IN THE SUPREME COURT OF MISSISSIPPI

NO. 2020-CA-01107-SCT

GOVERNOR TATE REEVES

v.

REPRESENTATIVE PHILIP GUNN AND
REPRESENTATIVE JASON WHITE

DATE OF JUDGMENT:	10/05/2020
TRIAL JUDGE:	HON. TIFFANY PIAZZA GROVE
TRIAL COURT ATTORNEYS:	ELLEN VIRGINIA ROYAL R. ANDREW TAGGART, JR. JOHN MICHAEL COLEMAN WILSON DOUGLAS MINOR PAUL E. BARNES
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	MICHAEL JAMES BENTLEY JOHN MICHAEL COLEMAN PAUL E. BARNES MOLLY MITCHELL WALKER WILSON DOUGLAS MINOR
ATTORNEYS FOR APPELLEES:	R. ANDREW TAGGART, JR. ELLEN VIRGINIA ROYAL
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	REVERSED AND RENDERED - 12/17/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

RANDOLPH, CHIEF JUSTICE, FOR THE COURT:

¶1. Our Constitution is a sacred compact among the people of this State. Miss. Const. art. 3, § 5. No single person or branch of this government can unilaterally amend our Constitution

or ignore its dictates. Today's case revolves around allegations by the Speaker of the House and the Speaker Pro Tempore that the Governor has ignored the dictates of our Constitution. Specifically, they allege that the Governor's decision to strike parts of House Bill 1782 exceeded his authority to partially veto appropriation bills. The Governor responds that the partial veto did not transgress the bounds of article 4, section 73, of the Mississippi Constitution.

¶2. It is our duty to interpret our Constitution when its meaning is put at issue. ***Alexander v. State ex rel. Allain***, 441 So. 2d 1329, 1333 (Miss. 1983), *overruled on other grounds by* ***5K Farms, Inc. v. Miss. Dep't of Revenue***, 94 So. 3d 221 (Miss. 2012). We will not shirk this duty. Having reviewed the record of the chancery court proceeding, pertinent sections of our Constitution, and case law addressing partial vetoes, we conclude the Governor did not exceed the power of his office. His partial veto comports with section 73 of our Constitution and therefore carried with it the authority endowed that office by the people of Mississippi. Accordingly, we reverse the judgment of the chancery court holding otherwise.

FACTUAL AND PROCEDURAL HISTORY

¶3. The Congress of the United States passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law by the president. Under the CARES Act, $1.25 billion was allocated to Mississippi to respond to the COVID-19 pandemic.

¶4. The Legislature ultimately passed several bills appropriating these monies. One of

these bills, House Bill 1782, was an omnibus bill[1] appropriating monies to the Mississippi Development Authority, the State Department of Health, the State Department of Mental Health, and the Board of Trustees of State Institutions of Higher Learning. The monies were to be spent for a multitude of purposes. The federal government conditioned all expenditures by the state to satisfy rules codified in the CARES Act and regulations established by the United States Department of the Treasury.

¶5. House Bill 1782 was sent to the Governor on July 2, 2020. On July 8, 2020, the Governor invoked section 73 of our Constitution to veto two parts of House Bill 1782. Specifically, the Governor vetoed the provision that the Mississippi Department of Health disburse $2 million of funds to Tate County and the provision that the Mississippi Department of Health disburse $6 million of funds to the MAGnet Community Health Disparity Program. *See* Appendix A. The Governor approved the remaining parts of House Bill 1782 consistent with section 73.

¶6. On August 5, 2020, two individual members of the House of Representatives, the Speaker of the House and the Speaker Pro Tempore of the House, filed suit in Hinds County Chancery Court challenging the Governor's invocation of section 73. The Governor filed a motion to dismiss, arguing the chancery court lacked jurisdiction to adjudicate the suit. The Speaker and the Speaker Pro Tempore filed a motion for judgment on the pleadings and the

[1] The parties acknowledged at oral argument that House Bill 1782 was not a general appropriation bill but an omnibus bill.

Governor supplemented his motion to dismiss with a motion for summary judgment.

¶7. The chancery court entered an order denying the Governor's motions to dismiss and for summary judgment. It granted the motion for judgment on the pleadings submitted by the Speaker and the Speaker Pro Tempore. The order rendered the partial veto a legal nullity and declared House Bill 1782 to be the law in its entirety. The Governor now appeals.

STANDARD OF REVIEW

¶8. The Speaker and the Speaker Pro Tempore contend that the Governor violated our Constitution. Constitutional questions are reviewed de novo by this Court. ***Thoms v. Thoms***, 928 So. 2d 852, 855 (Miss. 2006) (citing ***Baker v. State***, 802 So. 2d 77, 80 (Miss. 2001)).

ANALYSIS

I. The Standing Argument

¶9. The Governor begins by arguing the chancellor erred by finding that the Speaker of the House and the Speaker Pro Tempore had standing to bring this suit. The chancellor's decision was sound based on ***Fordice v. Bryan***, 651 So. 2d 998 (Miss. 1995). The ***Fordice*** court held that "[i]ndividual legislators had standing to bring the instant action [challenging partial vetoes] under well established case law." ***Fordice***, 651 So. 2d at 1003 (citing ***Van Slyke v. Bd. of Trs. of State Insts. of Higher Learning***, 613 So. 2d 872, 875 (Miss. 1993); ***Bd. of Trs. of State Insts. of Higher Learning v. Van Slyke***, 510 So. 2d 490 (Miss. 1987); ***Dye v. State ex rel. Hale***, 507 So. 2d 332 (Miss. 1987); ***State ex rel. Moore v. Molpus***, 578 So. 2d 624 (Miss. 1991)). The rationale provided for this decision was that "[t]heir votes on

[those] bills were adversely affected by the Governor's vetoes." ***Id.***

¶10. "Stare decisis 'is flexible enough to allow the Court to admit change under certain limited circumstances where the previous rule of law would *perpetuate error and wrong would result* if the decisions were followed.'" ***Payton v. State***, 266 So. 3d 630, 638 (quoting ***Hye v. State***, 162 So. 3d 750, 755 (Miss. 2015)). We are convinced that the ***Fordice*** decision regarding standing has perpetuated error and that wrong would continue to result from it were we to allow it to stand.

¶11. In this state's standing jurisprudence, the term "colorable interest" entered our legal lexicon in ***Harrison County v. City of Gulfport***, 557 So. 2d 780 (Miss. 1990). This admittedly amorphous term was used alongside the traditional articulation of "adverse impact" to describe when a party can assert standing to bring a suit. ***Harrison Cnty.***, 557 So. 2d at 782.[2] The holding in ***Fordice*** granted any individual legislator the right to challenge vetoes of the Governor based on their status as legislators. This finding was erroneous. There are some scenarios in which legislators as legislators may not have an interest, colorable or otherwise, in a governor's veto or may not have suffered an adverse impact as a result of a governor's veto. Where the Legislature itself declines to challenge a governor's veto, an adverse impact may be felt by the individual legislator who voted for the bill as a result of the Legislature's actions, not the Governor's actions. Further, when a legislator individually

[2] For discussion of "adverse impact," *see* ***Dye***, 507 So. 2d at 338 (citing ***Canton Farm Equip., Inc. v. Richardson***, 501 So. 2d 1098, 1105–09 (Miss. 1987); ***Bowsher v. Synar***, 478 U.S. 714, 106 S. Ct. 3181, 3186, 92 L. Ed. 2d 583 (1986)).

votes against a bill that is later vetoed, that same legislator has no specialized interest in challenging a governor's actions. Given these examples, it was error to grant individual legislators standing solely on their basis as legislators.

¶12. It is not enough to merely diagnose error though under our stare decisis jurisprudence, that error must also perpetuate wrong. ***Payton***, 266 So. 3d at 638. Here, this error of granting categorical standing to individual legislators perpetuates wrong by extending this Court's review beyond the bounds of judicial restraint and humility. In Mississippi, "constitutional issues are not reached if cases can be resolved upon other bases . . . ." ***Williams v. Stevens***, 390 So. 2d 1012, 1014 (Miss. 1980). And in cases resonating with political disputes, such as those between our two sister branches of government, we must act with particular care.

> [I]n a case raising delicate constitutional questions it is particularly incumbent first to satisfy the threshold inquiry whether we have any business to decide the case at all. Is there, in short, a litigant before us who has a claim presented in a form and under conditions "appropriate for judicial determination?" ***Aetna Life Ins. Co. of Hartford, Conn. v. Haworth***, 300 U.S. 227, 240, 57 S. Ct. 461, 464, 81 L. Ed. 617

Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 150, 71 S. Ct. 624, 95 L. Ed. 817 (1951) (Frankfurter, J., concurring). Continuing to extend categorical standing without considering the nature of the claims before a court would offend basic jurisprudential principles. Therefore, finding that the ***Fordice*** holding regarding standing was erroneous and will perpetuate wrong, we overrule that holding prospectively.[3]

---

[3] *See* ***Presley v. Miss. State Highway Comm'n***, 608 So. 2d 1288, 1299–1301 (Miss. 1992) (prospective application of new rule).

II. The Constitution of the State of Mississippi

¶13. Both the Governor and the Speaker and the Speaker Pro Tempore advance the argument that today's dispute is controlled by article 4, sections 69, 72, and 73 of our Constitution. Section 73 of our Constitution grants the Governor authority to veto parts of any appropriations bill. Section 73 reads, verbatim: "the Governor may veto parts of any appropriation bill, and approve parts of the same, and the portions approved shall be law." Miss. Const. art. 4, § 73.

