IN THE SUPREME COURT OF MISSISSIPPI
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 MISSISSIPPI; STATE OF MISSISSIPPI EX REL. LYNN FITCH, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL 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 Hinds County Chancery Court

BRIEF OF APPELLEES THE STATE OF MISSISSIPPI, GOVERNOR TATE REEVES, AND ATTORNEY GENERAL LYNN FITCH

Oral Argument Requested

LYNN FITCH
Attorney General

REX M. SHANNON III
Special Assistant Attorney General
MS Bar No. 102974
GERALD L. KUCIA
Special Assistant Attorney General
MS Bar No. 8716

SCOTT G. STEWART
Solicitor General
MS Bar No. 106359
JUSTIN L. MATHENY
Deputy Solicitor General
MS Bar No. 100754
MISSISSIPPI ATTORNEY GENERAL'S OFFICE
P.O. Box 220
Jackson, MS 39205-0220
Telephone: (601) 359-3680
E-mail: justin.matheny@ago.ms.gov

Counsel for the State Appellees

IN THE SUPREME COURT OF MISSISSIPPI
No. 2023-CA-00584-SCT

ANN SAUNDERS, ET AL.,
Appellants

v.

THE STATE OF MISSISSIPPI, ET AL.,
Appellees

On Appeal from the Hinds County Chancery Court

CERTIFICATE OF INTERESTED PERSONS

Under Mississippi Rule of Appellate Procedure 28(a)(1), governmental parties need not furnish a certificate of interested persons.

LYNN FITCH
Attorney General

/s/ Justin L. Matheny
JUSTIN L. MATHENY

Counsel for the State Appellees

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

INTRODUCTION

This Court should affirm the chancery court's judgment applying the plain text of the Mississippi Constitution to uphold important laws aiding the administration of criminal justice.

This case attacks the Legislature's efforts to equip the Judiciary with tools to manage emergencies in the lower courts, clear a backlog of criminal cases in Hinds County, and continue the administration of criminal justice when lower-court judges cannot handle a particular case, a set of cases, or their overall workload. Plaintiffs challenge laws authorizing the appointment of temporary special judges and establishing a new municipal court in the Capitol Complex Improvement District. Although plaintiffs vigorously attack the appointment provisions, that mechanism is not new. For decades, Miss. Code Ann. § 9-1-105 has empowered the Chief Justice of this Court to appoint (with the advice and consent of the other Justices) temporary special judges for a range of purposes. This year, in House Bill 1020, the Legislature likewise authorized the Chief Justice to appoint several temporary special judges to aid Hinds County's four circuit judges and thus alleviate a criminal-case backlog exacerbated by the pandemic and by a surge in crime in the City of Jackson. Also in HB 1020, the Legislature established a new municipal court—the Capitol Complex Improvement District court—to handle criminal and other matters heard by municipal courts throughout the State, and thus also help relieve the strain on Hinds County's criminal-justice system.

Plaintiffs claim that these laws violate the state constitution's limitations on judicial appointments and on the Legislature's power to establish new courts. The chancery court rejected these claims and entered judgment for the State.

The chancery court's decision is correct. *First*, the judicial-appointment provisions are constitutional. Under our constitution, the Legislature enjoys broad power, including power to establish and provide for the administration of the State's courts. *E.g.*, Miss. Const. art. IV, § 33; *id.*, art. VI, § 172. That authority includes the power to provide for temporary special circuit judge appointments. Indeed, the Legislature has provided for such appointments for decades. Plaintiffs contend that the appointment provisions violate section 153 of the constitution because that section requires that circuit judges be "elected by the people" yet, in plaintiffs' view, the challenged laws allow circuit judges to be appointed by the Chief Justice. But the challenged provisions do not provide for appointment of *circuit judges*. A circuit judge is a judge who is entitled to hold office for a "term of four years." *Id.*, art. VI, § 153. The challenged laws provide for the appointment of temporary special judges who are not entitled to hold office for a four-year term. Nothing in the constitution blocks the Legislature from allowing for such temporary appointments.

Plaintiffs also contend that the appointment provisions violate section 165 of the constitution because that section, in plaintiffs' view, allows a judge to be appointed only when a circuit judge is "unable or disqualified," only by the Governor, and only to replace (rather than to serve in addition to) existing circuit judges. Miss. Const. art. VI, § 165. That is not what section 165 does. Section 165 addresses a

specific, delicate situation: when a democratically elected circuit judge is "disable[ed]" or "disqualified," and someone must thus be appointed to temporarily serve in that circuit judge's place. *Ibid.* Section 165 says that, in that situation, the Governor may appoint someone to temporarily serve in that circuit judge's place. Nothing in section 165—or anywhere in the constitution—limits the Legislature's power to allow for temporary judicial appointments in the many other situations when the public interest may require them, such as emergencies or backlogs. The laws challenged here allow the Chief Justice to appoint temporary judges in emergency circumstances. Nothing in the state constitution prohibits that.

Second, the CCID court is constitutional. A new constitutional court is valid if it is an inferior court—a court subject to higher-court review. The CCID court meets that requirement. It is a municipal court. And state law authorizes appeals from municipal courts to constitutional courts. Plaintiffs contend that the CCID court is not a valid "inferior court" under section 172 of the constitution because nobody can appeal from the CCID court's decisions. That argument misreads state law, which provides a right to appeal from decisions of municipal courts like the CCID court. Plaintiffs' argument would require this Court to needlessly read a statute to violate the constitution. That is not what this Court does. Here, the only sound reading of Mississippi law is the one that sustains the CCID court.

The resolution of plaintiffs' two claims swallows up all other issues before this Court. This Court need not—and should not—decide anything else.

This Court should affirm the chancery court's judgment.

STATEMENT OF THE ISSUES

1. Under the state constitution, a circuit judge is a judge who is entitled to hold office for a "term of four years," and when a circuit judge is "disab[led]" or "disqualified," the Governor may appoint someone to temporarily serve in that judge's place. Miss. Const. art. VI, §§ 153, 165. The laws challenged here provide for the appointment of temporary judges who are not entitled to hold office for a four-year term and allow the Chief Justice to appoint temporary judges in emergencies that are not limited by the state constitution. Are those laws constitutional?

2. Under the state constitution, the Legislature may establish a new constitutional court if that court is an "inferior court"—a court whose decisions are subject to review by a higher court. Miss. Const. art. VI, § 172. Legislation challenged here creates a new municipal court for the Capitol Complex Improvement District, and state law provides a right to appeal from municipal-court decisions to a higher court. Is that legislation constitutional?

3. Should this Court reach any other issues in this appeal when its ruling on those other issues does not matter for the proper disposition of this case?

STATEMENT OF ASSIGNMENT

The Supreme Court has retained this appeal. Order on Motion #2023-1554.

STATEMENT OF THE CASE

Legal Background. The Mississippi Constitution vests the "Legislature" with "[t]he legislative power of this state." Miss. Const. art. IV, § 33. This broad authority includes "all political powers" that are "not withheld" by the state constitution and are not "in conflict with the Constitution of the United States."

