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.

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

[Proposed] *Amicus Curiae* Brief of the City of Jackson in Support of Appellants

Catoria P. Martin, MSB# 103938
Kristie Metcalfe, MSB# 103525
Office of the City Attorney
City of Jackson, Mississippi
P.O. Box 2779
Jackson, MS 39207

Jonathan B. Miller*
Michael Adame*
Cristian Torres*
Public Rights Project
490 43rd Street, #115
Oakland, CA 94609

*pro hac vice application forthcoming

Counsel for Proposed Amicus City of Jackson

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STATEMENT OF INTEREST

The City of Jackson files this brief in support of Plaintiffs. Jackson has significant interest in the outcome of this case. Enacted just this past legislative session, House Bill 1020 ("HB 1020") has a substantial impact on law enforcement and the administration of justice within and immediately around Jackson. Among other things, HB 1020 attempts to significantly expand the purview (and jurisdiction) of state police operating as part of the Capitol Complex Improvement District ("CCID"). In addition, HB 1020 creates four new judges for Hinds County, all to be appointed by the Chief Justice of this Court, instead of being elected directly by the community as are all other similarly situated judges throughout the state. These dramatic changes have considerable effects on the ways that law enforcement performs its job, how justice is administered, and the responsiveness of both the police and the courts to the local electorate.

The City of Jackson repeatedly finds itself the target of action by the Mississippi Legislature and the Governor. In many instances, these actions seek to undermine the city's authority and ability to serve its community. They are often part of a vicious cycle: the city is accused of not being able to fulfill its obligations and then resources are withdrawn and directed to entities outside of the city, making it difficult if not impossible to serve its community. Time and time again, the authority of the city and its community members is undercut. With respect to HB 1020, the state is imposing a police force and a justice system that is neither accountable nor responsive to the local electorate.

Jackson has great interest in effective law enforcement that keeps our community safe. Jackson also has a strong interest in a justice system that is efficient and disposes of cases in a meaningful and fair way. But HB 1020 removes power from the people of Jackson, and the people of Hinds County, and improperly undermines the vitality of local democracy. Jackson wants safe

communities and a smoothly run criminal justice system. However, taking power directly away from local communities is not the correct—or lawful—means of furthering these goals, nor is it the most efficient. For these reasons, and for what is set forth below, the judgment of the lower court should be reversed.

SUMMARY OF ARGUMENT

The City of Jackson agrees with Plaintiffs' claims in this case. The creation of appointed judges in Hinds County violates the plain language of the state constitution. The Mississippi Constitution does not permit the Chief Justice to expand the judicial roster by appointing Circuit Court judges to, what is effectively, full terms and dilute the vote and will of the people.

Jackson writes separately here to emphasize two separate points. *First*, Plaintiffs clearly have standing to bring this action. The Chancery Court reached the correct conclusion, and the decision on standing should be affirmed. Plaintiffs have, in fact, three different claims of standing. They have standing as taxpayers whose funds are utilized for an unlawful program. They have standing as voters whose voting power has been diluted by the appointment of unelected judges. They also have standing as direct participants in their local democracy.

Second, while some of the purported goals of HB 1020 are laudable, they were approached in the wrong manner. The Legislature had many means to achieve its goals of judicial efficiency other than the appointment of Circuit Court judges to effectively a full term. In fact, state law already provides mechanisms for handling backlogs. Moreover, court reform around the country demonstrates that the Legislature (as well as the courts themselves) has many viable avenues to address any purported backlogs within the confines of the Mississippi Constitution. HB 1020, however, is not permissible under any fair reading of the Mississippi Constitution and serves only to strip power away from the people of Jackson (and Hinds County).

