IN THE SUPREME COURT OF MISSISSIPPI

NO. 2011-EC-01710-SCT

GLORIA RICHMOND JACKSON

v.

KYMBERLEY HAVEN BELL

DATE OF JUDGMENT:	10/26/2011
TRIAL JUDGE:	HON. L. BRELAND HILBURN
COURT FROM WHICH APPEALED:	QUITMAN COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ELLIS TURNAGE
ATTORNEYS FOR APPELLEE:	THOMAS HENRY FREELAND, IV JOYCE MARIE FREELAND
NATURE OF THE CASE:	CIVIL - ELECTION CONTEST
DISPOSITION:	VACATED AND REMANDED - 10/17/2013
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

RANDOLPH, PRESIDING JUSTICE, FOR THE COURT:

¶1. Gloria Richmond Jackson appeals the Quitman County Circuit Court Special Judge's dismissal with prejudice of her petition for judicial review of an election contest, which contested the result of a Democratic primary runoff election. Jackson's petition was dismissed for lack of jurisdiction, because she failed to attach two attorney certificates to her petition, as required by Mississippi Code Section 23-15-927. We hold that the special judge erred by dismissing Jackson's petition *with prejudice* for the nonmerits issue of lack of jurisdiction. Accordingly, we vacate the order of dismissal with prejudice and remand this

action to the Quitman County Circuit Court Special Judge with instruction to enter an order dismissing this action *without prejudice*.

FACTS AND PROCEDURAL HISTORY

¶2. A runoff election was held for the Democratic primary for Quitman County Tax Assessor. The Quitman County Democratic Executive Committee issued its final certificate of results, finding that Jackson had received fewer votes than her opponent, Kymberley Haven Bell.

¶3. Jackson filed a petition contesting the election results with the executive committee, to no avail. Jackson then filed a petition in the Quitman County Circuit Court challenging the election results. Chief Justice Waller, pursuant to Mississippi Code Section 23-15-929, ordered the Honorable Breland Hilburn to serve as special judge. The special judge dismissed the action for lack of jurisdiction, because Jackson had failed to attach the petition previously filed with the executive committee.

¶4. Jackson filed a second petition challenging the election results, with the executive-committee petition attached. Bell filed a response to the petition, raising as an affirmative defense that the special tribunal lacked jurisdiction over the petition, because Jackson had failed to attach two attorney certificates, as required by Mississippi Code Section 23-15-927, and filed a motion to dismiss for Jackson's failure to attach attorney certificates to the circuit-court petition. Subsequently, Jackson filed two attorney certificates with the circuit court. On the same date, the special judge held a hearing on the jurisdictional issue. At the hearing, the special judge emphasized that "the language of the statute says that the petition for a judicial

review shall – which is the strongest word in law – shall not be filed unless it bear a certificate of two practicing attorneys[,]" and concluded that "[t]he Court has no alternative but to enter order of dismissal with prejudice." The same day, the special judge entered an order dismissing the petition with prejudice for lack of jurisdiction. Jackson appeals, challenging the circuit court's order dismissing her petition for lack of jurisdiction with prejudice.

DISCUSSION

¶5. The sole issue presented by the parties is whether a dismissal of an election contest for lack of jurisdiction may be *with prejudice*. Neither party raised a constitutional issue before the special tribunal or this Court. Whether the petition may be dismissed with prejudice is a question of law. We apply a de novo standard of review to questions of law. ***Moore v. Parker***, 962 So. 2d 558, 562 (Miss. 2007); *see also* ***McCain Builders, Inc. v. Rescue Rooter, LLC***, 797 So. 2d 952 (Miss. 2001) ("Jurisdictional questions are subject to de novo review.").