Hinton v. Bd. of Sup'rs of Perry Cnty., 84 Miss. 536, 36 So. 565, 567 (1904); *see Wheeler v. Shoemake*, 213 Miss. 374, 57 So. 2d 267, 280 (1952) ("the Legislature has all political power not denied it by the state or national constitutions"). The state constitution expressly authorizes the Legislature to "establish" certain lower courts "as may be necessary." Miss. Const. art. VI, § 172.

At the same time, the constitution sets in stone certain powers and features of the Judiciary. The constitution vests the "judicial power of the State" in this Court "and such other courts as are provided for" in the constitution. Miss. Const. art. VI, § 144. The constitution provides for a supreme court, circuit courts, and chancery courts, *id.* §§ 144, 152, and sets parameters on the jurisdiction and administration of these constitutional courts and their judges, *see id.* §§ 156-65.

This case concerns whether the Legislature has acted outside this framework. Three constitutional provisions are central to the case. Section 153 establishes the offices of circuit-court and chancery-court judges. It says: "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. Section 165 addresses when a judicial officer is "unable or disqualified." Specifically, it speaks to when "any judge of the Supreme Court or the judge or chancellor of any district in the 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." *Id.* § 165. In those circumstances, "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." *Ibid.* And, as noted above, section 172 authorizes the Legislature to create "inferior courts" not otherwise established by the constitution. It provides: "The Legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient." *Id.* § 172.

Factual Background. There are many circumstances when sitting judges may not be able to preside over a case or range of cases. Recusal, illness, public emergency, private emergency, an overcrowded docket, and scheduling conflicts are among these circumstances. The Legislature has long recognized the need for courts' work to continue in these circumstances and has legislated to make that happen.

For decades, state law has authorized the Chief Justice of this Court to appoint temporary special judges in various circumstances. *See* Miss. Code Ann. § 9-1-105. In 1989, by near-unanimous votes, the Legislature enacted the original section 9-1-105 and repealed prior laws on special-judge appointments. *See* Miss Laws, 1989, ch. 587 § 3; *id.* § 7 (repealing laws on appointments in cases of "disability," "disqualified" judges, and Chief Justice appointments of "retired judges" for a "return to active service on an emergency basis"); 1989 House Journal 1096 (119-1 vote); 1989 Senate Journal 2560 (Vol. II) (50-1 vote).

The 1989 enactment authorized the "Chief Justice ... with the advice and consent of a majority of the Justices of the Mississippi Supreme Court" to appoint "special" judges to replace "any judicial officer" who was "unwilling or unable" to serve

due to "physical disability or sickness" or "disqualification" under "Section 165" of the constitution. Miss Laws, 1989, ch. 587 § 3(1). For any such "appointment[s]" falling "within" the Governor's section 165 appointment powers (those triggered, as noted above, when a judge is "unable or disqualified to preside"), the enactment provided that "the Governor may at his election appoint a person" and that such an appointment would prospectively render the Chief Justice's appointment "void and of no further force or effect." *Id.* § 3(4). The law also vested the Chief Justice, upon "advice and consent" of the other Justices, with the power to appoint replacement "special judge[s]" in circumstances outside the Governor's section 165 appointment power. *Id.* § 3(1). These circumstances included "[w]henever" any judge "is unwilling or unable" to perform the judge's duties "by reason of ... absence ... from the state" or "for any other reason." *Ibid.* The 1989 enactment also gave the Chief Justice the "authority" (again subject to an "advice and consent" requirement) to "appoint a special judge to serve on an emergency basis in a circuit or chancery court" upon "request" of lower-court judges. *Id.* § 3(2). But unlike appointed "special judge[s]" who replace sitting judges, special judges appointed on such an "emergency basis" were obligated "to assist the circuit or chancery court ... in the disposition of causes so pending in such court." *Ibid.* (codified at Miss. Code Ann. § 9-1-105(2) (1989)).

Not long after the 1989 enactment, a federal court upheld section 9-1-105(2) against a Voting Rights Act challenge. *Prewitt v. Moore*, 840 F. Supp. 428, 435-36 (N.D. Miss. 1993) (three-judge court). The court held that the Chief Justice's authority to "appoint special judges on an emergency basis" under section 9-1-105(2)

was not a "change" from prior practice "with respect to voting" subject to section 5 of the federal Act. *Id.* at 435. The court added that section 9-1-105 permits special-judge appointments—not "the creation of additional permanent judgeships." *Ibid.* So "nothing" about section 9-1-105's appointment authority "affects the substance of" Mississippi citizens' "voting power." *Ibid.*; *see also Prewitt v. Moore*, 840 F. Supp. 436, 440 (N.D. Miss. 1993) (rejecting claim that "appointment of temporary judges" under section 9-1-105(2) dilutes minority votes in violation of section 2 of the federal Act).

In 2005, the Legislature expanded the Chief Justice's authority to appoint temporary special judges to "assist" lower courts under section 9-1-105(2). Miss. Laws, 2005, ch. 501 § 18. This enactment extended section 9-1-105(2)'s appointment powers to the appointment of "a special judge to serve on a temporary basis in a circuit or chancery court" made "upon [the Chief Justice's] own motion"—with the other Justices' "advice and consent"—"in the event of an emergency or overcrowded docket" and "for whatever period of time is designated by the Chief Justice." *Ibid.* This extension of section 9-1-105(2) passed by large margins. *See* 2005 House Journal 982-83 (103-11 vote); 2005 Senate Journal (Vol. II) 2133 (49-3 vote). The next year, to address the Hinds County Circuit Court's then-overcrowded docket, Chief Justice Smith "appointed two special judges to help expedite criminal cases" in the circuit court to "relieve the criminal case backlog." Clerk's Papers (C.P.) 271. Hinds County's circuit judges benefited from that aid designed to afford them "more time to devote to their criminal and civil dockets." C.P. 271. Circuit Judge Winston Kidd publicly

stated that he "appreciate[d]" the special-judge appointments, which provided "a tremendous help in reducing the number of criminal cases on my docket." C.P. 273.

In its most recent amendments to section 9-1-105(2), the Legislature extended the law to include temporary special judge appointments to "county court[s]." Miss. Laws, 2018, ch. 391 § 1. The 2018 enactment also gave the Chief Justice "discretion" to assign special judges appointed to "serve on a temporary basis" under section 9-1-105(2) "to hear particular cases, a particular type of case, or a particular portion of the [lower] court's docket." *Ibid.* The law passed without a dissenting vote. *See* 2018 House Journal 596 (115-0 vote); 2018 Senate Journal 307 (52-0 vote). Section 9-1-105(2) now 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.

Miss. Code Ann. § 9-1-105(2) (Rev. 2018).

In 2020, the COVID-19 pandemic contributed to a case backlog in Hinds County trial courts and elsewhere. The Chief Justice responded to those crises by appointing special judges to assist trial courts in performing their duties. *See*, *e.g.*, Orders in Cause Nos. 2020-AP-00756, 2020-AP-00757, 2020-AP-00787, 2020-AP-

00794, 2020-AP-00815. The City of Jackson also saw an unprecedented surge in violent crime during the pandemic. The City's persistent "crime problem" has been described by one judge as "sweltering, undisputed and suffocating." *NAACP v. Reeves*, No. 3:23-CV-272-HTW-LGI, 2023 WL 3767059, at *5 (S.D. Miss. Jun. 1, 2023). Between 2020 and 2022, the City reported record numbers of "homicides" and other "categories" of "violent crime." *Ibid*. That rampant "crime problem" effectively "cripped the criminal justice system." *Id.* at *5-6.

