IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL. — **PLAINTIFFS**

VS. — **CASE NO. 3:23-cv-00272-HTW-LGI**

TATE REEVES, in his official capacity As Governor of the State of Mississippi, ET AL. — **DEFENDANTS**

STATE EXECUTIVE DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' RENEWED NECESSITOUS AND URGENT MOTION FOR A TEMPORARY RESTRAINING ORDER [DKT. #24]

INTRODUCTION

This Court should deny Plaintiffs' renewed motion for a temporary restraining order ("TRO") [Dkt. #24] seeking to halt an important provision of 2023 H.B. 1020 that authorizes the appointment of several temporary judges to enhance public safety and alleviate a dangerous strain on Hinds County's overburdened criminal-court system. Plaintiffs contend that H.B. 1020's judicial-appointment provision violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and seek immediate relief on that basis. Plaintiffs' TRO request fails for multiple independent reasons. Plaintiffs lack standing to obtain the extraordinary relief that they demand, their claim fails on the merits, and they flunk all remaining TRO requirements. Granting them relief would cause irreparable harm to the people of Mississippi by exacerbating the very public-safety and criminal-justice emergencies that the challenged law seeks to address.

To start, Plaintiffs have no basis to seek relief—especially extraordinary TRO relief—against the appointment provision because they have failed to establish that the provision will ever harm them. None of the individual plaintiffs has shown that he or she is or will be a party to (or

be involved in) any civil or criminal proceeding presided over by any temporary judge appointed under H.B. 1020. Nor have the entity plaintiffs shown how they or their members will suffer any actual injury from H.B. 1020's appointment provision. Plaintiffs claim that the appointment provision is unlawful, but that does not establish their standing for injunctive relief. Plaintiffs have done nothing to show that the appointment provision will harm *them* or affect *them* in any way that is different from how the provision "affects" any other member of the public. This threshold failure alone dooms Plaintiffs' TRO motion.

Next, even if Plaintiffs could show standing for TRO relief, they cannot be granted a TRO because their equal-protection claim fails on the merits. The challenged judicial-appointment provision is race-neutral on its face and rationally advances legitimate purposes. It is therefore constitutional unless Plaintiffs show that it was driven by a discriminatory purpose and has a discriminatory effect. Plaintiffs have made neither showing. The Legislature enacted H.B. 1020 to address Jackson's ongoing public-safety and criminal-justice emergencies. Those emergencies gravely affect not just those living in Jackson, but all Mississippians: the many Mississippians who work in and visit Jackson; the many Mississippians affected by public-safety and criminal-justice problems that cannot be confined to Jackson or Hinds County; and every Mississippian who is entitled to a functioning capital city or is concerned for the future of their capital. Plaintiffs disregard these realities and rely instead on tired talking points claiming that H.B. 1020 was improperly motivated by race. Those claims are irreconcilable with the grim reality that so many Jacksonians and non-Jacksonians alike must contend constantly with the consequences of Jackson's ongoing crime problem, failed local leadership, and perpetual inability to sustain basic city and human services—problems that affect all Mississippians, regardless of race. The

Legislature acted to address those problems—without regard to race. H.B. 1020's appointment provision satisfies the Equal Protection Clause.

Finally, Plaintiffs' motion flunks all of the remaining TRO factors. For reasons already explained, Plaintiffs cannot show that they stand to suffer any imminent legal or practical injury as a result of the challenged appointment provision. That provision does not affect any plaintiff in any personal way. Nor does it bear on individual liberties or personal freedoms; rather, it relates exclusively to administrative functions of the judicial system. Plaintiffs' vague notions of constitutional injury are substantially outweighed by the public interest in enhancing public safety and supporting the criminal-justice system in Hinds County's courts—interests that Plaintiffs ignore. Indeed, on the equitable TRO factors, Plaintiffs do little more than repeat their claim of an equal-protection violation. But even if they had established a likely equal-protection violation—and they have not—that would not carry their burden on the separate, distinct TRO factors of irreparable harm, the equities, and the public interest. Those are separate requirements for TRO relief, and Plaintiffs have not satisfied them.

For all these reasons, Plaintiffs fail to make the requisite showing for a TRO. Their motion should be denied.

STATEMENT OF FACTS

Legal Background. This action invokes the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. That Clause provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

Factual Background. On April 21, 2023, Governor Tate Reeves signed into law H.B. 1020. 2023 H.B. 1020 (Ex. 1 at 2193-2226). 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). H.B. 1020 provides: "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.* H.B. 1020 further provides that these temporary 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).

Procedural Background. On April 21, 2023, six individuals who allege to be residents of Jackson, along with three NAACP entities, filed *Plaintiffs' Complaint for Declaratory and Injunctive Relief* against Mississippi Governor Tate Reeves, Mississippi Department of Public Safety Commissioner Sean Tindell, Chief of the Mississippi Department of Public Safety Office of the Capitol Police Bo Luckey, Chief Justice of the Mississippi Supreme Court Michael K. Randolph, and Mississippi Attorney General Lynn Fitch, all in their official capacities. Dkt. #1. Citing 42 U.S.C. § 1983, Plaintiffs assert that the judicial-appointment provision of H.B. 1020 violates the Fourteenth Amendment's Equal Protection Clause. *Id.* at 46-50, ¶¶ 131-49. They seek declaratory relief as well as preliminary and permanent injunctive relief. *Id.* at 50-51, ¶¶ A-J.