¶14. Section 69 sets forth the contents of appropriation bills:

> General appropriation bills shall contain only the appropriations to defray the ordinary expense 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.

Miss. Const. art. 4, § 69.

¶15. Section 72 provides for approval or disapproval of bills by governors and the veto override process.[4]

---

[4] Section 72 reads, verbatim:

> Every bill which shall pass both Houses shall be presented to the Governor of the state. If he approve, he shall sign it; but if he does not approve, he shall return it, with his objections, to the House in which it originated, which shall enter the objections at large upon its Journal, and proceed to reconsider it. If after such reconsideration two-thirds (⅔) of that House shall agree to pass the Bill, it shall be sent, with the objections, to the other House, by which, likewise, it shall be reconsidered; and if approved by two-thirds (⅔) of that

III. *Holder* and the case sub judice

¶16. All the parties contend that ***State v. Holder***, 76 Miss. 158, 23 So. 643 (1898), ***Fordice***, and ***Barbour v. Delta Correctional Facility Authority***, 871 So. 2d 703 (Miss. 2004), support their positions. The Speaker and the Speaker Pro Tempore assert that the Governor improperly exercised authority to partially veto House Bill 1782. No one contests that the plain language of section 73 grants a partial veto power to the governor of this state. Indeed, the cases cited by today's contestants confirms this truth. In ***Holder*** we said,

> Section 73 of the constitution relates to general appropriation bills or those containing several items of distinct appropriations; that is to say, special appropriation bills, with distinct items of appropriations. It applies to such as are made up of parts, and consist of portions separable from each other as appropriations. It was not designed to enable the governor to veto objectionable legislation in appropriation bills, for that is provided for in section 69. Section 73 was framed with a view of guarding against the evils of omnibus appropriation bills securing unrighteous support from diverse interests, and to enable the governor to approve and make law some appropriations, and to put others to the test of securing a two-thirds vote of the legislature as the condition of becoming law.

> House, it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the Governor within five (5) days (Sundays excepted) after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevented its return, in which case such Bill shall be a law unless the Governor shall veto it within fifteen (15) days (Sundays excepted) after it is presented to him, and such Bill shall be returned to the Legislature, with his objections, within three (3) days after the beginning of the next session of the Legislature.

Miss. Const. art. 4, § 72.

Holder, 23 So. at 644; *see also* ***Fordice***, 651 So. 2d at 1000 ("[T]he Governor is entitled to exercise his § 73 veto power upon 'parts' of 'appropriation' bills and only upon 'parts' of 'appropriation' bills."); ***Barbour***, 871 So. 2d 703. Again, in ***Holder*** we said that

> [t]he 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, dissociated from the other appropriations . . . . Restricting the prohibition of section 69 and the provisions of section 73 to general appropriations bills, or bills containing distinct and separable items of appropriation, all difficulty is removed, harmony is established, and the several provisions made intelligible and useful.

Holder, 23 So. at 645. Our Constitution and case law are clear that the power exercised by the Governor was granted to the Governor's office by the people of Mississippi.

¶17. Reading House Bill 1782 reveals its omnibus nature. Although the state of Mississippi was the primary recipient, parts of the bill specified that the Mississippi Development Authority, the State Department of Health, the State Department of Mental Health, and the Board of Trustees of State Institutions of Higher Learning were to distribute CARES Act funds to an untold number of different, separable subrecipients. This diverse group of subrecipients included ambulatory surgical centers, assisted living facilities, Alzheimer's/dementia care units, intermediate care facilities for individuals with intellectual disabilities, ground ambulances, nursing home facilities, the Mississippi Organ Recovery Agency, dentists, physicians, nurse practitioners, optometrists, allopaths, osteopaths,

podiatrists, the CREATE Foundation, the Community Foundation of Northwest Mississippi, the Community Foundation of Washington County, the Community Foundation of Mississippi, the Community Foundation of East Mississippi, the Greater Pinebelt Community Foundation, the Gulf Coast Community Foundation, nonprofit entities, food pantries, the North Mississippi Education Consortium, child-care facilities, federally qualified health centers, rural hospitals, Tate County, MAGnet Community Health Disparity Program, Access Family Health Services, community mental-health regions, the Mississippi Rural Physicians Scholarship Program, and the Office of Physician Workforce. In turn, those entities would redistribute funds received for a host of purposes, inter alia, personal protective equipment, providing COVID-19 testing for staff members, reimbursing expenditures in accordance with the CARES Act, administrative expenses, treating patients with COVID-19, continuing the operations of a medical center, development and implementation of a plan to reduce and mitigate the occurrence and negative outcomes in the minority community associated with COVID-19, reimbursements for entities that did not qualify for rural provider payments by the United States Department of Health and Human Services, providing services for substance use disorders, providing school-based health services, mental-health services for individuals who have become unemployed due to the COVID-19 pandemic, establishing and operations of telemedicine capabilities, payroll expenses, funds to pay for scholarships for medical school students open to serving rural communities, and starting or expanding physician-residency programs.

¶18. The omnibus characteristics of House Bill 1782 dictate today's result. The monies were appropriated to multiple, distinct, and separate entities, thus they were multiple separate appropriations as expounded upon in ***Holder***. The Governor's partial veto struck two appropriations, $2 million to Tate County and $6 million to MAGnet Community Health Disparity Program. The removal of these appropriations did not affect any other appropriations in the bill. The partial veto properly removed parts that could "be taken from the bill without affecting the others, which [could] be separated into different parts complete in themselves . . . ." ***Holder***, 23 So. at 645. Accordingly we reverse the judgment of the chancery court, and we hold the partial vetoes authoritative. The partial vetoes were a constitutional exercise of the authority endowed the office of the Governor by the people of Mississippi in our Constitution.

CONCLUSION

¶19. We reverse the chancery court's judgment and render judgment for the Governor, declaring that the veto of parts of House Bill 1782 was lawful under section 73 of our Constitution. No motion for rehearing will be allowed in this case, and the Clerk of this Court is directed to issue this Court's mandate immediately.

¶20. **REVERSED AND RENDERED.**

BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. MAXWELL, J., CONCURS IN PART AND IN RESULT WITH SEPARATE WRITTEN OPINION JOINED IN PART BY RANDOLPH, C.J., COLEMAN, BEAM, CHAMBERLIN AND ISHEE, JJ. KING, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, P.J. COLEMAN, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED IN PART BY MAXWELL AND CHAMBERLIN, JJ.

MAXWELL, JUSTICE, CONCURRING IN PART AND IN RESULT:

¶21. The majority has addressed the merits of this case head on, ruling the Governor did not exceed his constitutional authority when he vetoed two distinct appropriations in House Bill 1782. And I agree our constitution and ***State v. Holder***, 76 Miss. 158, 23 So. 643 (1898), support the majority's conclusion.

¶22. I also agree Speaker Gunn and Speaker Pro Tem White's argument was ripe for decision under ***Fordice v. Bryan***, 651 So. 2d 998 (Miss. 1995). But what concerns me and causes me to write separately is the prospective standing ruling the majority announces. There is no doubt this case has unearthed a glaring problem in ***Fordice***, which I will address in detail. But I am uncomfortable holding that standing is good today but not tomorrow. My review has not disclosed that this Court has ever handled a party's standing in this manner.

¶23. As the majority points out, the established practice is to avoid addressing constitutional issues in cases that "can be resolved upon other bases[,] and surely this includes the right to invoke the jurisdiction of the Court." ***Williams v. Stevens***, 390 So. 2d 1012, 1014 (Miss. 1980). Right or wrong, for forty years we have held "'standing' is a jurisdictional question . . . ." ***Id.*** So resolving standing prospectively certainly appears out of step with our Court's established practice. I am not saying the Court cannot do this. I just question if it should. Thus, while I call ***Fordice*** into serious question, I stop there.

¶24. Some background is necessary to address my concerns with ***Fordice***.

¶25. Because of the ongoing COVID-19 pandemic, the Mississippi Legislature was still

in session when the Governor returned his partial veto of House Bill 1782. The Governor's action prompted the two Representatives to file this suit alleging the partial veto was an unconstitutional nullity. Five days later, the House took up for consideration the Governor's partial veto and his reasons. But the House did not simply declare the partial veto of House Bill 1782 a nullity, as the Senate had earlier done in ***Barbour v. Delta Correctional Facility Authority***, 871 So. 2d 703 (Miss. 2004). *See* III S. Journal, Reg. Sess., at 3021 (Miss. Apr. 5, 2002). Instead, the House reconsidered House Bill 1782, as directed by article 4, section 72, of the Constitution. *See* Miss. Const. art 4, § 72. The House then decided to refer the matter of House Bill 1782 to a committee. And on August 24, 2020, the House followed that committee's recommendation to take *no action* on the CARES Act partial veto.