In September 2022, acting under section 9-1-105(2) "with the advice and consent" of this Court's other Justices, the Chief Justice appointed four "special judges" to serve in the Hinds County circuit court "on a temporary basis." C.P. 41; *see* C.P. 40-62. The special-judge appointments were "made to alleviate the strain on the Hinds County courts" caused in part by the pandemic and "in the interest of public safety and to timely provide access to justice to victims and accused." C.P. 41, 47, 53, 59. Each special judge was assigned "to preside" over and "enter judgment" in cases listed in attachments to the appointment orders. C.P. 42, 48, 54, 60; *see* C.P. 40-62.

A few weeks later, several officials—including the Hinds County Sheriff, the Hinds County District Attorney, the Capitol Police Chief, the Jackson Police Chief, the State Public Defender, and the Chief Justice—testified at a legislative hearing on Hinds County's overwhelmed criminal-justice system. The Chief Justice addressed the recent special-judge appointments, the circuit court's backlog of cases, and solutions to that problem. *See* Ex. 2 to Motion #2023-1650 at 4-20. He testified that he had "started by studying the problem" and meeting with state and local officials.

Id. at 7. He determined that Hinds County's "backlog is real" and noted that "all branches of government" were "working together" to resolve it. *Id.* at 15. The plans included the Chief Justice's four special-judge appointments that had enabled the circuit court to "try twice the number of cases, just for starters." *Id.* at 16. By taking that measure, the Chief Justice believed that "we can get rid of this backlog" and doing so "will help you get rid of the crime." *Id.* at 17.

The 2023 Legislature recognized the breakdown in Hinds County's criminal-justice system evidenced by the hearing testimony and other reputable sources. In April, after considering other proposed solutions, lawmakers enacted HB 1020.

HB 1020 authorizes the appointment of "temporary special circuit judges" to assist the Hinds County circuit court. HB 1020, § 1. The judicial-appointment provisions require the Chief Justice to "appoint four ... special circuit judges" to serve Hinds County's circuit court within "fifteen ... days after [the law's] passage." *Id.* § 1(1), (2). The Chief Justice may "reappoint" Hinds County's current special judges "that are serving on a temporary basis as of the [law's] effective date." *Id.* § 1(2). The temporary appointments automatically "expire on December 31, 2026." *Id.* § 1(1).

HB 1020 also establishes an "inferior court ... authorized by Article 6, Section 172 of the Mississippi Constitution" in the Capitol Complex Improvement District and vests that court with "municipal court[ ]" jurisdiction. HB 1020, § 4. The CCID court possesses the authority of other "municipal courts" to hear "preliminary matters and criminal matters authorized by law for municipal courts," "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." *Id.* § 4(1)(a). That limited subject-matter jurisdiction extends to violations that "accrue or occur, in whole or in part, within the" CCID's "boundaries." *Ibid.* HB 1020 empowers the Chief Justice to "appoint the CCID inferior court judge," who must be a "qualified elector of this state" and "possess all qualifications required by law for municipal court judges." *Id.* § 4(2). The "compensation" of CCID court personnel must track that of Jackson "municipal court judges and their support staff." *Id.* § 4(3). The CCID court's authorizing provisions expire "on July 1, 2027." *Id.* § 4(5).

Procedural Background. Plaintiffs are three voters and taxpayers in Hinds County. They challenge the judicial-appointment provisions of code section 9-1-105(2) and HB 1020 and the Legislature's establishment of the CCID court. C.P. 20-62. They named the Chief Justice, the Hinds County Circuit Clerk, and the Director of the Administrative Office of Courts as defendants in their official capacities. C.P. 20, 24.

Plaintiffs claimed that the judicial-appointment provisions violate two parts of the state constitution: section 153, by providing for circuit judges who have not been elected; and section 165, by providing for judicial appointments outside that section's framework for replacing "unable or disqualified" judges (because it authorizes appointments by the Chief Justice instead of the Governor, in circumstances other than disability or disqualification, and in addition to existing judges rather than in the place of those judges). C.P. 20, 21; *see also* C.P. 20-22, 30-38. Plaintiffs further claimed that the CCID court violates the state constitution because it "is not an

'inferior court'" under section 172 since there is no right to appeal from its decisions. C.P. 22; *see also* C.P. 20-22, 30-38.

Plaintiffs moved for a preliminary injunction on each claim. C.P. 77-135. The Attorney General intervened as a defendant on the State's behalf. C.P. 159-160.

The chancery court "temporarily stayed" the "effectuation" of HB 1020 "to allow full hearing and consideration" of the preliminary-injunction motion and set a hearing. C.P. 296; *see* C.P. 296-299, 723-724. The parties briefed motions to dismiss (*e.g.*, C.P. 148-152, 312-367, 370-414) and a motion to amend the complaint (*e.g.*, C.P. 172-197, 286-295, 417-426, 493-498), briefed plaintiffs' preliminary-injunction motion (*e.g.*, C.P. 212-279, 573-580), and submitted proposed findings of fact and conclusions of law on the preliminary-injunction motion (C.P. 427-454, 483-492).

On May 10, the chancery court heard all pending motions. C.P. 732-838. During the hearing, the court granted plaintiffs' motion to amend the complaint to add as defendants the State, the Governor, and the Attorney General. C.P. 560-561; *see also* C.P. 603-624 (amended complaint), 767-768 (oral ruling). At the hearing's conclusion, the chancery court took the case under advisement. C.P. 837-838.

On May 11, the court dismissed plaintiffs' claims against the Chief Justice and the Hinds County clerk. C.P. 581-595. The court ruled that "judicial immunity" bars plaintiffs' claims against the Chief Justice because "prior appointment[s] of special judges under [section] 9-1-105" were "judicial act[s]" and future "appointment[s] of temporary circuit court judges and the CCID court judge under HB 1020" will be "judicial acts." C.P. 592; *see* C.P. 589-593. The court ruled that the clerk has "no

personal stake in the outcome of the controversy" and his "presence" as a defendant provides "no relief to Plaintiffs as a matter of law." C.P. 584; *see* C.P. 581-586.

On May 15, the chancery court consolidated the preliminary-injunction hearing with trial on the merits under Rule 65(a)(2), denied plaintiffs' preliminary-injunction motion, granted the State's motion to dismiss, and awarded final judgment to the State. C.P. 655-679, 680-682.

The court first held that plaintiffs have standing to assert their claims. C.P. 669; *see* C.P. 665-670. The court determined that plaintiffs "participat[e] in financial transactions within the city limits of Jackson" that "are subject to sales taxes," and that they pay "Mississippi income and property taxes" that "will be used to fund the costs of judicial appointments to the Hinds County Circuit Court and the operation of the CCID court." C.P. 666. The court thus ruled that plaintiffs "are differently situated than other Mississippi taxpayers" and are entitled to "challenge the governmental actions" at issue, which "directly affect them." C.P. 669.