On April 28, 2023, Plaintiffs filed a "necessitous and urgent" motion for a TRO. Dkt. #11, #12. Following additional developments in a separate state-court challenge to H.B. 1020—which action was ultimately dismissed with prejudice by the Hinds County Chancery Court on May 15, 2023, see Mem. Op. (Ex. 2) and Final Judgment (Ex. 3)—Plaintiffs filed a "renewed necessitous and urgent" motion for a TRO on May 11, 2023. Dkt. #24. On May 12, 2023, this Court entered

an Order setting Plaintiffs' renewed motion for TRO for hearing on May 22, 2023, and directing the parties to submit all legal briefs in support of their respective positions by 5:00 p.m. on Friday, May 19, 2023. *See* Dkt. #26. On May 17, 2023, Governor Tate Reeves filed a pre-answer motion to dismiss all claims asserted against him for lack of subject-matter jurisdiction predicated on lack of standing and sovereign immunity. Dkt. #31, #32. The remaining three State Executive Defendants—Commissioner Sean Tindell, Chief Bo Luckey, and Attorney General Lynn Fitch, in their respective official capacities (hereinafter collectively "the State")—filed their answer and defenses that same day. Dkt. #33. They hereby timely file the instant response in opposition to Plaintiffs' renewed motion for TRO.

ARGUMENT

I. PLAINTIFFS' MOTION SHOULD BE DENIED BECAUSE THEY LACK STANDING TO OBTAIN THE EXTRAORDINARY TRO RELIEF THAT THEY DEMAND.

To maintain any lawsuit in federal court, plaintiffs must establish Article III standing by showing injury in fact, traceability, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). But plaintiffs bear a heavier burden where they seek prospective injunctive relief. A plaintiff must always show an injury traceable to the defendant's conduct that is "concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013) (quotation marks omitted). But when plaintiffs seek relief aimed at future conduct, their alleged "threatened injury must be *certainly impending* to constitute injury in fact," and "[a]llegations of *possible* future injury are not sufficient." *Id.* (quotation marks omitted; emphasis in original). *See also City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) (standing for prospective relief requires "a real and immediate threat" of future injury); *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974) ("It must be alleged that the plaintiff has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged statute or official conduct.")

(quotation marks omitted); *Stringer v. Whitley*, 942 F.3d 715, 721 (5th Cir. 2019) ("For a threatened future injury to satisfy the imminence requirement, there must be at least a substantial risk that the injury will occur.") (quotation marks omitted); *Soc'y of Separationists, Inc. v. Herman*, 959 F.2d 1283, 1285-86 (5th Cir. 1992) (en banc) (applying *Lyons* to reject individual juror and organization's challenge to a judge's jury instructions, e.g., because plaintiffs could not show real and immediate threat of appearing before the judge).

Here, none of the individual plaintiffs has standing to seek a TRO because none can show any concrete, imminent injury flowing from the challenged judicial-appointment provision of H.B. 1020. The individual plaintiffs purport to be residents of and registered voters in Jackson. Dkt. #1 at 6-9, ¶¶ 16-21. They do not claim any specific 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. Plaintiffs have neither shown nor alleged that they are in actual or imminent danger of experiencing any concrete and particularized injury resulting from the challenged appointments. None of the individual plaintiffs has shown that he or she is or will be a party to any civil or criminal proceeding (or involved at all in any proceeding) to be presided over by any temporary judge appointed pursuant to H.B. 1020. To the extent Plaintiffs contend that their status as registered voters in Jackson somehow confers standing, that assertion is baseless, as Plaintiffs' right to vote is not implicated at all in this matter. That is confirmed by the Hinds County Chancery Court's May 15, 2023, ruling that H.B. 1020 does not provide for *permanent* circuit judges and hence does not violate Section 153 of the Mississippi Constitution requiring the election of *permanent* circuit judges. *See* Mem. Op. at 17-21 (Ex. 2). Accordingly, Plaintiffs' right to vote—which they allege arises from MISS. CONST. art. VI, § 153 exclusively, see Dkt. #1 at 30, ¶ 82; 32,

¶ 88—is not at issue in this case. Thus, under settled Fifth Circuit law, none of the individual plaintiffs has standing to seek a TRO or injunctive relief.

Nor do any of the three NAACP plaintiffs have associational or organizational standing to seek a TRO or injunctive relief in this case. Associational standing requires the plaintiff-association to show that its members would independently meet Article III standing requirements. *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006). Organizational standing requires a plaintiff-organization to establish standing in its own name by meeting the same standing test that applies to individuals. *Tenth Street Residential Ass'n v. City of Dallas, Tex.*, 968 F.3d 492, 500 (5th Cir. 2020). The NAACP entity plaintiffs do not make the showings required under either doctrine. Because their members cannot independently establish standing, see *supra*, the NAACP entity plaintiffs lack associational standing. Similarly, the NAACP entity plaintiffs have not shown any concrete, imminent injury arising from the appointment of temporary special circuit judges pursuant to H.B. 1020. They have not explained how the temporary judicial-appointment provision of H.B. 1020 has caused or will cause them to undertake any actions that "differ from the [NAACP]'s routine lobbying activities," nor have they identified "any specific project that [they] had to put on hold or otherwise curtail in order to respond to" H.B. 1020. *N.A.A.C.P. v. City of Kyle, Tex.*, 626 F.3d 233, 238 (5th Cir. 2010). Thus, the NAACP entity plaintiffs likewise lack organizational standing.

