E-Filed Document Jun 1 2023 15:56:44 2023-CA-00584-SCT Pages: 64

NO. 2023-CA-00584-SCT

IN THE SUPREME COURT OF MISSISSIPPI

ANN SAUNDERS; SABREEN SHARRIEF; and DOROTHY TRIPLETT,

Appellants,

v.

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

On Appeal from the Chancery Court of Hinds County, Mississippi
First Judicial District

CORRECTED APPELLANTS' BRIEF

Oral Argument Requested

Cliff Johnson, MSB #9383
MacArthur Justice Center
University of Mississippi School of Law
481 Chucky Mullins Drive
University, MS 38677
(662) 915-6863
cliff.johnson@macarthurjustice.org

Robert B. McDuff, MSB #2532
Paloma Wu, MSB #105464
Mississippi Center for Justice
210 E. Capitol Street, Ste. 1800
Jackson, MS 39201
(601) 709-0858
rmcduff@mscenterforjustice.org
pwu@mscenterforjustice.org

Jacob W. Howard, MSB #103256
MacArthur Justice Center
P.O. Box 1447
Cleveland, MS 38732
(769) 233-7538
jake.howard@macarthurjustice.org

Joshua Tom (Miss. Bar No. 105392)
ACLU of Mississippi
P.O. Box 2242
Jackson, MS 39225
(601) 354-3408
jtom@aclu-ms.org

Tanner Lockhead*
NAACP Legal Defense & Educational Fund
700 14th Street, Ste. 600
Washington, DC 20005
(929) 536-3943
tlockhead@naacpldf.org

Brenda Wright**
Brittany Carter*
NAACP Legal Defense & Educational Fund
40 Rector Street, Fifth Floor
New York, NY 10006
(212) 617-1657
bwright@naacpldf.org
bcarter@naacpldf.org

*Admitted *pro hac vice*
***Pro hac vice* application pending

Counsel for Appellants

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF INTERESTED PERSONS

NO. 2023-CA-00584-SCT

ANN SAUNDERS; SABREEN SHARRIEF;
and DOROTHY TRIPLETT **APPELLANTS**

v.

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable J. Dewayne Thomas, *Chancery Court Judge*;
2. Honorable Michael K. Randolph, *Defendant-Appellee;*
3. Zack Wallace, Hinds County Circuit Court Clerk, *Defendant-Appellee;*
4. Greg Snowden, Director of the Administrative Office of the Courts, *Defendant-Appellee;*
5. State of Mississippi, *Defendant-Appellee*;
6. Governor Tate Reeves, *Defendant-Appellee*;
7. Attorney General Lynn Fitch, *Defendant-Appellee & Counsel for Defendants-Appellees*;
8. Mark Albin Nelson, *Counsel for Defendant-Appellee Hon. Michael K. Randolph*;
9. Ned Andrew Nelson, *Counsel for Defendant-Appellee Hon. Michael K. Randolph*;
10. Scherrie L. Prince, *Counsel for Defendant-Appellee Zack Wallace*;

11. Anthony Simon, *Counsel for Defendant-Appellee Zack Wallace*;
12. Pieter Teeuwissen, *Counsel for Defendant-Appellee Zack Wallace*;
13. Assistant Attorney General Wilson Douglas Minor, *Counsel for Defendant-Appellee Greg Snowden*;
14. Assistant Attorney General Justin L. Matheny, *Counsel for Defendants-Appellees*;
15. Assistant Attorney General Rex M. Shannon, III, *Counsel for Defendants-Appellees*;
16. Assistant Attorney General Gerald L. Kucia, *Counsel for Defendants-Appellees*;
17. Ann Saunders, *Plaintiff-Appellant*;
18. Sabreen Sharrief, *Plaintiff-Appellant*;
19. Dorothy Triplett, *Plaintiff-Appellant*;
20. Cliff Johnson, MacArthur Justice Center, *Counsel for Plaintiffs-Appellants (Lead)*;
21. Robert B. McDuff, Mississippi Center for Justice, *Counsel for Plaintiffs-Appellants;*
22. Paloma Wu, Mississippi Center for Justice, *Counsel for Plaintiffs-Appellants*;
23. Jacob W. Howard, MacArthur Justice Center, *Counsel for Plaintiffs-Appellants*;
24. Joshua Tom, ACLU of Mississippi, *Counsel for Plaintiffs-Appellants*;
25. Tanner Lockhead,* NAACP Legal Defense & Educational Fund, *Counsel for Plaintiffs-Appellants*;
26. Brittany Carter,* NAACP Legal Defense & Educational Fund, *Counsel for Plaintiffs-Appellants*;

RETRIEVED FROM DEMOCRACYDOCKET.COM

*Admitted *pro hac vice*

This the 31st day of May, 2023,

/s/ Jacob W. Howard
JACOB W. HOWARD

Counsel for Appellants

TABLE OF CONTENTS

RETRIEVED FROM DEMOCRACYDOCKET.COM

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

Page(s)

Cases

RETRIEVED FROM DEMOCRACYDOCKET.COM

RETRIEVED FROM DEMOCRACYDOCKET.COM

RETRIEVED FROM DEMOCRACYDOCKET.COM

Federal & State Statutes

RETRIEVED FROM DEMOCRACYDOCKET.COM

Constitutional Provisions

RETRIEVED FROM DEMOCRACYDOCKET.COM

Other Authorities

RETRIEVED FROM DEMOCRACYDOCKET.COM

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATEMENT OF THE ISSUES

1. Does H.B. 1020 violate the plain text of Sections 153 and 165 of the Mississippi Constitution by providing for the appointment rather than election of judges to the Hinds County Circuit Court for reasons other than the disqualification or disability of existing duly elected judges?

2. Does Section 9-1-105(2) of the Mississippi Code violate the plain text of Sections 153 and 165 of the Mississippi Constitution by providing for the appointment rather than election of judges to constitutional courts for reasons other than the disqualification or disability of duly elected judges?

3. Does H.B. 1020 violate Section 172 of the Mississippi Constitution by establishing the CCID court without a mechanism for supervisory control by a constitutional court?

4. Does the doctrine of judicial immunity apply in a suit seeking only prospective injunctive and declaratory relief?

5. Is the appointment of judges an administrative or executive act that is not protected by judicial immunity, rather than a judicial act?

6. Is injunctive relief available against an administrative officer who plays a central role in the administration of an unconstitutional statute?

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATEMENT OF THE CASE

Section 153 of the Mississippi Constitution unambiguously provides that circuit and chancery court judges "shall be elected by the people." Miss. Const. art. VI, § 153. Pursuant to this express constitutional command, Mississippians have elected our circuit court judges for more than 100 years. The legislature is no more free to disregard this essential constitutional requirement than it would be to ignore the requirement that the Governor and other statewide officials be elected. *See* Miss. Const. art. VI, § 144. The only exception, contained in Section 165 of the Constitution, allows the Governor to appoint a temporary judge in the place of an elected judge who is disqualified or otherwise unable to serve. Miss. Const. art. VI, § 165. The Mississippi Constitution, in Section 172, also imposes strict limits on the power and independence of inferior courts created by the legislature, requiring that they be subject to the supervisory control of one of the courts established by Mississippi's Constitution: the Supreme Court, the chancery courts, and the circuit courts. Miss. Const. art. VI, § 172; *Marshall v. State*, 662 So. 2d 566, 570–71 (Miss. 1995).

RETRIEVED FROM DEMOCRACYDOCKET.COM

This litigation challenges Mississippi House Bill 1020 and Section 9-1-105(2) of the Mississippi Code for violating these constitutional provisions. In violation of Sections 153 and 165 of the Constitution, H.B. 1020 and Section 9-1-105(2) authorize the Chief Justice of the Supreme Court to appoint unelected circuit court judges to serve alongside the elected judges of the Hinds County Circuit Court. H.B. 1020 additionally violates Section 172 of the Constitution by creating a new court for the Capital Complex Improvement District ("CCID") that is outside the supervision and control of any constitutional court. The Hinds County Chancery Court denied Appellants' motion for a preliminary injunction and dismissed Appellants' complaint for declaratory and injunctive relief on May 15, 2023. R.E. 2, R. 680–82. Appellants now seek enforcement of the

plain language of the Mississippi Constitution—and vindication of their constitutional rights—in this Court.

I. FACTUAL BACKGROUND

On April 21, 2023, Mississippi Governor Tate Reeves signed into law House Bill 1020 ("H.B. 1020"). R.E. 3, R. 657. Among other things, H.B. 1020 requires the Chief Justice of the Mississippi Supreme Court to appoint four judges to the Circuit Court of Hinds County. The relevant provision states:

> The Chief Justice of the Supreme Court shall appoint four (4) temporary special circuit judges for the Seventh Circuit 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 term of the temporary special circuit judges shall expire on December 31, 2026.

H.B. 1020 § 1(1), 2023 Leg., Reg. Sess. (Miss. 2023) [Hereinafter "H.B. 1020"]. The legislature mandated that these "judges shall be appointed no later than fifteen (15) days after the passage of this act." *Id*. § 1(2).

The circuit court judge appointments authorized by H.B. 1020 will not be made "in the place of" any elected circuit court judge in Hinds County who is "unable or disqualified to preside at any term of court," as provided by Miss. Const. art. VI, § 165. Rather, these unelected judges will serve in addition to the court's four elected judges and will wield the same power as the elected judges. Under H.B. 1020, the unelected judges will serve for nearly four years, through 2026, just shy of the full term of an elected judge. *See* Miss. Const. art. VI, § 153 (circuit and chancery court judges "shall hold their office for a term of four years"). Indeed, because H.B. 1020 empowers the Chief Justice to reappoint judges already serving pursuant to the other statutory provision

RETRIEVED FROM DEMOCRACYDOCKET.COM

challenged in this litigation, Section 9-1-105(2) of the Mississippi Code,[1] it is entirely possible—even likely—that one or more of the unlawfully appointed judges, at least one of whom was first appointed in 2020, will serve for a period longer than the constitutionally prescribed term of an elected judge, without ever facing an election.

If the appointments required by H.B. 1020 are allowed to proceed, the number of judges on the Hinds County Circuit Court will double: Half of the bench will be comprised of unelected judges, notwithstanding the mandate in the Mississippi Constitution that circuit court judges "shall be elected by the people." Miss. Const. art. VI, § 153.

As noted, H.B. 1020 is not the only provision of Mississippi law permitting judicial appointments prohibited by the Constitution. Section 9-1-105(2) of the Mississippi Code permits appointments not in cases of disability or disqualification of a sitting judge, but "in the event of an emergency or overcrowded docket." Miss. Code Ann. § 9-1-105(2). It provides:

> Upon the request of the Chief Judge of the Court of Appeals, the senior judge of a chancery or circuit court district, the senior judge of a county court, or upon his own motion, the Chief Justice of the Mississippi Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court, shall have the authority to appoint a special judge to serve on a temporary basis in a circuit, chancery or county court in the event of an emergency or overcrowded docket. 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.

Under Section 9-1-105(2), beginning in about August 2020, the Chief Justice appointed four judges to Hinds County Circuit Court, and he has subsequently reappointed at least one of

[1] *See* H.B. 1020 § 1(2) ("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.").