On the merits, the court ruled that plaintiffs failed to prove that "HB 1020 and Miss. Code Ann. § 9-1-105(2)" are "unconstitutional[ ] beyond a reasonable doubt." C.P. 668; *see* C.P. 666-668, 670-679.

To start, the court held that the challenged "judicial appointment provisions of HB 1020 and Miss. Code Ann. § 9-1-105(2)" do not "violate the Mississippi Constitution." C.P. 671. The court rejected plaintiffs' claim that the constitution's provisions on circuit judges (section 153) and replacing "unable or disqualified" judges (section 165) "preclude the appointment of judges by the Chief Justice" or "preclude

any appointment of judges for reasons other than disqualification or disability." C.P. 671-672. The court recognized that, "absent a limitation within the Mississippi Constitution, the Legislature has authority to extend appointment authority to the Chief Justice." C.P. 673-674. The court explained that the constitution contains no such "limitation" that condemns appointments of "temporary special judges" by the Chief Justice. C.P. 673-674. Section 9-1-105(2) authorizes "special circuit judges" that "serve on a temporary basis ... in the event of an emergency or overcrowded docket" and thus does not conflict with section 153's provision for elected circuit judges, who hold office for four years. C.P. 674; *see* C.P. 673-675. Nor, the court ruled, does that statute violate section 165's terms on "gubernatorial appointments." C.P. 673. Section 165 "contemplates an alternative to gubernatorial appointments," and section 9-1-105(2)'s "legislatively crafted appointment authority of the Chief Justice ... squarely fits within" the constitution's "permissive language of an alternative." C.P. 673. "Similarly," the court ruled, HB 1020's "limited appointment authority for temporary special judges" provides for "appointment[s] on an emergency basis to assist in an overcrowded docket" that "expire[ ] automatically on December 31, 2026." C.P. 674. So HB 1020's "temporary special judges" are not "permanent" judges that might create some constitutional conflict. C.P. 674. The court added that "temporary special judges" do not "dilute the power of the duly elected judges." C.P. 674. Each "permanent Circuit Court Judge in Hinds County" maintains "exactly the powers that he or she enjoyed prior to the enactment" of section 9-1-105(2) and HB 1020. C.P. 674.

Next, the court rejected plaintiffs' claim that the CCID court created by HB 1020 "violates § 172 of the Mississippi Constitution." C.P. 675; *see* C.P. 675-677. Section 172 allows the Legislature to "establish" any "inferior courts as may be necessary," but, plaintiffs claim, the CCID court is not an "inferior" court because HB 1020 does not "expressly provid[e] for a right of appeal" from its decisions. C.P. 675. In rejecting that claim, the chancery court recognized that, under this Court's precedent, "the CCID Court need only be inferior in ultimate authority" to a higher "constitutionally created" court. C.P. 675. That requirement is met, the court ruled, because the CCID court has "the same jurisdiction as municipal courts" and other key features of "municipal courts." C.P. 676. Those attributes show that, as is true for other "municipal court defendants," CCID court defendants enjoy "a right of appeal to the county court and ultimately to the circuit court." C.P. 676.

Based on these rulings, the chancery court "advanced and consolidated" plaintiffs' preliminary-injunction motion with "trial of the action on the merits," ruled that plaintiffs "failed to state a claim upon which relief may be granted," and dismissed their claims "with prejudice." C.P. 679. The court entered final judgment based on its dismissal orders. C.P. 680-682.

On May 16, plaintiffs appealed from the judgment. C.P. 683-686. This Court granted plaintiffs' motion to expedite their appeal. Order on Motion #2023-1554.

SUMMARY OF THE ARGUMENT

This Court should affirm the chancery court's rejection of plaintiffs' claims.

I. Under the state constitution, a circuit judge is a judge who must be elected and is then entitled to hold office for a four-year term, and when a circuit judge is disabled or disqualified, the Governor may appoint someone to temporarily serve in that judge's place. The laws challenged here are consistent with that framework. Those laws provide for appointment of temporary judges who are not entitled to hold office for a four-year term. So the fact that those temporary judges are not elected presents no constitutional problem. And the challenged laws do not purport to override the constitution's framework for what may be done when a judge is disabled or disqualified. The challenged laws address the different situation of an emergency or overcrowded docket. Nothing in the constitution limits the Legislature's authority to provide for the appointment of judges as it did in the challenged laws.

II. Under the state constitution, the Legislature may establish a new constitutional court if that court is an "inferior court"—which means that the new court is subject to review by a higher court. The legislation challenged here satisfies that requirement. That legislation creates a new municipal court, and state law provides a right to appeal municipal-court decisions to a higher court.

III. This Court should not reach any other issues. The State is a defendant in this case. So however this Court rules on the first two issues, the remaining issues—on whether other defendants belong in the case—are irrelevant to resolving this case.

ARGUMENT

I. The Challenged Judicial-Appointment Laws Are Constitutional.

The chancery court rejected plaintiffs' claim that the "judicial appointment provisions" in HB 1020 and section 9-1-105(2) violate the state constitution's provisions on "elected" circuit judges and gubernatorial replacements for "unable or disqualified" judges. C.P. 671-675. This Court reviews that ruling *de novo*. *Johnson v. Sysco Food Servs.*, 86 So. 3d 242, 243 (Miss. 2012). This Court affords the challenged appointment statutes a "strong presumption of constitutionality"; the challengers must prove that the laws are "unconstitutional beyond a reasonable doubt"; and "all doubts" must be "resolved in favor of [their] validity." *Id.* at 243-44; *see Estate of Smiley*, 530 So. 2d 18, 22 (Miss. 1988) (the "unconstitutionality" of a legislative act "must appear beyond reasonable doubt" and "when there is doubt, this Court will construe the statute as constitutional if possible").

The judicial-appointment laws comport with the Mississippi Constitution. The Legislature has broad political power, including the power to authorize judicial appointments. The Legislature may authorize judicial appointments unless the constitution says otherwise. Sections 153 and 165 do not strip lawmakers of the power to provide for temporary special judges, appointed by the Chief Justice, to serve alongside circuit judges. So the challenged appointment laws are constitutional. Plaintiffs' arguments rest on a misreading of the constitution and are otherwise flawed.

A. The Legislature Has Broad Power To Authorize Judicial Appointments Like Those Challenged Here.

The Mississippi Constitution grants the Legislature all "[t]he legislative power of this state." Miss. Const. art. IV, § 33. That broad authority includes "all political power" not withheld from the Legislature "by the state or national constitutions." *Wheeler v. Shoemake*, 213 Miss. 374, 57 So. 2d 267, 280 (1952); *see State ex rel. Greaves v. Henry*, 87 Miss. 125, 40 So. 152, 154 (1906) ("Congress has no power not confided to it," but the "Legislature has all power not withheld from it").

The Legislature's broad powers extend to authorizing judicial appointments. Courts have recognized this. In *Prewitt v. Moore*, 840 F. Supp. 436 (N.D. Miss. 1993), a district court upheld the Chief Justice's statutory authority to appoint "temporary judges" against a claim that, to satisfy federal law, such judges must be elected. *Id.* at 439-40. That claim failed because Mississippi law has never allowed voters "to elect temporary judges" and "the Voting Rights Act does not reach appointment procedures which do not involve voting." *Ibid.*; *see Prewitt v. Moore*, 840 F. Supp. 428, 429-36 (N.D. Miss. 1993) (three-judge court) (reviewing the history of the State's judicial-appointment laws and rejecting the claim that the 1989 enactment of section 9-1-105(2) was a "change" in state "practice" or "procedure with respect to voting").