Having failed to show any concrete, imminent injury caused by the challenged judicial-appointment provision, Plaintiffs lack standing to obtain a TRO against the appointment of temporary special circuit judges under H.B. 1020. This Court accordingly lacks jurisdiction to issue this relief and should deny the TRO motion.

II. ALTERNATIVELY, PLAINTIFFS' MOTION SHOULD BE DENIED BECAUSE NONE OF THE GOVERNING FACTORS SUPPORTS A TEMPORARY RESTRAINING ORDER.

To obtain a TRO, Plaintiffs "must establish the following elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) the threatened injury to the movant outweighs any harm to the nonmovant that may result from the injunction; and (4) the injunction will not undermine the public interest." *Gonzalez Morales v. Gillis*, Civil Action No. 5:20-CV-181-DCB-MTP, 2020 WL 6879277, at *2 (S.D. Miss. Nov. 23, 2020). The last two requirements merge and are considered together when the government is the opposing party. *Pacharne v. Dep't of Homeland Sec.*, 565 F. Supp. 3d 785, 802 (N.D. Miss. 2021). A TRO is an "extraordinary remedy and should be granted only if the movant has clearly carried the burden of persuasion with respect to all four factors." *RW Dev., LLC v. Cuningham Group Architecture, Inc.*, Civil No. 1:12-cv-00224-HSO-RHW, 2012 WL 3258782, at *2 (S.D. Miss. Aug. 8, 2012) (quoting *Allied Mktg. Group, Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 809 (5th Cir. 1989)) (quotation marks omitted). Plaintiffs fail to satisfy any of the TRO factors.

A. Plaintiffs seek a TRO against the challenged judicial-appointment provision based solely on an equal-protection claim. Because they are likely to fail on that claim, the Court should deny a TRO.

1. The challenged judicial-appointment provision of H.B. 1020 is race-neutral and rationally advances legitimate purposes; therefore, it is constitutional.

The challenged judicial-appointment provision is aimed at alleviating an objective backlog of criminal cases in Hinds County Circuit Court. Because H.B. 1020 does not implicate any fundamental right or suspect classification, the appointment provision is subject only to rational-basis review. *See Harris v. Hahn*, 827 F.3d 359, 365 (5th Cir. 2016). "Statutory classifications are given broad deference under rational basis review and will survive if there is any reasonably

conceivable state of facts that could provide a rational basis for the classification." *Id.* (quotation marks omitted). "The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it whether or not the basis has a foundation in the record." *Id.* (quotation marks omitted).

Plaintiffs cannot meet their burden to invalidate the judicial-appointment provision. The State of Mississippi has a legitimate interest in reducing overcrowded criminal dockets in its most populous county—particularly to ensure that victims and defendants alike have timely access to justice in the Hinds County criminal court system. This is especially important in the seat of State government, where a rise in violent crime has placed a steady strain on Hinds County criminal dockets in recent years. The judicial-appointment provision is rationally related to the State's legitimate interest. That provision brings additional judicial resources to bear on the problem of reducing the ongoing strain on Hinds County's overburdened criminal-court system. Because the challenged judicial-appointment provision is rationally related to a legitimate governmental interest, it does not violate the Equal Protection Clause and is constitutional.

2. Plaintiffs cannot show discriminatory effect or discriminatory purpose.

Plaintiffs contend that the judicial-appointment provision "violates the Equal Protection Clause" because it discriminates based on race. Dkt. #12 at 2; 5-15. To prevail on this argument, Plaintiffs must show that the appointment provision has a "discriminatory effect and . . . discriminatory purpose." *United States v. Armstrong*, 517 U.S. 456, 465 (1996). Plaintiffs do not show either, so their merits argument doubly fails.

First, Plaintiffs have not established that the judicial-appointment provision has any "discriminatory effect." *Armstrong*, 517 U.S. at 465. To claim that "H.B. 1020 will have a disparate impact on Black citizens," Plaintiffs argue that Hinds County has a higher percentage of

black residents than other parts of the State and that only "[t]he overwhelmingly Black residents of Hinds County . . . have been stripped of the right to vote for their circuit judges and to have circuit judges who reside in the County." Dkt. #12 at 6-7. But in fact, Plaintiffs' right to vote is not implicated at all in this matter. As Plaintiffs acknowledge in their complaint, any right to vote for Hinds County circuit judges can only be derived from Section 153 of the Mississippi Constitution. *See* Dkt. #1 at 30, ¶ 82; 32, ¶ 88. On May 15, 2023, the Hinds County Chancery Court held that H.B. 1020 does not violate Section 153 of the Mississippi Constitution, which provides for the election of *permanent* circuit judges in Mississippi. *See* Mem. Op. at 17-21 (Ex. 2). Specifically, the Court held that "H.B. 1020 does not provide for the creation of 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." *Id.* at 20. Because a Mississippi state court has finally adjudicated that any voting rights afforded pursuant to Section 153 of the Mississippi Constitution are not implicated by H.B. 1020's provision for appointment of temporary special circuit judges, Plaintiffs' right to vote is not at issue in this case. On that basis alone, Plaintiffs' claim fails on the merits.

