

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

**ROBERT FOSTER; KATIE LIGON; KIRBY CARTER;  
and JOHN WILLIAMS**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO.: 3:26-CV-181-MPM-JMV**

**THE STATE OF MISSISSIPPI; THE STATE BOARD OF  
ELECTION COMMISSIONERS; TATE REEVES, in his  
official capacities as the Governor of Mississippi and a  
Member of the State Board of Election Commissioners;  
MICHAEL WATSON, in his official capacities as the  
Mississippi Secretary of State and a Member of the State  
Board of Election Commissioners; LYNN FITCH, in her  
official capacities as the Mississippi Attorney General and a  
Member of the State Board of Election Commissioners**

**DEFENDANTS**

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’  
URGENT AND NECESSITOUS MOTION FOR PRELIMINARY INJUNCTION**

Voting rights cases are notoriously complex, but this one isn’t. In DeSoto County’s upcoming judicial elections, the entire county will select three circuit judges and two chancellors, but the Mississippi Legislature has also given a newly created majority-minority subdistrict comprised of only 22.6% of DeSoto County the exclusive franchise to elect a fourth circuit judge and third chancellor, both of whom will preside over the entirety of DeSoto County. In other words, voters in the majority-minority subdistrict have four votes for DeSoto County’s circuit judges and three votes for DeSoto County’s chancellors, whereas voters living outside the majority-minority subdistrict will have only three votes for DeSoto County’s circuit judges and two votes for DeSoto County’s chancellors.

Why is the State denying the remainder of DeSoto County’s electorate the right to vote for that fourth circuit judge and third chancellor? The State’s only proffered reason, and the only explanation supported by statistics and context, is race. For two reasons, then, the judicial

subdistrict created in DeSoto County by House Bill 1544 and Senate Bill 2768 violates the United States Constitution, the Voting Rights Act, and the Mississippi Constitution—not to mention common sense—by disenfranchising 77.4% of DeSoto County in the election of two judges and doing so solely based on race. This Court should intervene and issue a preliminary injunction to prevent that unlawful subdistrict from being used for the first time this November, which will deny more than three out of four of DeSoto County’s residents the right to vote and permit two candidates to establish incumbency under an unconstitutional, racially motivated electoral map.

### **BACKGROUND**

Following the 2020 decennial census, the Mississippi Legislature had five years to address judicial redistricting before the task fell to the Mississippi Supreme Court. MISS. CONST. Art. VI, § 152. After a failed attempt in 2024,<sup>1</sup> the Mississippi Legislature again took up judicial redistricting during its 2025 Regular Session. The Legislature did so through two bills—House Bill 1544 and Senate Bill 2768, both of which were signed into law by the Governor in April 2025.

House Bill 1544 re-identified DeSoto County as the Twenty-first Circuit Court District and amended Miss. Code Ann. § 9-7-64 to provide the following *until* January 1, 2027:

- (1) There shall be three (3) circuit judges for the Twenty-first Circuit Court District.
- (2) For the purposes of appointment and election, the three (3) judgeships shall be separate and distinct and denominated as “Place One”, “Place Two” and “Place Three”. The judges to fill Place One, Place Two and Place Three shall be residents of DeSoto County.

Miss. Code Ann. § 9-7-64 (2025). But House Bill 1544 also included a future amendment to Section 9-7-64. From and after January 1, 2027, Section 9-7-64 will provide:

- (1) There shall be four (4) circuit judges for the Twenty-first Circuit Court District.

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<sup>1</sup> Sarah Ulmer, MAGNOLIA TRIBUNE, *Judicial redistricting fails this session, will be back up for consideration in 2025* (May 1, 2024), available at: <https://magnoliatribune.com/2024/05/01/judicial-redistricting-fails-this-session-will-be-back-up-for-consideration-in-2025/>.

- (2) For the purposes of appointment and election, the four (4) judgeships shall be separate and distinct and denominated as “Place One”, “Place Two”, “Place Three” and “Place Four”. The judges to fill Place One, Place Two and Place Three shall be elected from within the district. Place Four shall be a subdistrict denominated as 21-1. The judge to fill Place Four shall be elected from the following precincts in DeSoto County: Horn Lake Central, Horn Lake East, Horn Lake High School\*, Horn Lake Intermediate School, Horn Lake North, Horn Lake West, Northwest Community College\*, Southhaven South and Southhaven West\*.

Miss. Laws, Ch. 513 (H.B. 1544), § 39 (2025) (Exhibit A).<sup>2</sup> Thus, as of January 1, 2027, DeSoto County, *i.e.*, the Twenty-first Circuit Court District, will have four circuit judges—three elected from county-wide elections and one elected exclusively from the newly created subdistrict, denominated as District 21-1.<sup>3</sup> The election for that Place Four circuit judge is scheduled to take place during the November 2026 general election.

Senate Bill 2768 similarly created a new chancery court district comprised of solely DeSoto County, effective January 1, 2027. Miss. Laws Ch. 507 (S.B. 2768), § 23 (2025) (Exhibit B). Specifically, from and after January 1, 2027, Senate Bill 2768 will amend Miss. Code Ann. § 9-5-51 to read:

- (1) The Seventeenth Chancery Court District is composed of DeSoto County.
- (2) There shall be three (3) chancellors for the Seventeenth Chancery Court District. The chancellorships shall be separate and distinct and denominated as

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<sup>2</sup> Effective upon passage, House Bill 1544 also amended Miss. Code Ann. § 9-7-1 to provide that “[a] circuit judge elected from a subdistrict shall not be required to be a resident of that subdistrict but shall be a resident of the circuit court district in which he or she seeks to serve by the date on which the person qualifies as a candidate for the judicial office.” Miss. Code Ann. § 9-7-1 (2025).

