

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

REPRESENTATIVE PHILIP GUNN  
REPRESENTATIVE JASON WHITE

PLAINTIFFS

VS.

FILED  
OCT 05 2020

CIVIL ACTION NO. G20-943

EDDIE JEAN CARR, CHANCERY CLERK

GOVERNOR TATE REEVES

BY Vmefon D.C.

DEFENDANT

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ORDER OF THE COURT

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State Representatives Philip Gunn and Jason White (“State Representatives” or “Plaintiffs”) submit their claim against Governor Tate Reeves (“Governor Reeves” or “Defendant”), as reflected in the Second Amended Complaint for Declaratory Judgment [MEC #9], requesting that this Court declare Governor Reeves’s partial veto of July 8, 2020 (“Partial Veto”) of House Bill No. 1782 of the 2020 Regular Session of the Mississippi Legislature (“H.B. 1782”) a nullity and of no legal effect, and to declare H.B. 1782 the law, in its entirety. The State Representatives argue that Governor Reeves interjected his legislative judgment in place of that of the Legislature itself, thwarting legislative intent and effectively rewriting the bill.<sup>1</sup> Governor Reeves submits that his Partial Veto was a constitutional exercise of his power to veto two (2) parts of an appropriations bill about which he had concerns, and, thereby, put those appropriations to the test of a two-thirds override vote by the full Legislature. Governor Reeves requests that this Court declare the veto lawful and dismiss the Plaintiffs’ lawsuit.

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<sup>1</sup> Plaintiffs are currently serving as Speaker and Speaker Pro Tempore of the Mississippi House of Representatives and are Plaintiffs herein in their individual capacity.

The parties agree that this matter should be decided on the pleadings without the need for the Court to take testimony; pursuant to Uniform Chancery Court Rule 3.11, the Court hereby dispenses with any further argument in this case.

## **I. FACTS**

On March 13, 2020, the President of the United States declared a nationwide State of Emergency due to the COVID-19 pandemic. On March 14, 2020, Governor Reeves issued a Proclamation declaring a State of Emergency to exist in the State of Mississippi due to the COVID-19 pandemic. On March 18, 2020, the Mississippi Legislature adopted House Concurrent Resolution 65, which extended the 2020 Regular Session of the Legislature, permitted periods of adjournment longer than three (3) days, and extended the deadlines for the passage of legislation. On June 18, 2020, the Mississippi Legislature adopted House Concurrent Resolution 69, which further extended the 2020 Regular Session of the Legislature and deadlines for certain legislation, and set October 10, 2020 as the date for the 2020 Regular session to adjourn *sine die*, absent motion prior to that date.

On July 1, 2020, the Mississippi Legislature passed H.B. 1782, which contains appropriations of federal funds received from the Coronavirus Aid, Relief and Economic Security Act of 2020 (“CARES Act”) through four state agencies – the Mississippi Development Authority, the Mississippi State Department of Health (“MSDH”), the Mississippi State Department of Mental Health and the Board of Trustees of the Institutions of Higher Learning.<sup>2</sup> In H.B. 1782, the

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<sup>2</sup> These CARES Act funds may only be used to cover costs that are “necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19).” 42 U.S.C. 801(d). The expenditures must have been “incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.” 42 U.S.C. 801(d). CARES Act funds used to cover expenditures that were not incurred as a result of COVID-19, that were not necessary to deal with the effects of COVID-19, or that were not incurred between March 1 and December 30, 2020, are subject to recoupment by the United States Department of the Treasury.

Legislature authorized appropriations of \$30,207,000 to the Mississippi Development Authority, \$91,900,000 to the Mississippi State Department of Health, \$1,400,000 to the Mississippi State Department of Mental Health, and \$6,218,000 to the Board of Trustees of the Institutions of Higher Learning to address the current ongoing public health emergency caused by the COVID-19 pandemic. The appropriations of federal CARES Act funds to be disbursed by the MSDH in H.B. 1782 specifically includes: \$1.5 million to Federally Qualified Health Centers; \$1 million to rural hospitals; \$2 million to the North Oak Regional Medical Center; \$6 million to the MAGnet Community Health Disparity Program; and \$80 million to all other hospitals “for their necessary expenditures incurred due to the COVID-19 public health emergency.” *See* Sec. 4, H.B., at 8-11.

