

IN THE SUPREME COURT OF MISSISSIPPI**NO. 2023-TS-00584****ANN SAUNDERS; SABREEN SHARRIEF; and DOROTHY TRIPLETT,***Appellants*

v.

STATE OF MISSISSIPPI; STATE OF MISSISSIPPI *ex rel.* TATE REEVES, in his capacity as Governor of the State of Mississippi; STATE OF MISSISSIPPI *ex rel.* LYNN FITCH, in her capacity as Attorney General of the State of Mississippi; 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,

Appellees.

EMERGENCY MOTION FOR EXPEDITED CONSIDERATION

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EMERGENCY MOTION FOR EXPEDITED CONSIDERATION

Pursuant to Mississippi Rules of Appellate Procedure 23 and (2)(c),¹ Ann Saunders, Sabreen Sharrief, and Dorothy Triplett, plaintiffs in the Chancery Court of Hinds County, and Appellants in this Court, respectfully request expedited consideration of their appeal of (1) the lower court's final judgment entered in this case on May 15, 2023 (Dkt. #77²) interpreting Mississippi Constitution Article VI, Sections 159, 165, and 172; House Bill 1020; and Mississippi Code Section § 9-1-105(2); and (2) the final judgments of dismissal as to Defendants Randolph and Wallace entered on May 11, 2023. (Dkt. #62 and Dkt. #64). Expedited briefing and consideration of this appeal will allow for a decision to be issued prior to H.B. 1020 entering into effect on July 1, 2023, as provided in Section 18 of H.B. 1020. In support of this motion, appellants state as follows:

1. This case involves a matter of the utmost importance, involving the structure of Mississippi state government as established by the Mississippi Constitution. This Court has emphasized that:

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).

2. The people of Mississippi have elected their circuit court judges for more than 100 years because the Mississippi Constitution expressly requires as much. Section 153 of the

¹ MRAP 23 provides: "Except as may be provided by special order, all civil cases will be submitted in the order in which they stand on the docket." The comment to MRAP 23 anticipates that a "civil case may be expedited ... by special order." In addition, MRAP(2)(c) states: "In the interest of expediting decision, or for other good cause shown, the Supreme Court or the Court of Appeals may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction."

² Citations to "Dkt" are to the docket numbers of orders and pleadings filed in the Chancery Court. They are available on the Mississippi Electronic Court ("MEC") system.

Mississippi Constitution, adopted by referendum in 1910, requires that circuit court judges be elected by the people, rather than appointed: “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 and the judges shall hold their office for a term of four years.” (Emphasis added.)

3. Indeed, Mississippi was the first state to select all of its judges by election, establishing this in the Constitution of 1832. *See* Lenore L. Prather, *Judicial Selection: What is Right for Mississippi*, 21 Miss. C. L. Rev. 199, 203 (2001-2002). The Mississippi Constitution of 1868 reverted to appointment of state judges, but the citizens of Mississippi ultimately voted to return to electing their judges in a 1910 referendum establishing the current provisions for selection of judges. *Id.* at 203-204. Clearly, the decision whether to elect or appoint Mississippi’s judges has been considered so fundamental as to require determination in the Constitution itself – not by the legislature.

4. Article VI, § 165 of the Mississippi Constitution, entitled “Disqualification of Judges,” allows for the appointment of temporary judges *by the Governor*, but in very limited circumstances: “Whenever any judge of the Supreme Court or the judge or chancellor of any district in this State 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.*” (Emphasis added.)

5. In disregard of these clear commands of the Constitution, H.B. 1020, passed by the Legislature and signed into law by the Governor on April 21, 2023, provides in Section 1 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

and duties of the judges other than those provided by the Constitution and laws of this state.” The Seventh Judicial District includes the whole of Hinds County, a county whose population is 73% Black. H.B. 1020 does not deprive the voters of any other county of their ability to elect their circuit judges.

6. H.B. 1020 further provides that the term of the “temporary” special circuit judges “shall expire on December 31, 2026” – meaning that they will serve almost the entire term of a judge properly elected under the Constitution.

