

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

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE;
MISSISSIPPI STATE CONFERENCE OF
THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE;
JACKSON CITY BRANCH OF THE
NAACP; DERRICK JOHNSON; FRANK
FIGGERS; CHARLES TAYLOR;
MARKYEL PITTMAN; CHARLES JONES;
and NSOMBI LAMBRIGHT-HAYNES,

Plaintiffs,

v.

TATE REEVES, in his official capacity
as Governor of the State of Mississippi;
SEAN TINDELL, in his official capacity
as Commissioner of Public Safety; BO
LUCKEY, in his official capacity as
Chief of the Mississippi Department of
Public Safety Office of Capitol Police;
MICHAEL K. RANDOLPH, in his
official capacity as Chief Justice of the
Mississippi Supreme Court; and LYNN
FITCH, in her official capacity as
Attorney General of the State of
Mississippi,

Defendants.

Case No. 3:23-cv-272-HTW-LGI

**PLAINTIFFS' REPLY IN
SUPPORT OF RENEWED
NECESSITOUS AND URGENT
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

INTRODUCTION

The Court's Order of May 12, 2023, temporarily restraining Defendant Randolph from appointing judges pursuant to H.B. 1020 and setting a hearing on his judicial immunity defense, also directed the parties "to submit all legal briefs in support of their

respective positions by Friday, May [19], 2023, at 5:00 o'clock pm.” ECF No. 26 at 4.¹ Under this simultaneous deadline, Plaintiffs will not have the opportunity to review Defendants’ response to Plaintiffs’ motion for a TRO before the mutual filing deadline. Accordingly, Plaintiffs submit this reply in anticipation of arguments Defendants may raise based on their Chancery Court filings. As shown in Plaintiffs’ opening brief (*see* ECF No. 12) and further supported below, Plaintiffs have adequately demonstrated their need for temporary injunctive relief to restrain Defendant Randolph from making the judicial appointments authorized by H.B. 1020 and thereby maintain the status quo.

Plaintiffs are now preparing to file their preliminary injunction motion regarding H.B. 1020 § 1 no later than Wednesday, May 24, and respectfully request that the TRO be extended to June 9, which—counting from the entry of the TRO on May 12—would be the maximum amount of time for a TRO under Fed. R. Civ. P. 65(b)(2), absent consent of the parties. Extending the TRO in this manner would give Defendants 14 days to respond, *see* L.U.Civ.R. 7(b)(4), and allow a hearing on that motion by June 9 when the TRO would expire. The temporary restraining order currently in place should remain in effect through June 9 so that the Court can consider the full record of Plaintiffs’ request for preliminary relief.

I. Plaintiffs Have Made the Requisite Merits Showing.

To warrant temporary injunctive relief, Plaintiffs are “not required to prove [their] entitlement to summary judgment” and “need not show that [they are] certain to win.”

¹ The order stated “Friday, May 20.” But the relevant Friday falls on May 19.

Janvey v. Alguire, 647 F.3d 585, 595–96 (5th Cir. 2011) (citation omitted). Instead, Plaintiffs need only present a “prima facie case.” *Id.* (citation omitted). “[I]t will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.” *Allied Home Mortg. Corp. v. Donovan*, 830 F. Supp. 2d 223, 227 (S.D. Tex. 2011) (citation omitted). Plaintiffs have set forth more than enough evidence to make a prima facie case and raise “serious” and “difficult” questions as to the merits of their claim. *See* ECF No. 12 at 5–15.

Defendants may not rely on the Chancery Court’s proceedings to oppose Plaintiffs’ merits showing. In denying the preliminary injunction motion there, the Chancery Court concluded only that the plaintiffs failed to prove that the challenged provisions of H.B. 1020 violated the Mississippi Constitution. *See* Order, *Saunders v. Randolph*, No. 25CH1:23-cv-00421, Dkt. #76 (Hinds Cnty. Ch. Ct. May 15, 2023). In doing so, the Chancery Court was careful to note that its consideration of H.B. 1020 was “extremely limited” because under Mississippi law, it could not “consider the motivation for the legislation or its policy.” *See id.* at 12–13. Here, by contrast, H.B. 1020’s improper “motivations” are directly relevant to Plaintiffs’ federal constitutional claim. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (“Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.”).

Furthermore, the Chancellor’s determination of likelihood of success on the merits was constrained by Mississippi law that requires plaintiffs to prove the

unconstitutionality of a statute “beyond a reasonable doubt.” *Saunders*, Dkt. #76 at 17. Federal law, however, requires only a reasonable likelihood of success to prevail on the motion for a TRO or preliminary injunction, and as demonstrated in ECF No. 12 at 5–15, Plaintiffs in this case have satisfied that standard.