¶26. This Court is not privy to why the House did not declare the partial veto a nullity, as the Senate did in ***Barbour***. Nor are we aware of the reasons underlying the House's chosen tactic for handling and considering the partial veto. We know only that the House has made no attempt to challenge the Governor's action—either *by political or legal means*—despite the opportunity to do so. In fact, the House referred House Bill 1782 to a committee, which ultimately recommended the House take no action, even though that same day the House did consider and did successfully override the Governor's separate—and also allegedly unconstitutional—partial veto of different unrelated legislation in House Bill 1700, restoring

billions in education funding that the Governor had recently gutted.[5]

¶27. The Governor asserts that the House's failure to even attempt to override the partial veto of House Bill 1782 is significant. First, he claims it shows the decision to allow the partial veto of the CARES Act distribution to North Oak Regional Medical Center and MAGnet was a *political* decision. This he suggests violates the political-question doctrine. Second, the Governor asserts the House's inaction when facing the veto deprives the Representatives of standing. The Governor concedes that, based on ***Fordice***, the Representatives may have had standing on August 5, 2020, when they filed their lawsuit. *See* ***Fordice***, 651 So. 2d at 1003. But he asserts any standing they had to sue the Governor was lost on August 24, 2020, when the House decided to take no action. As support, he cites ***In re City of Biloxi***, in which we held that "standing must exist when the litigation is commenced and must continue through all subsequent stages of litigation, or the case will become moot." ***In re City of Biloxi***, 113 So. 3d 565, 572 (Miss. 2013). As the Governor sees it, he is no longer responsible for adversely impacting the two Representatives' original votes to pass House Bill 1782. Rather, he pitches that any injury they are now suffering was caused by their own chamber's failure to act. So he also coins their claims as moot.

¶28. I do agree there are some legs to these arguments. But ***Fordice***, which was on the books when these two Representatives filed suit (and apparently until the moment the

[5] In their original complaint, the Representatives had alleged the partial veto of House Bill 1700 was also unconstitutional. But after the Legislature overrode the partial veto, the Representatives amended their complaint to remove any reference to House Bill 1700.

majority hands down its opinion), did allow a lawsuit challenging the governor's use of his partial veto power to be brought by just three legislative members. ***Fordice***, 651 So. 2d at 999. So I would not pull the rug from under these two Representatives today. But no matter the label—political question, standing, or mootness—the case before us exposes serious problems with ***Fordice***.

¶29. Perhaps my concerns are more prudential than wholly jurisdictional. Unlike the United States Constitution, Mississippi's Constitution does not limit judicial review to cases or controversies. ***Van Slyke v. Bd. of Trs. of State Insts. of Higher Learning*** (***Van Slyke II***), 613 So. 2d 872, 875 (Miss. 1993); *cf.* U.S. Const. art III, § II. That is why "we have been more permissive in granting standing to parties who seek review of governmental actions." ***Van Slyke II***, 613 So. 2d at 875 (citing ***Bd. of Trs. of State Insts. of Higher Learning v. Van Slyke*** (***Van Slyke I***), 510 So. 2d 490, 496 (Miss. 1987)). But this permissive judicial review is certainly not without limits. Under Mississippi's clear separation of powers, to the judiciary belongs judicial power and no legislative or executive power. *See* Miss. Const. art. 1, §§ 1 and 2. Arizona operates under a similar constitutional separation-of-powers arrangement as Mississippi. And the Arizona Supreme Court has noted "[t]his mandate underlies our own requirement that *as a matter of sound jurisprudence* a litigant seeking relief . . . must first establish standing to sue." ***Bennett v. Napolitano***, 81 P.3d 311, 316 (Ariz. 2003) (emphasis added).

¶30. ***Fordice*** appears to have required very little of the litigants in terms of standing. In

fact, ***Fordice*** appears to have granted almost categorical standing by essentially holding individual legislators must have a colorable interest in such a suit just because they are legislators. ***Fordice***, 651 So. 2d at 1003. ***Fordice*** also found the individual legislators were necessarily *personally* adversely affected by the governor's partial vetoes because they had voted for the bills in their original form. ***Id.***

¶31. But when I dig deeper into what the Representatives really allege here, it becomes clear they have not alleged an *individual* interest or injury that is *personal* to them. Instead, they allege what is more likely an *institutional* injury to the House—that the Governor exceeded his executive authority and thus encroached on legislative authority. This begs the question that the ***Fordice*** Court did not consider: How can two individual legislators bring a lawsuit asserting an injury to the entire legislative branch when the legislative branch, through subsequent actions, has neither signaled it has perceived any injury nor authorized the individual legislators to advance this cause?

¶32. Other states have avoided this very quandary by holding that "[l]egislators have no special right to standing simply by virtue of their status" but instead must establish standing like any other plaintiff. ***Morrow v. Bentley***, 261 So. 3d 278, 287 (Ala. 2017) (quoting ***ACLU of Tenn. v. Darnell***, 195 S.W.3d 612, 625 (Tenn. 2006)).[6] As the Alabama Supreme Court

[6] *See also* ***Markham v. Wolf***, 136 A.3d 134, 140 (Pa. 2016) (noting that there is no "special category of standing for legislators"); ***Hendrick v. Walters***, 865 P.2d 1232, 1236 (Okla. 1993) ("When a member of the law-making assembly initiates legal proceedings *in a representational capacity* as a senator or a member of the House of Representatives, that legislator can claim no elevated status in establishing standing. The lawmaker must meet

has emphasized, "not only are legislators not cloaked with a 'special category of standing,' but also, 'to establish standing, a legislator must overcome a heavy burden' because 'courts are reluctant to hear disputes that may interfere with the separation of powers between the branches of government.'" ***Morrow***, 261 So. 3d at 287 (citations omitted).[7] This view certainly makes sense as neither the executive nor the judiciary enjoy such broad categorical standing.

¶33. The ***Fordice*** Court merely *assumed* that individual legislators had a colorable interest in the suit against the governor based on their status as legislators and taxpayers. ***Fordice***, 651 So. 2d at 1003. But there is little to support this assumption. ***Fordice***'s finding of standing was based on ***Van Slyke II***. ***Fordice***, 651 So. 2d at 1003. And ***Van Slyke II*** did not confer any special standing on legislators due solely to their role as legislators. ***Van Slyke II***, 613 So. 2d at 875. Rather, ***Van Slyke II***'s concern was that individual "citizens should have the authority to challenge the constitutionality and/or review of governmental action" when there was no other way to raise constitutional conflicts or no probability that the class injured by the unconstitutional act would bring suit. ***Id.*** (quoting ***Van Slyke I***, 510 So. 2d at 497 (Prather, J., dissenting)). Cases like this one do not present the scenario

---

the same threshold criteria required of any other litigant.").

[7] *See also* ***Raines v. Byrd***, 521 U.S. 811, 819-20, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997) (noting that the United States Supreme Court's "standing inquiry has been especially rigorous when reaching the merits of the dispute would force [the Supreme Court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional").

envisioned by ***Van Slyke II***—a situation in which an individual citizen should be granted standing because the injured class, in this case the Legislature, was unable to seek redress for an alleged unconstitutional action. Much to the contrary, the Mississippi House of Representatives had both political and legal avenues to address the Governor's partial veto of House Bill 1782. But here they took neither.

¶34. Requiring individual legislators to establish standing—as opposed to merely *assuming* they have a colorable interest based on their role as legislators—is both a practical and logical safeguard. It would protect against judicial intervention and resulting interference in political disputes between the legislative and executive branch—especially ones that lack obvious backing of the legislative branch.[8]

¶35. If such were the current law, the Representatives in this case could not meet this threshold. And the chancellor's standing analysis would have been in error. According to the Representatives' own assertion, the passage of House Bill 1782 in both the House and Senate was "near-unanimous." So any adverse impact of the Governor's partial veto was really not unique to the individual Representatives. Instead, it was felt by nearly all members of both chambers. Yet here there is no endorsement by the body or joinder by any other

[8] Moreover, this notion would by no means be unique to just legislators. As mentioned, members of the executive and judicial branch are already bound by standing requirements. Governors are not cloaked with some elevated status of standing just by title of that office. Nor is a judge entitled to an enhanced status of standing when entering a court to pursue his or her own grievances. They too should be and are indeed required to meet the threshold criteria required of any other litigant.

House members. And neither the Lieutenant Governor nor any Senators are party.

¶36. In ***Raines v. Byrd***, the United States Supreme Court held six individual members of Congress lacked standing to challenge the constitutionality of the Line Item Veto Act because their alleged injury was "wholly abstract and widely dispersed." ***Raines***, 521 U.S. at 829. The same is true here. Any adverse impact on the votes of two of the 122 members of the Mississippi House of Representatives is similarly abstract. *See* ***Bennett***, 81 P.3d at 317 (holding four petitioners had "shown no injury to a private right or to themselves personally and are thus in a position similar to the six members of Congress in ***Raines***"); *see also* ***Biggs v. Cooper ex rel. Maricopa Cnty.***, 341 P.3d 457, 460 (Ariz. 2014) (noting that the Arizona Supreme Court has held that "individual legislators lack standing because they do not suffer an 'injury to a private right or to themselves personally' when they simply complain that their votes were counted, but the effect was nullified by the governor's acts" (quoting ***Bennett***, 81 P.3d at 317)).