On July 2, 2020, the Legislature tendered H.B. 1782 to Governor Reeves for his consideration. On July 8, 2020, Governor Reeves signed a message to the Mississippi House of Representatives, partially approving and partially disapproving H.B. 1782 (“Partial Veto”). In his Partial Veto message to the House, Governor Reeves wrote:

I am vetoing Lines 194-206 providing a \$2,000,000 appropriation of Federal CARES Act funds to the North Oak Regional Medical Center or its successor entities. The North Oak Regional Medical Center closed its doors long before the COVID-19 outbreak and, to date, has not provided any treatment to patients with COVID-19. Further, even if this facility was purchased and did resume operations prior to December 30, 2020, it is a virtual certainty that it would not have incurred \$2,000,000 in qualified reimbursable COVID-19 expenses. Thus, this appropriation of Federal CARES Act funds fundamentally does not comply with the mandatory guidelines issued by the United States Department of Treasury for the use of CARES Act funds.

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42 U.S.C. 801(f)(2). The Inspector General of the Department of the Treasury will “conduct monitoring and oversight of the receipt, disbursement, and use of [CARES Act] funds” by the State of Mississippi. 42 U.S.C. 801(f)(1). Under the CARES Act, the State of Mississippi, not the individual recipients of CARES Act funds, will be responsible for repaying CARES Act funds that were used for unauthorized purposes to the Federal Government. 42 U.S.C. 801(f)(2).



I am also vetoing Lines 207-222 providing a \$6,000,000 appropriation of Federal CARES Act funds to the MAGnet Community Health Disparity Program. While I fully support improving health access, performance, outcomes and cost efficiencies for all Mississippians, including in minority communities, I am unaware of this Program. Due to my unfamiliarity, I am uncomfortable allocating \$6,000,000 in Federal CARES Act funds to it, funds that the State of Mississippi would be responsible to pay back to the United States Treasury if they are not spent in accordance with mandatory guidelines issued by the United States Department of Treasury. If it was the intent of the Legislature to allocate funds to Federally Qualified Health Centers, the State Department of Health would have been a more appropriate conduit.

These two (2) provisions under the MSDH appropriation sum were the sole portions of H.B. 1782 purportedly vetoed by Governor Reeves. All other appropriations and conditions therein were approved. On the same date, Governor Reeves also signed House Bill 1805 ("H.B. 1805"). Pursuant to H.B. 1805, any CARES Act Funds that have not been expended by December 28, 2020 shall be transferred to the Unemployment Compensation Fund no later than December 30, 2020. Similarly, H.B. 1805 provides that, if at any time the entity to which CARES Act funds have been appropriated determines that the use of such funds would be an ineligible expenditure under the CARES Act, such funds shall be transferred to the Unemployment Compensation Fund no later than December 30, 2020.

Plaintiffs commenced this action on August 5, 2020. On August 10, 2020, the House of Representatives reconsidered H.B. 1782 in light of Governor Reeves' Partial Veto and referred H.B. 1782 to the Rules Committee. On August 24, 2020, the House Rules Committee convened, took up Governor Reeves' Partial Veto, and recommended to the House of Representatives that it "take no action." On August 24, 2020, the report of the House Rules Committee recommending that the House "take no action" on the Partial Veto was read to the full House and no member of the House

of Representatives made a motion with respect to Governor Reeves' Partial Veto.

On September 4, 2020, Governor Reeves filed a Motion to Dismiss for Lack of Jurisdiction [MEC #22]. Given the need for expediency, the Court postponed ruling on the disposition of the Motion to Dismiss for Lack of Jurisdiction until a final ruling on the merits. On September 17, 2020, Plaintiffs filed a Motion for Judgment on the Pleadings [MEC #38]. On that same date, Governor Reeves filed a Motion for Summary Judgment [MEC #40]. The parties agree that only issues of law remain for consideration by the Court and that the grant of one competing dispositive motion will necessarily render the other denied.