RETRIEVED FROM DEMOCRACYDOCKET.COM

them several times, most recently in September 2022. *See, e.g.*, Order Appointing Special Judge, *In Re: Judicial Appointment Related to Coronavirus (COVID-19): Special Judge for the Circuit Court of Hinds County, Mississippi*, No. 2020-AP-00815 (Aug. 4, 2020) (appointing Hon. Betty W. Sanders as a special temporary judge to the Hinds County Circuit Court through December 30); Order Appointing Special Judge, *In Re: Judicial Appointment*, No. 2020-AP-00815 (Jan. 5, 2021) (extending appointment of Hon. Betty W. Sanders through March 31, 2021); Order Appointing Special Judge, *In Re: Judicial Appointment*, No. 2020-AP-00815 (Apr. 7, 2021) (extending appointment of Hon. Betty W. Sanders through April 30, 2021); *In Re: Judicial Appointment*, No. 2022-AP-00651 (Jun. 29, 2022) (appointing Hon. Betty W. Sanders to serve as a special temporary judge through January 31, 2023); R. 625–43 (four September 2022 orders appointing special judges for an unspecified period and assigning them approximately 200 cases). Like the appointments called for in H.B. 1020, these appointments were not made because any of the court's elected judges was "unable or disqualified to preside at any term of court," Miss. Const. art. VI, § 165. Instead, these appointed judges serve in addition to (and alongside) the elected judges.

RETRIEVED FROM DEMOCRACYDOCKET.COM

H.B. 1020 also establishes a new court to handle certain cases arising in the Capital Complex Improvement District ("CCID")—a district that once covered a small zone for economic improvement but, under H.B. 1020, has been significantly expanded, and now covers broad swaths of Jackson. H.B. 1020 §§ 4, 8. The CCID 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 Capitol Complex Improvement District; 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 violations 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 Capitol Complex Improvement District.

Id. § 4(1)(a). The judge presiding over the CCID court will be appointed by the Chief Justice. *See id*. § 4(2).

The CCID court would be unlike any other in all of Mississippi.

First, unlike other legislatively created inferior courts, its jurisdiction is not a political subdivision of the state, as is the case with county courts, municipal courts, and justice courts. Nor is it a court established to provide alternatives to the traditional criminal justice system, as is the case with the various "intervention courts," or to provide a specialized forum for a particularly vulnerable class of citizens, as do the youth courts. Rather, it is the only court whose geographic jurisdiction is an economic improvement district.

Second, H.B. 1020 establishes no statutory right of appeal from the CCID court to any court established by the Constitution. *See generally* H.B. 1020. Although an earlier version of the bill provided for a right of appeal, that provision was stricken from the final bill. *See* H.B. 1020 § 5(2)(a) 2023 Leg., Reg. Sess. (Miss. 2023) (as passed by House, February 2, 2023) ("Appeals from CCID inferior courts shall be made to the Circuit Court of the First Judicial District of Hinds County."). In addition, under H.B. 1020, people convicted of misdemeanor offenses in the CCID court may be incarcerated in state prison at the Central Mississippi Correctional Facility rather than in a county or municipal jail, as is the case for people convicted of misdemeanors in every other court in Mississippi. H.B. 1020 § 4(1)(b); *cf.*, *e.g.*, Miss. Code Ann. § 21-23-20 (authorizing municipal courts to commit persons convicted of misdemeanors to jail); *Ellis v. State*, 33 So. 2d 837, 838 (Miss. 1948) ("In testing an offense as to whether it is a felony or misdemeanor, the power given to imprison in the penitentiary determines it to be a felony.") (citation omitted).

RETRIEVED FROM DEMOCRACYDOCKET.COM

II. PROCEDURAL BACKGROUND

Appellants Ann Saunders, Sabreen Sharrief, and Dorothy Triplett—three Hinds County citizens, voters, and taxpayers, R.E. 3, R. 665–66—filed suit in the Hinds County Chancery Court, seeking declaratory and injunctive relief against provisions of House Bill 1020 and Miss. Code Ann. § 9-1-105(2). R. 20–39. Appellants named as defendants Chief Justice Michael K. Randolph in his official capacity as Chief Justice of the Mississippi Supreme Court; Zack Wallace, in his official capacity as Clerk of the Circuit Court of Hinds County; and Greg Snowden, in his official capacity as Director of the Administrative Office of Courts. R. 24.

These individuals all play a central role in the administration and implementation of the statutes challenged in this litigation. Pursuant to the challenged statutes, Chief Justice Randolph holds the unconstitutional appointment authority under H.B. 1020 with respect to both the Hinds County Circuit Court and the CCID court as well as under Section 9-1-105(2). Mr. Wallace is responsible for the assignment of cases filed in the Hinds County Circuit Court to the court's judges, including the unconstitutionally appointed judges. R.E. 7, R. 583. Indeed, in orders issued in September 2022, unconstitutionally appointing judges to the Hinds County Circuit Court, Mr. Wallace is specifically ordered to effectuate the assignment of cases to them. *See* R. 43, 49, 55, 61. Mr. Snowden is responsible for the disbursement of taxpayer funds to pay for the courts, including for the salaries of the unconstitutionally appointed judges and their support staff and for the costs of the CCID court. H.B. 1020 §§ 4(3), 6. Appellants requested injunctive relief preventing each of these government actors from exercising their authority in furtherance of the unconstitutional appointment scheme and the creation and operation of the CCID court.

After filing and serving their Complaint, Appellants promptly filed a Motion for Preliminary Injunction. R. 77–102. The Chancery Court subsequently granted a Temporary

RETRIEVED FROM DEMOCRACYDOCKET.COM

Restraining Order enjoining any judicial appointments under H.B. 1020 on May 4, set to expire no later than May 14. R. 296–99.

The State of Mississippi *ex rel*. Lynn Fitch, in her official capacity as Attorney General of Mississippi, filed an unopposed motion to intervene, which was granted on May 2, 2023. R. 136-39, 159–60. Moreover, in keeping with the suggestion of the chancery court, R. 699, 717,[2] the Appellants subsequently filed an amended complaint, adding the State of Mississippi, Attorney General Fitch, and Governor Reeves as defendants in their official capacities. R. 603–43.

Appellee Chief Justice Randolph filed a motion to dismiss himself as a defendant on judicial immunity grounds, R. 148–52, which was granted by the chancery court on May 11, 2023. R.E. 4, R. 594–95. The chancery court—unlike this Court—was bound by a 2004 Court of Appeals' holding that the appointment of a special judge is a "judicial act" for purposes of judicial immunity. R.E. 5, R. 592 (quoting *Vinson v. Prather*, 879 So. 2d 1053, 1057 (Miss. App. 2004). However, the *Vinson* case involved a suit for damages. The chancery court cited no authority for its additional holding that judicial immunity applies "to suits seeking declaratory and injunctive relief." R.E. 5, R. 592–93.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Appellee Zack Wallace also filed a motion to dismiss the suit against him, R. 370–414, which was granted by the chancery court on May 11. R.E. 6, R. 587–88. Mr. Wallace argued that he lacked the requisite personal stake in the litigation, that he was not a proper party because the relief Appellants seek could be obtained from other parties, and that injunctive relief is unavailable against him because he cannot be ordered to take actions that are "beyond his constitutional

[2] R. 699 ("It is my opinion that the lawsuit should be styled against the AG's Office only, and possibly the Governor."); R. 717 ("I do suggest that you consider amending your Complaint to sue the Attorney General.… What I think it should be is the Attorney General and possibly the Governor.").

authority." R. 407–14. The chancery court dismissed Appellants' claims against Mr. Wallace, finding that "[t]o require Wallace to remain as a party herein would be to place him in the untenable position of violating either his Oath of Office and statutorily imposed duties or violating a Court *Order* under penalty of contempt." R.E. 6, R. 585.

The State filed a motion to dismiss Appellants' complaint on May 5, 2023, arguing that Appellants lack standing and that the complaint failed to state a claim on which relief can be granted. R. 312–67. After conducting a hearing on May 10, 2023, R. 732–838, on May 15, 2023, the chancery court entered a final order denying Appellants' motion for a preliminary injunction and granting the State's motion to dismiss. R.E. 2, R. 680–82. The chancery court held that Appellants have standing. R.E. 3, R. 668–70. However, despite the plain language of Sections 153 and 165 of the Constitution—which require circuit judges to be elected and allow appointment of a circuit court judge *only* by the Governor *only* when an elected judge is "unable or disqualified to preside" and *only* to serve "in the place of the judge or judges disqualified," Miss. Const. Art. VI, § 165—the chancery court stated that it found no "limitation within the Mississippi Constitution" barring the legislature from authorizing the Chief Justice to appoint *additional* circuit court judges pursuant to H.B. 1020 and Section 9-1-105(2). R.E. 3, R. 672–74.

RETRIEVED FROM DEMOCRACYDOCKET.COM

With respect to the CCID court, the chancery court acknowledged the "lack of specific language regarding right of appeal within the four corners of HB 1020." R.E. 3, R. 676. Nonetheless—and despite the fact that the CCID court is not a municipal court—the chancery court reasoned that "[b]ecause the CCID court is established to function as a municipal court, it is subject to the same appeal mechanism." R.E. 3, R. 676. On that basis, the court concluded that the CCID court is a constitutionally permissible inferior court. R.E. 3, R. 675–77.

Appellants filed their notice of appeal on May 16, R. 683–86, and now ask this Court to reverse the rulings of the chancery court and enforce the plain language of the Mississippi Constitution.

SUMMARY OF ARGUMENT

The plain language of the Mississippi Constitution precludes the legislature from authorizing appointments to the circuit courts as contemplated by Section 9-1-105(2) of the Mississippi Code and Section 1 of House Bill 1020. Section 153 of the Constitution mandates that circuit court judges "shall be elected by the people." Miss. Const. art. VI, § 153. Section 165 of the Constitution provides the only exception to this rule. It permits "the Governor" to appoint a judge to serve "in the place of" one of the elected circuit court judges in the narrow circumstance when the elected judge is "unable or disqualified" to preside, and only "during such disability or disqualification." *Id.* § 165. Contrary to these constitutional requirements, H.B. 1020 and Section 9-1-105(2) permit circuit court judges (and in the case of H.B. 1020, specifically Hinds County circuit court judges) to be appointed rather than "elected by the people." These statutes authorize the Chief Justice of the Supreme Court, who is plainly not "the Governor," to make these appointments, and the judges so appointed serve in addition to—rather than "in the place of"—the elected judges of those courts. These appointments are authorized "in the event of an emergency or overcrowded docket" (in the case of Section 9-1-105(2)) or for no stated reason at all (in the case of H.B. 1020), rather than because an elected judge is "unable or disqualified to serve." And rather than lasting "during [an elected judge's] disability or disqualification," Section 9-1-105(2) authorizes appointments "for whatever period of time is designated by the Chief Justice," while the judges appointed under H.B. 1020 are to serve for at least three and a half years until December

RETRIEVED FROM DEMOCRACYDOCKET.COM

31, 2026.[3] The judicial appointments authorized by H.B. 1020 and Section 9-1-105(2) of the Mississippi Code violate the plain language of the Constitution and must be invalidated.

The chancery court's contrary conclusion was based on an unduly broad and erroneous application of the principle, articulated by this Court in *Wheeler v. Shoemaker,* that "the Legislature has all political power not denied it by the state or national constitutions." *See* R.E. 3, R. 673–74 (quoting *Wheeler v. Shoemaker,* 57 So. 2d 267, 280 (Miss. 1952)). The chancery court's conclusion failed to recognize that Sections 153 and 165 of Article VI of the Constitution do, in fact, deny the legislature the power to authorize judicial appointments to the circuit courts outside of the limited circumstances specified in Section 165. The chancery court's overbroad application of *Wheeler* is contrary to the common principle of statutory and constitutional construction known as "*inclusio unius est exclusion alterius*." *Sw. Drug Co. v. Howard Bros. Pharmacy of Jackson*, 320 So. 2d 776, 779 (Miss. 1975). By specifying the method of selection for circuit court judges—namely, election by the people—and by defining a single, narrow exception to that general requirement, our Constitution excludes other methods of selection and other exceptions. The chancery court's contrary conclusion must be reversed, and Section 1 of H.B. 1020 and Section 9-1-105(2) of the Mississippi Code must be declared unconstitutional.