Regardless, equal-protection principles require comparing those "similarly situated." *Armstrong*, 517 U.S. at 465. Plaintiffs have given no reason to believe that Hinds County is similarly situated with any other county in the State. They do not even try to make that showing. And indeed Hinds County is not similarly situated to any other county in the State. It is the State's most populous county; the seat of State government; the home of the State Capitol, museums, medical center, State office buildings, and multiple universities; and, unfortunately, home to one of the State's most crime-ridden metropolitan areas—a reality heightened by its sheer size and by the unusual unwillingness of its local leaders to acknowledge and address the County's many

problems that hurt all Mississippians. Because Plaintiffs have not established a discriminatory effect, their equal-protection claim fails for this reason alone.

It bears noting that, on Plaintiffs' disparate-impact reasoning, every legislative action ever taken with regard to Jackson or Hinds County alone would, given the City and County's racial demographics, by definition have a discriminatory effect. That is not a legally sound way to establish discriminatory effect. *See, e.g., Moore v. Detroit Sch. Reform Bd.*, 293 F.3d 352, 369 (6th Cir. 2002) (holding that statute providing for appointment of school reform board only in Detroit school district, which had substantial impact on black citizens, was not racially discriminatory legislation, and therefore did not violate Equal Protection Clause, where state legislators sought to address problem that they perceived to exist in school districts with large populations, not to disenfranchise black citizens). An equal-protection claim requires a demanding showing, and Plaintiffs' facile approach falls short of what the Fourteenth Amendment demands.

Second, Plaintiffs also have not established that the judicial-appointment provision has any "discriminatory purpose." *Armstrong*, 517 U.S. at 465. As noted, the law is race-neutral on its face and advances legitimate objectives. Plaintiffs make several arguments in an effort to show discriminatory intent, Dkt. #12 at 7-15, but as demonstrated below, each of these arguments fails. And the burden of proof is squarely on the plaintiffs. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324-35 (2018).

As a threshold matter, Plaintiffs skip over several points of blackletter law. These errors permeate their discriminatory-intent argument.

State legislators are entitled to a presumption of good faith. *See Miller v. Johnson*, 515 U.S. 900, 915 (1995). *See also Fusilier v. Landry*, 963 F.3d 447, 464 (5th Cir. 2020) ("state legislatures are afforded a presumption of good faith"). Furthermore, the subjective motivations

of particular legislators in voting for a bill are not a sufficient basis from which to infer the purpose of the entire Legislature. *See, e.g., United States v. O'Brien*, 391 U.S. 367, 383-84 (1968) ("What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."); *Fusilier*, 963 F.3d at 466 (overemphasizing statements of individual legislators deemed improper).

Plaintiffs proceed as though the presumption of legislative good faith does not exist. The undercurrent running through Plaintiffs' filings is that white State legislators enacted H.B. 1020 with racially discriminatory intent—specifically, that they wished to prevent the black citizens of Jackson and Hinds County from electing Circuit Court judges. But Plaintiffs ignore the objective facts, which tell a very different story. Jackson is Mississippi's largest city, and the tri-county area is the largest metropolitan center in the state. Jackson is also the seat of State government, the home of the State Capitol, multiple hospitals and medical providers, museums, several universities, and a plethora of retail and restaurant establishments. The City of Jackson and Hinds County have both suffered undeniable crises of local leadership in recent years. Citizens of Jackson have been forced to contend almost continuously with all manner of infrastructure and related issues, including numerous and prolonged city-wide water outages, indefinite disruption to garbage collection, ubiquitous potholes, urban blight, growing vagrancy, a dysfunctional city government, physical fights at multiple county-board-of-supervisors meetings[1]—and a widespread increase in violent crime. These problems affect not only the residents of the City of Jackson and Hinds County, but also the many people who commute to Jackson from surrounding areas daily to work and do business, as well as the many individuals and families who travel to Jackson to visit the

[1] *See, e.g.*, Ex. 5 at 9-10; Ex. 5 at 11-14; Ex. 5 at 15-17; Ex. 5 at 18-21; Ex. 5 at 22-28; Ex. 5 at 29-39; Ex. 5 at 40-42; Ex. 5 at 43-46; Ex. 5 at 47-53; Ex. 5 at 54-61; Ex. 5 at 62-65; Ex. 5 at 66-67; Ex. 5 at 68-75; Ex. 5 at 76-79; Ex. 5 at 80-83; Ex. 5 at 84-87. *See also Lumumba v. City Council of Jackson*, 358 So. 3d 318 (Miss. 2023).

state capital for medical care, shopping/retail opportunities, and tourism/recreational attractions. Thus, Jackson/Hinds County's problems do not stop at the county lines—in a small state like Mississippi, the fallout spreads considerably further.

All of these attributes make Jackson/Hinds County unique among Mississippi cities/counties—and thus the problems in Jackson/Hinds County warrant action from the State. The State has a strong interest in the wellbeing of all area citizens and in creating conditions under which the capital city functions like a real city, with adequate resources to address not only infrastructure and related issues but—perhaps most importantly—surging crime.