## **II. SUBJECT MATTER JURISDICTION**

The Defendant's pending Motion to Dismiss for Lack of Jurisdiction [MEC #22] questions this Court's subject matter jurisdiction based on, *inter alia*, the Separation of Powers Doctrine, the Political Question Doctrine, the Mootness Doctrine and Plaintiffs' asserted lack of standing.

Our Mississippi Supreme Court has addressed similar jurisdictional questions in its consideration of challenges to the gubernatorial veto. Specifically, the appellate court has determined that the issue of the interpretation of the constitution is a duty of the courts. Where a question regarding the proper exercise of the substantive constitutional powers of the legislative or executive branch exists, it is the inescapable duty of the courts to resolve the question. *See Hunt v. Wright*, 70 Miss. 298, 305-306, 11 So. 608, 610 (Miss.1892); *State vs. McPhail*, 182 Miss. 360, 180 So. 387, 391 (1938). In interpreting various provisions of our state constitution, our courts have long been "called upon to declare the boundaries beyond which executive action may not pass, and to fix the limitations upon the executive authority to veto the declared will of both houses of the legislature." *State v. Holder*, 76 Miss. 158, 23 So. 643 (1898). Therefore, the Court finds that it is

charged with the duty to faithfully interpret the various provisions of the Mississippi Constitution to determine the boundaries of the legislative and executive branches in the current action.

Similarly, Plaintiffs, as legislators and taxpayers, had standing to bring suit since they asserted a colorable interest in the litigation. Plaintiffs' votes on H.B. 1872 were adversely affected by the Governor's Partial Veto. In a similar action, the Mississippi Supreme Court stated "[i]ndividual legislators had standing to bring the instant action under well established case law." *Fordice v. Bryan*, 651 So. 2d 998, 1003 (Miss. 1995); *see also Van Slyke v. Board of Trustees*, 613 So.2d 872, 875 (Miss.1993); *Board of Trustees v. Van Slyke*, 510 So.2d 490 (Miss.1987); *Dye v. Hale*, 507 So.2d 332 (Miss.1987); *State ex rel. Moore v. Molpus*, 578 So.2d 624 (Miss.1991). Therefore, the current action seeks adjudication of an issue squarely within the purview of the Court presented by parties with appropriate standing to pursue such action.

Although the Court need not adjudicate moot issues, the challenged veto herein is not now moot. Where a governor's action is capable of repetition yet evading review, the courts will conduct that review regardless of the passage of time in order to determine whether repetition would be legal. *Fordice*, 651 So. 2d at 1002.

Based upon the foregoing, this Court finds that Plaintiffs have standing to bring the current cause and this Court has appropriate jurisdiction to consider the request for relief. The Defendant's Motion to Dismiss for Lack of Jurisdiction [MEC #22] is hereby denied.



### III. STANDARD OF REVIEW

“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Miss. R. Civ. P. 12(c). On a motion for judgment on the pleadings, a court must take as true the allegations in the complaint, and the motion should not be granted unless it appears beyond any reasonable doubt that the non-moving party will be unable to prove any set of facts in support of the claim which would entitle the non-moving party to relief. *Huff-Cook, Inc. v. Dale*, 913 So.2d 988 (Miss. 2005). A motion for a judgment on the pleadings is decided on the pleadings alone. *City of Meridian v. \$104,960.00 U.S. Currency*, 231 So.3d 972 (Miss. 2017). However, “[a] copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.” Miss. R. Civ. P. 10(c). This Court has considered the pleadings filed herein and the exhibits attached. This Court has not considered “matters outside the pleadings”, thus, it is not necessary to convert the motion to a motion for summary judgment. See *Clarksdale Mun. Sch. Dist. v. State*, 233 So. 3d 299, 304 (Miss. 2017).

### IV. ANALYSIS

The process for how a bill becomes law in Mississippi is well-established. Once a bill is passed by the Legislature, it is presented to the Governor for approval. Miss. Const. §72. The Governor then has three options: approve the bill by his signature, return the bill to the Legislature for reconsideration, or do nothing. *Id.* A bill is enacted by the governor’s signature, by no action of the governor for five (5) days, or by a two-thirds vote in both Houses after disapproval. *Id.* Section 73 of the Mississippi Constitution, titled “Veto of parts of appropriations bill,” carves out an exception to this approval process, which specifically allows the governor to “veto parts of any appropriation bill and approve parts of the same, and the portions approved shall be law.” Miss. Const. §73.