¶37. Viewed in this manner, if there had been an injury of constitutional proportion here, it would have been to the Legislature *as a whole*. ***Bennett***, 81 P.3d at 317-18.[9] In their

[9] *See also* ***Rush v. Reynolds***, 946 N.W.2d 543, 2020 WL 825953, at *6 (Iowa Ct. App. Feb. 19, 2020) ("As the defendants point out, the injury alleged by the legislator-plaintiffs is not unique or personal to them but instead is true of all members of the Iowa legislature—each member was ultimately asked to vote on SF 638 after the HF 1321 amendments were added. Thus, the injury alleged by the legislator-plaintiffs is an institutional injury."); ***Biggs***, 341 P.3d at 460 (holding that "the legislature as a body suffers a direct institutional injury, and so has standing to sue, when an invalid gubernatorial veto improperly overrides a validly enacted law"); ***Forty-Seventh Legislature of State v. Napolitano***, 143 P.3d 1023, 1027 (Ariz. 2006) (holding that "the Legislature has alleged a

complaint for declaratory action, the Representatives asserted no individual colorable interest or adverse effect arising from the Governor's actions. They merely asserted a general claim that the Governor exceed his constitutional authority in violation of separation of powers.

¶38. Arizona has determined: "When a claim allegedly belongs to the legislature as a whole," a handful of "members who bring the action without the benefit of legislative authorization should not, except perhaps in the most exceptional circumstances, be accorded standing to obtain relief on behalf of the legislature." ***Bennett***, 81 P.3d at 318. And the "prudential concerns" driving that reasoning seem logical to me. ***Id.*** Indeed, the Alabama Supreme Court has wisely recognized: "[T]o hold otherwise could result in a scenario where a single legislator, perceiving a 'separation-of-powers injury' to the legislature as a whole, purports to bring an action seeking to redress the alleged injury, yet the majority of the legislature he or she purports to represent perceives no injury at all." ***Morrow,*** 261 So. 3d at 294. From my review, I have a hard time finding anything in the record before us to suggest we are not facing this type of scenario. The truth is we just do not know.

¶39. We have a suit brought by just two of 122 members of the House, which has neither endorsed nor joined this action. All we know for certain is that the House made no attempt to challenge the Governor's action—either *by political or legal means*—though it had opportunity to do so. Given the House's sharply contrasting stances on two allegedly unconstitutional exercises of partial vetoes, we are left with no indication that the House

---

particularized injury to the *legislative body as a whole*" (emphasis added)).

perceived an injury from the Governor's partial veto of House Bill 1782.[10]

¶40. Consequently, had we affirmed the chancellor's order, this Court would have run the real-world risk of judicially overriding a gubernatorial partial veto that the legislative branch allowed to stand. And the ironic justification for doing so would have been this Court's protection of legislative will.

¶41. But my critique of ***Fordice*** stops here, since I do not join in the majority's prospective standing ruling. Though ***Fordice*** got the Representatives in the door, to avoid a potential breach of separation of powers, absent exceptional circumstances, where an institutional legislative injury is alleged by an individual legislator, prudential concerns would certainly be eased if this Court entertained only those suits endorsed by the legislative body.[11]

RANDOLPH, C.J., COLEMAN, BEAM, CHAMBERLIN AND ISHEE, JJ.,

---

[10] I note that in ***Barbour*** the legislature was also still in session when the governor returned the partial veto in question. While this Court's ***Barbour*** opinion was silent about when the legislature adjourned, Senate Journals are not. *See* III S. Journal, Reg. Sess., at 3021 (Miss. Apr. 5, 2002). They record that the legislature only conditionally adjourned on April 5, 2002, with the caveat that it would reconvene on April 12, 2002, if the governor vetoed certain bills. *Id.* at 3020. The governor ultimately partially vetoed these bills, so the Senate reconvened on April 12. But when presented the partial veto of the bill in question, the Senate, based on an intervening Attorney General opinion, did not reconsider the bill. Rather it treated the partial veto as a nullity. *Id.* at 3021. By contrast, the House did not treat the partial vetoes of House Bill 1700 and House Bill 1782 as nullities. Instead, the House reconsidered both bills as directed by article 4, section 72 of the Constitution.

[11] *See* ***Napolitano***, 143 P.3d at 1028 (finding the legislators had standing because the Arizona Legislature had "ma[de] it clear that the Legislature as a body intended to challenge the Governor's action"); *see also* ***Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n***, 576 U.S. 787, 802, 135 S. Ct. 2652, 2664, 192 L. Ed. 2d 704 (2015) (concluding that the Arizona Legislature as a body had standing because it "assert[ed] an institutional injury, and it commenced [the] action after authorizing votes in both of its chambers").

JOIN THIS OPINION IN PART.

KING, PRESIDING JUSTICE, DISSENTING:

¶42. Because Governor Reeves exercised his veto power in a manner contrary to our Constitution and because we should not overrule ***Fordice***,[12] I dissent.

1. Constitutionality of Vetoes

¶43. Article 4, section 69, of our Constitution addresses appropriations bills. In making appropriations, the Legislature, and only the Legislature, has the power to "prescribe the conditions on which the money may be drawn, and for what purposes paid." Miss. Const. art. 4, § 69. The Governor's power of partial veto relates to appropriations bills "containing several items of distinct appropriations[.]" ***State v. Holder***, 76 Miss. 158, 23 So. 643, 644 (1898); Miss. Const. art. 4, § 73. The parties agree that House Bill 1782 is such an omnibus appropriations bill. They disagree, however, regarding which portions constitute separate and distinct appropriations. The Governor's partial veto power extends only to distinct, complete, whole appropriations. ***Holder***, 23 So. at 645. The Governor may not veto purposes or conditions of an appropriation, but may only veto separable appropriations in their entirety. ***Id.***

> [I]f a single bill, making one whole of its constituent parts, "fitly joined together," and all necessary in legislative contemplation, may be dissevered by the governor, and certain parts, torn from their connection, may be approved, and thereby become law, while the other parts, unable to secure a two–thirds vote in both houses, will not become law, we shall have a condition of things

[12] ***Fordice v. Bryan***, 651 So. 2d 998, 1003 (Miss. 1995)

> never contemplated, and appalling in its possible consequences. 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. Suppose a bill to create a reformatory for juvenile offenders, or to build the capitol, containing all necessary provisions as to purpose, amount of appropriation, and conditions; may the governor approve and make law of the appropriation, and veto and defeat the purpose or the conditions or both, whereby the legislative will would be frustrated, unless the vetoed purposes or conditions were passed by a two-thirds vote of each house? This would be monstrous. The executive action alone would make that law which had never received the legislative assent. And after all, and despite pragmatic utterances of political doctrinaires, the executive, in every republican form of government, has only a qualified and destructive legislative function, and never creative legislative power. If the governor may select, dissent, and dissever, where is the limit of his right? Must it be a sentence or a clause or a word? Must it be a section, or any part of a section, that may meet with executive disapprobation? May the governor transform a conditional or a contingent appropriation into an absolute one, in disregard and defiance of the legislative will? That would be the enactment of law by executive authority without the concurrence of the legislative will, and in the face of it. 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, dissociated from the other appropriations. To allow a single bill, entire, inseparable, relating to one thing, containing several provisions, all complementary of each other, and constituting one whole, to be picked to pieces, and some of the pieces approved, and others vetoed, is to divide the indivisible; to make of one, several; to distort and pervert legislative action, and by veto make a two–thirds vote necessary to preserve what a majority passed, allowable as to the entire bill, but inapplicable to a unit composed of divers complementary parts, the whole passed because of each.

Id. at 644-45.

¶44. Our Constitution defines "appropriation": an appropriation must "fix definitely the maximum sum thereby authorized to be drawn from the treasury." Miss. Const. art. 4, § 63.

Further, "[n]o bill passed after the adoption of this Constitution to make appropriations of money out of the State Treasury shall continue in force more than two months after the expiration of the fiscal year ending after the meeting of the Legislature at its next regular session[.]" Miss. Const. art. 4, § 64.

¶45. House Bill 1782 authorizes maximum amounts to be drawn from the treasury and appropriated to four entities: the Mississippi Development Authority, the State Department of Health, the State Department of Mental Health, and the Board of Trustees of State Institutions of Higher Learning. The appropriation to the State Department of Health is the appropriation at issue. The Legislature appropriated $91.9 million "to the State Department of Health for the *purposes* described in Section 4 of this act, for the period beginning upon July 1, 2020, and ending December 30, 2020." H.B. 1782, Reg. Sess., 2020 Miss. Laws ch. 104, § 3 (emphasis added). Section 4 directs that "[t]he funds appropriated under Section 3 of this act shall be expended *by the State Department of Health* for the following *purposes*[]." H.B. 1782, Reg. Sess., 2020 Miss. Laws ch. 104, § 4 (emphases added). House Bill 1782 then lists several purposes for which the Department of Health is to use the money, with the majority of the money being used to "[r]eimburs[e] hospitals for their necessary expenditures incurred due to the COVID-19 public health emergency." H.B. 1782, Reg. Sess., 2020 Miss. Laws ch. 104, § 4(e). The Governor struck two of these purposes: for the Department of Health to provide $2 million in funds to Tate County for disbursement to North Oak Regional Medical Center and for the Department of Health to provide $6 million

in funds to the MAGnet Community Health Disparity Program to address the disproportionate impact of COVID-19 on minority communities. H.B. 1782, Reg. Sess., 2020 Miss. Laws ch. 104, § 4 (c)-(d). All of these funds were to be administered by the Department of Health, not by the treasury; indeed, a portion of the bill provided the Department of Health with $150,000 "[f]or expenses of the department in administering the funds expended under paragraphs (a) through (g) of this section." H.B. 1782, Reg. Sess., 2020 Miss. Laws ch. 104, § 4(h).