ARGUMENT

I. PLAINTIFFS HAVE STANDING TO PURSUE THEIR CHALLENGE OF THE APPOINTMENT OF JUDGES

The Chancery Court correctly concluded that Plaintiffs "should be permitted to challenge the governmental actions that directly affect them." Op. at 15. In so doing, the Chancery Court relied on Plaintiffs' status as taxpayers in Hinds County for their standing. This analysis is correct and should be affirmed. In addition, Plaintiffs' standing is supported by at least two other bases for their interests in the subject matter of the litigation. *Araujo v. Bryant*, 283 So. 3d 73, 78 (Miss. 2019). Plaintiffs have an interest both in maintaining their voting power and in the integrity of their local democracy. The appointment of unelected judges dilutes Plaintiffs' voting power, and local democracy becomes less responsive to political will through these appointments. Because Mississippi standing law is less rigorous than federal law (and these are the types of interests recognized under federal law), Plaintiffs have standing under these separate theories as well. *City of Jackson v. Greene*, 869 So. 2d 1020, 1023 (Miss. 2004).

A. Plaintiffs Have Taxpayer Standing

In Mississippi state court, "parties have standing to sue when they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise provided by law." *Burgess v. City of Gulfport*, 814 So. 2d 149, 152–53 (Miss. 2002) (quoting *State v. Quitman Cnty.*, 807 So. 2d 401, 405 (Miss. 2001)). Generalized grievance undifferentiated from other members of the public is not enough, but community members who are specifically impacted by governmental action can pursue litigation against the state (or a subdivision thereof). *Araujo*, 283 So. 3d at 78 ("Plaintiffs are not simply general taxpayers challenging general governmental spending as unconstitutional."). "[F]or a plaintiff to establish standing on grounds of experiencing an adverse effect from the conduct of the

defendant/appellee, the adverse effect experienced must be different from the adverse effect experienced by the general public." *SASS Muni-V, LLC v. DeSoto Cnty.*, 170 So. 3d 441, 446 (Miss. 2015) (alteration in original) (internal quotation marks omitted) (quoting *Hall v. City of Ridgeland*, 37 So. 3d 25, 33–34 (Miss. 2010).

Here, Plaintiffs allege that they are residents of Hinds County, are registered voters, and pay both property and sales taxes based on transactions within the county. *See, e.g.*, Am. Compl. ¶¶ 10-14. This direct nexus to the challenged action results from their status as taxpayers and property owners. Their harms are not undifferentiated because they pay funds to directly support the challenged action and are directly impacted by it. Two prior decisions by this Court relating to the interests of residents make this point clear. In *Burgess*, residents of the City of Gulfport sought to challenge a land-use decision by the city based on their status as residents only, but "do not own the property in question. Neither have they alleged that they own the land around the property in question, or that the land has been affected in an adverse manner." 814 So. 2d at 153. Moreover, state law provided an alternative remedy to challenge the city's decision. By contrast, in *Araujo*, the plaintiffs had standing because "Plaintiffs are *ad valorem* taxpayers alleging that governmental entities are spending *ad valorem* tax revenue in direct violation of Article 8, Section 206, of the Mississippi Constitution." 283 So. 3d at 78. Plaintiffs in this case have a clear and direct nexus to the problem complained of as in *Araujo*.

B. Plaintiffs Have Standing as Voters in Hinds County

As Plaintiffs set forth in their amended complaint, residents and voters of Hinds County are now differently situated than those living in other Mississippi counties. *See, e.g.*, Am. Compl. ¶¶ 2-6. Some of their judges are elected, while others are now appointed for nearly a four-year term. The right to vote is enshrined in the Mississippi Constitution. Miss. Const. art. XII, § 241.

Yet that right now has different purchase for the residents of Hinds County. Plaintiffs and their fellow Hinds County residents are represented differently than all other state residents when it comes to the makeup of the local judiciary. This is disproportionate representation—a claim long recognized under the federal constitution. *See, e.g.*, *Baker v. Carr*, 369 U.S. 186, 208 (1962) ("[C]itizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution…"). As the U.S. Supreme Court explained, when voting power is "debased and diluted," parties present "a justiciable controversy subject to adjudication…" *Reynolds v. Sims*, 377 U.S. 533, 556 (1964). To put it another way, once a geographic system for representation by elected officials is chosen—here, for the election of local judges by county—that system needs to be implemented uniformly across counties. *Gray v. Sanders*, 372 U.S. 368, 379 (1963).