The Mississippi Court of Appeals has similarly rejected the view that section 9-1-105's appointment authority conflicts with the Governor's power, under section 165 of the constitution, to appoint in the case of "disab[led]" or "disqualifi[ed]" judges. *McDonald v. McDonald*, 850 So. 2d 1182, 1186-87 (Miss. Ct. App. 2002) (Southwick, P.J.), *aff'd*, 876 So. 2d 296 (Miss. 2004). Section 165's text, the court recognized, "does

not state that it is the exclusive mechanism for selection of special judges." *Id.* at 1187. And "[t]he Governor's authority is prefaced with the word 'may,'" suggesting that section 165's "procedure is optional as opposed to using some other feasible but unstated procedure." *Ibid.* The statutory framework also "provides that if the Governor makes an appointment under his authority, the Chief Justice's [special-judge] appointment becomes void." *Ibid.* (citing Miss. Code Ann. § 9-1-105(4) (Supp. 2001)). That "explicitly subordinate alternative to the Governor's" constitutional authority casts doubt on "whether section 165 declares an exclusive procedure." *Ibid.*; *see also Vinson v. Prather*, 879 So. 2d 1053, 1056-57 (Miss. Ct. App. 2004) (following *McDonald* in upholding a special-judge appointment under section 9-1-105 because the Governor's constitutional authority "is not the exclusive mechanism for the selection of special judges").

The laws challenged here fit well within the Legislature's broad authority to provide for special-judge appointments. Section 9-1-105(2) permits the Chief Justice to appoint "special judge[s] to serve on a temporary basis" when an "emergency" or "overcrowded docket" exists. HB 1020 authorizes the Chief Justice to "appoint temporary special circuit judges" to address the backlog of criminal cases in Hinds County's circuit court. HB 1020, § 1(1). Those laws are constitutional unless the federal or state constitution forbids them.

B. The Challenged Judicial-Appointment Laws Accord With The Mississippi Constitution.

Plaintiffs' lawsuit attacks the appointment provisions under Miss. Const. art. VI, §§ 153 and 165. C.P. 605; *see* C.P. 613-616. In assessing such a challenge, this Court starts with the "plain text" of constitutional provisions to resolve "question[s] regarding [their] interpretation." *In re Initiative Measure No. 65: Mayor Butler v. Watson*, 338 So. 3d 599, 607 (Miss. 2021); *see Ex parte Dennis*, 334 So. 2d 369, 373 (Miss. 1976) ("The construction of a constitutional section is ... ascertained from the plain meaning of the words and terms used within it."); *State v. Baggett*, 145 Miss. 142, 110 So. 240, 242 (1926) (courts must interpret constitutional words and phrases "employed therein by the framers of the Constitution" consistent with their "long-settled legislative meaning and application"). Plaintiffs' challenge fails on the plain text of sections 153 and 165. The appointment laws accord with those sections.

1. The appointment laws align with section 153. That section says: "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. That text provides that "judges of the circuit ... courts" have two defining features: they "shall be elected by the people" and they "shall hold their office for a term of four years." The two features are connected: having won election, "judges of the circuit ... courts" are entitled to hold their office for four years—unless they are impeached or otherwise removed from office through proceedings prescribed by law. *See*, *e.g.*, *id.*, art. IV, §§ 49, 50 (impeachment); *id.* § 53 (removal); *id.*, art. VI, § 177A (Judicial Performance Commission).

The challenged laws align with these principles. Temporary special judges—whether appointed under section 9-1-105(2) or HB 1020—are not "judges of the circuit ... courts" because they are not entitled to "hold their office for a term of four years." They hold their office on a temporary basis: for a case, a fleeting time period, or a "specifically" prescribed "duration" of time. Miss. Code Ann. § 9-1-105(8); *see id.* § 9-1-105(2) (authorizing "special judge" appointments for "whatever period of time is designated" or for "particular cases, a particular type of case, or a particular portion of the court's docket"); HB 1020, § 1(1) ("The term of the temporary special circuit judges shall expire on December 31, 2026."). Far from being removable only by impeachment or similar official proceedings, temporary special judges can be removed under Supreme Court "rules and regulations" on their "service and tenure." Miss. Code Ann. § 9-1-107(3) (senior judges); *see id.* § 9-1-105(6) (special-judge eligibility). So although temporary special judges are not "elected by the people," that is fine under section 153 because they are not "judges of the circuit ... courts": they do not enjoy the four-year term and tenure protections that the constitution grants to circuit judges.

2. The appointment laws also align with section 165. That section provides:

> 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. Section 165 addresses a narrow but important situation: when a judge is "unable or disqualified" to preside and someone else must thus preside "in [his or her] place." That is a delicate matter: it calls for the serious step of *replacing* (though temporarily) a democratically elected judge. Recognizing that such a situation is sensitive, our constitution's drafters carefully specified the process for taking that step: "the Governor" may appoint someone to preside for a limited time—"at such term or during such disability or disqualification."

The challenged laws respect this framework. Those laws do not allow anyone to serve "in the place of" a judge because of "disability or disqualification." *See* Miss. Code Ann. § 9-1-105(2) ("special judges" appointed "in the event of an emergency or overcrowded docket" must "assist the court to which [he or she] is assigned in the disposition of causes"); HB 1020, § 1(1)-(2) ("temporary special circuit judges" serve subject to the limitations "provided by the Constitution and laws of this state" and may be judges already "serving on a temporary basis" in Hinds County's circuit court). Since no circuit judge is being replaced (even temporarily), section 165's appointment process does not come into play and does not undercut the challenged laws.

C. Plaintiffs' Challenges To The Judicial-Appointment Laws Fail.

Plaintiffs make several arguments against the appointment laws. *See* Appellants' Br. (Br.) 14-31. Each fails.

1. Plaintiffs argue that section 153 requires circuit judges to be elected, the challenged laws allow circuit judges to be appointed, and so those laws violate section 153. Br. 17-19; *see also* Br. 15-17. But, as explained, the challenged laws do not

provide for the appointment of "judges of the circuit ... courts"—judges who "shall hold their office for a term of four years." Miss. Const. art. VI, § 153. They provide for judges who serve for a temporary period, without the tenure guaranteed to circuit judges. So this argument—plaintiffs' central argument—fails.

Plaintiffs also emphasize section 153's use of the word "shall": circuit judges "shall be elected by the people." *See* Br. 17-18. But plaintiffs ignore the use of the word "shall" at the end of section 153: circuit judges "shall hold their office for a term of four years." That "shall" is critical. The challenged laws do not provide for judges who "shall" hold an office for a four-year term, so those laws do not provide for circuit judges that are subject to section 153's election requirement.

