCID court, HB1020 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 [HB1020, § 4].” Id. § 4(2). The CCID “judge shall possess all qualifications required by law for municipal court judges.” Id. § 4(2). Section 4 of HB1020 requires the AOC to pay the judge for the new CCID court as well as the judge’s staff: “The Administrative Office of Courts shall provide compensation for the CCID inferior court judge and the support staff of the judge.” Section 6 of HB1020 provides that “[t]he Administrative Office of Courts shall provide support staff and any other staff necessary to carry out the functions and duties for the clerk of the CCID inferior court.” Section 6 of HB1020 also requires the AOC to provide compensation to CCID court staff: “The Administrative Office of Courts shall pay the salaries of the clerk and support staff of the CCID, subject to available funds specifically appropriated by the Legislature for such purpose. Such salaries shall not be in amounts less than the salaries paid to the clerk and staff of the municipal courts in the City of Jackson.” Except as otherwise provided in HB1020, its provisions “shall take effect and be in force from and after July 1, 2023.” Id. § 18.

Section 9 of HB1020 provides for a portion of sales tax revenue from financial transactions conducted within the city limits of Jackson to be diverted to the CCID Project Fund: “On or before August 15, 2023, and each succeeding month thereafter, nine percent (9%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within the corporate limits of the City of Jackson, Mississippi, shall be deposited into the Capitol Complex Improvement District Project Fund created in Section 29-

5-215.” Some or all of the funding for compensation of the special temporary judges appointed to the Hinds County Circuit Court, their staff, and court administrator will come from the CCID Project Fund. Some or all of the general operating funds for the new CCID court, compensation of the judge appointed to the CCID court, compensation of staff members, and compensation of the CCID court clerk and personnel will come from the CCID Project Fund. Some or all of the funding for compensation of the special temporary judges appointed to the Hinds County Circuit Court, their staff, and court administrator will come from money appropriated by the Legislature from Mississippi’s general fund. Some or all of the general operating funds for the new CCID court, compensation of the judge appointed to the CCID court, compensation of staff members, and compensation of the CCID court clerk and personnel will come from money appropriated by the Legislature from Mississippi’s general fund.

House Bill 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, which provides for judicial appointment of special judges. The current version of the pertinent statutory text of § 9-1-105 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, Mississippi Supreme Court 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. The orders appointing these temporary special circuit judges 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).

This action challenges the constitutionality of HB1020 and Mississippi Code Annotated Section 9-1-105(2) in light of 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 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]hensoever 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.

Plaintiff Ann C. Saunders is a 72-year-old African American resident of Jackson, where she has resided since approximately 2009. She is registered to vote in Hinds County, and she testified that she tries to vote in every election, including judicial elections for the Seventh District Circuit Court. Ms. Saunders owns her home in Jackson and pays property taxes on it. In addition, she owns a car, for which she pays an annual vehicle registration fee, and she regularly engages in business transactions in Jackson, on which she pays sales tax. Plaintiff Sabreen Sharrief is a 74-year-old African American resident of Jackson, where she has most recently resided since approximately 2010. She is registered to vote in Hinds County, and she testified that she tries to vote in every election, including judicial elections for the Seventh District Circuit Court. Mrs. Sharrief owns her home in Jackson and pays property taxes on it. In addition, she owns a car, for which she pays an annual vehicle registration fee, and she regularly engages in business transactions in Jackson, on which she pays sales tax. Plaintiff Dorothy C. Triplett is an 84-year-old white resident of Jackson, where she has resided since approximately 1987. She is registered to vote in Hinds County, and she testified that she tries to vote in every election, including judicial elections for the Seventh District Circuit Court. Ms. Triplett owns her home in Jackson and pays property taxes on it. In addition, she owns a car, for which she pays an annual vehicle registration fee, and she regularly engages in business transactions in Jackson, on which she pays sales tax. Plaintiffs are productive, engaged and

informed civically minded citizens who are actively involved in making their communities, city, and state a better place to live. As a result of Plaintiffs' participation in financial transactions within the city limits of Jackson—transactions that are subject to sales taxes—and their payment of Mississippi income and property taxes, money paid by Plaintiffs to the State of Mississippi will be used to fund the costs of judicial appointments to the Hinds County Circuit Court and the operation of the CCID court in Jackson.

The City of Jackson is the largest city in the State of Mississippi. It is the seat of State government and is home to the State Capitol, the Mississippi Supreme Court, the Mississippi Court of Appeals, numerous State agencies, multiple hospitals, and medical providers, museums, art centers, several universities, and a variety of retail and restaurant establishments.