The diminution of voting power, particularly along racial lines, is similarly protected by federal law. Hinds County is composed of voters who are nearly 75% Black.[1] It is the only county in Mississippi with more than 100,000 people and a majority Black population. Yet it has been singled out by this legislation. Under Section 2 of the Voting Rights Act (the "VRA"), the Supreme Court has long instructed lower courts to examine a change to methods of representation as a potential violation of voting rights. *See Thornburg v. Gingles*, 478 U.S. 30 (1986). In fact, the transition from elected to appointed positions was considered "undisputed" to trigger preclearance review under Section 5 of the VRA when that provision was in effect. *Riley v. Kennedy*, 553 U.S. 406, 420 (2008); *see also Johnson v. De Grandy*, 512 U.S. 997, 1018 (1994) (explaining that

[1] *Hinds County, MS Profile*, Census Reporter (last visited June 6, 2023), https://censusreporter.org/profiles/05000US28049-hinds-county-ms/.

limiting the power of elected officials, such as through the "creation or elimination of elective offices", can be an example of improper dilution).[2]

Currently within the Seventh Circuit Judicial District, there are four subdistricts, each of which encompasses part of the City of Jackson, has a majority-Black population, and has an elected permanent judge. All four elected Seventh Circuit judges, like most of their constituents, are Black. Now Black voters in the capital county of Hinds have lost their voting power over their local judiciary: HB 1020 improperly imposes unelected judges on the county, rather than correctly allowing county residents to vote for them and applies this diluting change exclusively and unequally to Hinds County. This harm to Plaintiffs' power as voters is a clearly cognizable interest which provides an independent basis for standing.

C. Plaintiffs Have Standing as Participants in Local Democracy

Plaintiffs also have standing because of their unlawful loss of political power, which includes the ability to directly determine judges in the Circuit Courts. "Mississippi's government can only validly act in ways in which it has been given power to act by the people of Mississippi." *Initiative Measure No. 65: Mayor Butler v. Watson*, 338 So. 3d 599, 606 (Miss. 2021) (citing Miss. Const. art. III, §§ 5–6). Mississippi has long recognized the authority of the people to select officials, including judges. Miss. Const. art. III, § 5 ("All political power is vested in, and derived from, the people."). Here, the people have denied the state the authority to appoint judges. *Moore v. Grillis*, 205 Miss. 865, 39 So. 2d 505, 509 (1949) ("It is necessary to bear in mind a State Constitution does not grant specific legislative powers, but limits them.") (citation omitted).

[2] The Supreme Court has held that the VRA applies to judicial districts where a state chooses to elect judges. *See, e.g.*, *Chisom v. Roemer*, 501 U.S. 380, 401 (1991).

The Mississippi Constitution divides the power of the state government into three distinct departments: legislative, judicial, and executive. Miss. Const. art. I, § 1. Judicial power is vested in a Supreme Court and other courts that the Mississippi Constitution provides for. Miss. Const. art. VI, § 144. In 1832, Mississippi became the first state to adopt popular elections of judges after a partisan election movement impelled by a desire to promote judicial independence from the political branches.[3] Thereafter, a 1910 amendment to Section 153 changed the selection of the judges of the circuit and chancery courts from appointment by the Governor to election by the people. *See State ex rel. Collins v. Jones*, 106 Miss. 522, 64 So. 241, 241-42 (1914). The authority of the people to select their officials, including judges, remains protected by the Mississippi Constitution. Accordingly, any infringement of that power, as asserted by Plaintiffs in this case, constitutes cognizable harm for standing.