¶6. Neither party contests that an election contest filed without attorney certificates may be dismissed for lack of jurisdiction. Mississippi Code Section 23-15-927 provides as follows, in relevant part:

> When and after any contest has been filed with the county executive committee . . . and the said executive committee having jurisdiction shall fail to promptly meet or having met shall fail or unreasonably delay to fully act upon the contest or complaint, or shall fail to give with reasonable promptness the full relief required by the facts and the law, the contestant shall have the right forthwith to file in the circuit court of the county wherein the irregularities are charged to have occurred . . . a sworn copy of his said protest

> or complaint, together with a sworn petition . . . . *But such petition for a judicial review shall not be filed unless it bear the certificate of two (2) practicing attorneys that they and each of them have fully made an independent investigation into the matters of fact and of law upon which the protest and petition are based and that after such investigation they verily believe that the said protest and petition should be sustained and that the relief therein prayed should be granted . . . .*

Miss. Code Ann. § 23-15-927 (Rev. 2007) (emphasis added). This Court has repeatedly held that the attorney-certificate requirement is a condition precedent to jurisdiction attaching. *See* ***Waters v. Gnemi***, 907 So. 2d 307, 322 (Miss. 2005) ("This two-practicing attorney requirement has been strictly construed and held to be jurisdictional."); ***Esco v. Scott***, 735 So. 2d 1002, 1006 (Miss. 1999) ("the certificate is a jurisdictional prerequisite to filing the petition"); ***Pearson v. Jordan***, 186 Miss. 789, 192 So. 39, 40 (1939) ("The certificate of the two disinterested attorneys is just as important as the petition itself, and is jurisdictional."). Accordingly, a petition for judicial review of an election contest filed without such certificates attached clearly may be dismissed for want of jurisdiction.

¶7. We repeatedly have held that an action cannot be dismissed *with prejudice* for the nonmerits reason of lack of jurisdiction. A dismissal with prejudice indicates a dismissal on the merits. ***B.A.D. v. Finnegan***, 82 So. 3d 608, 614 (Miss. 2012) ("a dismissal with prejudice indicates a ruling on the merits, which is not appropriate for a dismissal for want of jurisdiction"); ***Rayner v. Raytheon Co.***, 858 So. 2d 132, 134 (Miss. 2003) ("a dismissal with prejudice connotes an adjudication on the merits"). "If a court does not have subject matter jurisdiction to hear a case, then it cannot have jurisdiction to decide issues of fact and law . . . in order to . . . adjudicat[e] on the merits." ***Cook v. Children's Med. Group, P.A.***, 756 So.

2d 734, 743 (Miss. 1999); *see also* ***Esco***, 735 So. 2d at 1006 ("Subject matter jurisdiction deals with the power and authority of a court to consider a case."). In other words, without jurisdiction, a court is without authority to consider the merits of an action. Jurisdiction to review election contests was conferred by legislative act, currently Section 23-15-927. Accordingly, a dismissal for lack of jurisdiction is not a dismissal on the merits, and thus may not be with prejudice.

¶8. Bell relies on ***Esco*** for her argument that election contests may be dismissed with prejudice for failure to satisfy the jurisdictional requirement of attaching attorney certificates to the petition. In ***Esco***, the trial court had dismissed an election-contest petition for failure to comply with the attorney-certificate requirement, and this Court held that:

> The order of dismissal stated that the cause was dismissed, without incorporating the language "without prejudice." Thus, it is considered as having been dismissed with prejudice, precluding Esco from refiling.

Esco, 735 So. 2d at 1006-07 (citing ***Ross v. Milner***, 194 Miss. 497, 505-06, 12 So. 2d 917, 918 (1943)). However, ***Ross***, on which ***Esco*** relied, did not involve an election contest or a dismissal for lack of jurisdiction, and ***Esco*** did not discuss its decision to apply ***Ross***'s assumption that a dismissal was with prejudice in such context. We are unaware of any case other than ***Esco*** in which this Court has treated a dismissal for lack of jurisdiction as having been with prejudice. We hold that ***Esco*** mistakenly applied ***Ross*** in the context of a dismissal of an election-contest petition, and we overrule ***Esco*** to the extent that it provides that the dismissal of election-contest actions for failure to satisfy *jurisdictional* (*i.e.*, nonmerits) prerequisites can be with prejudice.

¶9. The dissent *sua sponte* raises an issue not before the special tribunal or this Court, and then cites a nonelection case.[1] The dissent opines without request that Section 23-15-927 improperly places procedural requirements for the filing of a complaint. Such is not the case. Neither party raised the constitutionality of Mississippi Code Section 23-15-927. We do not address issues not raised by the parties. ***Mabus v. Mabus***, 890 So. 2d 806, 811 (Miss. 2003). Nor did we request the parties to brief this issue as we did in ***Wimley***.