IV.
ANALYSIS AND CONCLUSIONS OF LAW

A party seeking to have a statute declared unconstitutional in Mississippi has a heavy burden: he must prove that the statute is unconstitutional "beyond a reasonable doubt." *Cities of Oxford, Carthage, Louisville, Starkville, & Tupelo v. Northeast Mississippi Elec. Power Ass'n*, 704 So.2d 59, 65 (Miss.1997). This Court's consideration of HB1020, and Miss. Code Ann. §9-1-105(2), is extremely limited in this action. This Court may not consider whether the Act is proper or improper, beneficial or detrimental, wise or unwise. "In

determining whether an act of the Legislature violates the Constitution, the courts are without the right to substitute their judgment for that of the Legislature as to the wisdom and policy of the act and must enforce it, unless it appears beyond all reasonable doubt to violate the Constitution." *State v. Bd. of Levee Comm'rs*, 932 So.2d 12, 19 (Miss.2006) (*citations omitted*). This Court is keenly aware of Plaintiffs' frustration with the method by which HB1020 has been passed. The Court notes that the actions of many Mississippi Legislators have been severely criticized for lack of consideration of the desires of the citizens of the City of Jackson and Hinds County in pursuing the same. The Court is cognizant of the cries of Plaintiffs, and numerous others, that the legislation is based on unfair and even racially motivated attempts to take over the Capitol City. As a lifelong citizen of Hinds County and a lifelong friend and neighbor of many of those decrying the same, this Chancellor is not unmoved. However, Mississippi law is clear that this Court may not consider the motivation for the legislation or its policy. Similarly, this Court may not consider the purported effects of the legislation as submitted by Defendants.

Defendants make assertions of a quicker disposition of criminal and civil cases, assurances of a decrease in criminal activity within the Capitol City, and general improvement in all areas for the Capitol City and State of Mississippi. However, the Court may not consider Defendants' allegations with regard to the purported motivation and policy of the challenged legislation either. As a sworn officer of this Court's judiciary, this Chancellor

must restrain his consideration of the challenged legislation to the limited inquiry of whether this Court can find, beyond a reasonable doubt, that the provisions violate the Mississippi Constitution.

In order for Plaintiffs to prevail in this action, they must demonstrate that HB1020 and Miss. Code Ann. §9-1-105(2) are in direct conflict with the "clear language of the constitution." *PHE, Inc. v. State*, 877 So.2d 1244, 1247 (Miss. 2004). To invalidate these provisions, this Court must find beyond a reasonable doubt that the Mississippi Legislature acted outside its authority and that the same are in direct violation with the Mississippi Constitution. "[T]o state that there is doubt regarding the constitutionality of an act is to essentially declare it constitutionally valid." *Moore v. Bd. of Supervisors of Hinds County*, 658 So.2d 883, 887 (Miss.1995). This Court cannot find that Plaintiffs herein have proven unconstitutionality beyond a reasonable doubt.

Standing

"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). Defendants

assert that Plaintiffs lack standing to advance any of the claims contained within their pleadings. This Court has cautiously considered this argument. However, as expressed at hearing, this Court finds that a matter of such great importance to all citizens of the City of Jackson, Hinds County, and the State of Mississippi must be open to judicial scrutiny.

"[C]itizens should have the authority to challenge the constitutionality and/or review of governmental action" when there is no other way to raise constitutional conflicts or no probability that the class injured by the unconstitutional act would bring suit. *Reeves v. Gunn*, 307 So. 3d 436, 445 (Miss. 2020)(citing *Van Slyke v. Bd. of Trs. of State Ins. of Higher Learning (Van Slyke II)*, 613 So.2d 872, 875 (Miss. 1993 (quoting *Van Slyke I*, 510 So. 2d at 497 (Prather, J., dissenting))). In *USPCI of Mississippi v. State ex rel. McGowan*, 688 So.2d 783, 789 (Miss. 1997), the Mississippi Supreme Court held that "the `standing' requirement . . . allow[s] a private citizen to challenge governmental actions contrary to law where the actions would otherwise escape challenge. . ." See also *Green v. Cleary Water, Sewer Fire Dist*, 17 So. 3d 559, 569 (Miss. 2009). Plaintiffs herein are situated differently than other Mississippi taxpayers and should be permitted to challenge the governmental actions that directly affect them as such, especially when such actions would otherwise escape challenge. See *Pascagoula Sch. Dist. v. Tucker*, 91 So.3d 598, 604 (Miss. 2012) (granting taxpayer standing because the law "affects the rights of all taxpayers in [a particular]

county”). For these reasons, the Court denies Defendants’ request to dismiss based on lack of standing.