II. THE LEGISLATURE CHOSE AN IMPERMISSIBLE MEANS TO ADDRESS PURPORTED CONCERNS ABOUT COURT BACKLOGS

A. The Mississippi Constitution Requires the Election of Judges

The City of Jackson agrees with Plaintiffs' arguments regarding HB 1020. Article VI, Section 153 of the Mississippi Constitution provides that Circuit and Chancery Court judges "shall be elected by the people." In so doing, the state constitution expressly denies the legislature the power to authorize the selection of judges to those courts by appointment or any method other than a direct election by the people.

The state constitution also includes a narrow exception in which appointment of judges is permitted. The existence of this specific exception within the text further underscores the problems

[3] Charles G. Geyh, *Methods of Judicial Selection and Their Impact on Judicial Independence,* Articles by Maurer Faculty. 54, 88 (2008), https://www.repository.law.indiana.edu/facpub/54?utm_source=www.repository.law.indiana.edu%2Ffacpub%2F54&utm_medium=PDF&utm_campaign=PDFCoverPages.

with HB 1020. Article VI, Section 165 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." None of those requirements has been fulfilled here. The challenged appointments are not the result of any elected circuit court judge being disabled or disqualified from serving. The challenged appointments call for the unelected judges to serve in addition to, not in the place of, elected judges. And the challenged statutes authorize the Chief Justice, rather than the Governor, to make appointments. Thus, this mechanism for appointment falls well 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.

B. There Are Ample Other Means to Address Purported Court Backlogs

Existing state law already provides a mechanism to address the purported concerns of the Legislature regarding potential court backlogs. To regulate the size of the Circuit Courts and Chancery Courts, the Mississippi Constitution requires that "[t]he Legislature shall, by statute, establish certain criteria by which the number of judges in each district shall be determined, such criteria to be based on population, the number of cases filed and other appropriate data." Miss. Const. art. VI, § 152. Accordingly, Mississippi law establishes that "[t]he number of judges in each circuit court district shall be determined" based on "[t]he population of the district; [t]he number of cases filed in the district; [t]the caseload of each judge in the district; [t]he geographic area of the district; [a]n analysis of the needs of the district by the court personnel of the district; and [a]ny other appropriate criteria." Miss. Code § 9-7-3(3). That law assigns to the Judicial College of the University of Mississippi Law Center and the Administrative Office of Courts responsibility for determining the appropriate data to be collected "as a basis for applying the above criteria." Miss.

Code § 9-7-3(4). There is no reason that this mechanism should and could not be used to handle issues of backlog or delay. In fact, between 2000 and 2020, the total number of elected Circuit Judges statewide grew by almost 20%, from 49 to 57.[4]

But even assuming that is not enough, the experience of other jurisdictions shows that the Legislature had many other available options that do not require a violation of the state constitution. To address judicial efficiency, the Legislature could have proposed and funded initiatives that streamline case management. Numerous jurisdictions have found success in implementing civil case management programs which expedite jury trials and shorten the timelines of pleadings, discovery, and motions.[5] California, Colorado, Minnesota and other states have successfully addressed civil backlog through such programs, shortening time to resolution and lowering litigation costs.[6]

The legislature has the authority to appoint special masters and reallocate responsibilities to lower courts to address backlogs, as the Plaintiffs' brief highlights. Br. at 28-29 (citing Miss. Code Ann. § 9-9-35 and Miss. Const. art. VI, § 172). Special masters ease judicial caseload burden by facilitating discovery and settlement in complex civil litigation.[7] Ensuring courts have sufficient administrative staff also improves judicial efficiency. Miami-Dade County's Civil Justice Initiative Pilot Project, which created four-person teams of a judge, bailiff, judicial assistant, and

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[4] *See* Annual Reports of the Supreme Court of Mississippi, https://courts.ms.gov/research/reports/reports.php.