The exercise of this veto power upon parts of appropriation bills, however, does not authorize the governor to veto any segment of an appropriation bill. *State ex rel. Teachers & Officers v. Holder*, 76 Miss. 158, 23 So. 643, 644 (Miss. 1898). Rather, the partial veto power described in Section 73 must be read in light of Section 69. *Id.* at 645. Article IV, §69 of the Mississippi Constitution of 1890 provides:

General appropriation bills shall contain only the appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments of the government; to pay interest on state bonds, and to support the common schools. All other appropriations shall be made by separate bills, each embracing but one subject. Legislation shall not be engrafted on the appropriation bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid.

Section 73 then gives effect to Section 69, and the bills subject to partial veto under §73 are those made up of several distinct appropriations which are “different, separable, each complete without the other, which may be taken from the bill without affecting the others, which may be separated into different parts complete in themselves.” *Holder*, 23 So. at 645.

Our Supreme Court first addressed the governor’s use of partial veto under § 73 in 1898, less than a decade after the Constitution of 1890 was adopted. In *Holder*, the Governor vetoed a condition that required a college board of trustees to adopt certain by-laws before the appropriation could be drawn from the State Treasury. 23 So. at 644. The Mississippi Supreme Court set forth the purpose for which the money may be paid pursuant to the power vested in the legislature by §69 of the Constitution:

Every bill of the character in question has three essential parts: The purpose of the bill, the sum appropriated for the purpose, and the conditions upon which the appropriation shall become available... . The true meaning of section 73 is that an appropriation bill made up of several parts (that is distinct appropriations), different, separable, each complete without the other, which may be taken from the bill



without affecting the others, which may be separated into different parts complete in themselves, may be approved, and become law in accordance with the legislative will, while others of like character may be disapproved, and put before the legislature again, disassociated from the other appropriations.

*Holder*, 23 So. at 645; *see also Fordice v. Bryan*, 651 So. 2d 998 (Miss. 1995).

Our Mississippi Supreme Court has specifically addressed the Governor's authority pursuant to Section 73 of the Mississippi Constitution to veto "parts of any appropriation bill" on two other occasions: *Fordice v. Bryan*, 651 So. 2d 998 (Miss. 1995); and *Barbour v. Delta Correctional Facility Authority*, 871 So. 2d 703 (Miss. 2004). In *Fordice*, the Governor vetoed conditions that prohibited a salary increase for the Commissioner of Higher Learning and capped the number of employees that various state agencies could employ. 651 So. 2d at 1000. In *Barbour*, the Governor vetoed conditions that placed a cap on the amount of the total appropriation to the Department of Corrections that could be used to house state inmates in private prisons and prohibited the agency from redirecting the amount allocated for private prisons to another division within the agency. 871 So. 2d at 705. The language vetoed in each of these cases placed legislative conditions on the use of appropriated funds. In *Holder*, *Fordice* and *Barbour*, the Supreme Court held that, under §73, the Governor may not approve an appropriation and concurrently veto the conditions attached to the appropriation. *See Barbour*, 871 So. 2d at 707. Section 73 of the Mississippi Constitution "was not designed to enable the governor to veto objectionable legislation in appropriation bills." *Holder*, 23 So. at 644.

Considering these constitutional provisions and the case law, the case at hand clearly turns on whether the two stricken provisions in H.B. 1782 are "appropriation bills" within the meaning of Article IV, § 73 of the Mississippi Constitution of 1890. Accordingly, the question before the Court is whether the stricken parts of H.B. 1782 were legislative conditions or distinct

appropriations. An appropriation is a definite maximum sum of money to be drawn from the State Treasury for a specific purpose. *See Clark v. Bryant*, 253 So. 3d 297, 303 (Miss. 2018) (an “appropriation” is “[a] legislative body’s ... act of setting aside a sum of money for a specific purpose”); *Paine v. Matthews*, 57 So. 2d 148, 151 (Miss. 1952) (“Webster's Dictionary defines an appropriation as ‘money set apart by formal action to a specific use’; ‘to set apart for, or assign to, a particular purpose or use, in exclusion of all others.’”).