<sup>3</sup> The origins of this subdistrict are questionable at best, and at worst, they’re blatantly unconstitutional post-*Louisiana v. Callais*. All agreed during the passage of the legislation at issue here that subdistricts began in Mississippi to ensure that black judges took the bench. Mississippi Legislature, *MS Senate Floor – 10 February, 2025; 3:00 PM*, at 1:18:23-40 YOUTUBE (Feb. 10, 2025), <https://www.youtube.com/watch?v=GHCDZdX8L0s> (Exhibit D) (“The reason why subdistricts were created because there were not a fair a representation of African American judges in our judiciary at the trial level.”); Mississippi Legislature, *MS House Floor – 6 February, 2025; 10:00 A.M.*, at 5:55:00–30, YOUTUBE (Feb. 6, 2025), <https://www.youtube.com/watch?v=SPptg5D1nVo> (Exhibit E). But that sort of race-based gerrymandering is exactly what the Supreme Court has since rejected as unconstitutional absent some specific identifiable instances of past discrimination that *necessitates* the particular remedial action taken. *Louisiana v. Callais*, 146 S.Ct. 1131, 1152 (2026).

“Place One,” “Place Two” and “Place Three.” The chancellor to fill Place One and Place Two shall be elected from all of the precincts within the district. Place Three shall be a subdistrict denominated as 17-1 for purposes of appointment and election. The chancellor to fill Place Three shall be elected from the following precincts in DeSoto County: Horn Lake Central, Horn Lake East, Horn Lake High School\*, Horn Lake Intermediate School, Horn Lake North, Horn Lake West, Northwest Community College\*, Southhaven South and Southhaven West\*.

Like House Bill 1544, Senate Bill 2768 provides for the election of two chancellors through county-wide elections and the election of a third chancellor from the same majority-minority subdistrict comprised of only a fraction of DeSoto County’s voters. Those elections will take place during the November 2026 general election.

That newly created subdistrict used for both the Place Four circuit judge and Place Three chancellor is—and was intended to be—a majority-minority subdistrict. The subdistrict makes up 22.6% of the voting-age population in DeSoto County and is disproportionately representative of the minority population in DeSoto County. According to the 2020 Census data utilized by the State of Mississippi on its redistricting website and in the Legislature’s Conference Report, the voting-age population within the subdistrict is 50.52% black and 40.83% white, whereas the voting-age population in DeSoto County as a whole is 24.85% black and 67.13% white.