Preliminary Injunction

Mississippi Rule of Civil Procedure 65 does not prescribe the circumstances in which a preliminary injunction or temporary restraining order may be granted; the grant or denial of injunctive relief remains a matter for the trial court’s discretion, exercised in conformity with traditional equity practice. See V. Griffith, *Mississippi Chancery Practice*, § 442 (2d ed. 1950). However, Mississippi case law has provided guidance in the consideration of injunctive relief. This Court must balance the equities and make four (4) findings: (1) there exists a substantial likelihood that the Plaintiffs will prevail on the merits; (2) the injunction is necessary to prevent irreparable harm; (3) threatened injury to the Plaintiffs outweighs the harm an injunction might do to the Defendants; and (4) entry of a preliminary injunction is consistent with the public interest. *T.M.T., LLC v. Midtown Mkt. Wine & Spirits, LLC*, 310 So. 3d 1217, 1228 (Miss. Ct. App. 2021) *City of Durant v. Humphreys County Memorial Hospital/ Extended Care Facility*, 587 So. 2d 244 (Miss. 1991). See also *Hinton v. Rolison*, 175 So.3d 1252, 1259-60 (Miss. 2015); *Short v. Williams*, 303 So.3d 87, 94 (Miss.Ct.App. 2020). Plaintiffs bear the burden of proving each of these four (4) factors by a preponderance of the evidence. *Clark v. Wesley*, 305 So. 3d 182, 192 (Miss. Ct. App. 2020); *Lauderdale v. DeSoto County*, 196 So. 3d 1091, 1101 (¶130) (Miss. Ct. App.

2016). In the case at hand, the Court cannot find that Plaintiffs have proven each of these four (4) factors.

First, this Court cannot determine that there exists a substantial likelihood Plaintiffs will prevail on the merits. To prevail on the merits, Plaintiffs must prove that HB1020 and Miss. Code Ann. §9-1-105(2) are unconstitutional "beyond a reasonable doubt." *Cities of Oxford, Carthage, Louisville, Starkville, & Tupelo v. Northeast Mississippi Elec. Power Ass'n*, 704 So.2d 59, 65 (Miss.1997). "[T]o state that there is doubt regarding the constitutionality of an act is to essentially declare it constitutionally valid." *Moore v. Bd. of Supervisors of Hinds County*, 658 So.2d 883, 887 (Miss.1995). Legislative enactments carry a strong presumption of validity; all doubts must be resolved in favor of the statute's constitutionality. *Loden v. Miss. Pub. Serv. Comm'n*, 279 So.2d 636, 640 (Miss.1973). And, "[i]f possible, courts should construe statutes so as to render them constitutional rather than unconstitutional if the statute under attack does not clearly and apparently conflict with organic law..." *Id.* (citing *Bd. of Educ. v. State Educ. Fin. Comm'n*, 243 Miss. 782, 138 So.2d 912 (1962)).

Judicial Appointments

This Court cannot find that the judicial appointment provisions of HB1020 and Miss. Code Ann. §9-1-105(2) violate the Mississippi Constitution. Section 153 of the Mississippi Constitution provides that "The judges of the circuit . . . courts shall be elected by the people in a manner and 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]henver 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. Plaintiffs maintain that these two (2) constitutional provisions preclude the appointment of judges by the Chief Justice of the Mississippi Supreme Court and preclude any appointment of judges for reasons other than disqualification or disability. This Court cannot so find.

In considering a challenge to the constitutionality of Miss. Code Ann. §9-1-105, predicated on §165, the Mississippi Court of Appeals opined:

This provision does not state that it is the exclusive mechanism for selection of special judges. The provision itself first sets out another alternative, namely, that the parties agree on a member of the bar as a replacement. The Governor's authority is prefaced with the word "may," indicating that the executive has personal discretion or perhaps that the use of this procedure is optional as opposed to using some other feasible but unstated procedure. The statute allowing an appointment by the Chief Justice also provides that if the Governor makes an appointment under his authority, the Chief Justice's appointment becomes void. Miss. Code Ann. § 9-1-105 (4) (Supp. 2001). Thus the statute offers an explicitly subordinate alternative to the Governor's constitutional power

of appointment.