This understanding of section 153 disposes of plaintiffs' other arguments about that section. Plaintiffs contend that "[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." Br. 18. Again, the laws here do not "authoriz[e] the appointment of circuit court judges." Plaintiffs relatedly contend that the Legislature "cannot, by statute, deprive the people of their right to elect their circuit court judges." Br. 18-19. But special-judge appointments authorized by section 9-1-105(2) and HB 1020 do no such thing. The people of Hinds County retain their right to elect their four circuit judges—nothing in the challenged statutes takes that right away—and the challenged laws do not address circuit judges. *See Prewitt v. Moore*, 840 F. Supp. 428, 435 (N.D. Miss. 1993) (three-judge court) ("section 9-1-105

does not provide for the creation of additional permanent judgeships" and does not "affect[ ] the substance of voting power"). Each Hinds County voter (including each plaintiff) enjoys the right to cast only one vote for one circuit-judge candidate at each election. Miss. Code Ann. § 9-7-23(2) (dividing Hinds County into four circuit subdistricts); *id.* § 9-7-25(1) ("[o]ne" Hinds circuit judge "shall be elected from each subdistrict"). That remains true regardless of the number of special-judge appointments made to the Hinds County circuit court under the challenged laws. *See Prewitt*, 840 F. Supp. at 435 (special-judge appointments do not "increase or decrease ... the number of judicial officials for whom the State's citizens may elect").

2. Plaintiffs next argue that "section 165 allows circuit judges to be appointed only in narrow circumstances that do not apply here." Br. 19 (capitalization and emphasis altered); *see* Br. 19-23. Plaintiffs contend that under section 165 appointment is allowed *only* when: a circuit judge is "unable or disqualified" to preside; someone is then appointed "in the place of" that judge for a limited "term"; and "the Governor" appoints that person. *E.g.*, Br. 19-20; *see* Br. 15 (section 165 provides "a single narrow exception in which appointment of judges is permitted").

This argument fails because plaintiffs are wrong about what section 165 says. Section 165 has a limited scope. It addresses one thing (gubernatorial appointment) that *may* be done in specified circumstances: when an elected circuit judge is "disab[led]" or "disqualifi[ed]." Miss. Const. art. VI, § 165. Section 165 does not define when—and only when—appointing a judge is allowed. *Ibid.*; *see McDonald v. McDonald*, 850 So. 2d 1182, 1187 (Miss. Ct. App. 2002) (section 165 "does not state

that it is the exclusive mechanism for selection of special judges"), *aff'd*, 876 So. 2d 296 (Miss. 2004). Section 165 does not speak to what the Legislature may provide outside the disability or disqualification contexts—such as with emergencies or overcrowded dockets—that may call for additional judges. And nowhere does section 165 say that someone may be appointed to exercise circuit-judge power *only* in the circumstances set out in section 165.

This plain-text reading dooms plaintiffs' text-based arguments about section 165. *See* Br. 20-23. Those arguments all rest on the mistaken view that section 165 sets out "a single narrow exception in which appointment of judges is permitted." Br. 15. As explained, section 165 addresses certain narrow circumstances in which the Governor is entitled to appoint someone to take the place of an elected judge.

Start with plaintiffs' "disability or disqualification" arguments against the appointment laws. Br. 20-21. Plaintiffs note that "[n]o elected circuit judge in Hinds County is currently disabled or disqualified from serving." Br. 20. But all that means is that the Governor has no basis to invoke section 165 to appoint someone "in the place of" a circuit judge. Plaintiffs also argue that "[b]y 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 excludes appointments for other reasons." Br. 20-21. But section 153 does not impose a blanket requirement that all judges be elected. That election requirement applies to "judges of the circuit ... courts." *Supra* pp. 21-22. And section 165 does not say that appointing

is allowed "only during" an elected judge's disability or disqualification; section 165 says what the Governor may do *when* an elected judge is disabled or disqualified.

Next take plaintiffs' "in the place of" arguments. Br. 22. Plaintiffs contend that the challenged laws are invalid because they call for appointees "in addition to" rather than "in the place of" an elected judge. Br. 22. But the fact that they call for appointments "in addition to" elected judges drives home why section 165 poses no barrier to these appointments. Section 165 addresses the delicate situation of *replacing* (even temporarily) an elected judge. It does not address—and does not limit—the situation of someone serving "in addition to" an elected judge. Plaintiffs' argument here is also flawed because it rests on the idea that the challenged laws "create[ ] entirely new judicial positions." Br. 22 (emphasis omitted). They do not. They allow for temporary appointments. *See Prewitt*, 840 F. Supp. at 435 (special-judge appointments under section 9-1-105 do not "provide for the creation of additional permanent judgeships" and do not "increase or decrease ... the number of judicial officials ... whom the State's citizens may elect").

Last, take plaintiffs' "the Governor" arguments. Br. 22-23. According to plaintiffs, section 165 "limit[s]" appointment power "to the Governor." Br. 23. "By granting narrow appointment authority to the Governor," plaintiffs say, "the Constitution plainly forbids other government actors from claiming that same authority." Br. 23. This argument would have force if the Legislature had said that, in the case of a circuit judge's disability or disqualification, an official other than the Governor will appoint a replacement and that the Governor cannot make an

overriding appointment. But that is not what the Legislature said. Section 165 does not (as plaintiffs would have it) limit all judicial-appointment power to the Governor. *See McDonald*, 850 So. 2d at 1187 ("[t]he Governor's authority" in section 165 "is prefaced with the word 'may,'" which suggests that its "procedure is optional as opposed to using some other feasible but unstated procedure"). Section 165 gives ultimate appointment power to the Governor in the narrow circumstances set out in section 165: when "disability or disqualification" of an elected judge requires someone to be temporarily appointed to preside in that judge's place. The challenged laws do not touch those narrow circumstances, and so pose no problem under section 165.

3. Plaintiffs' remaining arguments (Br. 23-31) lack merit.

Plaintiffs contend that "labeling appointments 'temporary' does not render them constitutional." Br. 23 (capitalization and emphasis altered); *see* Br. 23-26. They first argue: "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." Br. 24. This argument again falls because temporary special judges are not circuit judges and do not run afoul of any constitutional provision. *See supra* pp. 21-23. What is even more odd about this argument is that plaintiffs elsewhere agree that unelected judges may handle cases—and thus "sit in judgment of the rights, property, and freedom of Mississippians"—if their work is reviewed by an elected judge. *See* Br. 28. Decisions of temporary special judges are subject to review by the elected judges of this Court. By plaintiffs' own concession, their argument fails.

Plaintiffs relatedly argue that the challenged laws authorize appointments that "are not sufficiently time limited." Br. 24; *see* Br. 24-26. For this they first draw from section 165's directive that judges appointed under that provision serve during the "term of court" or period of disability or disqualification. Br. 24. But section 165 provides little guidance here because it deals, as explained, with the sensitive situation of appointing someone to serve *in the place of* an *elected* judge. Plaintiffs also maintain that special judges face "no meaningful time limit" and could serve for years. Br. 24; *see* Br. 24-25. Yet plaintiffs offer no rule by which this Court could soundly say that a temporary appointment extends too long. Nor could they: any rule would be arbitrary and without constitutional basis. Plaintiffs also point to nothing in the constitution that prohibits the periods set out in the challenged laws—which do have defined end points. *See* Miss. Code Ann. § 9-1-105(2) (authorizing "special judge" appointments for "whatever period of time is designated" or for "particular cases, a particular type of case, or a particular portion of the court's docket"); *id.* § 9-1-105(8) (special-judge orders "shall describe as specifically as possible the duration of the appointment"); HB 1020, § 1(1) ("The term of the temporary special circuit judges shall expire on December 31, 2026."). The Legislature did not say that special judges "shall hold their office for a term of four years." Miss. Const. art. VI, § 153.