RETRIEVED FROM DEMOCRACYDOCKET.COM

A separate provision of H.B. 1020, Section 4, which purports to establish a new inferior court for the Capital Complex Improvement District, is likewise constitutionally infirm, running afoul of Article VI, Section 172 of the Constitution and this Court's elucidation of that provision. Section 172 authorizes the legislature to establish inferior courts. As this Court explained in *Marshall*, 662 So. 2d at 570–71, an inferior court must meet two essential requirements: First, it

[3] H.B. 1020 is ambiguous as to when the appointment begins. It requires the appointments to be made "no later than fifteen days after the passage of this act," H.B. 1020 § 1(2), but the effective date of the statute, which triggers many other related provisions, is July 1, 2023, *id.* § 18.

must exercise some part of the jurisdiction of a constitutionally defined court (namely, the Supreme Court and the chancery and circuit courts), and second, it must be subject to supervision, through appeal or certiorari, by the constitutional court whose jurisdiction it exercises. The CCID court lacks the second of these requirements. Although it is assigned part of the jurisdiction of the Hinds County Circuit Court, H.B. 1020 does not create a right of appeal from decisions of the CCID court to the circuit court, either directly or indirectly. Indeed, the legislature removed a right of appeal that had been included in an earlier draft. And while its jurisdiction is defined by reference to the municipal courts, the CCID court is not itself a municipal court, and rights of appeal applicable to municipal courts are therefore unavailable from the CCID court. Appeal rights exist only when created by statute. *Marshall*, 662 So. 2d at 573 (Hawkins, J., concurring) ("[T]he right to appeal is not, nor can it be, a court-created right."). The chancery court erred by inferring a legislative intent to import the municipal court appeals process into H.B. 1020 merely on the basis of a jurisdictional overlap. Because it lacks a right of appeal to the Hinds County Circuit Court, the CCID court cannot constitutionally exercise the part of the circuit court's jurisdiction that it has been assigned in H.B. 1020. This Court should reverse the chancery court's judgment upholding the CCID court, and should declare Section 4 of H.B. 1020, establishing that court, unconstitutional.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The chancery court also erred by dismissing Chief Justice Randolph from this case under the doctrine of judicial immunity. Judicial immunity protects judges from liability for damages for past acts—it does not apply to suits for prospective relief. Here, Appellants seek only prospective relief against the Chief Justice in his official capacity, in the form of an injunction preventing future unlawful judicial appointments. In addition, judicial immunity only protects judges from liability for their *adjudicative* acts—it does not apply to claims seeking to enjoin *administrative or*

executive acts. Contrary to the decision of the chancery court and the Court of Appeals in *Vinson*, 879 So. 2d at 1057, the appointment of judges under H.B. 1020 and Section 9-1-105(2) is an administrative or executive act. There is nothing inherently "judicial" about appointing judges. Indeed, as noted above, judges in Mississippi generally are selected by the people (through elections) or the Governor (by appointment). Thus, the Chief Justice does not enjoy judicial immunity from the claims asserted and relief sought in this case, and the chancery court's dismissal of Appellants' claims against him should be reversed.

Finally, the chancery court erred in dismissing the Hinds County Circuit Clerk, Appellee Zack Wallace, from this case on the ground that he is not a proper party. The chancery court did not disagree that Mr. Wallace plays a role in the implementation of statutes that call for unelected judges to hear cases filed in the Hinds County Circuit Court. Instead, the chancery court's dismissal was based on the flawed premise that a ruling against Mr. Wallace would require him to choose between fulfilling his oath of office and facing contempt proceedings. But an order that H.B. 1020 and Section 9-1-105(2) are unconstitutional would relieve Mr. Wallace from any duty to assign cases to judges putatively appointed under those statutes. Because Mr. Wallace plays a central role in the administration of H.B. 1020 and Section 9-1-105(2) and because an injunction against him would prevent unconstitutionally appointed judges from hearing cases in the Hinds County Circuit Court, Mr. Wallace is a proper defendant.

RETRIEVED FROM DEMOCRACYDOCKET.COM

STANDARD OF REVIEW

"A *de novo* standard of review is applied to questions of law, legal conclusions, and jurisdictional questions." *Gibson v. Bell*, 312 So. 3d 318 (Miss. 2020) (internal quotation marks removed). Whether an enactment of the legislature is unconstitutional is a question of law and is therefore subject to *de novo* review. *State v. Bd. of Levee Comm'rs for Yazoo-Mississippi Delta*, 932 So. 2d 12, 18 (Miss. 2006). Likewise, questions concerning the proper construction of a statute

are reviewed *de novo*. *Id.* Further, a trial court's grant or denial of a motion to dismiss, including dismissal on the grounds of judicial immunity, is reviewed *de novo*. *Weill v. Bailey*, 227 So. 3d 931, 934 (Miss. 2017).

ARGUMENT

I. JUDICIAL APPOINTMENTS UNDER THE CHALLENGED LAWS VIOLATE THE PLAIN TEXT OF THE MISSISSIPPI CONSTITUTION.

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

> Our Constitution is a sacred compact among the people of this State. 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) (citation omitted).

RETRIEVED FROM DEMOCRACYDOCKET.COM

When faced with questions regarding the meaning of the Mississippi Constitution, "the Court begins by examining the plain text" and "bow[s] with respectful submission to its provisions." *In re Initiative Measure 65: Mayor Butler v. Watson*, 338 So. 3d 599, 607 (Miss. 2021) (citations omitted). When interpreting the Constitution in accordance with its text, its "plain language is to be given its usual and popular signification and meaning." *Id.* at 607. In that endeavor, "the Court turns to dictionaries for guidance." *Id.* at 609 (citations omitted). The Court's "goal is to analyze and understand the text as an ordinary speaker would understand the language; in short, [the Court] analyze[s] the text of our Constitution as the people who ratified it and are governed by it would understand it." *Id.* at 609.

This Court has said that an enactment of the legislature will not be struck down, unless its unconstitutionality is established "beyond a reasonable doubt." *Bd. Of Levee Comm'rs,* 932 So. 2d at 26 (citations and internal quotations omitted). However, where a statute "directly conflict[s]

with the clear language of the constitution," it *is* unconstitutional beyond a reasonable doubt. *Id.* "[N]o 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." *Cecil Newell, Jr. v. State*, 308 So. 2d 71, 77 (Miss. 1975). "Mississippi's government can only validly act in ways in which it has been given power to act by the people of Mississippi." *In re Initiative 65*, 338 So. 3d at 606 (citing Miss. Const. art. III, §§ 5–6).

A. The Plain Text of Sections 153 and 165 of the Mississippi Constitution Controls.

The plain text of the Mississippi Constitution commands that circuit and chancery court judges be elected by the people. Miss. Const. art VI, § 153. It provides one narrow exception permitting the Governor to appoint a substitute judge to preside in the place of an elected circuit or chancery court judge who is disabled or disqualified from serving, and only during the elected judge's disability or disqualification. *Id.* § 165. As explained below, under the plain text of these provisions, the judicial appointments purportedly authorized by H.B. 1020 and Section 9-1-105(2) cannot be sustained.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The chancery court did not examine the language of Sections 153 and 165. Instead, it found a "reasonable doubt" that the challenged statutes violated the Constitution based on a misapplication of the principle that "the Legislature has all political power not denied it by the state or national constitutions." *See* R.E.3, R. 673–74 (quoting *Wheeler v. Shoemaker,* 57 So. 2d 267, 280 (Miss. 1952)). Contrary to the chancery court's conclusion, however, Section 153 of the Constitution, by providing that circuit and chancery court judges "shall be elected by the people," *does* deny the legislature the power to authorize the selection of judges to those courts by appointment—or any method other than an election by the people. Likewise, by expressly including a single narrow exception in which appointment of judges is permitted, Section 165 of the Constitution precludes the legislature from establishing other exceptions. *Cf. Bittner v. United*

States, 143 S. Ct. 713, 720 (2023) (describing the widely accepted canon of construction that "the inclusion of one thing is the exclusion of another"); *Sw. Drug Co.*, 320 So. 2d at 779 (same). *Wheeler* does not authorize the legislature to ignore the Constitution.

The chancery court also erred in relying on dicta in two Court of Appeals cases that construed a statutory provision, Section 9-1-105(1) of the Mississippi Code, related to one of the provisions challenged here. *See* R. 673 (citing *Vinson*, 879 So. 2d 1056–57 and *McDonald v. McDonald*, 850 So. 2d 1182 (Miss. Ct. App. 2002), *aff'd*, 876 So. 2d 296 (Miss. 2004)). In *McDonald*, the defendant challenged the judgment entered against him by a special chancellor appointed under Section 9-1-105(1) when all three of the court's elected chancellors had recused themselves. The defendant argued that the appointment was unconstitutional because it was made by the Chief Justice rather than the Governor. 850 So. 2d at 1186. Because the defendant had failed to notify the Attorney General of the challenge to the statute's constitutionality, as required by M.R.C.P. 24(d), the court declined to reach the merits. *Id.* Nevertheless, the Court of Appeals suggested that Section 165 of the Constitution might not be "the exclusive mechanism for selection of special judges[,]" and mused that that "perhaps . . . the use of this procedure is optional as opposed to using some other feasible but unstated procedure." *Id.* This Court is not, of course, bound by the musings of the Court of Appeals.[4] As the Court has made clear, even the *holdings* of the Court of Appeals are "merely persuasive authority," but "its dictum has no precedential value whatsoever." *Methodist Healthcare-Olive Branch Hosp. v. McNutt*, 323 So. 3d 1051, 1061 (Miss.

RETRIEVED FROM DEMOCRACYDOCKET.COM

[4] In affirming *McDonald*, this Court made no mention of the Court of Appeals' dicta concerning the constitutional challenge to the special chancellor's appointment or of Section 9-1-105. 876 So. 2d at 296–98.

2021). More importantly, fidelity to the text of the Constitution forbids reading into Section 165 an "unstated procedure" for adding unelected judges to the circuit and chancery courts.[5]

The plain text of the Constitution controls even when adhering to it makes it harder to achieve a particular policy goal. *In re Initiative Measure 65*, 338 So. 3d at 611–12 (adhering to text of Constitution even though it created a mathematically impossible requirement for submission of ballot initiatives). Here, the legislature's policy goals must yield to the clear command of the Mississippi Constitution that circuit court judges be elected.

1. The Plain Text of Section 153 of the Constitution Requires that Circuit Court Judges Be Elected.

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

> 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.

Miss. Const. art. VI, § 153 (emphasis added).

RETRIEVED FROM DEMOCRACYDOCKET.COM

There is no ambiguity about what it means that circuit and chancery court judges "shall be elected by the people." "Shall" means "a duty to; more broadly, is required to," and is "the mandatory sense that drafters typically intend and that courts typically uphold."[6] "Elect" means

[5] *Vinson* is even less authoritative than *McDonald*, on which it relies. In *Vinson*, the plaintiffs appealed the dismissal of their suit against Chief Justice Prather for damages, claiming that proceedings before a special chancellor appointed under Section 9-1-105(1) violated their due process rights. The Court of Appeals, in support of its conclusion that appointment was constitutional, merely quoted *McDonald*'s assertion that Section 165 "is not the exclusive mechanism for the selection of special judges," with no further discussion or analysis. 879 So. 2d at 1056–57. Moreover, *Vinson* affirmed the dismissal on judicial immunity grounds, and thus the discussion of the validity of the appointment was not necessary to the result and is therefore dicta.
[6] "Shall," *Black's Law Dictionary* (11th ed. 2019).