McDonald v. McDonald, 850 So. 2d 1182, 1187 (Miss. Ct. App. 2002). Stated differently, “Article 6 Section 165 of our constitution allows the governor to appoint a special chancellor if the original one is unable to preside but it is not ‘the exclusive mechanism for the selection of special judges.’ *McDonald v. McDonald*, 850 So.2d 1182, 1187 (¶ 13) (Miss.Ct.App. 2002). Mississippi Code Annotated Section 9-1-105 gives the Chief Justice of the supreme court, with the advice and consent of a majority of the justices, the express authority to appoint a person to serve as a special judge....” *Vinson v. Prather*, 879 So. 2d 1053, 1056 (Miss. Ct. App. 2004).

“A plain reading of the statute (§9-1-105) reveals that the Chief Justice's appointive powers are quite limited. Namely, any appointment made by the Chief Justice is void should the Governor thereafter exercise his constitutional and statutory appointive authority. Miss. Code Ann. § 9-1-105(4) (Rev. 1991). Even so, the authority of the Chief Justice of the Mississippi Supreme Court to make appointments, instead of the Governor, reflects nothing more than a slight shift in the appointive authority between the executive and judicial branches of government in Mississippi.” *Prewitt v. Moore*, 840 F. Supp. 428, 435 (N.D. Miss. 1993). Section 165 contemplates an alternative to gubernatorial appointments and the legislatively crafted appointment authority of the Chief Justice, created in §9-1-105, squarely fits within the permissive language of an alternative. The Mississippi Supreme Court has expressly held that “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). Therefore, absent a limitation within the

Mississippi Constitution, the Legislature has authority to extend appointment authority to the Chief Justice. *See Moore v. Grillis*, 39 So.2d 505, 509 (Miss. 1949).

In a similar manner, HB1020 allows the Chief Justice to exercise limited appointive authority for temporary special judges. 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). “[S]ection 9-1-105 does not provide for the creation of additional permanent judgeships. It allows for the appointment on an emergency basis. There has not been an increase or decrease in the number of judicial officials” *Prewitt v. Moore*, 840 F. Supp. 428, 435 (N.D. Miss. 1993). Similarly, HB1020 does not provide for the creation of additional permanent judgeships. It allows for the appointment on an emergency basis to assist in an overcrowded docket and it expires automatically on December 31, 2026.

Finally, the appointment of temporary special judges does not “dilute the power of the duly elected judges” as posited by Plaintiffs. Each elected permanent Circuit Court Judge in Hinds County will retain exactly the powers that he or she enjoyed prior to the enactment of the challenged laws. The appointment of temporary special judges will not impede or interfere with the full powers and authority that each of the elected permanent Circuit Court Judges in Hinds County enjoyed prior to the enactment of the challenged provisions.

Based on the foregoing, this Court cannot find that Plaintiffs will be able to prevail on the merits by proving, beyond a reasonable doubt, that HB1020 and §9-1-105(2) violate the

Mississippi Constitution. Instead, this Court must specifically find that Plaintiffs will be unable to demonstrate that either provision violates the Mississippi Constitution.

Creation of CCID Court

Plaintiffs further assert that Section 4 of HB1020 violates § 172 of the Mississippi Constitution which 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.” Plaintiffs maintain that the absence of statutory language expressly providing for a right of appeal removes the CCID Court from the category of an “inferior court”. “[W]hen the legislature creates a court and bestows jurisdiction upon it, that 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). Therefore, to withstand constitutional challenge, the CCID Court need only be inferior in ultimate authority to the constitutionally created Circuit Court.

HB1020 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. The provision further states that the CCID judge shall possess all qualifications required by law for municipal court judges and that his or her compensation shall not be in an amount less than the compensation paid to municipal court judges in the City of Jackson. The CCID Court expressly

has “jurisdiction to hear and determine all preliminary matters and criminal matters authorized by law for municipal courts.” Municipal courts are creatures of statute. See Miss. Code Ann. §21-23-1. 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”). Therefore, state law provides municipal court defendants with a right of appeal to the county court and ultimately to the circuit court. As the circuit court is a constitutionally-created court, municipal courts are “inferior courts” which enjoy a degree of concurrent jurisdiction with circuit courts. “Municipal courts are validly inferior courts.” *Miss. Judicial Performance Comm’n v. Thomas*, 549 So. 2d 962, 964 (Miss. 1989). 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. The lack of specific language regarding right of appeal within the four corners of HB1020, while perhaps not ideal, does not necessitate that there exists no right of appeal. Mississippi law “generally will read the statutes [, upon the same subject] together to interpret them harmoniously.” *Brown v. State*, 102 So. 3d 1087, 1092 (¶ 23) (Miss. 2012). Therefore, in the absence of specific language regarding the right of appeal contained with HB1020 itself, Mississippi law would read other applicable statutes concerning right of appeal together with HB1020 “to interpret the harmoniously”. Accordingly, this Court

cannot find that Plaintiffs will be able to prevail on the merits by proving, beyond a reasonable doubt, that the creation of the CCID Court by HB1020 violates the Mississippi Constitution.