| 2027 Circuit Population using 2020 Census data |            |        |         |       |         |         |           |         |           |         |           |           |             |
|------------------------------------------------|------------|--------|---------|-------|---------|---------|-----------|---------|-----------|---------|-----------|-----------|-------------|
| District                                       | Population | White  | % White | Black | % Black | 18+_Pop | % 18+_Pop | 18+_Wht | % 18+_Wht | 18+_Blk | % 18+_Blk | 18+_AP_Bl | % 18+_AP_Bl |
| 1                                              | 251168     | 187010 | 74.46%  | 48775 | 19.42%  | 193333  | 76.97%    | 147648  | 76.37%    | 36044   | 18.64%    | 37255     | 19.27%      |
| 2                                              | 273007     | 179878 | 65.89%  | 58916 | 21.58%  | 209959  | 76.91%    | 144821  | 68.98%    | 41727   | 19.87%    | 44180     | 21.04%      |
| 3                                              | 177175     | 116354 | 65.67%  | 47300 | 26.70%  | 140390  | 79.24%    | 94558   | 67.35%    | 36709   | 26.15%    | 37756     | 26.89%      |
| 4-1                                            | 27215      | 9033   | 33.19%  | 16810 | 61.77%  | 21318   | 78.33%    | 7767    | 36.43%    | 12578   | 59.00%    | 12797     | 60.03%      |
| 4-2                                            | 33450      | 4956   | 14.82%  | 27286 | 81.57%  | 24818   | 74.19%    | 4203    | 16.94%    | 19757   | 79.61%    | 20120     | 81.07%      |
| 4-3                                            | 11798      | 2304   | 19.53%  | 9162  | 77.66%  | 9046    | 76.67%    | 1871    | 20.68%    | 6914    | 76.43%    | 7018      | 77.58%      |
| 4-4                                            | 26769      | 7887   | 29.46%  | 17843 | 66.66%  | 20537   | 76.72%    | 6574    | 32.01%    | 13215   | 64.35%    | 13411     | 65.30%      |
| 5                                              | 95224      | 54649  | 57.39%  | 36753 | 38.60%  | 73771   | 77.47%    | 44087   | 59.76%    | 27223   | 36.90%    | 27787     | 37.67%      |
| 6-1                                            | 22988      | 6562   | 28.55%  | 15675 | 68.19%  | 18342   | 79.79%    | 5581    | 30.43%    | 12183   | 66.42%    | 12445     | 67.85%      |
| 6-2                                            | 35532      | 19347  | 54.45%  | 14336 | 40.35%  | 28373   | 79.85%    | 16023   | 56.47%    | 10832   | 38.18%    | 11060     | 38.98%      |
| 6-3                                            | 40324      | 16889  | 41.88%  | 21562 | 53.47%  | 30676   | 76.07%    | 13778   | 44.91%    | 15616   | 50.91%    | 15928     | 51.92%      |
| 7-1                                            | 35913      | 6779   | 18.88%  | 27398 | 76.29%  | 26980   | 75.13%    | 6114    | 22.66%    | 19638   | 72.79%    | 19961     | 73.98%      |
| 7-2                                            | 39093      | 3062   | 7.83%   | 34771 | 88.94%  | 30262   | 77.41%    | 2473    | 8.17%     | 26881   | 88.83%    | 27322     | 90.28%      |
| 7-3                                            | 34589      | 1347   | 3.89%   | 32028 | 92.60%  | 26303   | 76.04%    | 1237    | 4.70%     | 24209   | 92.04%    | 24695     | 93.89%      |
| 7-4                                            | 87876      | 32321  | 36.78%  | 50681 | 57.67%  | 68923   | 78.43%    | 27317   | 39.63%    | 38146   | 55.35%    | 38720     | 56.18%      |
| 7-5                                            | 16395      | 1868   | 11.39%  | 14180 | 86.49%  | 12801   | 78.08%    | 1683    | 13.15%    | 10875   | 84.95%    | 11029     | 86.16%      |
| 7-6                                            | 30271      | 15135  | 50.00%  | 13234 | 43.72%  | 24957   | 82.45%    | 12936   | 51.83%    | 10498   | 42.06%    | 10800     | 43.27%      |
| 8                                              | 99643      | 52976  | 53.17%  | 31123 | 31.23%  | 73507   | 73.77%    | 41763   | 56.82%    | 22410   | 30.49%    | 22985     | 31.27%      |
| 9-1                                            | 16217      | 3910   | 24.11%  | 11732 | 72.34%  | 12400   | 76.46%    | 3379    | 27.25%    | 8609    | 69.43%    | 8767      | 70.70%      |
| 9-2                                            | 33643      | 18716  | 55.63%  | 13131 | 39.03%  | 25988   | 77.25%    | 15167   | 58.36%    | 9527    | 36.66%    | 9725      | 37.42%      |
| 10                                             | 97587      | 49727  | 50.96%  | 42743 | 43.80%  | 74790   | 76.64%    | 40040   | 53.54%    | 31356   | 41.93%    | 32072     | 42.88%      |
| 11-1                                           | 23584      | 10059  | 42.65%  | 12295 | 52.13%  | 18080   | 76.66%    | 8170    | 45.19%    | 8990    | 49.72%    | 9163      | 50.68%      |
| 11-2                                           | 19704      | 2468   | 12.53%  | 16599 | 84.24%  | 14715   | 74.68%    | 2076    | 14.11%    | 12192   | 82.85%    | 12403     | 84.29%      |
| 11-3                                           | 25045      | 5255   | 20.98%  | 18857 | 75.29%  | 18762   | 74.91%    | 4555    | 24.28%    | 13498   | 71.94%    | 13743     | 73.25%      |
| 12                                             | 89669      | 52539  | 58.59%  | 30427 | 33.93%  | 70231   | 78.32%    | 42667   | 60.75%    | 22860   | 32.55%    | 23465     | 33.41%      |
| 13                                             | 74865      | 45278  | 60.48%  | 26707 | 35.67%  | 57588   | 76.92%    | 35936   | 62.40%    | 19778   | 34.34%    | 20171     | 35.03%      |
| 14                                             | 86612      | 47600  | 54.96%  | 35230 | 40.68%  | 66585   | 76.88%    | 37645   | 56.54%    | 26391   | 39.64%    | 27029     | 40.59%      |
| 15                                             | 158692     | 112702 | 71.02%  | 34437 | 21.70%  | 120490  | 75.93%    | 87890   | 72.94%    | 25012   | 20.76%    | 25857     | 21.46%      |
| 16                                             | 139588     | 69254  | 49.61%  | 62357 | 44.67%  | 110856  | 79.42%    | 57865   | 52.20%    | 47149   | 42.53%    | 48135     | 43.42%      |
| 17                                             | 86468      | 46343  | 53.60%  | 36446 | 42.15%  | 66990   | 77.47%    | 37792   | 56.41%    | 26830   | 40.05%    | 27399     | 40.90%      |
| 18                                             | 124905     | 84388  | 67.56%  | 31902 | 25.54%  | 94885   | 75.97%    | 65999   | 69.56%    | 23423   | 24.69%    | 23993     | 25.29%      |
| 19                                             | 143252     | 94709  | 66.11%  | 30070 | 20.99%  | 109676  | 76.56%    | 74951   | 68.34%    | 22212   | 20.25%    | 23385     | 21.32%      |
| 20                                             | 266176     | 173699 | 65.26%  | 71213 | 26.75%  | 203271  | 76.37%    | 136310  | 67.06%    | 52857   | 26.00%    | 54148     | 26.64%      |
| 21                                             | 150203     | 97334  | 64.80%  | 37808 | 25.17%  | 112496  | 74.90%    | 75519   | 67.13%    | 27160   | 24.14%    | 27957     | 24.85%      |
| 21-1                                           | 35111      | 12730  | 36.26%  | 18397 | 52.40%  | 25518   | 72.68%    | 10418   | 40.83%    | 12612   | 49.42%    | 12892     | 50.52%      |
| 22                                             | 51528      | 13825  | 26.83%  | 36297 | 70.44%  | 39982   | 77.59%    | 11945   | 29.88%    | 27052   | 67.66%    | 27507     | 68.80%      |

Conference Report (Exhibit B). Thus, effective January 1, 2027, the circuit judge occupying Place Four in DeSoto County and the chancellor occupying Place Three will be elected from a majority-minority subdistrict comprising only 22.6% of DeSoto County without any input from the remaining 77.4% of DeSoto County's voters. The first election utilizing that judicial subdistrict will occur on November 3, 2026.<sup>4</sup>

<sup>4</sup> The qualifying period is already closed, having opened January 2, 2026, and closed on February 2, 2026. See Miss. Code Ann. § 23-15-977(1); see also 2026 Elections Calendar, Mississippi Secretary of State's Office, available at: <https://www.sos.ms.gov/sites/default/files/elections/2026%20Elections%20Calendar.pdf>. Two candidates have qualified to run for each seat at issue. 2026 Primary Election Candidate Qualifying List, Mississippi Secretary of State's Office, available at: <https://www.sos.ms.gov/elections-voting/candidate-qualifying-list>. But the electoral ballot for November 2026 is far from finalized. With respect to special elections, there is still time for judicial candidates for either judgeship to qualify because the qualification deadline for all special elections is August 20, 2026. See Mississippi Secretary of State's Office, Elections Division, 2026 Elections Calendar, at page 11, available at: <https://www.sos.ms.gov/content/documents/elections/2026%20Elections%20Calendar.pdf> (last visited July 2, 2026) (citing Miss. Code Ann. § 23-15-839).