"*to select by vote* for an office, position, or membership."[7] "Elected by the people" stands in direct contrast to "appointed by the Governor." Indeed, historically, gubernatorial appointments were used to select chancery and circuit court judges under the Constitution of 1890 until 1910 when the people of Mississippi approved a referendum to regain their right to vote for their judges. *See Collins ex rel. State v. Jones*, 64 So. 241 (1914) (comparing pre- and post-1910 constitutional provisions).

Indeed, Section 153's command that circuit court judges "shall be elected by the people" is just as clear as Article V, § 140, which uses identical language to describe how the Governor and other statewide officials must be chosen: "The Governor of the state and all statewide elected officials shall be elected by the people[.]" "The normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning." *In re J.P.*, 151 So. 3d 204, 212 (Miss. 2014) (quoting *Sorenson v. Secretary of Treasury of U.S.*, 475 U.S. 851, 860 (1986)). A law authorizing the appointment of circuit court judges is no less violative of the Constitution than would be a law that purports to permit the Chief Justice or another governmental actor to appoint the Governor, Lieutenant Governor, or Attorney General would be.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The chancery court upheld H.B. 1020 and Section 9-1-105(2) based on a misapplication of the principle that legislation is presumed valid unless it is unconstitutional "beyond a reasonable doubt." R. 675–75. When, as here, a statute conflicts with the plain and unambiguous text of the Constitution, the statute *is* unconstitutional beyond a reasonable doubt. *See Bd. of Levee Comm'rs*, 932 So. 2d at 26. The legislature cannot, by statute, deprive the people of their right to elect their

[7] "Elect," Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/elect (last visited May 23, 2023) (transitive verb) (emphasis added); *see Initiative Measure 65*, 638 So. 2d at 609 ("When searching for a popular or usual meaning of a [constitutional] term, the Court often turns to dictionaries for guidance.").

circuit court judges, as Section 1 of H.B. 1020 and Section 9-1-105(2) purport to do. Section 1 of H.B. 1020 and Section 9-1-105(2) of the Mississippi Code are contrary to the plain text of the Constitution, and the chancery court's contrary conclusion must be reversed.

2. The Plain Text of Section 165 Allows Circuit Judges to Be Appointed Only in Narrow Circumstances that Do Not Apply Here.

To be sure, Article VI, § 165 of the Constitution authorizes the appointment of circuit court judges in certain narrow circumstances. But that provision has no application here. It states, in relevant part:

> 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.

Miss. Const. art. VI, § 165 (emphasis added.) The text is clear: A circuit court judge may be appointed *only* when an existing duly elected judge is "disqualified" or otherwise "unable" to preside. Any judge so appointed presides "in the place of" a sitting circuit judge, and may serve only "during such disability or disqualification" of the circuit court judge in whose place she presides, either for the entire court term in which the disability or qualification occurs or for the duration of the disability or disqualification. *Id.* Moreover, replacement judges may be appointed *only* by "the Governor." *Id*. "The construction of a constitutional section is of course ascertained from the plain meaning of the words and terms used within it." *Ex parte Dennis*, 334 So. 2d 369, 373 (Miss. 1973). The plain meaning of each of the words and terms used within Section 165 confirms that the judicial appointments authorized by H.B. 1020 and Section 9-1-105(2) are unlawful.

RETRIEVED FROM DEMOCRACYDOCKET.COM

First, the challenged appointments are not the result of any elected circuit court judge being *disabled or disqualified* from serving. Second, the challenged appointments call for the unelected judges to serve in addition to, not *in the place of*, elected judges. Finally, the challenged statutes authorize the Chief Justice, rather than the Governor, to make appointments. These challenged provisions therefore fall outside of Section 165's narrow exception to the general rule that circuit court judges "shall be elected by the people," Miss. Const. Art. VI, § 153.

a) "Disability or Disqualification"

No elected circuit judge in Hinds County is currently disabled or disqualified from serving under the plain meaning of those words. Appellees have not even attempted to refute that. Nor could they: There is no reasonable debate about the meaning of "disability or disqualification" as a predicate to appoint an unelected judge under Section 165. The Merriam-Webster dictionary defines "disability" as "a physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions;" it can also mean "lack of legal qualification to do something."[8] "Disqualification" means "something that disqualifies or incapacitates;" "disqualify," in turn, means "to deprive of the required qualities, properties, or conditions: make unfit," or "to deprive of a power, right, or privilege."[9]

RETRIEVED FROM DEMOCRACYDOCKET.COM

By creating an exception to the constitutional requirement of elected judges in Section 153 only during the "disability or disqualification" of a sitting judge, the Mississippi Constitution

[8]"Disability," Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/disability (last visited May 22, 2023) (first and fourth definitions).
[9] "Disqualification," Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/disqualification (last visited May 22, 2023) (first definition); "Disqualify," Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/disqualify (last visited May 22, 2023) (first and second definitions).

excludes appointments for other reasons. *See, e.g., Harper v. Banks, Finley, White & Co. of Miss. P.C.,*167 So. 3d 1155, 1162 (Miss. 2015) ("[W]here a statute enumerates and specifies the subject or things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned or under a general clause"). Indeed, any other interpretation would render the entire constitutional provision superfluous. If the appointment of circuit court judges could be authorized for any policy reason that the legislature deems compelling—for example, to address overcrowded dockets—there would be no reason for Section 165 of the Constitution to specify one specific circumstances in which such appointments are permitted. *See, e.g., Corley v. United States,* 556 U.S. 303, 314 (2009) (citations omitted) ("[O]ne of the most basic interpretative canons [is] that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'").

The challenged appointments have nothing to do with the disability or disqualification of any judge. Section 1 of H.B. 1020 authorizes the appointment of four "temporary special judges" to the Hinds County Circuit Court without any reference to the disability or disqualification of a sitting judge: Indeed, it doesn't specify any reason or justification for the appointments whatsoever. Section 9-1-105(2) authorizes judicial appointments "in the event of an emergency or overcrowded docket." Miss. Code Ann. § 9-1-105(2). Neither Section 165 nor any other provision of the Constitution authorizes the legislature to sidestep the constitutional command that judges be elected in these circumstances. Both H.B. 1020 and Section 9-1-105(2) violate the plain terms of the Mississippi Constitution because they allow appointments of circuit judges that are *not* based on the disability or disqualification of any sitting circuit judge.

RETRIEVED FROM DEMOCRACYDOCKET.COM

b) "In the Place of"

Appointments made under H.B. 1020 and Section 9-1-105(2) violate the Mississippi Constitution because appointees will not serve "in the place of" a duly elected judge, as required by Section 165 of the Constitution. Instead, they serve "in addition to" the duly elected judges of a circuit or chancery court.

Section 165 permits a replacement judge to fill the shoes of an elected circuit judge who is unable to preside during a particular term of the court or in a particular case. Under H.B. 1020, the unelected judges do not fill the shoes of an elected judge who cannot serve for a period of time or for a particular case. Instead, H.B. 1020 creates entirely *new* judicial positions, to be filled by appointment instead of election, while the existing circuit judges elected by the people are still serving. A judge who is appointed for the specific purpose of *increasing* the number of circuit judges simply cannot be said to be presiding "in the place of" an elected judge who *continues to serve*.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The same infirmity invalidates Section 9-1-105(2). Under that statute, judicial appointees likewise do not serve in the shoes of a duly elected judge. In particular, Section 9-1-105(2) permits appointments to a circuit or chancery court to expand the court's capacity "in the event of an emergency or overcrowded docket" by appointing additional judges.1 Miss. Code Ann. § 9-1-105(2). These judicial appointees serve in addition to, not "in the place of" the duly elected judges of the court.

c) "The Governor"

By conferring the appointment authority on the Chief Justice of the Mississippi Supreme Court, H.B. 1020 and Section 9-1-105(2) also violate a clear constitutional requirement that appointment authority—even when allowed in the narrow circumstances of disability or

disqualification—is limited to the Governor. *See* Miss. Const. Art. VI, § 165. Conferring the appointment authority on the Chief Justice is at odds with the text of the Mississippi Constitution and upsets the separation of powers in Mississippi that the drafters of the Constitution deliberately constructed.

As noted above, the chancery court's reliance on *McDonald* and *Vinson* to justify the legislature's effort to transfer by fiat a constitutional power from one branch of government to another through H.B. 1020 and section 9-1-105(2) is misplaced.[10] Moreover, reading Section 165 of the Mississippi Constitution to permit other government officials to appoint judges would again run headlong into the commonplace canon of construction known as "inclusio unius est exclusio alterius." *See*, *e.g.*, *Sw. Drug Co.*, 320 So. 2d at 779. Put differently: If the drafters of the Constitution had "intended to allow" someone other than the Governor to appoint judges to serve in place of disabled or disqualified circuit court judges, they "would have provided so accordingly with plain language." *Watson v. Oppenheim*, 301 So. 3d 37, 43 (Miss. 2020). They "did not do so." *Id*. By granting narrow appointment authority to the Governor, the Constitution plainly forbids other government actors from claiming that same authority. The framers of the Mississippi Constitution drafted a constitution that limits appointment power to the Governor; they had no need to expressly and redundantly deny that same power to the Chief Justice or to another designee.

RETRIEVED FROM DEMOCRACYDOCKET.COM

3. Labeling Appointments "Temporary" Does Not Render Them Constitutional.

In the court below, Appellees maintained that H.B. 1020 and Section 9-1-105(2) are constitutional because they "authorize *temporary* special judicial appointments—not permanent

[10] Not only did the *McDonald* court expressly acknowledge that its discussion of 9-1-105(1) was dicta; it went out of its way to highlight that § 9-1-105(4) reserves to the Governor the power to disapprove appointments made by the Chief Justice. Under H.B. 1020 and § 9-1-105(2), by contrast, the Governor has been entirely excluded from the appointment process.

judgeships." R. 360 (emphasis added). But judicial appointments that fall outside the scope of Section 165 do not become constitutional merely because they are labeled as "temporary." Nothing in the Constitution authorizes unelected circuit court judges to sit in judgment of the rights, property, and freedom of Mississippians for even a single day, unless a duly elected circuit court judge becomes unable or disqualified to serve. Yet, under both H.B. 1020 and Section 9-1-105(2), unelected circuit court judges will sit for extended periods of time (potentially years) with the full power of elected judges, alongside the elected judges who are accountable to the people every four years. Even if the challenged appointments were made as a result of disability or disqualification of duly elected judges—and they are not—these appointments are not sufficiently time limited.

Section 165 limits appointed judges to serve during the "term of court" or other period during which the elected judge in whose place they are serving is disqualified or disabled from presiding. In Mississippi, terms of court vary by court, but in all courts, court terms last less than one year.[11] Although Section 9-1-105(2) provides for appointed judges to serve "on a temporary basis," the only limitation the statute places on the length of these purportedly temporary appointments is that they may last "for whatever period of time is designated by the Chief Justice." Miss. Code Ann. § 9-1-105(2). In practice, the statute places no meaningful time limit on appointments. Appointments made under Section 9-1-105(2) often extend well beyond a single term of court or the duration of a particular case as Section 165 contemplates. As noted, "temporary" judges currently sitting alongside the Hinds County Circuit Court's elected judges

RETRIEVED FROM DEMOCRACYDOCKET.COM

[11] This Court, for example, holds two terms per year. *See* Miss. Code Ann. § 9-3-3. Circuit courts set their own terms, but most hold at least two terms per year. *See id.* § 9-7-3(1)-(2). The Hinds County Circuit Court holds six terms per year. *See* Circuit Clerk, Hinds County, Mississippi, https://www.hindscountyms.com/elected-offices/circuit-clerk (last visited May 31, 2023).

have been serving for as many as three years under appointments by the Chief Justice. *See supra*, Statement of the Case.