Second, this Court finds that Plaintiffs have failed to prove that an injunction is necessary to prevent irreparable harm. Plaintiffs assert that they will suffer violations of their constitutional rights which will be irreparable. However, as set forth above, the challenged provisions are not unconstitutional in nature and thereby cannot create any violations of Plaintiffs' constitutional rights. As a lifelong resident of Hinds County and a faithful voter in local elections, this Chancellor is keenly aware of the Plaintiffs' expressed feelings regarding the appointment of special circuit court judges and the creation of a CCID Court. However, disappointment and frustration with the legislative process does not create a judicial right to relief. While the Court is sympathetic to the Plaintiffs' feelings, it cannot find that the same constitutes irreparable harm. Accordingly, Plaintiffs are unable to demonstrate irreparable harm and fail to satisfy this factor.

Next, this Court finds that the threatened injury to Plaintiffs does not outweigh the harm an injunction might do to Defendants. As set forth above, this Court specifically finds that Plaintiffs will suffer no real and present harm, entitled to legal relief, absent an injunction. Again, the Court acknowledges the frustration and disappointment of Plaintiffs; however, the same does not constitute harm in the sense required for injunctive relief. Defendants stand to suffer great harm should this Court improperly grant the injunctive relief sought. The challenged provisions constitute the duly-enacted legislation of the Mississippi Legislature, as elected by the people of

the State of Mississippi. The enjoining of effectuation of properly enacted legislation constitutes a significant harm to the state. Out of an abundance of caution, this Court temporarily stayed the effectuation of HB1020 in an effort to be fully apprised of all law and argument; however, this Court cannot extend such relief absent the demonstration of unconstitutionality. Therefore, the denial of an improper injunction will result in no real legally recognized damage to Plaintiffs as opposed to substantial harm to Defendants if the injunction was granted.

Finally, this Court finds that injunctive relief is not consistent with the public interest. The public interest is obviously served by providing safeguards for implementation of duly-enacted legislation. The public interest is also served by upholding and enforcing federal and state laws and regulations, specifically including those regarding the judiciary. In contrast, the public interest is not served by unnecessary and improper interference by the judicial branch of government into the purview of the legislative branch.

After careful consideration, this Court finds that Plaintiffs' claims fail on the merits. Plaintiffs are unable to prove, beyond a reasonable doubt, that the challenged provisions are unconstitutional; Plaintiffs are unable to demonstrate irreparable harm; Plaintiffs are unable to show that the harm to Plaintiffs outweighs any harm to Defendants; and Plaintiffs are unable to show that an injunction will serve the public interest. This Court is extremely mindful of the importance of this litigation and the impending deadlines for effectiveness of the legislation at issue. Therefore, this Court has acted expeditiously in its efforts to bring this matter to full

conclusion. This Court is also desirous that Plaintiffs herein be given every opportunity to pursue a meaningful appellate review of this Court's ruling prior to the legislation's effective date. To that end, and in accordance with Rule 65 of the Mississippi Rules of Civil Procedure, this Court "order[s] the trial of the action on the merits to be advanced and consolidated with the hearing of the application." Miss. R. Civ. P. 65. This Court finds that the Plaintiffs have failed to state a claim upon which relief may be granted in their *Motion for Preliminary Injunction and Supporting Memorandum* [MEC #10] as well as in the *Complaint for Declaratory and Injunctive Relief* [MEC #2] and *Amended Complaint for Declaratory and Injunctive Relief* [MEC #68].

Based upon the foregoing reasons, this Court hereby grants Defendants' *Motion* seeking dismissal and hereby denies all relief sought in Plaintiffs' *Complaint for Declaratory and Injunctive Relief* [MEC #2], *Motion for Preliminary Injunction and Supporting Memorandum* [MEC #10] and *Amended Complaint for Declaratory and Injunctive Relief* [MEC #68] and dismisses all in their respective entirety with prejudice. This matter is now fully ripe for appellate review. A separate order shall issue consistent herewith.

SO ORDERED, this the 15th day of May 2023.



J. DEWAYNE THOMAS, CHANCELLOR