H.B. 1782 states, in relevant part:

Section 3. – The following sum, or so much of it as may be necessary, is appropriated out of any money in the Budget Contingency Fund not otherwise appropriated, to the State Department of Health for the purposes described in Section 4 of this act... \$91,900,000.00.

Section 4. – The funds appropriated under Section 3 of this act shall be expended by the State Department of Health for the following purposes:

- (a) Providing funds to ... Health Centers ... \$1,500,000.00.
- (b) Providing funds to rural hospitals ... \$1,000,000.00.
- (c) Providing funds to Tate County ... \$2,000,000.00.
- (d) Providing funds to the MAGnet ... \$6,000,000.00.
- (e) Reimbursing hospitals ... \$80,000,000.00.
- (f) Reimbursing hospitals ... \$1,000,000.00.
- (g) Providing funds to ... Family Health Services ... \$250,000.00.
- (h) For the expenses of the department ... \$150,000.00.

Section 3 of H.B. 1782 provides a “**sum, or so much of it as may be necessary, is appropriated**” to the MSDH “**for the purposes described in Section 4 of this act....**” The sum set out in Section 3 is a total of \$91,900,000. Therefore, a plain reading of Section 3 identifies an appropriation of a definite maximum sum of money to be drawn for a specific purpose. Section 4 provides that “**the funds appropriated under Section 3 of this act shall be expended by [MSDH] for the following purposes....**” Section 4 then delineates eight (8) conditions under which the \$91,900,000

appropriated in Section 3 may be spent, for the funding of the various divisions and programs of the MSDH. Similar to the legislation at issue in *Barbour*, the language in Section 4 is contingent upon the preceding provision of Section 3. Therefore, the language of H.B. 1782 makes Section 4 reliant upon Section 3, and thus, a condition of this Section. *See Barbour*, 871 So.2d at 711.

Neither of the provisions vetoed by the Governor in Section 4 are an entire, separate and distinct appropriation and neither is subject to the partial veto authority granted to a governor under Section 73, Article 4 of the 1890 Constitution as interpreted by *Holder*, *Fordice* and *Barbour*. Section 3 of H.B. 1782, containing the \$91.9 million sum, and Section 4, containing the purposes and conditions directing how that \$91.9 million is to be spent, are inseparable. To find otherwise would result in Governor Reeves effectively writing an \$8 million dollar appropriation to the Department of Health to do with as it saw fit, which was not intended by the Legislature. Such would result in “the enactment of law by executive authority without the concurrence of the legislative will, and in the face of it.” *Holder*, 23 So. at 645. Despite his admirable intentions, the Partial Veto by Governor Reeves constituted “creative legislative power” which is outside the purview of his executive authority. *Barbour*, 871 So.2d at 711.

## V. CONCLUSION

Based upon the pleadings submitted herein, the Constitution and case law, the Court finds that the Partial Veto was part of a condition; therefore, according to the Mississippi Constitution of 1890 and almost 100 years of case law interpreting our State's Constitution, Governor Reeves' Partial Veto was unconstitutional. A Governor's unconstitutional attempt of a partial veto is a nullity. *See Holder*, 23 So. 643. Accordingly, H.B. 1782 became law, in its entirety as passed by the Legislature.



**IT IS THEREFORE ORDERED AND ADJUDGED** that the Defendant's Motion to Dismiss for Lack of Jurisdiction [MEC #22] is hereby denied; Plaintiffs' Motion for Judgment on the Pleadings [MEC #38] is hereby granted; Defendant's Motion for Summary Judgment [MEC #40] is hereby denied. The Court hereby enters declaratory judgment in this matter, rendering the Partial Veto of no legal effect and a nullity, and declaring H.B. 1782 to be law in its entirety.

This the 5th day of October, 2020.

  
CHANCELLOR