Likewise, the duration of appointments that are set to occur under H.B. 1020 will exceed what Section 165 permits. H.B. 1020 provides for unelected judges to serve for at least three and a half years through the end of 2026—that is, nearly the entire length of an actual elected judicial term of office. Indeed, because H.B. 1020 allows the Chief Justice to reappoint judges currently serving under section 9-1-105(2), at least one judge who was first appointed in August 2020 and has been repeatedly reappointed could serve for over six years—well beyond the term of an elected judge—without ever facing a vote of the people of Hinds County.

These appointments are not stopgap measures: They indefinitely reconfigure the composition of the Hinds County Circuit Court with no ongoing assessment of their continued necessity. Such a considerable change to the Hinds County Circuit Court, over so many years, simply defies the Mississippi Constitution and the division of power among the electorate, the judiciary, and the executive that it establishes.

RETRIEVED FROM DEMOCRACYDOCKET.COM

If the legislature were permitted to empower a designee to appoint judges so long as they use the word "temporary" in so doing, it could effectively nullify Sections 153 and 165 of the Constitution. Nothing would prevent the legislature and its appointer-of-choice from stacking the judiciary with an unlimited number of unelected "temporary" judges serving terms of varying lengths and wielding power equivalent to that of duly elected judges. That result would deny the citizens of Mississippi their constitutionally protected right to elect judges, as they have done for over 100 years. A constitutional right "is an entitlement of every individual which he or she may claim no matter how inconvenient society or its members or its courts may deem it." *Birkley v.*

State, 750 So. 2d 1245, 1256 (Miss. 1999) (quoting *Pearson v. State*, 428 So. 2d 1361, 1364 (Miss. 1983).

B. An Elected Judiciary Is Central to Mississippi's History and Reflects the Will of the People.

As shown above, H.B. 1020 and 9-1-105(2) conflict with the plain language of the Constitution. That should be the beginning and the end of this Court's analysis. But this scheme also disregards the history of Section 153, which confirms that the people of Mississippi made a deliberate choice to elect their judges. Throughout Mississippi's history, the elected character of the state judiciary has been considered so fundamental that it required codification in the Constitution itself. Indeed, Mississippi was the first state to select all of its judges by election, establishing this requirement in the Constitution of 1832. *See* Lenore L. Prather, *Judicial Selection: What is Right for Mississippi,* 21 Miss. C. L. Rev. 199, 203 (2002). The Mississippi Constitution of 1869 reverted to appointment of judges, and the Constitution of 1890 maintained appointment as the method of selection. *Id.* But the citizens of Mississippi ultimately voted to return to electing their judges in a landmark 1910 referendum. *Id.* at 203–04. The requirement that circuit judges be "elected by the people" has remained unchanged in the Constitution ever since.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Mississippians' desire to keep judges accountable to the people remains strong. When then-Governor William Allain convened a Constitutional Study Commission in the 1980s to draft a new constitution to update the Constitution of 1890, the Commission recommended extensive changes in judicial administration in Mississippi, but even so, the draft would have *maintained* elections for trial court judges and Supreme Court justices. Constitutional Study Commission, *A Draft of a New Constitution for the State of Mississippi,* 7 Miss. C. L. Rev. 1, 21, 24 (1986).[12]

[12] The Commission's new proposed constitution was never adopted.

The people of Mississippi recently reaffirmed their commitment to electoral accountability by rejecting the legislature's 2002 proposal to increase the terms of office for circuit and chancery judges to six years, up from the current four. The voters defeated the proposed constitutional amendment by a wide margin, and that defeat was particularly striking given the amendment had broad support from the legal community, with the Mississippi Judicial Advisory Commission even recommending an eight-year term. John W. Winkle III, *The Mississippi State Constitution: A Reference Guide*, Commentary on Article 154 (Oxford University Press, 2d ed. 2014). Clearly, the accountability of circuit and chancery court judges through regular elections remains important to the people of Mississippi.

An interpretation of the Constitution that would allow the legislature to make an end-run around the judicial election requirement is at odds with the history, as well as the plain terms, of the Constitution.

RETRIEVED FROM DEMOCRACYDOCKET.COM

C. The Legislature Can Address Overcrowded Dockets Without Violating the Constitution.

In the court below, Appellees maintained that H.B. 1020 was "designed to . . . alleviate the ongoing strain on Hinds County's court system." R. 350. But even if Appellees' characterization of Hinds County's court system were accurate, the legislature still must act within the bounds of the Constitution. Regardless, invalidating H.B. 1020 and Section 9-1-105(2) will not leave the legislature bereft of tools to address crowded dockets in Hinds County or elsewhere.

The Constitution anticipated that the number of judges the state requires might vary over time or from place to place within the state, and specifically provided for that possibility in Section 152 of the Constitution, which authorizes the legislature to divide the state into an appropriate number of judicial districts and to determine "the number of judges in each district" using criteria such as "population, the number of cases filed and other appropriate data." Miss. Const. art. VI §

152. State law, in turn, provides specific criteria that the legislature "shall" consider when they do just that. Miss. Code Ann. § 9-7-3(3) (enumerating specific criteria including "[t]he case load of each judge in the district"). Thus it is within the power of the legislature to add elected judgeships to the circuit courts where circumstances require it. Where there is no upcoming regularly scheduled election, special elections are available to provide for that additional capacity in a manner that conforms with the Constitution. Miss. Code Ann. § 23-15-833. The legislature has added new chancery and circuit judges under Section 152 of the Constitution many times in order to handle increased workloads, Mary Libby Payne, *The Mississippi Judiciary Commission Revisited: Judicial Administration: An Idea Whose Time Has Come*, 14 Miss. C. L. Rev. 413, 476–78 (1994), and it could do so again now.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The creation of new elected judgeships is not the only constitutional option. The circuit courts already possess the authority to assign cases to the county courts to assist with backlogs. Miss. Code Ann. § 9-9-35. Should that prove insufficient, the legislature could provide for special masters to assist with case management or create positions analogous to federal magistrate judges which could handle a significant portion of the judicial workload with their decisions subject to appeal and review by the circuit court judges. Such roles are permissible, so long as ultimate decision-making authority remains with the elected judge. *Sullivan v. Maddox*, 283 So. 3d 222, 238 (Miss. Ct. App. 2019).

Moreover, the Constitution contemplates the creation of inferior courts exercising some or all of the jurisdiction of the circuit courts, but subject to review by a circuit court or other constitutional court with elected judges. Miss. Const. art. VI, § 172. The legislature has used this provision to establish the county and municipal courts. Miss. Code Ann. §§ 9-9-1, *et seq.*; *id.* §§ 21-23-1, *et seq*. If help is needed addressing case backlogs, the legislature may expand the type

and/or number of cases that can be transferred to and heard by the county or municipal courts[13] or increase the number of judges on those courts, as it has done in the past, *see* Miss. Code Ann. § 9-9-15 (adding additional judges to the Hinds County Court "[i]n order to relieve the crowded condition of the docket"). Addressing busy dockets in any of these manners would ensure the people can still elect their circuit court judges, and through the appeal rights that apply to the inferior courts, would ensure that the constitutionally accountable circuit court judges maintain supervisory control over all cases within their jurisdiction.

In sum, the legislature has many avenues for expanding the capacity of the courts to handle an increased case load or address a backlog. If the legislature does not wish to use any of these constitutional options, then it may advance a constitutional amendment that will provide for some (or all) judges to be appointed on whatever basis it deems appropriate, including a constitutional amendment to allow appointment under circumstances such as those contemplated by the statutes challenged here. What the legislature and this Court may not do is disregard the dictates of the Constitution and deprive the people of Mississippi of their right to elect their circuit court judges to meet the exigencies of the moment.

RETRIEVED FROM DEMOCRACYDOCKET.COM

> [The Constitution] should not be changed, expanded or extended beyond its settled intent and meaning by any court to meet daily changes in the mores, manners, habits, or thinking of the people. The power to alter is the power to erase. Such changes should be made by those authorized so to do by the instrument itself—the people.

In re Initiative Measure 65, 338 So. 2d at 603 (citing *State v. Hall*, 187 So. 2d 861, 863 (Miss. 1966)).

[13] *See*, *e.g.*, *Ex parte Tucker*, 143 So. 700, 701–02 (Miss. 1932) ("[I]t was within the constitutional authority of the Legislature to authorize the circuit courts to transfer for trial to the county courts, all or such part of the indictments originating in the circuit court as the Legislature should deem expedient.").

D. Prior Rulings of Unconstitutionally Appointed Judges Under Section 9-1-105(2) Would Not Be Open to Challenge.

To justify the maintenance of unconstitutional appointments, the Appellees argued below that recognizing the unconstitutionality of Section 9-1-105(2) could call into question the rulings of judges previously appointed under that section. R. 233. The argument is without merit. The "de facto officer doctrine" makes clear that granting the relief Appellants seek with regard to Section 9-1-105(2) will not provide a basis to attack prior decisions. For well over 100 years, Mississippi law has been clear that actions performed by officials in possession of office, including judicial office, do not lose their validity simply because it is later discovered that they undertook their role without proper legal authority.

> We adopt, however, as the true view, that one in possession of an office, judicial or not, who exercises the functions of the position, is to be considered, as to all persons dealing with him, rightfully in possession of the office, and that his acts as such are valid and binding, and this, too, whether he fails to take the oath required, or even though it should be judicially determined that the law under which he was appointed or selected was unconstitutional.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Powers v. State, 36 So. 6, 8 (Miss. 1904); *see also Bird v. State*, 122 So. 539, 540 (Miss. 1929) ("It is well settled in this state that the acts of a de facto judge are valid, regardless of whether he was properly appointed or qualified or not"); *Nelson v. State*, 626 So. 2d 121, 125 (Miss. 1993) ("These precedents compel the conclusion that Nelson's prayer for reversal based upon the failure to comply with the statute regarding the appointment of Judge Evans must fail."). Precedent is clear: decisions by judges appointed under Section 9-1-105(2) in past cases are not open to challenge.[14]

[14] The "de facto officer" doctrine is also confirmed by statute. Miss. Code Ann. § 25-1-37 provides, in relevant part: "The official acts of any person in possession of a public office and exercising the functions thereof shall be valid and binding as official acts in regard to all persons interested or affected thereby, whether such person be lawfully entitled to hold the office or not and whether such person be lawfully qualified or not."

Appellants' amended complaint also makes clear that the relief they seek with respect to Section 9-1-105(2) is purely prospective. R 621-22.[15] They do not seek to invalidate prior rulings of Section 9-1-105(2) judges. While future appointments under Section 9-1-105(2) would end, judges currently sitting by appointment could continue serving until their current caseloads are cleared.

II. THE CCID COURT CREATED BY H.B. 1020 IS VOID BECAUSE IT IS NOT AN INFERIOR COURT WITHIN THE MEANING OF THE CONSTITUTION.

The Mississippi Constitution limits judicial power to "a Supreme Court and such other courts as are provided for in this Constitution." Miss. Const. art. VI, § 144. In addition to the Supreme Court, the Constitution expressly provides for circuit courts and chancery courts, Miss. Const. art. VI, § 152, and endows them with specific authority and jurisdiction, Miss. Const. art. VI, §§ 156-163. These are the only types of courts specifically provided for in the Constitution, and they are therefore known as "constitutional courts." Sections 145 and 153 of the Constitution require that the judges of these constitutional courts must be elected. Section 154 sets the qualifications for circuit and chancery court judges, and Section 152 sets forth considerations governing the number of seats on these courts and the requirement that they be elected in districts. *See* Miss. Const. art. VI, § 152 (providing specific instructions for districting in circuit and chancery courts); *id.* § 154 (setting out the minimum qualifications for persons eligible to serve as judges). In sum, the Mississippi Constitution established a detailed regime by which the backbone courts—the constitutional courts—were to be maintained as the scaffolding of the judicial branch.