¶46. The two vetoed purposes do not meet the basic, constitutional definition of a separate and distinct appropriation because no money is disbursed to Tate County or MAGnet *from the treasury*. The money comes from and is administered by the Department of Health. And the Department of Health is not simply a pass-through for the money it receives from the treasury. The Legislature outlined the Department of Health's specific obligations regarding the disbursements of the money appropriated to it. The Department of Health

> shall not disburse *any* funds appropriated under this act to *any* recipient without first: (a) making an individualized determination that the reimbursement sought is, in the agency's independent judgment, for necessary expenditures incurred due to the public health emergency with respect to COVID-19 . . . . In addition, the agency shall ensure that all funds appropriated under this act are disbursed in compliance with the Single Audit Act . . . .

H.B. 1782, Reg. Sess., 2020 Miss. Laws ch. 104, § 8 (emphases added). Further,

> [a]s a condition of receiving and expending the funds appropriated to the agency under this act, the agency shall certify to the Department of Finance and Administration that each expenditure of the funds appropriated to the agency under this act is in compliance with the guidelines, guidance, rules, regulations and/or other criteria . . . of the United States Department of the

> Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act.

H.B. 1782, Reg. Sess., 2020 Miss. Laws ch. 104, § 9. Moreover, the language in Section 4 makes it reliant on the language of appropriation in Section 3. The Legislature appropriated the money in Section 3 and then in Section 4 stated, "[t]he funds appropriated under Section 3 of this act shall be expended by the State Department of Health for the following purposes[,]" rendering Section 4 contingent on Section 3. Additionally, the removal of these provisions does indeed affect the remainder of the appropriation. The Department of Health now has an $8 million appropriation with no purposes or conditions attached.

¶47. This Court addressed a nearly identical situation in ***Barbour v. Delta Correctional Facility Authority***, 871 So. 2d 703 (Miss. 2004). In ***Barbour***, Sections 1 and 2 of the bill at issue appropriated money from the treasury to the Mississippi Department of Corrections (MDOC). ***Id.*** at 705. Section 3 began with "[o]f the funds appropriated under the provisions of Sections 1 and 2, not more than the amounts set forth below shall be expended for the respective major objects or purposes of expenditure[.]" ***Id.*** Section 3 outlined several expenditures that the appropriation to the MDOC was to cover, including that of funding private prisons. ***Id.*** The Governor vetoed the portion of Section 3 regarding funding private prisons. ***Id.*** He argued that the provisions was a separate appropriation because it contained a specific amount of money designated for a specific purpose. ***Id.*** at 709. The Court rejected this argument, noting that

> [t]he bill, as written, this Court finds, clearly makes Section 3 '[o]f the funds

> appropriated under the provisions of Sections 1 and 2, not more than the amounts set forth below . . .' contingent upon the preceding provisions of Sections 1 and 2 both of which state '[t]he following sum, or so much thereof as may be necessary, is hereby appropriated . . . .' The language of the bill makes Sections [sic] 3 reliant upon Sections 1 and 2 and, in this case, thus, a condition of these sections.

Id. at 711. Today's case is no different—the provisions in Section 4 are each reliant on Section 3, which is the actual appropriation of funds by the Legislature. A governor may not use a partial veto in this manner to "thwart or sabotage the legislative intent." ***Id.*** "[T]he Governor's veto here cannot inhibit the legislative intent of the bill, nor can his veto create new legislation." ***Id.*** The Governor's partial vetoes of conditions and purposes of an appropriation are therefore unconstitutional and a nullity.

¶48. To properly exercise a partial veto on this bill, it is clear that the Governor would have to veto one or more of the four appropriations to an agency in toto. Thus, Governor Reeves could have vetoed the entire $91.9 million appropriated to the Department of Health. But as it stands, he vetoed purposes and conditions of the appropriation to the Department of Health; he did not veto separate and distinct appropriations. Indeed, in making an appropriation, the Legislature, and only the Legislature, may prescribe conditions on the appropriation, and it may prescribe for what purposes the appropriation is paid. Miss. Const. art. 4, § 69. The two vetoed portions of the law specifically prescribed some of the purposes for which the appropriation was paid to the Department of Health. Such a partial veto is tantamount to the executive legislating with the veto, and is contrary to our Constitution.

2. Standing

¶49. I also disagree with the decision to overrule ***Fordice***. The majority misrepresents and exaggerates the holding in ***Fordice*** in order to imagine that it provides some sweeping "categorical" legislator standing by virtue of legislator status. Maj. Op. ¶ 12. But ***Fordice*** in no way holds that legislators have special and sweeping standing, nor would legislators have individual standing in some of the examples the majority gives, such as when a legislator voted against a bill and then the Governor vetoed it. Instead, the Court in ***Fordice*** used the standard for standing in Mississippi—adverse effect and colorable interest—and found that legislators who voted in the majority for legislation that passed and was then vetoed suffered an adverse effect because their votes were nullified by the veto.[13] ***Fordice***, 651 So. 2d at 1003 (The colorable interest or adverse effect involved is the fact that the legislators' votes on the vetoed bills "were adversely affected by the Governor's vetoes."). Indeed, legislators who voted against a bill that became law and was then vetoed would have no adverse effect on their votes, but their votes would be vindicated, and they would therefore not have standing under ***Fordice***.

¶50. Mississippi law regarding standing is more permissive than is federal law. ***Id.*** Parties have standing "when they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise authorized

[13]Each legislator takes an oath stating that "I will faithfully discharge my duties as a legislator[.]" Miss. Const. art. 4, § 40. When a legislator asserts that such duty has been unconstitutionally thwarted or nullified, the legislator would generally have standing.

by law."[14] ***Id.*** (quoting ***State ex rel. Moore v. Molpus***, 578 So. 2d 624, 632 (Miss. 1991)).

¶51. In a similar case, the Court of Appeals of New York determined that an individual legislator had standing to challenge the constitutionality of vetoes. ***Silver v. Pataki***, 755 N.E. 2d 842 (N.Y. 2001). That court noted that "[c]ases considering legislator standing generally fall into one of three categories: lost political battles, nullification of votes and usurpation of power. Only circumstances presented by the latter two categories confer legislator standing." ***Id.*** at 847 (citations omitted). Like this Court in ***Fordice***, the ***Silver*** court found that the legislator, "who voted with the majority in favor of the budget legislation, . . . undoubtedly has suffered an injury in fact with respect to the alleged unconstitutional nullification of his vote sufficient to confer standing." ***Id.*** at 847-48 (citations omitted).

---

[14]Justice Maxwell's and Justice Coleman's separate opinions emphasize that standing is jurisdictional. However, some of our caselaw has improperly conflated jurisdiction and standing. *See* 1 Jeffrey Jackson et al., *Miss. Prac. Series: Miss. Civ. P.* § 1:28, Westlaw (database updated May 2020) ("At times, standing has been thought an inquiry into jurisdiction of the subject matter, but this overstates the point. Whether a matter is of the general type or class that the court may hear is a distinct and different question than whether a particular person may bring it. It is also a question that should be answered before the court turns to separate and subsequent question whether a particular person may bring the action or otherwise commence a matter."); 3 Jeffrey Jackson & Mary Miller, *Miss. Prac. Series: Encyclopedia of Miss. Law* § 19:210 (3d ed.), Westlaw (database updated Oct. 2020) ("In practice there has been a tendency to overstate the jurisdictional nature of justiciability issues. Most familiar are the standing cases. There we find such expressions as '[t]he question of standing is a jurisdictional issue' and '[s]tanding is an aspect of subject matter jurisdiction.' These unfortunate views seem to flow from the practice that, in considering a justiciability issue, the 'well-pleaded allegations of the complaint are taken as true.' But that is true of Rule 12(b) practice across the board. The conceptual problem with this increasingly familiar overstatement is that it offends the fundamental premise that determining subject matter jurisdiction precedes all else. Without subject matter jurisdiction, the court has no authority to decide questions of justiciability." (citations omitted)).

"[P]laintiff as a Member of the Assembly won the legislative battle and now seeks to uphold that legislative victory against a claimed unconstitutional use of the veto power nullifying his vote." ***Id.*** at 848. Taking the plaintiff's allegations as true solely for purposes of analyzing standing, the court found that "the vetoed provisions were improperly invalidated and should be in effect. Such a direct and personal injury is clearly within a legislator's zone of interest and unquestionably represents a concrete and particularized harm." ***Id.*** (citations omitted) (internal quotation marks omitted).