Jackson's unparalleled crime problem is well documented. It cannot be disputed that "the City of Jackson is a hotspot for violent crime in the state." Ex. 4 at 73. In 2020, Jackson reported 130 homicides—a record number. Ex. 4 at 10. That year, "Jackson accounted for less than 6 percent of the state's population . . . but more than 50 percent of all homicides." Ex. 4 at 67. In 2021, Jackson surpassed that record with at least 155 reported homicides—"the highest per capita murder rate in the nation . . . . [h]igher than Birmingham, Atlanta, Detroit, and even Chicago." Ex. 4 at 3. Even despite a 14% decline in homicides in 2022, Jackson reported 138 homicides that year, meaning Jackson's "homicide rate still managed to surpass every other major city in the U.S. for the second straight year." Ex. 4 at 20. "In other words, the rate of killings in Jackson is more than three times greater than in Chicago." *Id.*[2]

The city's skyrocketing homicide rate is attributable in part to Jackson's failure to provide an adequately staffed police force. Estimates have placed the necessary number of police officers for Jackson at approximately 600. *See* Ex. 4 at 15-16. In 2020, the Jackson City Council reportedly

[2] Jackson's ongoing crime epidemic has been widely reported in recent years. The following sampling of additional reports is illustrative in this regard: Ex. 4 at 29-30; Ex. 4 at 31-33; Ex. 4 at 34-38; Ex. 4 at 39-40; Ex. 4 at 41-44; Ex. 4 at 45-46; Ex. 4 at 47-65; Ex. 4 at 86-88.

"voted to defund 50 police officer positions in order to raise salaries for new hires." *Id.* As of April 2022, it was reported that the Jackson Police Department ("JPD") had only 258 sworn police officers. Ex. 4 at 19. As of July 2022, it was reported that JPD was "short 110 officers." Ex. 4 at 17-18. *See also* Ex. 4 at 76 ("By their own admission, the City of Jackson's police force is understaffed, with 100 fewer officers than the Department receives funding to employ"). It is no surprise that "one of the factors leading to the surge of crime in Jackson is a shortage of officers from dispatcher to sworn officers." *See* Ex. 4 at 7.

H.B 1020 is an effort to focus additional resources on the Jackson-area crime problem—a problem the Legislature is entitled to address for the safety and wellbeing of all Mississippians who live in, live around, travel to, or care about Jackson/Hinds County. There is nothing discriminatory about that. And every provision of H.B. 1020 is facially race-neutral and affects both black and white citizens equally.

With those points in mind, the State addresses, in turn, Plaintiffs' assertions regarding discriminatory intent.

To start, Plaintiffs argue that legislators "actually expressed" their discriminatory intent behind H.B. 1020. Dkt. #12 at 7. *See also* Dkt. #12 at 7-8; 15. But their weak anecdotal references to statements by two legislators prove no such thing. Dkt. #12 at 7-8. It is true that, during protracted floor debate on an early version of H.B. 1020, Representative Lamar argued that the Legislature should not limit the "talent pool" of special judges by excluding the "best and brightest" judges from "Holmes County or Madison County or wherever they may be." *See* Dkt. #12 at 7 & n. 2. But that quote—excised from an argument that special judges could potentially come from the home counties of principal opponents of H.B. 1020—fails to prove that Representative Lamar acted with any ill-motivation. Other snippets from Plaintiffs' own cherry-

picked newspaper articles undercut their attempt to vilify Representative Lamar. *See*, *e.g.*, Dkt. #12-2 at 88. Moreover, if anything, it is telling that Plaintiffs' so-called proof of "actual expressions" of discriminatory intent consists of their spin on a statement made by one legislator as H.B. 1020 made its way through a robust legislative process. For nearly four months, the Legislature thoroughly reviewed, negotiated, amended, and debated H.B. 1020. *See* Ex. 1 at 1-2. Yet the best Plaintiffs can muster is a single legislator's cut-and-pasted statement at one debate divorced from its context. That is not evidence of Representative Lamar's alleged discriminatory intent. And it most certainly fails to prove that the entire Legislature's motive behind H.B. 1020 was unlawful.

Plaintiffs' only other piece of anecdotal proof of legislative statements is even worse. They suggest that a single statement—made eight years ago, by one legislator, on a proposed constitutional amendment that was voted down by the State's entire electorate—shows that discriminatory intent motivated other legislators to back H.B. 1020. Dkt. #12 at 8. That eight-year-old quote proves nothing about any motivations behind H.B. 1020. *See* Dkt. #12-2 at 90. And even wrongfully assuming it does, one legislator's statements cannot be extrapolated to cast doubt on the motivations of an entire Legislature. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2349-50 (2021). Nor are legislators' statements made about unrelated legislation probative of discriminatory intent. *See, e.g., Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299, 1325 (11th Cir. 2021). *See also Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 140 S. Ct. 1891, 1916 (2020) (reaffirming that statements that are "remote in time and made in unrelated contexts—do not qualify as 'contemporary statements' probative" of discriminatory motive).

Next, Plaintiffs argue that the "historical background" of the judicial-appointment provision shows discriminatory purpose. Dkt. #22 at 8-10. To make that argument, Plaintiffs rely primarily on a case decided more than 35 years ago about events occurring over 60 years ago. *See id.* at 9. But "[p]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful." *Abbott*, 138 S. Ct. at 2324. *See also Veasey v. Abbott*, 830 F.3d 216, 232 (5th Cir. 2016) (en banc) ("historical evidence" provides "little probative value" when it is not "reasonably contemporaneous" to a challenged enactment); *Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Comm'n*, 945 F.3d 206, 216 (5th Cir. 2019) (as to things cited in long-ago judicial opinions: "presumption of legislative good faith" is "not changed by a finding of past discrimination").