¶10. Moreover, the dissent's view that the Legislature may not control matters of procedure in election cases is misplaced. Unlike the medical-malpractice claims in ***Wimley***, "Miss. R. Civ. P. 81(a)(4) expressly states that proceedings pertaining to election contests would continue to be governed by statutory procedures with the rules of civil procedure having limited applicability." ***Waters v. Gnemi***, 907 So. 2d 307, 315 (Miss. 2005); Miss. R. Civ. P. 81(a)(4). The review of an election contest is an entirely separate undertaking from an original filing of a civil complaint. The review process is entirely distinct and established by statute, until it reaches this Court, where procedure is controlled by the Mississippi Rules of Appellate Procedure. Recognizing that judicial review may be necessary to some extent in election contests, the Legislature prescribed limited jurisdiction to afford contestants the opportunity to seek judicial review. *See* ***Harpole v. Kemper County Democratic Executive Comm.***, 908 So. 2d 129, 143 (Miss. 2005) (Section 23-15-927 enables the circuit court to have the jurisdictional capacity to decide certain election issues.). In other words, Section

[1] ***Wimley v. Reid***, 991 So. 2d 135 (Miss. 2008).

23-15-927 (unlike the statute in ***Wimley***) gives the courts limited jurisdiction where jurisdiction otherwise would be improper. *See* ***In re Bell***, 962 So. 2d 537, 541-42 (Miss. 2007).

¶11. Section 146 of Article 6 of the Mississippi Constitution states that the Supreme Court "shall exercise no jurisdiction on matters other than those specifically provided by this Constitution or by general law." Miss. Const. art. 6, § 146.

¶12. Section 23-15-927 is a general law within the election code. It states that the "executive committee" maintains jurisdiction over election contests. Miss. Code. Ann. § 23-15-927 (Rev. 2007). Only after the "executive committee has wrongfully failed to act," may the complainant seek judicial review, which is unlike a complaint in a civil matter. *Id.* The judicial relief sought under the election code is unique unto itself. The circuit clerk of the court where the complaint is filed must "immediately . . . notify the Chief Justice of the Supreme Court . . . who shall forthwith designate and notify a circuit judge or chancellor of a district other than that which embraces the county . . . involved . . . to proceed to said county wherein the contest or complaint has been filed there to hear and determine said contest." Miss. Code. Ann. § 23-15-929 (Rev. 2007). The hearing is actually a "special tribunal," which consists of the judge and five election commissioners who sit with the judge "as advisors or assistants in the trial and determination of the facts." Miss. Code. Ann. § 23-15-931 (Rev. 2007). After the special judge (with the assistance of the commissioners) makes his judgment, "the judgment shall be certified and promptly forwarded to the Secretary of the State Executive Committee," where it becomes the State Executive Committee's duty to

revise the decision. ***Id.*** Only then may the contestant "file an appeal in the Supreme Court within the time and under such conditions and procedures (M.R.A.P.) as are established by the Supreme Court for other appeals." Miss. Code. Ann. § 23-15-933 (Rev. 2007); see M.R.A.P. 16(a), (b). It is worth noting that the United States Attorney General made no objections to this amendment. Miss. Code Ann. § 23-15-933 (Rev. 2007) (ed. note).

¶13. Nothing about the judicial-review process of the election code mandated by the Legislature conflicts with our separate-mandated, constitutional powers. Nor does this mechanism encroach upon the judicial branch. Thus, no violation of the separation of powers is at issue.

CONCLUSION

¶14. The trial court did not err by dismissing this election-contest action for failure to satisfy the jurisdictional prerequisite of attaching two attorney certificates to the petition for judicial review. However, the special judge erred by dismissing this action *with prejudice* for the nonmerits issue of lack of jurisdiction. Accordingly, we vacate the order dismissing this action with prejudice and remand this matter to the Quitman County Circuit Court special judge with instruction to enter an order dismissing this action without prejudice.[2]

¶15. **VACATED AND REMANDED.**

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[2]Jackson also moves this Court to take judicial notice of an adjudicative fact, which goes to the merits of the action. Since we address only a jurisdictional issue today, the adjudicative fact is of no value to the Court's consideration today, and we dismiss it as moot.