In addition, Section 172 of the Constitution permits the legislature "from time to time, [to] establish such other *inferior courts* as may be necessary, and abolish the same whenever deemed

RETRIEVED FROM DEMOCRACYDOCKET.COM

[15] *See also* R. 573 ("Plaintiffs no longer seek a preliminary injunction requiring the termination of all judges appointed to the Hinds County Court pursuant to Miss. Code Ann. 9-1-105(2)").

expedient." Miss. Const. art. VI, § 172. The definition of an "inferior" court is well settled. First, an inferior court may exercise part or all of the jurisdiction of one of the constitutional courts. *State v. Speakes*, 109 So. 129, 133 (Miss. 1926) (quoting *Houston v. Royston*, 8 Miss. 543, 549–50 (1843) and collecting cases); *Marshall*, 662 So. 2d at 570 (under Section 172, an "inferior court's jurisdiction is carved" from a "constitutionally created court").

Second, an inferior court "must be inferior in ultimate authority to the constitutionally created court which exercises the same jurisdiction . . . by giving the constitutional court controlling authority over the legislative court, by appeal or certiorari…." *Marshall*, 662 So. 2d at 570–71; *Ex parte Tucker*, 143 So. at 701. Thus, an inferior court exercising a part of the jurisdiction constitutionally assigned to the circuit courts—for example, a county court—must be subject to the control of a circuit court through appellate review of its decisions by the circuit court. *See Speakes*, 109 So. at 129 (holding that law conferring appellate jurisdiction upon circuit court as to appeals from county court on equity matters is constitutional). Likewise, an inferior court exercising jurisdiction constitutionally assigned to the Supreme Court—namely, the Mississippi Court of Appeals—must be subject to the control of the Supreme Court, typically through review by petition for writ of certiorari. *Marshall*, 662 So. 2d at 571. Thus, a legislatively created court is not an inferior court—and therefore cannot, consistent with the Constitution, exercise any part of the judicial power of the state—unless its decisions are appealable to, or otherwise subject to the supervision of, a constitutional court with the same or greater jurisdiction as it exercises. *Id*.; *see also id*. at 570.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Under this definition, the CCID court is not an "inferior court" as contemplated by Section 172. Indeed, it is unlike any other court in Mississippi. The CCID court has no right of appeal to any constitutional court in the state or any other mechanism for a constitutional court to exercise

supervisory control over it. Accordingly, the CCID court is not an "inferior court" and is unconstitutional.

A. The CCID Court Unconstitutionally Evades the Supervision of Any Constitutional Court.

Supervision by the constitutional courts is required for a court to be "inferior." *Marshall v. State*, 662 So. 2d at 570. Indeed, "all that is required of a court created by legislative act under Section 172 is that when a new court is created . . . [it] must be inferior in ultimate authority to the constitutional court whose jurisdiction is of the same character as that given to the new court." *Ex parte Tucker*, 143 So. at 701 (holding "superiority is accomplished by giving the circuit court the controlling authority of reversal, revisal, correction, and direction over the new court, as by certiorari [or] appeal").

RETRIEVED FROM DEMOCRACYDOCKET.COM

The legislature deliberately chose not to provide for a right of appeal from decisions of the CCID court in H.B. 1020. In fact, an earlier draft of H.B. 1020 included a right of appeal from the CCID court to the Hinds County Circuit Court, *see* H.B. 1020 § 5(2)(a) (as passed by House, February 2, 2023) [16] ("Appeals from CCID inferior courts shall be made to the Circuit Court of the First Judicial District of Hinds County."), but the legislature struck that provision prior to final passage, *see generally* H.B. 1020 (as signed by the Governor). This Court may not read back into the statute a right of appeal the legislature deliberately removed. *Lawson v. Honeywell Int'l, Inc.*, 75 So. 3d 1024, 1030 (Miss. 2011) ("This Court cannot *add* to the plain meaning of the statute.") (emphasis added and citations omitted). As this Court recently affirmed, courts "must presume that the Mississippi Legislature meant what it said and said what it meant." *Mississippi Dep't of Corrections v. MacArthur Justice Center*, 220 So. 3d 929, 932 (Miss. 2017) (cleaned up).

[16] *Available at* http://billstatus.ls.state.ms.us/documents/2023/pdf/HB/1000-1099/HB1020PS.pdf.

Indeed, a right of appeal cannot exist without express statutory authorization. "[T]he right to appeal is not, nor can it be, a court-created right." *Marshall*, 662 So. 2d at 573 (Hawkins, J., concurring). "[T]he right of appeal in this state . . . has from the beginning been a statutory right only, governed solely by statute." *Id*. That principle is core to our constitutional structure: "One of the methods whereby the authors of the United States Constitution expected to keep the judicial power under proper check was by vesting in Congress control of the appellate jurisdiction of the Supreme Court." Gary L. McDowell, *Curbing the Courts*, 121–30 (Louisiana State University Press, 1988); *Sheldon v. Sill*, 49 U.S. 441 (1850). Further "[t]his principle, that the right of appeal is purely a statutory right was not, and is not, confined to the United States Constitution. Virtually every state has adopted this principle." *Marshall*, 662 So. 2d at 574 (Hawkins, J., concurring). Mississippi is no different.

For other inferior courts in Mississippi, the constitutionally required statutory right of appeal exists in the originating statute. *See* Miss. Code Ann. § 43-21-651(1) (providing appeal from youth courts); Miss. Code Ann. § 9-4-3(2) (providing review by certiorari from the courts of appeal); Miss. Code Ann. § 11-51-79 (providing appeal from county courts); Miss. Code Ann. § 99-39-1 (providing appeal from justice courts and municipal courts). The legislature's deliberate omission of a right of appeal is fatal.

RETRIEVED FROM DEMOCRACYDOCKET.COM

B. The CCID Court Is Not a Municipal Court, and Laws Providing Appeals from Municipal Courts Therefore Do Not Apply.

The court below, analogizing the CCID court to a municipal court, erroneously held that the statutes and rules creating rights of appeal from municipal courts to county or circuit courts also allow for appeals from the CCID court. R. 675–77; Miss. Code Ann. § 11-51-81 (providing "appeals . . . from all municipal courts shall be to the county court under the same regulations as are provided on appeals to the circuit court . . ."). By the terms of H.B. 1020 and the provisions of

the Mississippi code establishing municipal courts, the CCID court is not a municipal court, and the provisions governing appeals from municipal courts do not apply.

In fact, the legislature does not even *call* the CCID court a municipal court. *See generally* H.B. 1020 § 4(1)(a) (purporting to create "one inferior court … located withing the boundaries [of] the CCID"). Indeed, there is already a municipal court in Jackson, which will continue to have jurisdiction over the geographic area covered by the CCID court.[17] The provisions cited by the chancery court specify the jurisdiction of the CCID court by reference to municipal courts, *see*, *e.g.*, H.B. 1020, ¶ 4(1)(a) ("The CCID inferior court … and shall have the same jurisdiction as municipal courts to hear and determine all cases charging violations of [various state and local laws]."). But having overlapping jurisdiction with a municipal court is not the same as *being* a municipal court for the following reasons.

First, municipal courts only exist in municipalities. Miss. Code Ann. § 21-23-1 ("There shall be a municipal court in all municipalities of this state."). Municipalities are creatures of statute, Miss. Code Ann. § 21-1-1, and must meet certain requirements, including being chartered, Miss. Code Ann. § 21-3-1. Here, the Capitol Complex Improvement District is not a municipality—either as a matter of law or a matter of common sense. *See generally* Miss. Code Ann. § 29-5-201, *et seq.* (establishing the CCID). It was created to "establish regular funding and administration of infrastructure projects within a defined area of Jackson."[18] Because the CCID is not a municipality, the CCID court cannot be a municipal court.

RETRIEVED FROM DEMOCRACYDOCKET.COM

[17] The City of Jackson, Jackson Municipal Court, https://www.jacksonms.gov/jackson-municipal-court/ (last visited May 31, 2023).

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

Second, by law, municipal court judges must be appointed by an official who governs that municipality. Miss. Code Ann. § 21-23-3 (providing judges of municipal courts "shall be appointed by the governing authorities of the municipality"). The CCID judge is appointed by the Chief Justice, a statewide official, not by the governing authority in Jackson or the CCID. Because the CCID judge is not appointed by a municipal "governing authorit[y]" as this statute contemplates, the CCID Court is not a municipal court.

Third, no municipal court is empowered to commit individuals convicted of misdemeanors to state prison. *See generally* Miss. Code Ann. tit. 21, ch. 23 (describing municipal courts). In contrast, under H.B. 1020, while the CCID court has jurisdiction over certain misdemeanors like other municipal courts, people convicted by the CCID court can be sent directly to state prison at the Central Mississippi Correctional Facility. H.B. 1020 § 4(1)(b) ("Any person convicted in the CCID inferior court may be placed in the custody of the Mississippi Department of Corrections, Central Mississippi facility.").[19]

RETRIEVED FROM DEMOCRACYDOCKET.COM

To be sure, the CCID court shares some similarities with municipal courts. However, for all of the reasons explained above, it is not one. Accordingly, the chancery court's construction of H.B. 1020 to allow appeals from the CCID court under provisions applicable to municipal courts was legally incorrect and must be reversed. The legislature's creation of a CCID court that is outside the supervisory authority of any constitutional court violates Section 172 of the Mississippi Constitution and its establishment and operation must be enjoined.

[19] H.B. 1020 § 4(1)(b). The Central Mississippi Correctional Facility is currently under federal investigation for incarcerating people in allegedly unconstitutional conditions. *See* Press Release, Dep't of Just., Off. of Pub. Affs., Justice Department Finds Conditions at Mississippi State Penitentiary Violate the Constitution (Apr. 20, 2022), https://www.justice.gov/opa/pr/justice-department-finds-conditions-mississippi-state-penitentiary-violate-constitution.

C. In the Alternative, this Court Must Clarify that a Right of Appeal Exists to the Circuit Court.

If this Court finds the CCID court constitutional, it must clarify that, as the chancery court held, a non-discretionary right of appeal exists from the CCID court to the Hinds County Circuit Court. The CCID court falls geographically entirely within the jurisdiction of the Hinds County Circuit Court. It exercises part of the subject matter jurisdiction that is constitutionally assigned to the circuit courts. Accordingly, under this Court's precedents, to qualify as an inferior court within the meaning of Section 172, the CCID court must be subject to the supervision of the Hinds County Circuit Court through a right of appeal. *Cf.* Miss. Code Ann. § 11-51-81 (providing that "all appeals from" "other tribunals other than courts of justice of the peace and municipal courts[] shall be direct to the circuit court"). Any other construction of the statutory scheme applicable to the CCID court would deprive litigants of their constitutional rights and run afoul of Section 172 of the Mississippi Constitution.

RETRIEVED FROM DEMOCRACYDOCKET.COM

III. THE CHIEF JUSTICE IS A PROPER PARTY AND IS NOT IMMUNE FROM SUIT TO ENJOIN FUTURE JUDICIAL APPOINTMENTS.

In this case, Appellants seek to enjoin the unconstitutional appointment of judges to the Hinds County Circuit Court and the CCID court. The legislature—through Sections 1 and 4 of H.B. 1020 and Miss. Code Ann. § 9-1-105(2)—designated the Chief Justice of the Mississippi Supreme Court as the *sole* state official responsible for appointing circuit court judges and the CCID court judge. An injunction against the Chief Justice would redress the harm Appellants complain of, and he is therefore a proper party to this litigation. Nevertheless, the chancery court dismissed him from this lawsuit holding that he was entitled to judicial immunity. In doing so, the chancery court erred in two respects: First, it incorrectly held that the judicial immunity doctrine applies despite Appellants' seeking only declaratory and injunctive relief, and second, it ruled that the appointment power established by H.B. 1020 and Section 9-1-105(2) constitutes adjudicative

action for which the Chief Justice is immune from suit. R. 589–93. The chancery court's dismissal of Chief Justice Randolph must be reversed.