Plaintiffs further contend that the "sequence" of legislative "events" that produced H.B. 1020 suggests discriminatory intent. Dkt. #22 at 10-12. Undeniably, and as already mentioned, H.B. 1020 was the product of an intensive, protracted, and well-documented legislative process that is a matter of public record. *See* Ex. 1 at 1-2. Plaintiffs' small handful of cherry-picked complaints about what the Legislature did and "did not do" throughout that process fails to prove that legislators unlawfully "focus[ed] on race." Dkt. #12 at 10. If anything, considering "the whole picture" as Plaintiffs insist, Dkt. #12 at 12, the legislative record proves that legislators engaged in "sincere" and "serious legislative debate on the wisdom" of H.B. 1020 that was anything but ill-motivated. *See Brnovich*, 141 S. Ct. at 2349.

Plaintiffs also argue that certain purported "procedural departures" from "the normal procedural sequence of legislation" and "substantive departures" suggest discriminatory intent. Dkt. #12 at 12-15. But, as with Plaintiffs' other baseless attempts to cast H.B. 1020 as ill-motivated, their anecdotal accusations of "departures" are meritless and fail to establish the

"numerous and radical procedural departures that may lend credence to an inference of discriminatory intent" in this context. *See Veasey*, 830 F.3d at 238.

On so-called "procedural departures," Plaintiffs claim that the original version of H.B. 1020 should not have been assigned to the House Ways and Means Committee based on an opinion of two internet reporters. Dkt. #12 at 12 (citing Dkt. #12-2 at 143). But Plaintiffs' argument (and the reporters' argument that they build from) ignores the fact that the original version of H.B. 1020 was a revenue bill that brought forward hundreds of code sections on state revenues. *See* Ex. 1 at 4-1043. Assigning revenue bills to the House committee charged with handling revenue bills is nothing improper. Plaintiffs also contend, based on a newspaper article, that a Democratic member of the House conference committee on H.B. 1020 "was never shown the amended text of the bill until a vote was taken." Dkt. #12 at 12 (citing Dkt. #12-2 at Ex. T). But that is not even what the newspaper-article source of Plaintiffs' accusation says about what that opponent of H.B. 1020 said: Representative Banks said that "he was able to add provisions that would benefit the city" and "requested the changes" after the final version "was handed to him" before the deadline. Dkt. #12-2 (Ex. T) at 153. Moreover, even if Plaintiffs' characterization of Representative Banks's reported statements was not misleading, it would not matter. Statements of a law's opponents are not valid evidence to prove the law's supporters acted with discriminatory intent. *See Veasey*, 830 F.3d at 233.

Plaintiffs' final Hail-Mary on "procedural departures" accuses the Legislature of violating Section 89 of the Mississippi Constitution by failing to run H.B. 1020 through the "standing committee on local and private legislation." Dkt. #12 at 12. That argument has at least two glaring flaws. First, H.B. 1020 is not "local and private legislation" so there was no such violation. *See*, *e.g.*, *Sec'y of State v. Wiesenberg*, 633 So. 2d 983, 995 (Miss. 1994) ("a general State problem,

though confined to a specific geographical area, may require and benefit from State action, without that action violating the constitution"). *See also Loden v. Miss. Pub. Serv. Comm'n*, 279 So. 2d 636, 639 (Miss. 1973); *Culley v. Pearl River Industrial Comm'n*, 108 So. 2d 390, 397-98 (Miss. 1959). Second, even assuming that H.B. 1020 might conflict with Section 89, that is an unproven accusation and an unadjudicated claim that is not before this Court. Until that claim is proven in a court of competent jurisdiction, Plaintiffs' so-called "local and private" "procedural departure" allegations get them nowhere.

Plaintiffs' accusations of "substantive departures" are even more full of holes. *See* Dkt. #12 at 13-15. For example, Plaintiffs characterize the special temporary judges appointed under H.B. 1020 to relieve Hinds County's overcrowded docket as "new Circuit Court judges" and call that a "departure" from past practice. Dkt. #12 at 13. But appointing special judges to relieve overcrowded dockets is *past practice*, not a "departure" from it. In 2005, the Democratically controlled Legislature authorized the Chief Justice of the Mississippi Supreme Court to appoint special judges (from any county, no less) to address crowded circuit-court dockets. *See* 2005 S.B. 2339, § 18 (amending MISS. CODE ANN. § 9-1-105(2) to allow for Chief Justice appointments of special judges to circuit courts "in the event of an emergency or overcrowded docket" and "for whatever period of time is designated by the Chief Justice"). Plaintiffs, of course, ignore that the Legislature nearly 20 years ago (when their allies controlled it) authorized the same thing that the Legislature of today has done to cast a policy decision they disagree with as "racist."