[5] Brittany Kauffman, *Pilot Projects, Rule Changes, and Other Innovations in State Courts Around the Country*, National Center for State Courts (Aug. 18, 2016), https://www.ncsc.org/__data/assets/pdf_file/0022/25681/ncsc-cji-appen dices-d.pdf.

[6] *See, e.g.*, Corina D. Gerety & Logan Cornett, *Momentum for Change: The Impact of the Colorado Civil Access Pilot Project*, Rule One Initiative (Oct. 2014), https://iaals.du.edu/sites/default/files/documents/publications/momentum_for_change_capp_final_report.pdf.

[7] Lynn Jokela & David F. Herr, *The Role of Special Masters in the Judicial System: Special Masters in State Court Complex Litigation: An Available and Underused Case Management Tool*, 31 Wm. Mitchell L. Rev. 1299 (2005).

case manager, improved case closures by 16% and shortened the average duration of civil litigation by nearly 50%.[8] In addition, several states have successfully created specialized courts that improve judicial efficiency. For example, in Arizona, the Maricopa County Commercial Court only handles complex business litigation, reducing the burden on the county court system.[9]

Jurisdictions implementing prosecutorial reform or creating dedicated triage units have alleviated criminal court backlogs.[10] In a pilot program, Brooklyn (Kings County, New York) increased felony case resolutions at six months by 11% through implementing truncated timelines of court appearances and requiring case conferences between attorneys.[11] Harris County recently announced a 21% decrease in its felony backlog since June 2021, accomplished through a triage program that funded prosecutor overtime for violent crime cases.[12]

These reforms across the country demonstrate that the Legislature has opportunities to alleviate court docket backlog without violating the Mississippi Constitution. To echo the Plaintiffs' brief: there are abundant, tested options to improve judicial efficiency that would still allow residents of Hinds County to elect their own judges in conformity with the state constitution. A rejection of HB 1020 does not eliminate the possibility of solutions.

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[8] Lydia Hamblin & Paula Hannaford-Agor, *Evaluation of the Civil Justice Initiative Pilot Project*, National Center for State Courts (Apr. 2019), https://www.ncsc.org/__data/assets/pdf_file/0013/26230/cjipp-final-evaluation-report.pdf.

[9] Kauffman, *supra* note 5 at 4.

[10] *Prosecutor Backlog: Causes, Data, and Solutions*, Prosecutor's Center for Excellence (Jan. 13, 2021), https://pceinc.org/wp-content/uploads/2021/02/20210113-Backlog-Causes-and-Solutions-List-PCE-updated.pdf.

[11] Joana Weill et al., *Felony Case Delay: Lessons From a Pilot Project in Brooklyn*, Center for Justice Innovation at 36 (Mar. 2021), https://www.innovatingjustice.org/sites/default/files/media/document/2021/Brooklyn_Project_Evaluation.3.29.2021.pdf.

[12] *Harris County District Attorney Kim Ogg Reveals 21% Reduction of Case Backlog*, Harris County District Attorney Office (Apr. 12, 2023) https://www.harriscountyda.com/harris_county_district_attorney_kim_ogg_reveals_21_reduction_of_case_backlog.

CONCLUSION

For all the foregoing reasons, and for the reasons provided by Plaintiffs, this Court should REVERSE the decision below and 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.

Respectfully submitted,

/s/ Catoria P. Martin

Catoria P. Martin, MSB# 103938
Kristie Metcalfe, MSB# 103525
Office of the City Attorney
City of Jackson, Mississippi
P.O. Box 2779
Jackson, MS 39207

Jonathan B. Miller*
Michael Adame*
Cristian Torres*
Public Rights Project
490 43rd Street, #115
Oakland, CA 94609

*pro hac vice application forthcoming

Counsel for Proposed Amicus City of Jackson

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that I have on this day caused the foregoing to be filed using the MEC system, which sent notice to all counsel of record.

This the 7th day of June 2023.

/s/ Catoria P. Martin
Catoria P. Martin