WALLER, C.J., LAMAR, CHANDLER AND PIERCE, JJ., CONCUR. DICKINSON, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, KING AND COLEMAN, JJ.

DICKINSON, PRESIDING JUSTICE, DISSENTING:

> [T]he Legislature [should] refrain from promulgating procedural statutes which require dismissal of a complaint, and particularly a complaint filed in full compliance with the Mississippi Rules of Civil Procedure.[3]

¶16. Gloria Jackson contested the election results in her race for Quitman County Tax Assessor by filing a complaint in the Quitman County Circuit Court. The majority says her complaint must be rejected because she failed to comply with a procedural requirement that was never adopted by this Court, and is nowhere to be found in the Mississippi Rules of Civil Procedure. I respectfully but forcefully dissent.

ANALYSIS

¶17. Less than four years ago, we handed down the above-quoted language in ***Wimley v. Reid***, a decision described by the author of today's majority as "well-reasoned."[4] In ***Wimley***, we addressed and struck down as unconstitutional a statute that required medical-negligence plaintiffs to attach attorney certificates of consultation with experts – or expert disclosures in lieu of the certificates – to medical-negligence complaints.[5] The plaintiff's attorney had

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[3] ***Wimley v. Reid***, 991 So. 2d 135, 138 (Miss. 2008).

[4] ***Id***. at 139 (Randolph, P.J., specially concurring).

[5] ***Id***. at 135.

failed to attach the statutorily required certificate, so the defendant moved for dismissal of the suit.

¶18. Finding the statute to be unconstitutional meddling with this Court's authority to control matters of procedure, we stated that enforcing it would "require us to abrogate the Mississippi Rules of Civil Procedure and apply instead a procedural rule set forth in a statute."[6]

¶19. Also, in addressing the Separation of Powers Doctrine, we found that the statutory requirement that an attorney's certificate be attached to the plaintiff's complaint is a procedural rule the Legislature was without authority to make.[7] We unequivocally held "that a complaint, otherwise properly filed, *may not be dismissed, and need not be amended*, simply because the plaintiff failed to attach a certificate or waiver."[8]

¶20. I realize I have reached conclusions and am expressing opinions that cut against the grain of the traditional judicial approach in this Court. I do not do so lightly. Below, I will set forth my reasons and the authorities that have compelled this dissent.

1. **Section 23-15-927's procedural requirement is unconstitutional.**

¶21. The Mississippi Constitution, while establishing a form of government similar to the federal model, includes an important provision not found in its federal counterpart – a

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[6] ***Id.*** at 136.

[7] ***Id.*** at 137.

[8] ***Id.*** at 138 (emphasis added).

provision that forbids each branch of government from sharing any of its powers with either of the other two branches.

Mississippi Constitution, Article 1, Section 1

¶22. Our Constitution's first section establishes and grants powers to three distinct branches of government – legislative, judicial, and executive – and it grants the "judicial power" of the state to the judicial branch.[9] Section 144 of our Constitution vests in the Supreme Court the control of that judicial power.[10]

Mississippi Constitution, Article 1, Section 2

¶23. Our Constitution's second section prohibits the Supreme Court from sharing its judicial powers with the legislative or executive branches:

> No person or collection of persons being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others.[11]

This *constitutional* provision, restated as it pertains to this case and Rule 81, says the following:

> [Neither the Supreme Court nor any justice on the Supreme Court] shall exercise any power properly belonging to [the Legislature].
>
> [The Legislature] shall not exercise any power properly belonging to [the Supreme Court].

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[9] Miss. Const. art. 1, § 1.

[10] Miss. Const. art. 6, § 144.

[11] Miss. Const. art. 1, § 2.

¶24. This *constitutional* provision could not be more clear. We may fairly debate which branch of our government is authorized to exercise a particular power (such as the power to promulgate procedural rules for our courts), but it is beyond reasonable debate that the branch that is granted the power may not constitutionally share it.

Newell v. State – *The Power to Promulgate Rules of Procedure*

¶25. For many years, the Mississippi Legislature assumed for itself the power to control many aspects of the judiciary, including its rules of practice and procedure. All the rules that addressed such matters as pleading, discovery, and the admission of evidence once were controlled by statutes.