Plaintiffs have filed suit alleging that both House Bill 1544 and Senate Bill 2768 violate the United States Constitution, the Voting Rights Act, and the Mississippi Constitution because both bills vest in 22.6% of the voting-age population an exclusive franchise to select DeSoto County's Place Four circuit judge and Place Three chancellor and because the only reason for doing so—as expressly stated on the floor of the House and as borne out by context and statistics—was on account of race. Because of the unlawfulness of that electoral scheme, Plaintiffs seek declaratory and injunctive relief from this Court—a declaration that the Legislature's creation of the subdistrict in DeSoto County is unconstitutional or violative of the Voting Rights Act and an injunction to prevent the law from taking effect. Moreover, Plaintiffs seek an order setting a special election with a new qualifying period or, at the very least, an order reopening the qualifying deadline for the November 2026 general election with respect to the judicial elections at issue. Given that their success on the merits is virtually certain and irreparable harm looms, Plaintiffs now seek a preliminary injunction.

### **ARGUMENT AND AUTHORITIES**

To obtain a preliminary injunction, the movant must establish four elements:

(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

*Robinson v. Ardoin*, 86 F.4th 574, 587 (5th Cir. 2023) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)). All four are met here.

#### **I. Plaintiffs Will Likely Succeed on the Merits Where the State Has Denied 77.4% of DeSoto County the Right to Elect DeSoto County's Place Four Circuit Judge and Place Three Chancellor for Entirely Race-Based Reasons.**

House Bill 1544 and Senate Bill 2768's electoral map for DeSoto County's Place Four circuit judge and Place Three chancellor are unlawful for two overarching reasons. First, (A) they

are unlawful because the Legislature without any rational basis or justifiable reason denied a right to vote to almost 78% of DeSoto Countians, which unfairly vested an exclusive, unparalleled right to vote for those judgeships in only one subset of voters to the exclusion of all other voters in DeSoto County. Second, (B) the only plausible explanation and the Legislature’s proffered reason for creating the subdistricts at issue—to create a majority-minority district, *i.e.*, a race-based reason—is impermissible.

**A. The statutes at issue violate the Equal Protection Clause and the Mississippi Constitution by giving the subdistrict an additional or exclusive vote.**

In Mississippi, circuit judges and chancellors are elected by the people in a manner provided by the Legislature. MISS. CONST. Art. VI, § 154 (“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 . . .”). The Legislature has thus divided the State into judicial districts from which circuit judges and chancellors are to be elected, including DeSoto County. Miss. Code Ann. § 9-5-1, *et seq.*; Miss. Code Ann. § 9-7-1, *et seq.* In drawing those maps, the State has an obligation to comply both with the Fourteenth Amendment’s Equal Protection Clause and the Mississippi Constitution’s prohibition on special or local laws. *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 665 (1966); MISS. CONST. Art. IV, § 87.

**Fourteenth Amendment.** Indeed, the Equal Protection Clause “protects the right of all qualified citizens to vote, in state as well as in federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). That right includes both the right to cast a ballot and to have one’s vote counted equally. *Id.* (citing *Ex parte Yarbrough*, 110 U.S. 651 (1884), and *United States v. Mosley*, 238 U.S. 383 (1915)); *see also Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (gathering cases) (“In decision after decision, [the Supreme] Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.”);

*Gray v. Sanders*, 372 U.S. 368, 381 (1963) (“But once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.”).

That’s true for every voter “participat[ing] in the election . . . whatever their race, whatever their sex, whatever their occupation, whatever their income, and *wherever their home may be in that geographical unit.*” *Gray*, 372 U.S. at 379 (emphasis added); *Reynolds*, 377 U.S. at 563 (“Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable.”). “To the extent that a citizen’s right to vote is debased, he is that much less a citizen,” which is why the Supreme Court has interpreted the “clear and strong command of our Constitution’s Equal Protection Clause” to be that “[a] citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm”—in one neighborhood or another. *Reynolds*, 377 U.S. at 567–68.

Where “a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.” *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 627 (1969). Applying that exacting level of scrutiny requires that “the deference usually given to the judgment of legislators does not extend to decisions concerning which resident citizens may participate in the election of legislators and other public officials.” *Id.* Therefore, “when [courts] are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a ‘rational basis’ for the distinctions made are not applicable.” *Id.* at 627–28 (citing *Harper*, 383 U.S. at 670 (1966)).

On their face, the statutes at issue deprive 77.4% of the electorate in DeSoto County the right to vote on the circuit judge occupying Place Four and the chancellor occupying Place Three. Put differently, the statutes give those living in the majority-minority subdistrict four votes for DeSoto County’s circuit judges and three votes for DeSoto County’s chancellors, making everyone else in DeSoto County lower-level citizens with fewer rights and less power, possessing only three circuit-judge votes and two chancellor votes. And the statutes make no mention of their purpose, nor is one evident from the surrounding text. So facially, the statutes deprive DeSoto County voters living outside the majority-minority subdistrict of the right to vote in those judicial elections at issue simply based on the location of their homes—something expressly prohibited by the Constitution’s Equal Protection Clause. *Gray*, 372 U.S. at 379.

