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IN THE SUPREME COURT OF MISSISSIPPI

NO. 2023-CA-00584-SCT

ANN SAUNDERS, *ET AL.*

Appellants

V.

STATE OF MISSISSIPPI, *ET AL*

BRIEF OF SOUTHERN POVERTY LAW CENTER AND MISSISSIPPI VOTES AS *AMICI CURIAE* IN SUPPORT OF THE APPELLANTS

OF COUNSEL:

Gary Stein
Steven R. Fisher
Rachel R. Siegel
Sedinam M. Anyidoho
SCHULTE ROTH & ZABEL
919 Third Avenue
New York, New York 10022
(212) 756-2012
Gary.Stein@srz.com
Steve.Fisher@srz.com
Rachel.Siegel@srz.com
Sedinam.Anyidoho@srz.com

Leslie Faith Jones
(Miss. Bar. No. 106092)
SOUTHERN POVERTY LAW CENTER
111 East Capitol Street, Suite 280
Jackson, MS 39201
(601) 948-8882
Leslie.Jones@splcenter.org

Bradley E. Heard
Sabrina Khan
Jack Genberg
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Avenue, Suite 340
Decatur, GA 30030
(404) 521-6700
Bradley.Heard@splcenter.org
Sabrina.Khan@splcenter.org
Jack.Genberg@splcenter.org

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INTERESTS OF AMICI CURIAE

limited circumstances. Far from its intended use, it is being abused to further create *de facto* unelected circuit judges.

Accordingly, HB 1020 is plainly violative of Section 153 of the Constitution, and the Chancery Court s ruling to the contrary should be reversed.

ARGUMENT

I. The Temporary Special Circuit Judges Created by HB 1020 Are *De Facto* Circuit Judges And, As Such, Must Be Elected By the People

Although HB 1020 purports to create four temporary special circuit judges, there is precious little daylight between these temporary special judges and standard, elected circuit court judges. This is shown b

Third, the statutorily-mandated term for which HB 1020 judges must serve is just shy of the constitutionally-mandated four-year term of elected circuit court judge. These appointed judges will serve from July 1, 2023 through December 31, 2026, a three-and-one-half year term. HB 1020 Section 1(1). The duly elected circuit judges in Hinds County serve a term of only four years, also ending on December 31, 2026. Miss. Const. art. VI, § 153. And, in practical terms, because HB 1020 expressly permits the Chief Justice of the Supreme Court to appoint an individual already serving on a temporary basis ... in the Seventh Circuit Court District, HB 1020 Section 1(2), the appointed judges could very well end up serving as circuit judges for a full four years, or even *longer*, despite never having been elected.

Fourth, these appointments and the concomitant bypassing of circuit judge elections are not justified by any exigency. No emergency or emergency requirement is articulated in HB 1020 which necessitates immediate appointments, unlike Section 9-1-

dock [1]

Fifth, under HB 1020, the appointed circuit judges shall receive an office and operating allowance to be used for the purposes described and in amounts equal to those authorized in Section 9-1-36 [of the Mississippi Code]. HB36 [of 5B

For all these reasons, the temporary special judges are both titularly and functionally the equivalent of circuit court judges. Section 153 of the Constitution, however, requires that circuit judges shall be elected. By providing for the appointment of circuit judges pursuant to statute rather than their election by the people, HB 1020 stands in direct conflict with the clear language of the constitution. *PHE, Co[illegible]reW*nBT/F[illegible]reW*nBT/[illegible]Tf[illegible]Tm0 g0 G[]TJET[illegible]reW*nBT/F[illegible]Tf[illegible]Tm0 g0 C*

attempt to create a shadow judiciary of appointed circuit judges for Hinds County cannot be reconciled with Section 153 s directive that circuit judges shall be elected.