A. Judicial Immunity Does Not Apply in Suits for Prospective Relief.

Judicial immunity does not apply to suits for declaratory and prospective injunctive relief. Instead, immunity only applies to actions seeking to impose liability for past actions. The lower court erred in holding that judges are immune from suits seeking only declaratory and prospective injunctive relief.

That general principle is spelled out in federal common law from which the doctrine developed.[20] In *Pulliam v. Allen*, the Supreme Court held that a judicial officer acting in his or her judicial capacity is not immune from prospective injunctive relief. 466 U.S. 522, 541–42 (1984) (considering an action under Section 1983). The Court made clear that a contrary rule would have no support in American jurisprudence:

> We never have had a rule of absolute judicial immunity from prospective relief, and there is no evidence that the absence of that immunity has had a chilling effect on judicial independence. None of the seminal opinions on judicial immunity, either in England or in this country, has involved immunity from injunctive relief. No Court of Appeals ever has concluded that immunity bars injunctive relief against a judge. At least seven Circuits have indicated affirmatively that there is no immunity bar to such relief, and in situations where in their judgment an injunction against a judicial officer was necessary to prevent irreparable injury to a petitioner's constitutional rights, courts have granted that relief.

Pulliam at 536–37.

Here, Appellants seek only prospective injunctive relief, so immunity does not apply. This basic point is why counsel for Chief Justice Randolph will not be able to point to any cases where judges received judicial immunity from claims seeking only prospective relief. Following *Pulliam*,

[20] In delineating the immunity doctrine, courts in Mississippi have relied on federal case law for guidance. For instance, in *Loyacono v. Ellis*, this Court turned to the oft-cited case of *Stump v. Sparkman*, 435 U.S. 349 (1978) for assistance in the inquiry. 571 So. 2d 237, 238 (Miss. 1990) (deciding a question of state judicial immunity by reasoning from and citing federal common law).

RETRIEVED FROM DEMOCRACYDOCKET.COM

Congress amended Section 1983 to extend judicial immunity beyond the common law doctrine to some suits for prospective relief. *See* 42 U.S.C. § 1983 (amending the statute after *Pulliam* and providing that, "except that in any action brought against a judicial officer for an act or omission taken in such an officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable"). That amendment does not apply here. This suit is not brought under Section 1983, and subsequent federal cases interpreting that specific statute are neither binding nor persuasive. Instead, under longstanding Mississippi law, judicial immunity is not available in suits for prospective relief—at least until the Mississippi legislature says otherwise.

The purpose of judicial immunity is not served by granting immunity in suits for prospective relief. The purpose of judicial immunity is to ensure that a judge is "free to act upon his own convictions, without apprehension of personal consequences for himself." *Stump v. Sparkman*, 435 U.S. 349, 355 (1978) (citing *Bradley v. Fisher*, 80 U.S. 335 (1871)). The doctrine serves the same exact purpose in Mississippi. *Wheeler*, 798 So. 2d at 392; *Loyacono*, 571 So. 2d at 238. "[I]injunctive relief against a judge raises concerns different from those addressed by the protection of judges from damages awards. The limitations already imposed by the requirements for obtaining equitable relief against any defendant . . . severely curtail the risk that judges will be harassed and their independence compromised by the threat of having to defend themselves against suits by disgruntled litigants." *Pulliam*, 466 U.S. at 537–38 (citing *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07 (1959)).

Granting the Chief Justice immunity here will not serve that goal. Suits for declaratory and prospective injunctive relief are not remedies that would harm a judge's ability to exercise good judgment or act on their convictions. Being stopped from acting in the future (here, being

RETRIEVED FROM DEMOCRACYDOCKET.COM

prospectively enjoined from appointing people to courts in Hinds County) is not the same as being monetarily liable for making judgments over actual cases in the past.

Indeed, if judicial immunity applied to suits for prospective relief, there would be no basis for a party to seek a *writ of prohibition* or a *writ of mandamus* in this Court against lower state court judges. Judges would simply claim judicial immunity from those writs. Yet those writs are well recognized and commonly enforced in Mississippi. *See State v. Maples*, 402 So. 2d 350 (Miss. 1981) ("The writ of prohibition is of ancient origin, and . . . prohibits a judge or court from taking some action."); *Holmes v. Board of Supervisors*, 24 So. 2d 867 (Miss. 1946) (issuing writ of prohibition). The injunction Appellants seek—which seeks to restrain the chief justice from taking official action that is barred by the Constitution—is analogous to a writ of prohibition, and barring such relief would not serve the purpose for which judicial immunity is recognized in this state.[21]

RETRIEVED FROM DEMOCRACYDOCKET.COM

B. Judicial Immunity Does Not Apply Because Appointments Are Administrative Acts, Not Adjudicative Acts.

Even if judicial immunity applied to suits for declaratory or injunctive relief, it still would have no application here. Judicial immunity applies only to "judicial acts." *Forrester v. White*, 484 U.S. 219, 227 (1988). It does not apply to "the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform." *Id*. There is nothing "judicial or adjudicative" about the act of appointing judges. *Id*. at 229. Rather, the appointment of judges is an executive or administrative function.

---

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

This Court has not developed its own test to distinguish "between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges." *Forrester*, 484 U.S. at 227. However, the United States Supreme Court has explained that "'[w]hether an act by a judge is a 'judicial' one relate[s] to [(1)] the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and [(2)] to the expectation of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.'" *Mireles v. Waco*, 502 U.S. 9, 12 (1991) (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)). In keeping with this guidance, the Fifth Circuit has "adopted a four-factor test for determining whether a judge's actions [are] judicial in nature[.]" *Davis v. Tarrant County, Tex.*, 565 F.3d 214, 222 (5th Cir. 2009).[22] Those four factors are:

> (1) whether the precise act complained of is a normal judicial function; (2) whether the acts occur[] in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy center[s] around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity.

Id. (citations and footnote omitted). A plaintiff need not prevail on every factor. Indeed, in some cases the first factor will be dispositive of the issue. *See, e.g., Daves v. Dallas County, Texas*, 22 F.4th 522, 539 (5th Cir. 2022). In this case, application of these factors leads to the conclusion that the appointments are not judicial acts.

Factor One. *First*, the appointment of judges is *not* a "normal judicial function." *Davis*, 565 F.3d at 222. For the purposes of a judicial immunity analysis, the "touchstone" judicial "function[s] [are] resolving disputes between parties, or . . . authoritatively adjudicating private

[22] The Eleventh Circuit employs the same four-factor test. *See, e.g., McCullough v. Finley*, 907 F.3d 1324, 1331 (11th Cir. 2018).

RETRIEVED FROM DEMOCRACYDOCKET.COM

rights." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 435, 436 (1993) (cleaned up).[23] The appointment of judges is obviously far removed from these core judicial functions. In *Richardson v. Koshiba*, 693 F.2d 911, 914 (9th Cir. 1982), a Judicial Selection Commission attempted to argue, as Chief Justice Randolph did in the court below, that "its functions are 'judicial' in nature"—and thus that the Commission was protected by quasi-judicial immunity—"because its responsibilities of recommending candidates for judicial office . . . and . . . reviewing reappointment petitions requires it to 'weigh the merits of [the] candidates,' 'consider all the evidence,' 'conduct extensive investigations,' and . . . 'attempt[] objectively to evaluate the merits of each candidate.'" But the Ninth Circuit Court of Appeals persuasively rejected these arguments, explaining that these "functions bear little resemblance to the characteristic of the judicial process that gave rise to the recognition of absolute immunity for judicial officers: the adjudication of controversies between adversaries." *Id*. (citations omitted). Instead, "these responsibilities indicate that the Commission's functions are executive in nature." *Id*. (citation omitted). The same is true in this case.

Indeed, the appointment of judges shares far more in common with ordinary employment decisions than it does with "'resolving disputes'" or "'adjudicating private rights.'" *Antoine*, 508 U.S. at 436 (citation omitted). In *Forrester v. White*, 484 U.S. at 229, the United States Supreme Court held that a judge's decisions to demote and later discharge a probation officer were "administrative" rather than "judicial" acts, and therefore not protected by judicial immunity even with respect to a suit for damages. The Court explained that "a judge who hires or fires a probation officer cannot meaningfully be distinguished from a district attorney who hires and fires assistant district attorneys, or indeed from any other Executive Branch officer who is responsible for making

RETRIEVED FROM DEMOCRACYDOCKET.COM

[23] *See also Forrester*, 484 U.S. at 227 ("[T]he paradigmatic judicial acts [are those] involved in resolving disputes between parties who have invoked the jurisdiction of the court.").

such employment decisions." *Id*. The same is true in the appointment context. A judge who appoints another judge "cannot meaningfully be distinguished" from any "Executive Branch officer who is responsible for making" judicial appointments. *Id.; see also Watts v. Bibb Cnty.*, 2010 WL 3937397, *13 (M.D. Ga. Sept. 30, 2010) ("The decision to appoint magistrates does not involve *judicial* discretion. … [It] is an administrative personnel decision and therefore not protected by judicial immunity.") (emphasis added).[24]

Of course, there are some functions outside the context of dispute resolution and adjudication that have "historically been reposed exclusively in the courts." *Sparks v. Character & Fitness Comm. of Ky.*, 859 F.2d 428, 434 (Ky. 1988).[25] But the appointment of judges is not one of those functions. As a North Carolina federal district court explained in finding that the appointment of magistrates is not a judicial function protected by judicial immunity:

> Appointment of magistrates and other judges is ministerial; it is not required to be done by judges; it is a power to *select* that in North Carolina is vested variously in governors, district bar organizations, judges, local governing boards, local officials, and the electorate. The act of appointing to office is not a *judicial* duty.

Lewis v. Blackburn, 555 F. Supp. 713, 723 (W.D.N.C. 1983), *rev'd on other grounds*, 759 F.2d 1171 (4th Cir. 1985) (emphasis in original). The same is true in Mississippi. The appointment of judges has not "historically been reposed exclusively in the courts." *Sparks*, 859 F.2d at 434. To the contrary—as explained extensively throughout this brief—the Constitution expressly provides that circuit court judges shall be elected by the people, *see* Miss. Const. Art. 6, § 153, or appointed

RETRIEVED FROM DEMOCRACYDOCKET.COM

[24] In *Forrester*, the Court acknowledged that the acts of demoting and discharging the probation officer "may have been quite important in providing the necessary conditions of a sound adjudicative system." *Forrester*, 484 U.S. at 229. The same is true of the appointment of judges. For purposes of the immunity analysis, however, the question is not whether the act is important to the functioning of the adjudicative system, it is whether the *act itself* is "judicial or adjudicative." *Id*.

[25] These functions include, for example, "the power to determine eligibility for membership in the bar." *Sparks*, 859 F.2d at 434.

under narrow circumstances by the Governor, *see* Miss. Const. Art. 6, § 165.[26] Even were this Court to determine that the Chief Justice may share the power of selecting judges with the people and the Governor, he can exercise that power *only* if and when the Legislature authorizes him to do so, not because of any inherent judicial authority. And a function that is commonly performed by the people or the Executive Branch does not become a judicial function simply because it is performed by a judge. *See, e.g., Forrester,* 484 U.S. at 228 (quoting *Ex parte Virginia*, 100 U.S. 339, 348 (1880)) (finding an act is not judicial for purposes of judicial immunity if it "might as well have been committed to a private person as to one holding the office of a judge").