7. Section 4 of H.B. 1020 also establishes a new court in the City of Jackson to handle cases arising in the Capital Complex Improvement District (“the CCID court”) involving preliminary criminal matters, misdemeanor cases, and certain city ordinances. The judge overseeing that court will be appointed by the Chief Justice of the Mississippi Supreme Court. And unlike others convicted of misdemeanors in other courts throughout the state, those found guilty of misdemeanors in the CCID court can be sent to state prison. Moreover, H.B. 1020 provides no avenue for appeal or any other form of supervision by a constitutional court of the decisions and judgments of the CCID court. The CCID court is therefore not an “inferior court” and so is plainly unconstitutional under Section § 172 of the Mississippi Constitution.³

8. H.B. 1020 was signed into law on April 21, 2023, and plaintiffs-appellants promptly filed this lawsuit challenging its constitutionality three days later, on April 24, 2023. Dkt. 1, and presented expedited briefing, testimony, and argument in the Chancery Court to assure that

³ Plaintiffs-appellants have also challenged the appointment of four circuit judges for Hinds County on September 22, 2022, under the provisions of Miss. Code Ann. § 9-1-105(2), which grant the Chief Justice of the Mississippi Supreme Court authority to add special judges to a circuit court by temporary appointment “in the event of an emergency or overcrowded docket.” This appointment power, again, disregards the plain terms of § 165 of the Mississippi Constitution, which permits appointment of temporary judges only by the Governor, and only when a sitting circuit judge is “unable or disqualified” from sitting on a particular case.

the constitutionality of H.B. 1020 could be determined before any such appointments were made. They promptly filed their notice of appeal the day after the Chancery Court issued its judgment dismissing their case (Dkt. #77).

9. Through this motion, plaintiffs-appellants seek expedited filing of the designated record⁴ and an expedited briefing schedule that will permit this Court to rule upon the constitutionality of H.B. 1020 before July 1, 2023, when H.B. 1020 takes effect, or as soon thereafter as the Court deems feasible. Specifically, they propose the following schedule for briefing and consideration of this case:

May 31, 2023	Appellants file their opening brief
June 14, 2023	Appellees file their responsive briefs
June 19, 2023	Appellants file their reply brief
June 20-30, 2023	Argument and determination of the merits by this Court

10. Resolving this case prior to the July 1, 2023 effective date is not only important to preserve the rights of the plaintiffs-appellants, but also to protect against confusion and waste of public resources involved in establishing the administrative apparatus for judgeships that would then have to be undone if H.B. 1020 is determined to be unconstitutional. For example, Section 1 of H.B. 1020 provides for the hiring of support staff for each special judge: “[t]he Administrative Office of Courts shall establish personnel policies to compensate the support staff for each temporary special circuit judge.” Section 15 of H.B. 1020 also requires appointment of a court administrator to manage the caseloads of the special judges, providing that “[t]he Chief Justice of the Supreme Court, in consultation with the Administrative Office of Courts shall appoint a court

⁴ It is worth noting that the court reporter has already prepared transcripts of the hearings held in the court below.

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.”

11. Plaintiffs-Appellants are agreeable to a case schedule setting different deadlines, but request that any schedule permit this case to be taken under advisement for a decision prior to the July 1, 2023 effective date of H.B. 1020, or as soon thereafter as possible.

12. As noted above, this case presents an important issue of constitutional interpretation addressing the very structure of state government under our Constitution, and the right of the plaintiffs and other citizens of Hinds County to vote for their circuit judges as the Mississippi Constitution requires. 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).

13. Although the Chancery Court ruled that it was unable to find the challenged provisions here “unconstitutional beyond a reasonable doubt,”⁵ it also recognized “the importance of this litigation and the impending deadlines for effectiveness of the legislation at issue,” Dkt. 76,

⁵ The Chancery Court cited *State v. Bd. Of Levee Comm’rs*, 932 So.2d 12, 19 (Miss. 2006) for the “reasonable doubt” standard. But that very case establishes that the doctrine has important limits. After citing the “reasonable doubt” standard, the opinion states “Nonetheless, ‘no citation of authority is needed for the universally accepted principle that if there be a clash between the edicts of the constitution and the legislative enactment, the latter must yield.’” *Id.*, 932 So.2d at 26 (citing *Newell v. State*, 308 So.2d 71, 77 (Miss.1975)). This Court went on to find that the challenged legislation did, in fact, violate the plain language of the constitution, and struck it down. *Id.*, at 26-27. Here, too, the plain language of the constitution forbids what the legislature has done in H.B. 1020, and that important issue can only be decided by this Court.

at 24, and the need for “Plaintiffs herein to be given every opportunity to pursue a meaningful appellate review of this Court’s ruling prior to the legislation’s effective date.” Dkt. 76, at 25.

CONCLUSION

For the foregoing reasons, and any others apparent to the Court, Plaintiffs-appellants respectfully request that this Court establish a briefing schedule for this case that allows their appeal to be heard and determined prior to July 1, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing motion with the Clerk of the Court using the MEC system, which sent notification of such filing to all counsel of record.

I further certify that on this day I deposited a copy of the foregoing motion with the United States Postal Service, postage prepaid, for delivery to the following:

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This, the 19th day of May, 2023.

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