¶52. On the other hand, a legislator who voted against a bill that won a majority and was then vetoed would not have any standing purely as a legislator to challenge what the Court of Appeals of New York refers to as a "lost political battle." ***Id.*** at 847. As in ***Silver***, the plaintiffs are not "seeking to obtain a result in a courtroom which [they] failed to gain in the halls of the Legislature." ***Id.*** at 848 (internal quotation marks omitted). Legislators "have a plain, direct and adequate interest in maintaining the effectiveness of their votes."[15]

[15]Such an injury does not vanish when the Legislature fails to attempt to override an unconstitutional veto. If the vetoes were unconstitutional as alleged by the legislators, then the vetoes were void and a nullity. ***Holder***, 23 So. at 645 ("The action of the governor having been unconstitutional, and therefore void, his action in dealing with the bill was a nullity[.]"); ***Fordice***, 651 So. 2d at 1001 ("A Governor's unconstitutional attempt of a partial veto is a nullity."); ***Barbour***, 871 So. 2d at 711. "Nullity" is defined as a "legal invalidity[,]" "nothingness[,]" and "an act void of legal effect[.]" https://www.merriam-webster.com/dictionary/nullity (last visited Nov. 24, 2020). "Void" is defined as "of no legal force or effect" and "containing nothing[.]" https://www.merriam-webster.com/dictionary/void (last visited Nov. 24, 2020). Thus, the vetoes, if unconstitutional, are a legal nothing, and the Legislature is not required to act on a legal nothing to maintain standing. The Legislature should not be forced to attempt to override an allegedly unconstitutional and, therefore, null veto in order to maintain standing

Coleman v. Miller, 307 U.S. 433, 438, 59 S. Ct. 972, 975, 83 L. Ed. 1385 (1939). Like Mississippi (until today), several other states also hold that, in certain circumstances where legislators are adversely affected, they have individual standing to sue — individual legislators have standing to challenge executive action when their individual duties as legislators are impacted by that executive action. *See* ***Silver***, 755 N.E. 2d 842 (holding that individual legislator had standing to sue governor regarding the constitutionality of his vetoes, despite the legislature's not attempting to override the vetoes); ***State ex rel. Ohio Gen. Assembly v. Brunner***, 872 N.E.2d 912 (Ohio 2007) (finding that individual legislators had standing to sue the governor over the constitutionality of a veto because their individual votes were potentially nullified); ***Hanabusa v. Lingle***, 198 P.3d 604 (Haw. 2008) (finding that individual legislators had standing to sue the governor where they alleged the governor deprived them of their right to advise and consent to certain executive appointments); ***Turner v. Shumlin***, 163 A.3d 1173, 1178 (Vt. 2017) (finding that individual legislator had standing to challenge executive action that he alleged deprived him of his duty to advise and consent regarding appointments); ***Hendrick v. Walters***, 865 P.2d 1232 (Okla. 1993) (finding that an

---

to seek redress for the injury. We do not generally require any plaintiff attempt to cure the alleged injury by the defendant in order to maintain standing and we should not do so now. Justice Maxwell's separate opinion claims that " had we affirmed the chancellor's order, this Court would have run the real-world risk of judicially overriding a gubernatorial partial veto that the legislative branch allowed to stand. And the ironic justification for doing so would have been this Court's protection of legislative will." CIPR Op. ¶ 40. Yet, the justification for deciding the constitutional issue is not protecting anyone's "will"—deciding the constitutional issue, either way, is about protecting the limitations on power set out by our Constitution, to wit, enforcing our Constitution. CIPR Op. ¶ 40.

individual legislator has standing to sue where the alleged executive action, if proved invalid, would place the legislator in a position in which his "confirmation votes would be invited, and indeed cast, to place an imprimatur upon invalid appointments; and his vote to override the Governor's veto would be in vain"); ***Morrow v. Bentley***, 261 So. 3d 278, 287-88 (Ala. 2017) (noting that in a case in which individual legislators challenged a line-item veto, the Alabama Supreme Court "has at least implicitly determined that a legislator can, under some circumstances, suffer an injury in his or her capacity as a legislator that will confer upon him or her standing to sue in that official capacity").

¶53. Moreover, the majority does not articulate any wrong perpetuated by ***Fordice*** even in the event it was wrongly decided. Maj. Op. ¶ 12. The "jurisprudential principles" to which the majority refers are easily resolved by applying the standards we currently have for standing and political questions. *Id.* We need not completely misrepresent ***Fordice*** as granting "categorical" legislator standing when it does not, and we need not then purport to overrule that misrepresentation simply to be able to consider jurisprudential principles. Such action is absurd, and an insult to the judiciary's ability to simply consider the actual case before it to determine whether it need be decided on the merits or dismissed on jurisprudential grounds.

¶54. For these reasons, I dissent.

KITCHENS, P.J., JOINS THIS OPINION.

COLEMAN, JUSTICE, DISSENTING:

¶55. Well-settled law requires us to determine whether the courts have the authority to decide the controversy before us before proceeding. Because the two legislators who filed the instant case lack standing and because standing is a jurisdictional requirement, the majority oversteps when it reaches the merits of the case. That the majority reaches the merits after first overruling the only case in which the Court has ever held that individual legislators have standing to challenge a governor's veto is, at best, perplexing.

¶56. I wholly agree with the majority's criticism of the colorable interest standing threshold and decision to overrule ***Fordice v. Bryan***, 651 So. 2d 998 (Miss. 1995), to the extent that ***Fordice*** held that individual legislators have standing to challenge a governor's partial veto of appropriations bills.

¶57. The phrase "colorable interest" did not make an appearance in any Mississippi case concerning standing or anything else until 1990 when the Court handed down its opinion in ***Harrison County v. City of Gulfport (In re City of Gulfport)***, 557 So. 2d 780 (Miss. 1990). There, the Court wrote,

> Parties may sue or intervene where they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, *see* ***Dye v. State ex rel. Hale***, 507 So. 2d 332, 338 (Miss. 1987); ***Frazier v. State of Mississippi***, 504 So. 2d 675, 691-92 (Miss. 1987); ***Belhaven Improvement Association, Inc. v. City of Jackson***, 507 So.2d 41, 45–47 (Miss. 1987), or as otherwise authorized by law, *see, e.g.*, ***Canton Farm Equipment Co. v. Richardson***, 501 So. 2d 1098, 1105-09 (Miss. 1987); ***City of Pascagoula v. Scheffler***, 487 So. 2d 196, 198 (Miss. 1986).

In re City of Gulfport, 557 So. 2d at 782. None of the cases cited by the ***In re City of***

Gulfport Court to support its version of Mississippi's standing requirement held that a party has standing to sue by demonstrating a colorable interest.

¶58. Standing is a jurisdictional issue, ***City of Madison v. Bryan***, 763 So. 2d 162, 166 (Miss. 2000); ***Frisby v. City of Gulfport (In re City of Biloxi)***, 113 So. 3d 565, 570 (Miss. 2013), and therefore addresses the fundamental question of the power of courts to act. Standing is too important an issue to be governed by phrases pulled from the amorphous judicial ether, especially when the phrase in question can be read to expand the power of a branch of government beyond anything supported by earlier legal principles that rest on more solid foundations.

¶59. For the foregoing reasons, I would overrule ***In re City of Gulfport***, 557 So. 2d 780 (Miss. 1990), and any other case that creates standing for a plaintiff who can do no more than demonstrate a colorable interest in the subject matter of litigation.

¶60. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." ***Miss. Dep't of Revenue v. AT&T Corp.***, 101 So. 3d 1139, 1149 (¶ 26) (Miss. 2012) (internal quotation marks omitted) (quoting ***Steel Co. v. Citizens for a Better Env't***, 523 U.S. 83, 94 (1988)). Case after Mississippi Supreme Court case confirms that standing is a jurisdictional issue. *See,* e.g., ***Jourdan River Estates, LLC v. Favre***, 278 So. 3d 1135, 1146 (¶ 40) (Miss. 2019); ***Araujo v. Bryant***, 283 So. 3d 73, 77 (¶ 12) (Miss. 2019); ***Davis v. City of Jackson***, 240 So. 3d 381, 383 (¶ 9) (Miss.

2018); ***City of Madison v. Bryan***, 763 So. 2d 162, 166 (¶ 20) (Miss. 2000).

¶61. Forty years ago, the Mississippi Supreme Court wrote as follows:

> [O]ur view is that the issue of "standing" is a jurisdictional question which can and should be raised by us on our own motion-this is especially true where, as here, a constitutional interpretation is sought. To conclude otherwise would permit the "standing" issue to be resolved with the accompanying possibility that it might be determined adversely to the complainants, thereby leaving this Court in the awkward posture of having interpreted the constitution for complainants who had no legal right to invoke the jurisdiction of the Court.

Williams v. Stevens, 390 So. 2d 1012, 1014 (Miss. 1980). In contrast to today's majority, the unanimous ***Williams*** Court announced that concerns of jurisdiction and standing require us to err on the side of caution when faced with a request for constitutional interpretation. Also, requiring that parties demonstrate standing is not new. "(O)ne of the fundamental principles in invoking a court's jurisdiction is that the plaintiff or complainant, as the case may be, must show a right in himself to invoke the jurisdiction of the court." ***Hancock Cnty. v. State Highway Comm'n***, 188 Miss. 158, 164 193 So. 808, 810 (1940). Thus, there is no conflation of standing and jurisdiction as argued by Presiding Justice King. King Diss. Op. ¶ 50 n.14. A putative plaintiff must demonstrate "a right to invoke the jurisdiction of the court," and, absent such a right, the courts have no power to take any action.

¶62. In overruling the ***Fordice*** Court's holding that individual legislators have standing, the majority necessarily concludes that the plaintiffs in today's case cannot show in themselves a right to invoke the jurisdiction of the courts. Apparently, though, my colleagues in the majority are nonetheless unable to help themselves and proceed to interpret the

Constitution "for complainants who had no legal right to invoke the jurisdiction" of the courts. ***Williams***, 390 So. 2d at 1014.

¶63. I simply cannot agree with the majority's decision to reach the merits after what amounts to an express holding that the plaintiffs fail to establish standing. The majority acknowledges that the ***Fordice*** Court was wrong and then decides to go ahead and also be wrong just one more time. The majority cites ***Presley v. Mississippi State Highway Commission***, 608 So. 2d 1288 (Miss. 1992), to excuse itself and try to justify reaching the merits in today's case. However, necessarily implied in the majority's attempted justification is the belief that the courts can change the law setting their power to hear cases. I find persuasive what the late Justice Scalia once wrote about the power of the federal courts to announce prospective holdings.