Finally, Defendants may continue to misconstrue the Federal Courts Improvement Act of 1996’s amendments to 42 U.S.C. § 1983. The Fifth Circuit has held that that language “only precludes injunctive relief for suits against a judicial defendant acting in his ‘judicial capacity,’” so it did not bar a suit against “the Louisiana Supreme Court, and its members,” for “declaratory and injunctive relief” unrelated to actions in their judicial capacity. *LeClerc v. Webb*, 419 F.3d 405, 414 (5th Cir. 2005). The same is true here, where as a matter of federal law the Chief Justice’s statutorily mandated appointment of four judges to the Hinds County Circuit Court for multi-year terms with unlimited powers over future cases is an administrative, not judicial, function. *See* ECF No. 25 at 6–13.

II. Plaintiffs Have Shown Irreparable Harm.

The “[t]hreat of irreparable injury is ‘[p]erhaps the single most important prerequisite for the issuance of a preliminary injunction.’” 11A Charles Alan Wright & Arthur B. Miller, *Federal Practice and Procedure* § 2948.1. The imminent constitutional violations stemming from H.B. 1020 will deprive Hinds County’s Black voters of their constitutional rights to equal protection of the laws. *See* ECF No. 12 at 5–16. Such deprivations “for even minimal periods of time constitute[] irreparable injury.” *J & B Ent. v. City of Jackson, Miss.*, 2006 WL 1118130, at *12 (S.D. Miss. Apr. 7, 2006).

Defendants may contend that Plaintiffs are only indirectly affected by the judicial appointments provision of H.B. 1020. But courts routinely reach the merits of cases involving injuries similar to the constitutionally protected rights at issue here. *See, e.g., Fusilier v. Landry*, 963 F.3d 447, 452, 454 (5th Cir. 2020) (in equal protection suit “challeng[ing] the electoral method for Louisiana’s 32nd Judicial District Court,” “African-American voters and the Terrebonne Parish NAACP” “plainly had standing”); *Voter Info. Project, Inc. v. City of Baton Rouge*, 612 F.2d 208, 212 n.1 (5th Cir. 1980) (allowing challenge to judicial election scheme to proceed where plaintiffs included “[B]lack voters”). Plaintiffs and their members include Black voters who live in Hinds County and have voted in Hinds County Circuit Court elections in the past and plan to do so in the future. *See* Decl. of Charles Taylor, ECF No. 12-2 at ¶¶ 2–4; Decl. of Frank Friggers, ECF No. 12-3 at ¶¶ 2–3; Decl. of Nsombi Lambright-Haynes, ECF No. 12-4 at ¶¶ 2–3. H.B. 1020’s judicial appointment provision will deprive Plaintiffs of rights afforded to other Mississippi citizens, and dilute the strength of their vote. Plaintiffs have thus demonstrated standing and irreparable harm.

III. Extending the TRO Would Not Harm Defendants or Disserve the Public Interest.

Finally, the threatened injury to Plaintiffs significantly outweighs any purported harm to Defendants from leaving the temporary restraining order in place until June 9, and the balance of equities tips in Plaintiffs’ favor. *See* ECF No. 12 at 16–17.

Defendants may argue that the State’s interests in addressing crime and overcrowded dockets counsel against extending the temporary injunctive relief. But the

status quo is that the Hinds County Circuit Court is already being supported by several temporary judges who were appointed in September 2022 to address the “criminal case backlog.” ECF No. 12-2, Ex. B. Even more importantly, the laudable goal of addressing crime must be pursued through means that do not deprive the predominantly Black citizens of Hinds County of the benefit of elected and resident Circuit Court judges that is afforded to the citizens of every other county in Mississippi. *See, e.g., Villas at Parkside Partners v. City of Farmers Branch*, No. CA 3:06-CV-2376-L, 2007 WL 1498763, at *10 (N.D. Tex. May 21, 2007) (“[T]he ‘public interest . . . does not extend so far as to allow . . . actions that interfere with the exercise of fundamental rights.’” (quoting *Deerfield Med. Center v. City of Deerfield Beach*, 661 F.2d 328, 338-339 (5th Cir. 1981)); *Phillips v. Cole*, 298 F. Supp. 1049, 1053 (N.D. Miss. 1968) (“The State of Mississippi, in undertaking to define crime and prosecution thereof, must, at all events, comply with the demands of the Constitution of the United States.”); *see also, e.g., Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022) (“There is generally no public interest in the perpetuation of unlawful [government] action.”).

CONCLUSION

For the foregoing reasons, the Court should extend the temporary restraining order prohibiting Defendant Randolph from appointing judges pursuant to H.B. 1020 through the earlier of the resolution of Plaintiffs’ forthcoming motion for a preliminary injunction or June 9, 2023.

Respectfully submitted this 19th day of May, 2023.

/s/ Eric H. Holder, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2023, I electronically filed the foregoing Plaintiffs' Reply in Support of Renewed Necessitous and Urgent Motion for a Temporary Restraining Order with the Clerk of the Court by using the Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Mark H. Lynch
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