II. HB 1020 Usurps the Constitutional Duties of Elected Circuit Judges

Elected circuit court judges are constitutional officers. Miss. Const. art. VI, § 153; *Leachman v. Musgrove*, 45 Miss. 511, 515 (1871) (noting that it is too plain to dispute that circuit judges are constitutional officers); *Mississippi Com n on Jud Performance v. DeLaughter*, 29 So. 3d 750, 759 (2010) (Circuit court judges are constitutional officers) (Waller, C.J., dissenting). Because elected circuit court judges are constitutional officers, the legislature is permitted neither to take away powers or duties from existing circuit judges, nor to give the powers of a circuit court judge to anyone else. It is a general principle of state constitutional law that the legislature cannot take away from a constitutional officer the powers or duties given that officer by the constitution, or vest such powers or functions in any other department or officer. 16 C.J.S, Constitutional Law, Section 321. This is a limitation on the legislature s authority that flows from the separation of powers doctrine. *Id.*

This Court has recognized that legislative acts abrogating the authority of constitutional officers are void. In *Fant v. Gibbs*, 54 Miss. 396, 403, 414, 415 (1877), for example, this Court relied on principles of separation of powers to strike down a statute that deprived certain elected district attorneys of their duties as a constitutional officer. *Id.* at 403-04. There, thirteen district attorneys had been elected to serve from each of the state s thirteen judicial districts. *Id.* at 407-08. Thereafter, the legislature reduced the number of judicial districts to eleven, leaving two district attorneys with spot duties. *Id.* The Court held that the law was clearly unconstitutional in depriving [the two unassigned district attorneys] of both duties and a district. *Id.* at 411.

In *Bd. of Trustees of State Institutions of Higher Learning v. Ray*, 809 So. 2d 627 (Miss. 2002), this Court struck down a state statute that interfered with the constitutional powers of the

circuit judges in Hinds County, there is a remedy at hand: it can increase the number of *elected* judges. That is the only remedy permitted by the Constitution.

III. Other States Highest Courts Have Found Similar Statutes Unconstitutional

In several other states with constitutional provisions prescribing the election of judges, courts have found unconstitutional statutes that instead provided for the appointment of judges. The holdings and reasoning of these cases are directly applicable here.

The Alabama Supreme Court, for example, has repeatedly found such legislation to be invalid. In *Opinion of the Justices.*, 41 So. 2d 907 (Ala. 1949), the Alabama Supreme Court struck down a statute naming an additional judge to serve as a circuit court judge, holding that it violated provisions of the Alabama Constitution requiring vacancies to be filled by appointment by the governor and providing for new circuit court judges to be elected at the next general election. The court held that Alabama s circuit courts are not of statutory creation. They are provided for by the Constitution and ... the legislature may [not] name the person to serve as circuit judge. *Id.* at 910. The Alabama Supreme Court later ruled that a different statute creating the position of Assistant Judge of Probate of Jefferson County, and allowing for the judge to be appointed by the Judge of Probate, likewise ran afoul of the constitutional requirement that all judges be elected. *Opinion of the Justs.*, 357 So. 2d 648 (Ala. 1979). Both of these cases are on point here, as HB 1020 likewise contravenes the Mississippi Constitution s mandate that all circuit judges be elected.

Similarly, the Tennessee Supreme Court struck down a law allowing the mayor of Nashville and the City Council to create a new juvenile and domestic relations court and appoint its sole member. *State ex rel. Haywood v. Superintendent, Davidson Cnty. Workhouse*, 259 S.W.2d 159, 161 (Tenn. 1953). Like the Mississippi Constitution, the Tennessee Constitution endows the people with the power to elect the judges of certain courts: The Judges of the Circuit and Chancery Courts, and of other inferior courts, shall be elected by the qualified voters of the district or circuit

to which they are to be assigned. Tenn. Const. art. VI, § 4. The Tennessee Supreme Court found the law in question was in direct conflict with Article VI

Finally, the Oregon Supreme Court s decision in *State ex rel. Madden v. Crawford*, 295

Sedinam M. Anyidoho[2]
SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, NY 10022
(212) 756-2000
Gary.Stein@srz.com
Rachel.Siegel@srz.com
Steven.Fisher@srz.com
Sedinam.Anyidoho@srz.com

Counsel for Proposed Amici Curiae the Southern Poverty Law Center and Mississippi Votes

[2] New York admission pending

CERTIFICATE OF SERVICE

I, Leslie Faith Jones, attorney for *amici*, hereby certify that I have this day electronically filed the

correct copy to all counsel of record.

I further certify that on this day I deposited a copy of the foregoing Brief with the U. S. Postal Service, postage prepaid, for delivery to the following:

Honorable J. Dewayne Thomas