> "[T]he judicial Power of the United States" conferred upon this Court and such inferior courts as Congress may establish, Art III, § 1, must be deemed to be the judicial power as understood by our common-law tradition. That is the power "to say what the law is," ***Marbury v. Madison*** [5 U.S. 137] 1 Cranch 137, 177, 2 L. Ed. 60 (1803), not the power to change it. I am not so naive (nor do I think our forebears were) as to be unaware that judges in a real sense "make" law. But they make it *as judges make it*, which is to say as *though* they were "finding" it—discerning what the law *is*, rather than decreeing what it is today *changed to*, or what it will *tomorrow* be. . . . For this reason . . . I would find both "selective prospective" and "pure prospectivity" beyond our power.

James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 549 (1991) (Scalia, J., concurring). I have been unable to find any support for the proposition that the Mississippi Supreme Court has the power to change the substantive law that establishes the rights of the legislators under

the Constitution that would give rise to standing if it existed here. The majority cites none. Yet to reach the merits of the dispute before us today, the majority must not only conclude that we do have that power, but that we exercised it in a case that most of us agree should be overturned.

¶64. Pursuant to the foregoing, I respectfully dissent. I would hold that the plaintiffs lack standing and remand the case with instructions to dismiss for lack of jurisdiction.

MAXWELL AND CHAMBERLIN, JJ., JOIN THIS OPINION IN PART.

STATE OF MISSISSIPPI

Office of the Governor

July 8, 2020

TO THE MISSISSIPPI HOUSE OF REPRESENTATIVES

GOVERNOR'S PARTIAL VETO MESSAGE FOR HOUSE BILL 1782

I am returning House Bill 1782: "AN ACT MAKING AN APPROPRIATION FROM THE BUDGET CONTINGENCY FUND TO THE MISSISSIPPI DEVELOPMENT AUTHORITY, THE STATE DEPARTMENT OF HEALTH, THE STATE DEPARTMENT OF MENTAL HEALTH AND THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING FOR THE PURPOSES OF ADDRESSING OR RELATED TO THE PUBLIC HEALTH EMERGENCY DUE TO THE COVID-19 PANDEMIC; AND FOR RELATED PURPOSES," partly approved and partly not approved pursuant to the authority of Article VI, Section 73 of the Mississippi Constitution and assigning the following reasons for partial veto of this bill.

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.

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.

For these reasons, I am vetoing the $2,000,000 appropriation of Federal CARES Act funds to the North Oak Regional Medical Center and the $6,000,000 appropriation of Federal CARES Act funds to the MAGnet Community Health Disparity Program contained in House Bill 1782 pursuant to the authority of Article VI, Section 73 of the Mississippi Constitution, which provides:

EXHIBIT B
Clerk Papers 144

"The governor may veto parts of any appropriation bill, and approve parts of the same, and the portions shall be law."

Respectfully submitted,

TATE REEVES
GOVERNOR

July 8, 2020

9:15 P.M.

MISSISSIPPI LEGISLATURE REGULAR SESSION 2020

By: Representatives Mims, Mickens, Paden, Dortch, Foster, Hines, Johnson, Bell (65th), McCray, Thompson

To: Rules

HOUSE BILL NO. 1782
(As Sent to Governor)

AN ACT MAKING AN APPROPRIATION FROM THE BUDGET CONTINGENCY FUND TO THE MISSISSIPPI DEVELOPMENT AUTHORITY, THE STATE DEPARTMENT OF HEALTH, THE STATE DEPARTMENT OF MENTAL HEALTH AND THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING FOR THE PURPOSES OF ADDRESSING OR RELATED TO THE PUBLIC HEALTH EMERGENCY DUE TO THE COVID-19 PANDEMIC; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. 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 Mississippi Development Authority for the purposes described in Section 2 of this act, for the period beginning upon July 1, 2020, and ending December 30, 2020.....$ 30,207,000.00.

SECTION 2. The funds appropriated under Section 1 of this act shall be expended by the Mississippi Development Authority for the following purposes:

(a) Providing funds to the ambulatory surgical centers licensed by the State Department of Health for purchasing personal protective equipment (PPE) and providing for COVID-19 testing for their staff for protection against COVID-19 from current patients

and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year, in amounts not exceeding Four Thousand Dollars ($4,000.00) per surgery center.$ 300,000.00.

(b) Providing funds to the assisted living facilities licensed by the State Department of Health for purchasing personal protective equipment (PPE) and providing for COVID-19 testing for their staff for protection against COVID-19 from current patients and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year, in amounts not exceeding Four Thousand Dollars ($4,000.00) per facility.....$ 452,000.00.

(c) Providing funds to the Alzheimer's/dementia care units licensed by the State Department of Health for purchasing personal protective equipment (PPE) and providing for COVID-19 testing for their staff for protection against COVID-19 from current patients and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year, in amounts not exceeding Four Thousand Dollars ($4,000.00) per unit.....$ 88,000.00.

(d) Providing funds to the fourteen (14) providers of intermediate care facilities for individuals with intellectual disabilities licensed by the State Department of Health for purchasing personal protective equipment (PPE) and providing for

COVID-19 testing for their staff for protection against COVID-19 from current patients and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year, in amounts not exceeding Ten Thousand Dollars ($10,000.00) per facility.....$ 140,000.00.

(e) Providing funds to the permitted ground ambulances licensed or permitted by the State Department of Health for purchasing personal protective equipment (PPE) and providing for COVID-19 testing for their staff for protection against COVID-19 from current patients and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year, in amounts not exceeding Five Thousand Dollars ($5,000.00) per ambulance.....$ 3,110,000.00.

(f) Providing funds to the nursing home facilities licensed by the State Department of Health for purchasing personal protective equipment (PPE) and providing for COVID-19 testing for their staff for protection against COVID-19 from current patients and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year, in amounts not exceeding Ten Thousand Dollars ($10,000.00) per facility.....$ 2,110,000.00.

(g) Providing funds to the Mississippi Organ Recovery Agency (MORA) for purchasing personal protective equipment (PPE)

and providing for COVID-19 testing for their staff for protection against COVID-19 from current patients and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year.....$ 100,000.00.

(h) Providing funds to independent dentists licensed by the Board of Dental Examiners who are not employed by a hospital for purchasing personal protective equipment (PPE) and providing for COVID-19 testing for themselves and their office staff, for protection against COVID-19 from current patients, and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year, in amounts not exceeding Four Thousand Dollars ($4,000.00) per dentist.....$ 5,632,000.00.

For the purposes of this paragraph (h), "independent dentist" means a licensed dentist who actively provides care to patients, owns a share of his or her practice, has key decision-making rights for his or her practice, and is not employed by a hospital or an organization associated with a hospital.

For the purposes of this paragraph (h), no practice group of dentists shall receive more than Forty Thousand Dollars ($40,000.00) in total reimbursement.

(i) Providing funds to independent physicians licensed by the State Board of Medical Licensure who are not employed by a hospital, nurse practitioners licensed by the Mississippi Board of

Nursing who are not employed by a hospital and who have an independent practice, and independent optometrists licensed by the State Board of Optometry for purchasing personal protective equipment (PPE) and providing for COVID-19 testing for themselves and their office staff, for protection against COVID-19 from current patients, and to have sufficient PPE and testing in preparation for the expected new cases during the continuation of the current COVID-19 public health emergency later this year, in amounts not exceeding Two Thousand Five Hundred Dollars ($2,500.00) per physician, nurse practitioner or optometrist.....$ 7,125,000.00.

Not more than two thousand eight hundred fifty (2,850) persons may receive funds under this paragraph (i).

For the purposes of this paragraph (i), "independent physician" means a licensed physician, including allopaths, osteopaths and podiatrists, who actively provides care to patients, owns a share of his or her practice, has key decision-making rights for his or her practice, and is not employed by a hospital or an organization associated with a hospital; and "independent optometrist" means a licensed optometrist who actively provides care to patients, owns a share of his or her practice, has key decision-making rights for his or her practice, and is not employed by a hospital or an organization associated with a hospital.

For the purposes of this paragraph (i), no practice group of physicians shall receive more than Twenty-five Thousand Dollars ($25,000.00) in total reimbursement.

(j) Providing funds to community foundations for the purposes of making grants to nonprofit entities to reimburse those entities for eligible expenditures incurred by the entities, in amounts not exceeding Four Thousand Dollars ($4,000.00) per entity .....$ 4,000,000.00.

The authority shall distribute to the community foundations a pro rata share of the funds authorized under this paragraph (j) based on the population served by the foundation. The community foundations may retain not more than one percent (1%) of the amount received from the authority under this paragraph (j) for administrative expenses.

For the purposes of this paragraph (j):

(i) "Community foundations" means the CREATE Foundation, the Community Foundation of Northwest Mississippi, the Community Foundation of Washington County, the Community Foundation for Mississippi, the Community Foundation of East Mississippi, the Greater Pinebelt Community Foundation and the Gulf Coast Community Foundation;

(ii) "Nonprofit entity" means an entity that provides services to the public and in which no part of the assets, income or profit is distributed to or enures to the benefit of its members, directors or officers; and

(iii) "Eligible expenditure" means a cost incurred that is reimbursable from funds received by the State of Mississippi from the Coronavirus Relief Fund established by the federal Coronavirus Aid, Relief and Economic Security (CARES) Act under the guidance and guidelines of the United States Department of the Treasury regarding the use of those funds.