It’s not just the fact that subdistricting is problematic, though the practice is controversial in its own right.<sup>5</sup> Indeed, subdistricting typically protects citizens’ voting strength by simply dividing an at-large multi-member district into smaller single-member subdistricts. *See, e.g.*, Shawn Fremstad, Note, *State Judicial Elections and the Voting Rights Act: Defining the Proper Remedial Scheme*, 76 MINN. L. REV. 101, 113 (1991) (“Typically, an at-large electoral district is divided into several single-member subdistricts.”). Under those circumstances, voters in each subdistrict typically exercise an equal right to vote via a parallel voting structure.<sup>6</sup> That is, each subdistrict elects their own preferred judge or judges without the input of voters from other

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<sup>5</sup> *See, e.g., LULAC, Council No. 4434 v. Clements*, 999 F.2d 831, 872–73 (5th Cir. 1993) (en banc); *Nipper v. Smith*, 39 F.3d 1494, 1543–45 (11th Cir. 1994) (en banc) (criticizing the use of subdistricts in judicial redistricting).

<sup>6</sup> Some courts have expressed concern with the typical subdistricting system by accepting an opposite framing of the effects of proportionate subdistricting. *See Clark v. Roemer*, 777 F. Supp. 471, 479 (M.D. La. 1991) (“For example, if a judicial district with four judges is subdivided into four subdistricts, each to elect one judge, each voter in each district loses three of the four votes he or she formerly had.”). But those courts fail to account for the fact that when such proportionate subdistricting occurs the quantity of the votes cast by each voter goes down, the quality or strength of their vote increases insofar as they are more likely to sway the election in their respective subdistrict.

subdistricts, but the right to vote is equalized by allowing each subdistrict to do the same, affording every voter the right to vote for an equal number of judges. A prime example of arguably permissible subdistricting—assuming no racial gerrymandering or vote dilution—in Mississippi would be the Sixth Circuit Court District, which is divided into three subdistricts, each of which shall independently elect one circuit judge to preside over the entire Sixth Circuit Court District. Miss. Laws. Ch. 513 (H.B. 1544), § 13. In that example, the residents of each subdistrict have the same voting value, even if they have no say in the election of judges from the other two subdistricts.

But this case doesn't present the typical subdistricting scheme; rather, it involves an egregious single-subdistrict map that gives the subdistrict an exclusive, extra vote. And it's noteworthy to point out that this is the only instance in the entire state where the Legislature has created only a single subdistrict that votes for *all four* circuit judges and *all three* chancellors, while the remainder of the district is permitted to vote for *only three* of the district's circuit judges and *only two* of the district's chancellors. Thus, the residents outside this specially favored subdistrict are devalued by the Legislature denying them the right to vote on these new judgeships, while granting special rights to only a small, privileged few. Put another way, residents of the subdistrict receive an extra and exclusive vote for the Place Four circuit judge and Place Three chancellor—a specialized right to select an additional circuit judge and chancellor, while maintaining the right to influence the election of all other circuit judges and chancellors in DeSoto County. That specialized subdistricting—on its face and regardless of the Legislature's motivations—violates the Equal Protection Clause and the Mississippi Constitution.

Indeed, the subdistricting scheme here violates the Equal Protection Clause's mandate that "all who participate in an election are to have an equal vote" regardless of where they live within the geographic jurisdiction. *Gray*, 372 U.S. at 379–80. That is especially true here, where the

statute *facially* affords the subdistrict at issue a weightier vote based on nothing more than location without providing parallel subdistrict voting as seen elsewhere in Mississippi. *See Reynolds*, 377 U.S. at 563 (“Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable.”). The population of the subdistrict as compared to the remainder of DeSoto County provides no rational basis for drawing maps in this way,<sup>7</sup> and there is no logical explanation upon the face of the statute or sheer mathematics supporting the Legislature’s choice to deny nearly 78% of DeSoto Countians the right to vote on their Place Four circuit judge and Place Three chancellor, leaving those choices entirely to the subdistrict’s voters.

**Mississippi Constitution.** The subdistrict also violates the Mississippi Constitution’s prohibition on special or local laws passed by the Legislature. Section 87 of the Mississippi Constitution provides:

No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided by general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the Legislature for the benefit of any individual or private corporation or association, and in all cases where a general law can be made applicable, and would be advantageous, no special law shall be enacted.

MISS. CONST. Art. IV, § 87. The Mississippi Supreme Court has routinely defined local or special legislation as follows:

Class legislation, also often called local or private legislation, is legislation limited in operation to certain persons or classes of persons, natural or artificial, or to certain districts of the territory of the State, and statutes which make unreasonable or arbitrary classifications or discriminations violate provisions of Constitutions prohibiting special laws granting any special or exclusive privileges, immunities,

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<sup>7</sup> In some contexts, flotal districts might be permissible to afford a more populous area within a multi-member district weightier votes than a less populous area within that same multi-member district. *See for example Davis v. Mann*, 377 U.S. 678, 686 n.2 (1964). But this isn’t a flotal-district case where the subdistrict at issue wouldn’t itself be entitled to greater representation on the circuit-court or chancery-court bench based on its population alone.

or franchises, or passed for the benefit of individuals inconsistent with the general law of the land.

*Lovorn v. Hathorn*, 365 So. 2d 947, 949 (Miss. 1978) (quoting *Vardaman v. McBee*, 198 Miss. 251, 21 So. 2d 661 (1945)); *State ex rel. Pair v. Burroughs*, 487 So. 2d 220, 223 (Miss. 1986).

That general prohibition, of course, isn't without exceptions. The Constitution provides a procedure by which the Legislature may determine whether local or private legislation cannot be provided for by general law. MISS. CONST. Art. IV, § 89. That procedure includes a requirement that a local or private bill be "reported back with a recommendation in writing that it do pass, stating affirmatively the reasons therefor, and why the end to be accomplished should not be reached by a general law, or by a proceeding in court." *Id.* Only where "a bill is passed in conformity to the requirement hereof, other than such as are prohibited in [Section 90], the courts shall not, because of its local, special, or private nature, refuse to enforce it." *Id.* Thus, where "local and private legislation . . . contravenes § 90, § 89 will not apply." *State ex rel. Pair v. Burroughs*, 487 So. 2d 220, 224 (Miss. 1986).