The fact that appointment of judges is not "a normal judicial function" should be dispositive of the immunity issue. However, analysis of the remaining three factors of the Fifth Circuit's test confirms that judicial appointment is not a judicial act.

Factor two. The second factor is "whether the acts occur[] in the courtroom or appropriate adjunct spaces such as the judge's chambers." *Davis*, 565 F.3d at 222. Although the Chief Justice *could* choose to name appointees in a courtroom or his chambers, there is nothing about the act that favors those locations over others. There is no need, for example, for a court reporter (or transcript), bailiff, clerk, law books, or other staff. The Chief Justice could just as easily—and just as appropriately—make appointments at the Governor's Mansion, on the floor of the Mississippi House of Representatives, or at a meeting of the County Board of Supervisors.[27]

RETRIEVED FROM DEMOCRACYDOCKET.COM

[26] In this respect, Mississippi is like most states. *See, e.g.,* Brennan Center for Justice, *Judicial Selection: Significant Figures* (May 8, 2015) (updated April 14, 2023), https://www.brennancenter.org/our-work/research-reports/judicial-selection-significant-figures (last visited May 23, 2023) ("[W]hen a vacancy opens up in the middle of a judge's term, in most states, the Governor makes an interim appointment to fill the seat. In contrast, in most states, when sitting judges seek another term, they must participate in some type of popular election.").

[27] In practice, judicial appointments are noticed through an order, but the challenged laws do not require an order.

Factor three. The third factor is "whether the controversy center[s] around a case pending before the court." *Davis*, 565 F.3d at 222. But there is no "controversy" to be resolved in appointments. The *appointee* will later resolve controversies; the *appointment* itself does not. And to the extent that a "controversy" is resolved through appointment, the very same "controversy" is resolved by a gubernatorial appointment or an election by the people. Moreover, although the judges appointed by the Chief Justice will ultimately preside over cases in *other* courts: the act of appointment is not made in the context of "*a case pending before the* [*Chief Justice*]." *Id*. (emphasis added).

Factor four. The final factor is "whether the acts arose directly out of a visit to the judge in his official capacity." *Davis*, 565 F.3d at 222. Although Section 9-1-105(2) permits appointments "[u]pon the request of the . . . the senior judge of a chancery or circuit court district," it also permits the Chief Justice to make appointments on his own motion—as he did in the case of the recent appointments Appellants identified in their complaint. R. 40-62. And even if a request of the senior circuit court judge could be characterized as a "visit," there is nothing inherently judicial involved in such a visit Indeed, as far as the appointment process is concerned, a visit with the Chief Justice in his official capacity as one legislatively authorized to appoint judges is indistinguishable from a visit with Governor in his official capacity as one constitutionally authorized to appoint judges under Section 165. Thus, this factor—like the others—weighs against the conclusion that the appointment of judges is a judicial act.

RETRIEVED FROM DEMOCRACYDOCKET.COM

In its decision below granting the Chief Justice's motion to dismiss, the chancery court relied on the decision of the Mississippi Court of Appeals in *Vinson* which held that "an appointment pursuant to Mississippi Code Annotated Section 9-1-105 is a judicial act." *Vinson v. Prather*, 879 So. 2d 1053, 1057 (Miss. Ct. App. 2004). Obviously, decisions of the Court of

Appeals are not binding on this Court. Nor is the *Vinson* decision persuasive: It contains no meaningful analysis or support for its conclusion. It fails to grapple with, much less rebut or undermine, any of the argument, analysis, and authorities highlighted above. Indeed, the Court of Appeals' decision in *Vinson* is wholly devoid of *any* support or analysis for its bare declaration that the appointment of judges is a judicial rather than administrative act. The entire discussion of the issue by the *Vinson* court is as follows:

> Even if we look to the act itself, we find no error because we consider an appointment pursuant to Mississippi Code Annotated Section 9–1–105 a judicial act. The Vinsons' attempt to label the appointment as administrative or non-adjudicative is without merit.

See Vinson, 879 So. 2d at 1057. The Court of Appeals' decision in *Vinson* is inconsistent with the great weight of authority distinguishing judicial acts from executive and administrative acts and should be rejected.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The appointment of judges under H.B. 1020 and Section 9-1-105 is not a judicial act. It does not involve the "'resol[ution] [of] disputes between parties'" or the "'adjudicate[ion] [of] private rights.'" *Antoine*, 508 U.S. at 436 (citation omitted). Nor is it a function that has "historically been reposed exclusively in the courts." *Sparks*, 859 F.2d at 434. It need not take place in a courthouse, and it does not involve a controversy in a case pending before the Chief Justice. Indeed, it does not involve *any case* pending before the Chief Justice. The appointment of judges is an executive or administrative act, one often performed by the Governor. Moreover, the most common method of selecting judges in Mississippi—election—is performed by the people. Thus, there is nothing inherently judicial or adjudicative about the act of appointing judges. It is not protected by judicial immunity. The decision of the chancery court dismissing Chief Justice Randolph must be reversed.

IV. THE CLERK OF THE HINDS COUNTY CIRCUIT COURT PLAYS A CENTRAL ROLE IN THE CHALLENGED CONDUCT AND IS A PROPER PARTY.

Defendant Zack Wallace, the Clerk of the Hinds County Circuit Court, is a proper defendant in this matter because he is central to the implementation of House Bill 1020 and the execution of Section 9-1-105(2)—and because an injunction against him would provide the relief Appellants seek. In his official capacity, Appellee Wallace is responsible for the assignment of cases to the judges of the Hinds County Circuit Court, including those improperly added to the bench pursuant to the challenged statutes. This is beyond dispute.[28] Indeed, in four orders signed by the Chief Justice in September 2022, Mr. Wallace is specifically directed to effectuate the assignment of cases to appointed judges. *See* R. 40–62 (orders appointing judges under Section 9-1-105). Without Appellee Wallace assigning cases to them, the judicial appointees at issue in this case could not perform any adjudicative function.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Appellants seek an injunction prohibiting the assignment of cases to the unelected judges at issue in this case, and it is Appellee Wallace alone who is responsible for undertaking that task. Appellee Wallace's neutrality or lack of a personal stake in this case does not diminish his centrality to the appointment regime established in H.B.1020 or under Section 9-1-105(2). Appellants did not sue him for his personal beliefs or in his personal capacity, but in his official capacity. In that capacity, he is a proper defendant.[29]

The chancery court dismissed Appellants' claims against Mr. Wallace because it believed that "[t]o require Wallace to remain as a party herein would be to place him in the untenable

[28] Even if this fact were disputed, Appellants allege in their complaint that Appellee Wallace is the party responsible for assigning cases to judges appointed under H.B. 1020 and Section 9-1-105(2). That allegation must be accepted as true for purposes of a motion to dismiss.

[29] The chancery court's conclusion that no injunction can issue because Mr. Wallace "is required by law to perform the ministerial acts complained of by Plaintiffs," R.E. 7, R. 585, is belied by the appointment orders attached to the complaint. R. 40–62. Surely, if one justice of this Court can order Mr. Wallace to assign cases to appointed judges, the entire Court can order him not to.

position of violating either his Oath of Office and statutorily imposed duties or violating a Court *Order* under penalty of contempt." R.E. 7; R. 585. That determination is unsupported and contrary to law: any declaration from this Court that H.B. 1020 or Section 9-1-105(2) is unconstitutional would relieve Appellee Wallace of any duty he would otherwise have pursuant to those laws. *Cf. Fitzhugh v. City of Jackson*, 97 So. 190, 191 (Miss. 1923) (declaring city zoning ordinance unconstitutional and ordering city officials to issue permit that would have violated invalidated zoning scheme). Contrary to the chancery court's finding, Mr. Wallace's oath of office would in fact forbid him from carrying out an unconstitutional act. *See Chevron U.S.A., Inc. v. State*, 578 So.2d 644, 648-49 (Miss. 1991) ("The Mississippi Constitution, like that of the United States, is the supreme law within the range of its authority, [and] [n]o act prohibited by it can be given effectuality and validity."); Handbook for Circuit Court Clerks (requiring clerks to swear to "faithfully support the Constitution of the United States and the Constitution of the State of Mississippi").[30] That is just as true of orders issued by the chancery court as it is of this Court.

Appellee Wallace is a proper party to this suit, and it was legal error for the chancery court to dismiss Appellants' claims against him.

RETRIEVED FROM DEMOCRACYDOCKET.COM

CONCLUSION

Courts serve no higher purpose than preventing violations of constitutional protections. Sections 153, 165, and 172 of the Mississippi Constitution serve a vital purpose as well: to provide for the democratic legitimacy of the state judiciary. H.B. 1020 and Section 9-1-105(2) undermine that democratic legitimacy and deny core constitutional protections to the residents of Hinds County and all citizens of Mississippi.

[30] Mississippi Judicial College, Handbook for Circuit Court Clerks 110 (2019), available at https://mjc.olemiss.edu/wp-content/uploads/sites/134/2019/07/2019-Handbook-for-Circuit-Court-Clerks.pdf (describing oaths for "other elected officials" under Section 268).

THEREFORE, the Court should REVERSE the decision below, declare that the provisions of HB 1020 and Section 9-1-105(2) of the Mississippi Code calling for the appointment of judges and the creation of the CCID court violate the Mississippi Constitution, and remand the case to the chancery court with instructions to enter a permanent injunction prohibiting Appellees from taking any action to enforce the unconstitutional statutes.

Respectfully submitted,

s/ Jacob W. Howard
Jacob W. Howard, MSB #103256
MacArthur Justice Center
P.O. Box 1447
Cleveland, MS 38732
(769) 233-7538
jake.howard@macarthurjustice.org

Cliff Johnson, MSB #9383
MacArthur Justice Center
University of Mississippi School of Law
481 Chuck Mullins Drive
University, MS 38677
(662) 915-6863
cliff.johnson@macarthurjustice.org

Robert B. McDuff, MSB #2532
Paloma Wu, MSB #105464
Mississippi Center for Justice
210 E. Capitol Street, Ste. 1800
Jackson, MS 39201
(601) 709-0857
rmcduff@mscenterforjustice.org
pwu@mscenterforjustice.org

Brenda Wright**
Brittany Carter*
NAACP Legal Defense & Educational Fund
40 Rector Street, Fifth Floor
New York, NY 10006
(212) 617-1657
bwright@naacpldf.org
bcarter@naacpldf.org

RETRIEVED FROM DEMOCRACYDOCKET.COM

Tanner Lockhead*
NAACP Legal Defense & Educational Fund
700 14th Street, Ste. 600
Washington, DC 20005
(929) 536-3943
tlockhead@naacpldf.org

Joshua Tom (Miss. Bar No. 105392)
ACLU of Mississippi
P.O. Box 2242
Jackson, MS 39225
(601) 354-3408
jtom@aclu-ms.org

Counsel for Appellants

*Admitted *pro hac vice*
**Pro hac vice* application pending

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing Corrected Appellants' Brief[1] 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 pleading with the United States Postal Service, postage prepaid, for delivery to the following:

Hon. Dewayne Thomas
Chancery Court Judge
P.O. Box 686
Jackson, MS 39205-0686

This 1st day of June, 2023.

/s/ Jacob W. Howard
JACOB W. HOWARD

RETRIEVED FROM DEMOCRACYDOCKET.COM

[1] The Appellants' Brief was corrected to include a certificate of service (below) for the Honorable Dewayne Thomas.