Plaintiffs further argue that elected circuit judges are central to Mississippi's history and its people. Br. 26-27. But the challenged laws are consistent with that tradition. *See supra* pp. 6-9; *Prewitt*, 840 F. Supp. at 429-436 (recounting the history of the State's judicial-appointment laws and concluding that special-judge

appointments under section 9-1-105 effect no "change with respect to voting ... that was different" from historical practice). Circuit judges are still "elected by the people"—including in Hinds County, which still elects all four of its circuit judges. Consistent with its broad power and long practice, the Legislature may provide for the appointment of temporary special judges to serve the public interest.

Plaintiffs next claim that the Legislature has other tools for addressing crowded dockets. Br. 27-29. But the Legislature is authorized to choose from a range of permissible options the one that it thinks will best address a problem. Because the challenged laws are constitutional, the Legislature's choice must stand. And the Legislature had good reason not to embrace plaintiffs' alternatives. Plaintiffs say that the Legislature could add more elected judgeships to Hinds County. Br. 27-28. But the Legislature reasonably could take the view that Hinds County's diminishing population makes that an improper response—particularly to a *temporary* backlog. Plaintiffs contend that circuit courts "already possess the authority to assign cases to the county courts to assist with backlogs." Br. 28. But the Legislature could reasonably conclude that this existing authority was not resolving Hinds County's backlog. Plaintiffs next say that "the legislature could provide for special masters," "with their decisions subject to appeal and review by the circuit court judges." Br. 28. But this proposal would mean that circuit judges would still have work that they cannot get to—and so, the Legislature could reasonably believe, this would not address the backlog. Next, plaintiffs propose creating new inferior courts "subject to review by a circuit court or other constitutional court with elected judges." Br. 28; *see*

Br. 28-29. But again, providing for review by a circuit court would not solve the problem of circuit judges with too great a workload. And if plaintiffs are fine with new unelected inferior-court judges "subject to review by" a "constitutional court with elected judges," it is hard to see why they object to the laws they challenge: The decisions of special judges are reviewable by this Court. By plaintiffs' admission, then, there is no constitutional problem with the challenged appointment laws. With that concession, their claim collapses.

Last, plaintiffs resist the State's suggestion in the trial court "that recognizing the unconstitutionality of Section 9-1-105(2) could call into question the rulings of judges previously appointed under that section." Br. 30; *see* Br. 30-31. According to plaintiffs, the "de facto officer doctrine" would bar attacks on prior decisions. Br. 30. The State agrees that attacks on prior decisions are legally barred. But the State was recognizing a practical reality: people in prison generally do not like to be in prison, and they can be expected to launch any legal attack that they think will get them out. Even if those claims all fail, the State should not have to litigate them one after another. So although the three plaintiffs here "do not seek to invalidate prior rulings," Br. 31, that is cold comfort given the many prisoners desiring to attack their convictions. This is just more reason to reject plaintiffs' challenge to the judicial-appointments laws.

II. The CCID Court Is Constitutional.

The chancery court also rejected plaintiffs' claim that the CCID court created by HB 1020 violates section 172 of the constitution. C.P. 675-677. The same

heightened standards that govern this Court's review of plaintiffs' judicial-appointments challenge also apply to their attack on the CCID court. *Johnson v. Sysco Food Servs.*, 86 So. 3d 242, 243-44 (Miss. 2012); *Estate of Smiley*, 530 So. 2d 18, 21-22 (Miss. 1988). The CCID court is constitutional.

A. The Legislature has broad power to establish new "inferior" constitutional courts. The constitution provides for a supreme court, circuit courts, and chancery courts, Miss. Const. art. VI, §§ 144, 152, and sets out the authority and jurisdiction of these constitutional courts, *see id.* §§ 156-63. The constitution also gives the Legislature authority to establish other inferior courts and leeway in doing so. Section 172 provides: "The Legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient."

In defining what an "inferior court" is, this Court has said that "when the legislature creates a court and bestows jurisdiction upon it, that court must be inferior in ultimate authority to the constitutionally created court which exercises the same jurisdiction." *Marshall v. State*, 662 So. 2d 566, 570 (Miss. 1995). "This superiority is shown by giving the constitutional court controlling authority over the legislative court, by appeal or certiorari, for example." *Ibid.*

B. Under those principles, the CCID court is a valid inferior court. It is a municipal court. And state law provides a right to appeal from municipal-court decisions.

The CCID court is a municipal court. The CCID court has "jurisdiction to hear and determine all preliminary matters and criminal matters authorized by law for

municipal courts." HB 1020, § 4(1)(a). The CCID court "shall have the same jurisdiction as municipal courts to hear and determine" certain motor vehicle, traffic, and disturbing-the-peace offenses. *Ibid.* A CCID judge "shall possess all qualifications required by law for municipal court judges." *Id.* § 4(2). And a CCID judge's "compensation shall not be in an amount less than the compensation paid to municipal court judges and their support staff in the City of Jackson." *Id.* § 4(3).

There is a right to appeal from the decisions of municipal courts like the CCID court. "Any person adjudged guilty of a criminal offense by a ... municipal court may appeal to county court or, if there is no county court, to circuit court." Miss. R. Crim. P. 29.1(a); *see* Miss. Code Ann. § 11-51-81. So state law provides municipal-court defendants with a right of appeal to the county court and ultimately to the circuit court, *see* Miss. Code Ann. § 11-51-81, which is a constitutional court, *see* Miss. Const. art. VI, § 152. Like other municipal courts, the CCID court is thus a "validly established inferior court[ ]." *Mississippi Jud. Performance Comm'n v. Thomas*, 549 So. 2d 962, 964 (Miss. 1989).

Even if the CCID court were deemed not to be a municipal court, it is still a proper inferior court. HB 1020 says that the CCID court is an "inferior court as authorized by ... Section 172" of the state constitution. HB 1020, § 4. So even if the CCID court were not a municipal court, appellate review would still be available by writ of certiorari to the circuit court. *See* Miss. Code Ann. § 11-51-95; *see Town of Terry v. Smith*, 48 So. 3d 507, 509 (Miss. 2010) (section 11-51-95 "extends [certiorari] review 'to all tribunals inferior to the circuit court'"). Because a "constitutional court"

thus has "controlling authority over" the CCID court "by appeal or certiorari," the CCID court is a valid inferior court under section 172. *Marshall*, 662 So. 2d at 570.

C. Plaintiffs contend that the CCID is not a valid inferior court. Br. 31-37. Their arguments lack merit.

Plaintiffs claim that the CCID court is not an inferior court because there is "no right of appeal" from the CCID court "to any constitutional court" or "any other mechanism for a constitutional court to exercise supervisory control over" the CCID court. Br. 32-33; *see* Br. 31-34. As explained, this is wrong. HB 1020 places CCID courts within the existing state-law appellate-review apparatus for municipal courts.