Still, where "legislation [is] limited in operation to certain persons or classes of persons . . . or to certain districts of the territory of the State . . . mak[ing] unreasonable or arbitrary classifications or discriminations" in the contexts provided for by Section 90, courts must hold that legislation to be violative of the Mississippi Constitution. *See, e.g., Lovorn*, 365 So. 2d at 950 (Miss. 1978); *see also Alexander v. State by and through Allain*, 441 So. 2d 1329, 1333 (Miss. 1983) ("As long ago as 1823, *Runnels v. State*, [1 Miss. 146, 148–49 (1823)], held it the duty of the judiciary to declare void any legislative enactment which may be repugnant to the provisions of the constitution and that this duty is paramount to the authority of the legislature.").

There's little doubt that the subdistrict at issue made "unreasonable [and] arbitrary classifications or discriminations"—the State can come forward with no justifiable explanation for

why the subdistrict’s voters are given a weightier or additional vote in the election of DeSoto County’s judges. Thus, the laws at issue, insofar as they draw a unique subdistrict in DeSoto County, are special or local laws. The question then becomes whether Section 90 prohibits the passage of local or special laws in this context—it does.

Section 90 expressly prohibits special or local legislation “[c]reating, increasing, or decreasing the fees, salary, or emoluments of any public officer.” MISS. CONST. Art. IV, § 90(o). With the passage of House Bill 144 and Senate Bill 2768, the Legislature created a fourth circuit judge and third chancellor in DeSoto County and thereby created or increased the fees, salary, and emoluments of those offices which hadn’t before existed. And the Legislature created those offices with a specialized and local focus, creating them for the people residing in the challenged subdistrict to have their own judges accountable only to them. Therefore, the statutes are repugnant to Section 90(o).

Section 90 also prohibits special and local laws “[p]roviding for the creation of districts for the election of justices of the peace and constables.” MISS. CONST. Art. IV, § 90(t). While “justices of the peace” likely refer to justice court judges—not circuit judges or chancellors—the framers of Mississippi’s Constitution generally took issue with special or local laws, and Section 90(t) makes clear that their concern extended to the creation of judicial districts. There being no substantive distinction between the creation of justice court districts and districts for circuit and chancery court, it would debase the purpose of Section 90(t) to read it in a formalistic manner to prohibit special or local laws in the creation of judicial districts for only justice court judges.

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House Bill 1544 and Senate Bill 2768 created a subdistrict and gave voters therein the exclusive franchise to select additional DeSoto County judges while allowing those subdistrict

voters to also vote for county-wide judicial officers, thereby influencing the county-wide elections and having their own election from within the subdistrict. From the face of the statute and the statistics underpinning DeSoto County's electoral district, House Bill 1544 and Senate Bill 2768 violate the Equal Protection Clause of the United States Constitution by depriving those living outside the subdistrict any vote with respect to the Place Four circuit judge and the Place Three chancellor and vesting voters within the subdistrict with an exclusive franchise to elect those judges. And the laws at issue create an unreasonable and arbitrary subdistrict that violates the Mississippi Constitution's prohibition on special or local laws. Therefore, on its face, the statutory subdistrict violates both the Federal and Mississippi Constitution, and Plaintiffs are likely to succeed on the merits without considering the Legislature's purpose in creating the subdistrict.

**B. The State's Only Proffered Reason for Creating the Subdistrict Is Race-Based and Therefore Impermissible.**

Plaintiffs' success on the merits is even clearer when one considers *why* the State created the subdistrict in the first place. The Supreme Court has held that "redistricting legislation that is so bizarre on its face that it is 'unexplainable on grounds other than race,'" *Shaw v. Reno*, 509 U.S. 630, 644 (1993) (quoting *Arlington Heights v. Metro. Housing Development Corp.*, 429 U.S. 252, 266 (1977)), "is presumptively invalid and can be upheld only upon an extraordinary justification," *id.* at 643–44 (quoting *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 272 (1979)). That's because "our colorblind Constitution" prohibits race-based discrimination in voting legislation absent rare and extraordinary circumstances. *Allen v. Milligan*, 608 U.S. ----, 2026 WL 1552756, at \*1 (June 2, 2026) (per curiam); *Louisiana v. Callais*, 146 S.Ct. 1131, 1152 (2026) (noting that "the Constitution almost never permits the Federal Government or a State to discriminate based on race").

There's no question that the Legislature created the subdistrict at issue here for race-based reasons. Statistics aside, the subdistrict was created as part of an effort to increase the number of majority-minority subdistricts throughout the State to ameliorate the concerns of Democrats in the Mississippi Legislature.<sup>8</sup> Evidencing that intent, the debates on the House floor focused on subdistricting as a historical mechanism for ensuring that black judges take the bench in Mississippi.<sup>9</sup> And the opposition to House Bill 1544 and Senate Bill 2768 was focused on concerns that the Legislature's redistricting plans would hinder black judges' ability to win elections.<sup>10</sup>

Representative Kevin Horan—the author of House Bill 1544 and a leader in the judicial redistricting effort—met those concerns by defending both bills with an explanation that House Bill 1544 and Senate Bill 2768 create additional majority-black subdistricts in other parts of the

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<sup>8</sup> As one commentator described the Democratic concerns with the Legislature's redistricting effort, "the Minority in the House grilled [Representative Kevin] Horan on the floor for nearly two hours. Their frustration, which was summed up by State Rep. Bryant Clark (D) when speaking on the bill prior to its passage, centered on access to the courts by black Mississippians and those in the Delta." Frank Corder, MAGNOLIA TRIBUNE, *With deadline looming, lawmakers try again to pass an updated judicial redistricting plan* (Feb. 17, 2025), available at: <https://magnoliatribune.com/2025/02/17/with-deadline-looming-lawmakers-try-again-to-pass-an-updated-judicial-redistricting-plan/>.