Plaintiffs' attempt to shame the Legislature for not creating new circuit judgeships in Hinds County with thin policy arguments cast as "substantive departures" is likewise meritless. Dkt. #12 at 13-14. They contend that Hinds County deserves "new elected, not appointed, judgeships" because it is the "most populous single Circuit Court District" and "has the same four elected

judgeships as several less populous districts." Dkt. #12 at 14 (citing MISS. CODE ANN. §§ 9-7-7 (First Circuit District), -11 (Second Circuit District), -17 (Fourth Circuit District). But that pretends that population is the only factor that legislators must consider in setting judgeships. *See* Dkt.# 12 at 13-14 (acknowledging that MISS. CODE ANN. § 9-7-3(3) includes several criteria for setting judgeships). Moreover, Plaintiffs' four-judge-district comparators do not prove that H.B. 1020's approach was ill-motivated. There is nothing untoward about the Legislature assigning the slightly less-populous First Circuit District (in Northeast Mississippi) that covers over 3,500 square miles the same number of judges to Hinds County's District, which spans just over 877 square miles. The Second District (on the Mississippi Gulf Coast) has four judges and serves a population of over 281,000 persons, which is far more than Hinds County's four-judge district. *See* Dkt. #12-2 at 72 (estimating Hinds County's population at 271,730 persons and noting Hinds County's population has decreased by 28,000 over the past decade—including an estimated loss of 10,000 in less than the past two years). And the Fourth District (in the Mississippi Delta) has four judges but fewer residents than Hinds County. But that hardly proves that the Legislature must allot more circuit judges to Hinds County. The number of judges in the Fourth District was set in 1994 and thus does not account for the well-known and massive population decrease in that area over the past thirty years. Plaintiffs also point to the newly created Twenty-Third Circuit District in DeSoto County to claim that the Legislature must create new circuit judgeships in Hinds County and point to DeSoto's demographics for support. Dkt. #12 at 14. But Plaintiffs' own exhibits undermine their population-based policy argument: DeSoto County has an estimated 191,723 population and two judges while Hinds County has an estimated 217,730 population and four judges. *See* Dkt. #12-2 at 72, 155. If anything, comparing the two districts' judgeships and populations shows that

Hinds County should need fewer judges. But whatever that shows, it certainly does not prove any "substantive departure" that evinces H.B. 1020 was animated by racial intent.

Finally, on top of all these points is one more that defeats Plaintiffs' TRO request. The fact-intensive nature of Plaintiffs' claims of intentional discrimination militates against blocking a state law with a TRO. Plaintiffs should not be permitted to cherry-pick articles from partisan media reports favorable to their cause, submit a few partisan and politically-charged affidavits, and on the basis of such "evidence," bootstrap their way to a federal court order restraining the operation of duly-enacted state law. Where, as here, Plaintiffs' claim depends heavily on factual allegations on which Plaintiffs face a steep burden, the State must have a reasonable opportunity to respond in due course with its own evidence before its laws are enjoined by a federal court. This looming factual dispute alone precludes a TRO. Where evaluating the prospect of the plaintiffs' success on the merits will "require a difficult battle" in proving that the actions in question were done with a certain motive, the "likelihood of success prong" has not been satisfied. *Cf. Fleishut v. Avondale Indus.*, Civ. A. No. 94–3500, 1995 WL 27464, at *4 (E.D. La. Jan. 23, 1995) ("To find that the petitioners have a likelihood of success on the merits, the court, in effect, must find that success in the underlying proceedings should not prove difficult.") (quotation marks omitted).

A TRO "should not be granted unless the question presented by the movant is free from doubt." *See Metal Mgmt. Miss., Inc. v. Barbour*, Civil Action No. 3:08-CV-00431 HTW-LRA, 2008 WL 3842979, at *5 (S.D. Miss. Aug. 13, 2008). This matter is—at best for Plaintiffs—rife with doubts regarding Plaintiffs' ability to prove any discriminatory effect or intent in connection with H.B. 1020. The Court should deny a TRO.

B. Plaintiffs cannot demonstrate irreparable harm.

Plaintiffs' failure to show irreparable harm also precludes a TRO. As noted, the individual plaintiffs purport to be residents of and registered voters in Jackson. Dkt. #1 at 6-9, ¶¶ 16-21. They do not claim any specific past, present, or anticipated future status as a civil litigant, a criminal defendant, or any other party to (or any involvement in) any proceeding pending in Hinds County Circuit Court. Plaintiffs have neither shown nor alleged that they are in actual or imminent danger of experiencing any concrete and particularized, real-world injury arising from the challenged appointments. None of the individual plaintiffs has shown that he or she is or will be party to any civil or criminal proceeding to be presided over by any judge appointed under H.B. 1020. Nor have the NAACP plaintiffs fared any better: they have offered no proof that any of these entities or their members will suffer any irreparable injury from the appointment provision. To the extent Plaintiffs contend that their right to vote is somehow harmed, that argument is eviscerated by the Hinds County Chancery Court's ruling, which—as explained above—forecloses any claim that voting rights are or can be implicated by H.B. 1020's judicial appointment mechanism.

The mere "possibility" of irreparable injury does not support preliminary injunctive relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Rather, "plaintiffs seeking preliminary relief [must] demonstrate that irreparable injury is *likely* in the absence of an injunction." *Id.* (citing *Lyons*, 461 U.S. at 103) (emphasis in original). There is no evidence that Plaintiffs will actually experience any irreparable harm from the appointment of temporary special circuit judges. Plaintiffs allege that "irreparable injury is present as a matter of law where" their equal-protection rights have been violated. *See* Dkt. #12 at 15. But that presupposes an equal-protection violation, which—as shown above—has not occurred here. And irreparable injury is a

separate TRO requirement: Plaintiffs cannot satisfy it simply by pointing back to a showing on the merits requirement for TRO relief.