(k) Providing funds to community foundations for the purpose of reimbursing food pantries for eligible expenditures incurred by the pantries, in amounts not exceeding Four Thousand Dollars ($4,000.00) per pantry.....$ 4,000,000.00.

The community foundations, in their discretion, may reimburse a food pantry directly from the funds provided under this paragraph (k) or may reimburse entities acting on behalf of a food pantry or providing a service to a food pantry. The community foundations may retain not more than one percent (1%) of the amount received from the authority under this paragraph (k) for administrative expenses.

For the purposes of this paragraph (k), the terms "community foundations" and "eligible expenditures" shall have the meanings as defined in paragraph (j) of this section.

(l) Providing funds to the North Mississippi Education Consortium to be distributed to child care facilities throughout the state on an equitable basis for reimbursing the facilities for eligible expenditures incurred by the facilities or for providing personal protective equipment (PPE).....$ 3,000,000.00.

For the purposes of this paragraph (l), "child care facility" means any facility as defined by Section 43-20-5(a), Mississippi Code of 1972.

(m) For expenses of the authority in administering the funds expended under paragraphs (a) through (l) of this section.....$ 150,000.00.

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, for the period beginning upon July 1, 2020, and ending December 30, 2020.....$ 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 the Federally Qualified Health Centers in the state for their expenses in addressing the continuation of the current COVID-19 public health emergency and treating patients with COVID-19.....$ 1,500,000.00.

(b) Providing funds to rural hospitals as defined in House Bill No. 94, 2020 Regular Session, for their expenses in addressing the continuation of the current COVID-19 public health emergency and treating patients with COVID-19.....
.....$ 1,000,000.00.

~~(c) Providing funds to Tate County, Mississippi, to be disbursed to the North Oak Regional Medical Center or its successor entity, which funding the Legislature finds is a necessary expenditure incurred due to the COVID-19 public health emergency, since such funding is necessary to allow the medical center to continue in operations during the current COVID-19 public health emergency.....$ 2,000,000.00.~~

~~If by October 1, 2020, a hospital is not in operation in Tate County, or there is not an executed contract or Memorandum of Understanding for the operation of a hospital in Tate County, as determined by the department, then the funds authorized under this paragraph (c) for Tate County shall be reallocated on October 1, 2020, for the purpose authorized in paragraph (e) of this section.~~

~~(d) Providing funds to the MAGnet Community Health Disparity Program, whose mission is to strengthen collaboration and coordination for improved health access, performance, outcomes and cost efficiencies and whose vision is to improve the health status for all Mississippians through integrated health, which funding shall be used to address the disproportionate impact on the minority community of coronavirus infections and deaths from COVID-19, by developing and implementing plans to reduce and mitigate those occurrences and negative outcomes in the minority community during the continuation of the current COVID-19 public health emergency later this year.....$ 6,000,000.00.~~

All Federally Qualified Health Centers in the state are eligible to receive funding through the MAGnet Community Health Disparity Program from the funds authorized under this paragraph (d) upon application submitted to the MAGnet Community Health Corporation for approval.

(e) Reimbursing hospitals for their necessary expenditures incurred due to the COVID-19 public health emergency.....$ 80,000,000.00.

If the funds allocated to Tate County under paragraph (c) of this section are reallocated for the purpose authorized in this paragraph (e), then the amount authorized under this paragraph (e) shall be increased to Eighty-two Million Dollars ($82,000,000.00).

The department shall determine the maximum possible amount available to each hospital using a formula based on the total number of hospitalized COVID-19 patients that the hospital treated as of June 21, 2020, and the number of Mississippi licensed hospital beds in the hospital. A hospital shall be eligible to receive the amount determined under that formula or the actual amount of the necessary expenditures incurred by the hospital due to the COVID-19 public health emergency, whichever is the lesser amount.

As a condition of receiving the funds under this paragraph (e), each hospital shall provide monthly reports to the department with detailed information about the allowable expenses of the hospital related to treating COVID-19 patients.

(f) Reimbursing hospitals that have more than twenty-five (25) hospitalized COVID-19 patients as of June 21, 2020, but were unable to receive a rural provider payment from the United States Department of Health and Human Services because of being located in a county that is part of a metropolitan statistical area and not being designated as a critical access hospital.....$ 1,000,000.00.

As a condition of receiving the funds under this paragraph (f), each hospital shall provide monthly reports to the department with detailed information about the allowable expenses of the hospital related to treating COVID-19 patients.

(g) Providing funds to Access Family Health Services for the expenses of providing services for substance use disorders and providing school-based health services, the demand for which has increased due to the continuation of the current COVID-19 public health emergency.....$ 250,000.00.

(h) For expenses of the department in administering the funds expended under paragraphs (a) through (g) of this section.....$ 150,000.00.

SECTION 5. (1) 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 Mental Health for the purposes described in subsection (2) of this section, for the period beginning upon July 1, 2020, and ending December 30, 2020.....$ 1,400,000.00.

(2) The State Department of Mental Health shall provide the funds authorized under this section in equal amounts to each of the fourteen (14) community mental health regions to pay for all eligible expenditures for mental health services, which are those costs incurred by the regions that are reimbursable from funds received from the Budget Contingency Fund to address the current COVID-19 public health emergency. For the purposes of this section, eligible expenditures include, but are not limited to:

(a) Providing mental health services to persons who are or have been unemployed and/or persons who have been displaced from their homes due to the COVID-19 pandemic;

(b) Expenses for reimbursement, acquisition and distribution of medical and protective supplies, including, but not limited to, sanitizing products and personal protective equipment (PPE) for the COVID-19 public health emergency;

(c) Expenses for establishing and operating telemedicine capabilities for the treatment of COVID-19 patients; and

(d) Payroll expenses for employees to provide mental health services substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

SECTION 6. 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 Board of

Trustees of State Institutions of Higher Learning for the purposes described in Section 7 of this act, for the period beginning upon July 1, 2020, and ending December 30, 2020.....$ 6,218,000.00.

SECTION 7. The funds appropriated under Section 6 of this act shall be expended by the Board of Trustees of State Institutions of Higher Learning for the following purposes:

(a) Providing funds for the Mississippi Rural Physicians Scholarship Program to pay for medical school students to serve the rural area of our state because the rural communities continue to lack primary coverage to deal with the COVID-19 public health emergency and those communities are in dire need of more primary care physicians to prepare for the expected additional patients during the continuation of the current COVID-19 public health emergency later this year.....$ 1,800,000.00.

(b) Providing funds to the Office of Physician Workforce for five (5) hospitals to start or expand their physician residency programs to address the dire shortage of physicians in the state, especially primary care physicians, which limits the ability of the state to properly address patient needs and the disproportionate effects on the minority communities during the continuation of the current COVID-19 public health emergency, in order for the state to be better prepared to take care of existing COVID-19 patients and the expected additional patients during the continuation of the current COVID-19 public health emergency later this year.....$ 4,418,000.00.

SECTION 8. (1) As used in this section and Section 9 of this act, the term "agency" means the Mississippi Development Authority, the State Department of Health, the State Department of Mental Health or the Board of Trustees of State Institutions of Higher Learning, as the case may be.

(2) The agency shall not disburse any funds appropriated under this act to any recipient without first: (a) making an individualized determination that the reimbursement sought is, in the agency's independent judgment, for necessary expenditures incurred due to the public health emergency with respect to COVID-19 as provided under Section 601(d) of the federal Social Security Act as added by Section 5001 of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and its implementing guidelines, guidance, rules, regulations and/or other criteria, as may be amended or supplemented from time to time, by the United States Department of the Treasury; and (b) determining that the recipient has not received and will not receive reimbursement for the expense in question from any source of funds, including insurance proceeds, other than those funds provided under Section 601 of the federal Social Security Act as added by Section 5001 of the CARES Act. In addition, the agency shall ensure that all funds appropriated under this act are disbursed in compliance with the Single Audit Act (31 USC Sections 7501-7507) and the related provisions of the Uniform Guidance, 2 CFR Section 200.303 regarding internal controls, Sections 200.330

through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

SECTION 9. (1) As a condition of receiving and expending the funds appropriated to the agency under this act, the agency shall certify to the Department of Finance and Administration that each expenditure of the funds appropriated to the agency under this act is in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act.

(2) If the Office of Inspector General of the United States Department of the Treasury, or the Office of Inspector General of any other federal agency having oversight over the use of monies from the Coronavirus Relief Fund established by the CARES Act (a) determines that the agency or recipient has expended or otherwise used any of the funds appropriated to the agency under this act for any purpose that is not in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act, and (b) the State of Mississippi is required to repay the federal government for any of those funds that the Office of the Inspector General determined were expended or otherwise used improperly by the agency or

recipient, then the agency or recipient that expended or otherwise used those funds improperly shall be required to pay the amount of those funds to the State of Mississippi for repayment to the federal government.

SECTION 10. The money appropriated by this act shall be paid by the State Treasurer out of any money in the Budget Contingency Fund not otherwise appropriated, upon warrants issued by the State Fiscal Officer; and the State Fiscal Officer shall issue his or her warrants upon requisitions signed by the proper person, officer or officers in the manner provided by law.

SECTION 11. This act shall take effect and be in force from and after July 1, 2020.