<sup>9</sup> Mississippi Legislature, *MS House Floor – 6 February, 2025; 10:00 A.M.*, at 5:55:00–30, YOUTUBE (Feb. 6, 2025), <https://www.youtube.com/watch?v=SPptg5D1nVo>. And there was agreement in the Senate that judicial subdistricting as a general practice in Mississippi has race-based origins. Mississippi Legislature, *MS Senate Floor – 10 February, 2025; 3:00 PM*, at 1:18:23–40 YOUTUBE (Feb. 10, 2025), <https://www.youtube.com/watch?v=GHCDZdX8L0s> (recognizing that "[t]he reason why subdistricts were created because there were not a fair a representation of African American judges in our judiciary at the trial level.").

<sup>10</sup> The ACLU opposed judicial redistricting when it was first proposed during the Legislature's 2024 Session. ACLU of Mississippi, Press Release, ACLU-MS Statement on Senate Judicial Redistricting Plan (Apr. 9, 2024), available at: <https://www.aclu-ms.org/press-releases/statement-on-judicial-redistricting-plan/>. Those same objections were lodged by Democratic members of the Mississippi House of Representatives as they debated House Bill 1544 and Senate Bill 2768 during the 2025 Session. See, e.g., Frank Corder, MAGNOLIA TRIBUNE, *With deadline looming, lawmakers try again to pass an updated judicial redistricting plan* (Feb. 17, 2025), available at: <https://magnoliatribune.com/2025/02/17/with-deadline-looming-lawmakers-try-again-to-pass-an-updated-judicial-redistricting-plan/> ("the Minority in the House grilled [Representative] Horan on the floor for nearly two hours. Their frustration, which was summed up by State Rep. Bryant Clark (D) when speaking on the bill prior to its passage, centered on access to the courts by black Mississippians and those in the Delta."); see also Mississippi Legislature, *MS House Floor – 6 February, 2025; 10:00 A.M.*, at 4:59:00–6:25:35 YOUTUBE (Feb. 6, 2025), <https://www.youtube.com/watch?v=SPptg5D1nVo>.

state. Representative Horan specifically pointed to DeSoto County and other districts as examples of places where House Bill 1544 created such majority-minority subdistricts, explaining:

It was very difficult for us to find areas throughout the district where there was African American population that supported residency requirements and subdistricts--however you want to do it. And I think that's probably a good thing in this State--that people that are living in these areas are living black folks, white folks, Asians, Vietnamese, whomever, are living in these same neighborhoods. I think that's a good thing, Gentleman. But if you look in DeSoto County, that subdistrict is a subdistrict that allows in DeSoto County--will have an increasing majority-minority population for those individuals in that subdistrict to elect the candidate of their choice. Same way with the district in Monroe and Lee County that's coming forward. The same way with the chancery district in Lowndes County that covers part of Starkville. And in Forrest County that covers the downtown area. We are increasing African American BVAP or APBVAP districts. We are not decreasing it, Gentleman.

Mississippi Legislature, *MS House Floor – 6 February, 2025; 10:00 A.M.*, at 6:01:50–3:08 YOUTUBE (Feb. 6. 2025), <https://www.youtube.com/watch?v=SPptg5D1nVo>. Just before House Bill 1544's passage, Representative Horan assured the House, “[w]e have created additional African American subdistricts,” including one in DeSoto County. *Id.* at 6:24:51–56.

The statistics back up that explanation. By the State's own metrics, DeSoto County's total voting-age population is 67.13% white and 24.85% black, whereas the subdistrict is 40.83% white and 50.52% black. And the total population of DeSoto County is 64.8% white and 25.17% black, while the subdistrict's total population is 36.26% white and 52.4 percent black. Thus, the subdistrict in DeSoto County created by House Bill 1544 and Senate Bill 2768 is overwhelmingly and disproportionately black when compared to the DeSoto County population as a whole.

In other words, the statistics confirm what the Legislature made clear during floor debates—the subdistrict was drawn to ensure a majority-minority district. And the bizarre electoral scheme established by House Bill 1544 and Senate Bill 2768 can't be explained with

anything but race.<sup>11</sup> So strict scrutiny applies. *Callais*, 146 S.Ct. at 1152; *Shaw*, 509 U.S. at 644 (quoting *Arlington Heights*, 429 U.S. at 266).

The Supreme Court has “identified ‘only two compelling interests’ that can satisfy that standard.” *Callais*, 146 S.Ct. at 1152 (quoting *SFFA v. President and Fellows of Harvard College*, 600 U.S. 181, 207 (2023)). The only such “compelling interest” relevant here “is ‘remediating specific, identified instances of past discrimination that violated the Constitution or a statute.’” *Ibid.* “To ‘rise to the level of a compelling state interest,’ an effort to remediate past discrimination ‘must satisfy two conditions.’” *Id.* (quoting *Shaw v. Hunt*, 517 U.S. 899, 909 (1996)). “First, the discrimination must be identified discrimination.” *Ibid.* “In other words, the State or Federal Government must identify the specific instances of past discrimination that it aims to remediate and, in light of that specification, must ‘determine the precise scope of the injury it seeks to remedy.’” *Id.* (quoting *Shaw*, 517 U.S. at 909). “The States and Federal Government have no compelling interest in generally remediating ‘past discrimination in a particular industry or region’ or ‘the effects of societal discrimination.’” *Id.* (quoting *Shaw*, 517 U.S. at 909–10). “Second, after identifying the specific instance of discrimination, ‘the institution that makes the racial distinction must have . . . a strong basis in evidence to conclude that [its] remedial action [is] necessary.’” *Id.* (quoting *Shaw*, 517 U.S. at 910).