C. <u>The harm to the State in granting an injunction would far exceed any purported harm to Plaintiffs, and the public interest thus favors denying Plaintiffs' motion.</u>

As noted above, the balance of the equities and the public interest merge and are considered together when the government is the opposing party. *Pacharne v. Dep't of Homeland Sec.*, 565 F. Supp. 3d 785, 802 (N.D. Miss. 2021) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Those features strongly weigh against a TRO. A TRO would undermine duly-enacted legislative efforts to temporarily mitigate Jackson's ongoing public-safety and criminal-justice emergencies.

First, the judicial-appointment provision is a duly-enacted law of the Mississippi Legislature—*viz.*, the people's representatives. It inherently reflects the will of the people of the State of Mississippi. The State is harmed any time that will is enjoined by a federal court on behalf of a handful of individual plaintiffs who are unhappy with the actions of the Legislature. *See Abbott*, 138 S. Ct. at 2324 n.17 ("the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State").

Second, the City of Jackson—the seat of State government—is presently engulfed in a public-safety emergency stemming from a significant increase in violent crime, and a TRO would undercut efforts to address that emergency. The challenged laws are part and parcel of a broader legislative effort to address this ongoing public safety crisis with the objective of creating a safer capital city for all Jacksonians and all Mississippians. H.B. 1020 provides additional judicial resources designed to further this effort by temporarily increasing the efficiency and effectiveness of the criminal court system in Hinds County. The harm in enjoining the challenged judicial-appointment provision of H.B. 1020 far exceeds any purported harm that has been or could be experienced by Plaintiffs as a result of the challenged provision.

Third, the Hinds County Circuit Court has in recent years been plagued by a backlog of criminal cases created in large part by overcrowded dockets. Undoubtedly, the COVID-19 pandemic exacerbated this problem. On the criminal side of the court system, the exceedingly high crime rate in the Jackson area has placed a strain on judicial resources that affects the ability of both victims and the accused alike to timely access justice through the courts.

The appointment of temporary special circuit judges has undoubtedly helped to alleviate overcrowded dockets. In 2006, the Mississippi Supreme Court "appointed two special judges to help expedite criminal cases in Hinds County Circuit Court and relieve the criminal case backlog." Ex. 6 at 2. In remarking on those appointments at that time, Hinds County Circuit Judge Winston Kidd said, "I appreciate the Supreme Court's appointment of Senior Retired Circuit Judges Breland Hilburn and William Coleman. Judge Hilburn has been a tremendous help in reducing the number of criminal cases on my docket." Ex. 6 at 4. Former Hinds County Circuit Senior Judge Tomie Green likewise recognized this problem. *See, e.g., Safeco Ins. Co. of Am. v. State ex rel. Hood*, -- So. 3d --, 2019 WL 3955084, at *2 (Miss. Aug. 22, 2019) (reflecting Judge Green's intent to appoint special master, in part "on the grounds of [the court's] overcrowded civil and criminal dockets").

As crime rates have soared in Hinds County in recent years, the problem of overcrowded criminal dockets has not abated. In early 2021, Hinds County District Attorney Jody Owens reported 2,600 criminal cases on the Hinds County Circuit Court docket, with another 600 cases in which the defendant had yet to appear before a judge. *See* Ex. 4 at 23-28. Following a spike in homicides and violent crimes in 2020, D.A. Owens "said one factor contributing to the increase in crime is the lack of cases being resolved in the court system." Ex. 4 at 24. *See also* Ex. 5 at 1-2; Ex. 5 at 3-4; Ex. 5 at 5-8.

H.B. 1020 provides additional judicial resources designed to temporarily ease this ongoing strain on the criminal dockets of permanent circuit court judges in Hinds County. A TRO would block these much-needed resources and would exacerbate ongoing problems in Hinds County's administration of criminal justice. The harm in enjoining the challenged provision of H.B. 1020 thus far exceeds any purported harm that has been or could be experienced by plaintiffs who have shown nothing more than that they live and vote in Jackson.

Plaintiffs contend that a TRO should issue now to avoid "unseating the appointed judges, possibly after they have begun to hear cases." Dkt. #12 at 17. But that is no reason to deprive the public in the meantime of the benefit of these additional judicial resources authorized by the Mississippi Legislature. The reassignment of cases is not a novel occurrence, and the Hinds County Circuit Court can adapt at the appropriate time if needed. Furthermore, to the extent Chief Justice Randolph would intend to reappoint existing temporary special circuit judges, the status quo is more closely approximated by denying, rather than granting, a TRO that would prevent those individuals from being reappointed to continued service in their current roles.

Weighed in the balance against the legitimate legislative policy considerations of law and order, public safety, and increased access to justice through the criminal court system, Plaintiffs' claim that a TRO would serve the public interest rings hollow.

CONCLUSION

For all these reasons, the Court should deny Plaintiffs' renewed motion for a temporary restraining order [Dkt. #24] in its entirety.

THIS the 19th day of May, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and one of the attorneys for the above-named State Executive Defendants, 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 ECF filing system, which sent notification of such filing to all counsel of record.

THIS the 19th day of May, 2023.

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