Plaintiffs contend that "[t]he legislature deliberately chose not to provide for a right of appeal from decisions of the CCID court." Br. 33. They explain that "an earlier draft of H.B. 1020 included a right of appeal from the CCID court to the Hinds County Circuit Court," "but the legislature struck that provision prior to final passage." Br. 33. "This Court," plaintiffs say, "may not read back into the statute a right of appeal the legislature deliberately removed." Br. 33. But this Court need not "read back into" HB 1020 a right of appeal. That right is already provided by existing Mississippi law governing municipal courts. *See* Miss. R. Crim. P. 29.1(a); Miss. Code Ann. § 11-51-81. Nowhere does HB 1020 say that there is no right to appeal. It is always perilous to read much into edits that occur in the legislative process. And it would be remarkable to read into this deletion (as plaintiffs invite this Court to do) that the Legislature was trying to create a court that was doomed to be invalidated. Consistent with principles of constitutional avoidance and the statute that passed,

the right view of the deletion is that the Legislature realized that existing law provides for the needed appellate review. *See Wayne Cnty. Sch. Dist. v. Quitman Sch. Dist.*, 346 So. 3d 853, 859 (Miss. 2022) ("There is a presumption that acts of the legislature are valid, and the unconstitutionality of an act must be proved beyond a reasonable doubt before it will be declared invalid.") (internal quotations omitted); *State ex rel. Greaves v. Henry*, 87 Miss. 125, 40 So. 152, 154 (1906) ("if there be a well-founded reasonable doubt of the constitutionality of a legislative act, it must be held constitutional").

Plaintiffs add that "a right of appeal cannot exist without express statutory authorization." Br. 34. But existing law provides that authorization. *Supra* pp. 33-34. Plaintiffs cite no authority for the view that a right to appeal must be enacted in the same session law that creates an inferior court. And plaintiffs' approach again defies the canon of constitutional avoidance. Courts do not read statutes to violate the constitution when they can reasonably be read otherwise. *Smiley*, 530 So. 2d at 22 (the "unconstitutionality" of a legislative act "must appear beyond a reasonable doubt," and, "when there is doubt, this Court will construe the statute as constitutional if possible"). Here, the best reading of HB 1020 is that it respects existing mechanisms for appellate review. This is not a situation where the Legislature passed a law that expressly extinguishes a right to appeal. The law here just does not expressly address a right to appeal. The right way to construe the law is the one commanded by principles of constitutional avoidance: read HB 1020 to be consistent with the constitution and with existing statutes that provide for appeals

from municipal courts—like the CCID court. This Court should decline plaintiffs' invitation to reach out to constitutionally invalidate a law when it has an easy basis to uphold the law. This Court should do as the chancery court did: rule that the CCID court is "established to function as a municipal court" and thus its rulings are "subject to the same appeal mechanism" as other municipal-court decisions. C.P. 676.

Plaintiffs next argue that the CCID court "is not a municipal court" because it does not match certain attributes of other municipal courts: other municipal courts "only exist in municipalities" (and the CCID is not itself a municipality); judges on other municipal courts "must be appointed by an official who governs that municipality" (not the Chief Justice); and, unlike the CCID court, "no municipal court is empowered to commit individuals convicted of misdemeanors to state prison." Br. 35-36; *see also* Br. 34-35. But plaintiffs cite nothing that requires the Legislature to replicate these features for every municipal court that it may wish to establish. Plaintiffs cite statutes setting out features of other municipal courts. Br. 35-36. But the Legislature is entitled to change statutory law and to take a different approach than it has in past statutes—even past similar statutes. *See Marshall*, 662 So. 2d at 569 (when a matter is "statutory, not constitutional," it is "subject to legislative change"). That is what the Legislature did here. It expressly retained core features of other municipal courts—including on jurisdiction, qualifications, and compensation. HB 1020, § 4(1)-(3). It announced how the CCID is different from other municipal courts. *E.g.*, *id.* § 4(1)(a) (jurisdictional boundaries), 4(1)(b) (MDOC custody), 4(2) ("CCID inferior court judge" appointment). And it left in place other features of

municipal courts—such as the right for higher-court review. Nothing in the state constitution bars this approach. The constitution does not direct that municipal courts must map onto a municipality's boundaries, specify who must appoint municipal-court judges, or limit municipal courts' ability to commit misdemeanants to state prison. Municipal courts are creatures of statute, the Legislature may create and tailor them as it wishes unless the constitution says otherwise, and here the constitution does not say otherwise.

Last, plaintiffs argue that if this Court rejects their challenge to the CCID court then this Court should "clarify that ... a non-discretionary right to appeal exists from the CCID court to the Hinds County Circuit Court." Br. 37. The State is fine with this Court making clear that the existing mechanisms of appellate review of municipal courts apply to the CCID court. But those mechanisms require that appeals "shall be to the county court" first, with a right of "further appeal ... to the circuit court." Miss. Code Ann. § 11-51-81; *see also* Miss. R. Crim. P. 29.1(a). Plaintiffs' argument for "clarif[ication]" (Br. 37) just shows how thin their challenge to the CCID court is and how easily this Court can uphold the CCID court by just rejecting plaintiffs' facile arguments against it.

III. The Court Need Not And Should Not Resolve Any Other Issues.

Before denying plaintiffs' preliminary-injunction motion and granting the State's dismissal motion, the chancery court dismissed plaintiffs' claims against the Chief Justice and Hinds County clerk on judicial-immunity and improper-party grounds. C.P. 581-588, 589-595. This Court need not reach plaintiffs' challenges to

those rulings. If this Court affirms the chancery court's final judgment on the merits—and it should for the reasons given above—plaintiffs' charges leveled at the Chief Justice and the Hinds County clerk would be moot and irrelevant. If plaintiffs achieve reversal on any ground, their claims against those parties would still be irrelevant. The State is a party to the lawsuit either way. Any judgment in plaintiffs' favor would thus effectively block future implementation of the challenged laws, which is all the relief plaintiffs ever stand to get.

CONCLUSION

This Court should affirm the chancery court's judgment.

Respectfully submitted,

LYNN FITCH
Attorney General

/s/ Justin L. Matheny
SCOTT G. STEWART
Solicitor General
MS Bar No. 106359
Justin L. Matheny
Deputy Solicitor General
MS Bar No. 100754
STATE OF MISSISSIPPI
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 220
Jackson, MS 39205-0220
Telephone: (601) 359-3680
E-mail: justin.matheny@ago.ms.gov

Counsel for the State Appellees

REX M. SHANNON III
Special Assistant Attorney General
MS Bar No. 102974
GERALD L. KUCIA
Special Assistant Attorney General
MS Bar No. 8716

CERTIFICATE OF SERVICE

I hereby certify that on this date the forgoing document was electronically filed with the Clerk of this Court using the Court's MEC system, which transmitted a copy to all counsel of record.

A hard copy of the forgoing document has also been mailed to the following persons via U.S. Mail:

Hon. J. Dewayne Thomas
Chancery Court Judge
Fifth Chancery District
P.O. Box 686
Jackson, MS 39205

This the 14th day of June, 2023.

/s/ Justin L. Matheny
JUSTIN L. MATHENY