The State cannot identify any specific instances of discrimination in the selection of DeSoto County’s judges, nor can it show that the subdistrict at issue here was a “necessary” remedy. That’s especially true where the remedy imposed by the State is extraordinary. The State didn’t choose

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<sup>11</sup> In cases where the Legislature’s districting scheme in a hodge-podge of varying types of districts—single-county districts, multi-county districts, multi-county districts broken into subdistricts, single-county districts broken into subdistricts, and DeSoto County with a single-county district and a subdistrict that receives an extra vote—this Court might recognize, as esteemed jurists have, that the Legislature has created a “crazy quilt” without any rational basis that gives and inference of discrimination from the district map alone. *See Reynolds v. Sims*, 377 U.S. 533, 588 (1964) (Clark, J., concurring in the affirmance).

to draw two parallel subdistricts to “remedy” any ostensible past discrimination; rather, the State gave a majority-minority subdistrict an exclusive right to select the circuit judge in Place Four and the chancellor in Place Three, *while also* giving the subdistrict’s voters the right to vote for the Place One, Two, and Three circuit judges and the Place One and Two chancellors. Stated more plainly, the State denied more than three-fourths of DeSoto County the right to vote on their Place Four circuit judge and Place Three chancellor, vesting that right exclusively in the voters residing within the subdistrict. Even assuming the State could point to any identifiable discrimination in need of a remedy, it cannot demonstrate that the subdistrict was a “necessary” remedy.

Therefore, Plaintiffs’ challenge under the Fourteenth and Fifteenth Amendments, as well as their challenge under the Voting Rights Act, must succeed where the State has facially denied 77.4% of DeSoto County the right to vote for the Place Four circuit judge and Place Three chancellor on no basis other than race and where the State can’t overcome the strict scrutiny required to do so. In other words, Plaintiffs aren’t just substantially likely to succeed on the merits—there’s no world in which the State’s maps survive the scrutiny required by federal courts.

## **II. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief.**

Having shown that Plaintiffs are substantially likely to succeed on the merits, a preliminary injunction is necessary to prevent Plaintiffs from suffering irreparable harm. Indeed, “[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024) (quoting *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012)).

Still, Plaintiffs will be irreparably deprived of any opportunity to say who their Place Four circuit judge or Place Three chancellor is for the next four years if these elections are allowed to proceed under the State’s current plan, and they will suffer the added injury of having to displace

candidates they don't support who are elected by the subdistrict after those candidates obtain incumbency through a discriminatory election regime. *See* Stephen J. Ware, *Ideological Competition Over State Supreme Court Selection Methods*, 87 ALBANY L. REV. 963, 1005–06 (2024).

As the en banc Fifth Circuit has recognized, “[i]t would be untenable to permit a law with a discriminatory effect to remain in operation for [an upcoming] election.” *Veasey v. Abbott*, 830 F.3d 216, 270 (5th Cir. 2016) (en banc); *accord Reynolds*, 377 U.S. at 585 (“[I]t would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under an invalid plan.”); *see also Robinson v. Ardoin*, 86 F.4th 574, 600 (5th Cir. 2023) (“Once an ‘election occurs, there can be no do-overs and no redress’ for voters whose votes were diluted.” (citation omitted)). Thus, Plaintiffs will undoubtedly suffer irreparable injury absent an injunction.

### **III. The Threatened Injury Outweighs the Harm of an Injunction; Indeed, Injunctive Relief Furthers the Public Interest.**

Where the State is a defendant contesting the issuance of a preliminary injunction, the State’s interest and the public interest “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009); *accord Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (per curiam). Here, the threatened injury to Plaintiffs outweighs any “harm” the State might feel in not being allowed to proceed with the upcoming election under the brand-new unlawful map. “[T]here is no harm from issuing a preliminary injunction that prevents the enforcement of a likely unconstitutional state law.” *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 219 (W.D. Tex. 2020). And the State’s interest in doing so is minimal, if it exists at all, since “neither [the State] nor the public has any interest in enforcing a regulation that violates federal law.” *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024) (quoting *Alliance for Hippocratic Med. v. U.S. Food & Drug Admin.*, 78 F.4th 210,

251 (5th Cir. 2023), *reversed on other grounds by, FDA v. Alliance for Hippocratic Med.*, 602 U.S. 367 (2024)); *see also Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 219 (W.D. Tex. 2020) (explaining that “[i]njunctive preventing the violation of constitutional rights are ‘always in the public interest,’” especially when an injunction will protect the right to vote (gathering cases from the Supreme Court and the Fifth, Sixth, Ninth, and Eleventh Circuits)). Where, as here, the State has produced an electoral map that blatantly deprives 77.4% of DeSoto County of their right to vote and where the State has done so for no reason other than race, the threatened injury and the public interest militate in favor of a preliminary injunction.

### CONCLUSION

With more than four months until election day, there is ample time for this Court to intervene and preliminarily enjoin the State’s use of the unconstitutional subdistrict at issue. Doing so will prevent irreparable harm to Plaintiffs and ensure that DeSoto Countians aren’t deprived of the right to vote on account of their homesite or race. This Court should afford Plaintiffs the preliminary injunction they seek, enjoining use of House Bill 1544 and Senate Bill 2768’s majority-minority subdistrict in DeSoto County in the November 2026 general election and ordering a special election for the Place Four circuit judge and Place Three chancellor with a new qualifying deadline or, at the very least, reopening the qualifying deadline for the November 2026 general election.

Dated: July 2, 2026.

Respectfully submitted,

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BY: /s/ Channing J. Curtis

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing *Memorandum* with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record/ECF participants. The foregoing has also been physically served upon the Mississippi Attorney General, who is authorized under Mississippi law to accept service of process for all Defendants.

This, the 2nd day of July 2026.

/s/ Channing J. Curtis