¶26. In 1975, this Court took an important step toward judicial independence when it decided ***Newell v. State***, which clearly stated:

> The inherent power of this Court to promulgate procedural rules emanates from the fundamental constitutional concept of the separation of powers and the vesting of judicial powers in the courts.[12]

The ***Newell*** Court went on to say:

> the phrase "judicial power" in section 144 of the Constitution includes the power to make rules of practice and procedure, not inconsistent with the Constitution, for the efficient disposition of judicial business.[13]

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[12]***Newell v. State***, 308 So. 2d 71, 76 (Miss. 1975) (citing ***Matthews v. State***, 288 So. 2d 714 (Miss. 1974); ***Gulf Coast Drilling & Exploration Co. v. Permenter***, 214 So. 2d 601 (Miss. 1968); and ***Southern Pacific Lumber Co. v. Reynolds***, 206 So. 2d 334 (Miss. 1968)).

[13]***Newell***, 308 So. 2d at 76.

¶27. Six years following ***Newell***, this Court took another important step. On May 26, 1981 – citing the Mississippi Constitution and ***Newell*** as its authority – this Court entered an order establishing and adopting the Mississippi Rules of Civil Procedure, declaring those rules to be controlling over conflicting statutes.[14] And on September 24, 1985, this Court entered an order establishing and adopting the Mississippi Rules of Evidence, declaring them to be controlling over conflicting statutes.[15]

¶28. These steps, while important, were incomplete. By leaving in place procedural statutes that did not conflict with the rules,[16] this Court effectively shared its constitutional powers with the Legislature. Neither the Court then nor any Court since – including today's majority – has explained why such power-sharing does not violate Article 1, Section 2 of the Mississippi Constitution.

2. The majority's arguments are without merit.

¶29. It its attempt to distinguish today's case from ***Wimley***, the majority makes several arguments that are easily exposed as either inapposite or without merit. I shall address each of them.

It was unnecessary for the parties to raise the constitutionality of Section 23-15-927.

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[14]*Order Adopting the Mississippi Rules of Civil Procedure* (May 26, 1981).

[15]*Order Adopting the Mississippi Rules of Evidence* (Jan. 1, 1986).

[16]"[I]n the event of a conflict between these rules and any statute . . . . these rules shall control." *Order Adopting the Mississippi Rules of Civil Procedure* (May 26, 1981).

¶30. The majority seeks refuge in the facially attractive argument that, ordinarily, we do not address constitutional issues not raised by the parties. It is true that neither of the parties raised the constitutionality of Section 23-15-927. But that is also true of the parties in ***Wimley***, neither of which raised the constitutionality of the statute before the trial court or in this Court (although we requested the parties to brief the issue).

¶31. Despite the failure of the parties to raise the issue in ***Wimley***, we nevertheless addressed it, because – unlike other constitutional violations that implicate the rights and responsibilities of litigants – the statute in question challenged the powers and duties of this very Court. A statute that may or may not violate the constitutional rights of a litigant – a litigant who may or may not wish to raise the issue – is a far cry, and a very different animal, from a statute through which Legislature assumes unto itself powers the Constitution grants to this Court.

Election contests are not different from civil complaints because of jurisdiction.

¶32. The majority says that the

> [election] review process is entirely distinct and established by statute, until it reaches this Court, where procedure is controlled by the Mississippi Rules of Appellate Procedure. Recognizing that judicial review may be necessary to some extent in election contests, the Legislature prescribed limited jurisdiction to afford contestants the opportunity to seek judicial review. . . . In other words, Section 23-15-927 (unlike the statute in ***Wimley***) gives the courts limited jurisdiction where jurisdiction otherwise would be improper.

¶33. The point the majority attempts to make here is not entirely clear. The issue is not about jurisdiction, but rather, about procedural rules. With only a few very limited

exceptions, the only reason the circuit court may hear appeals from inferior courts – and the only reason this Court may hear civil-damages appeals and criminal appeals – is because the Legislature confers the jurisdiction to do so.[17] But once jurisdiction is conferred on the circuit court, chancery court, or this Court, the procedure for appeals is controlled by the Mississippi Rules of Civil Procedure and the Mississippi Rules of Appellate Procedure.

¶34. The majority points out that "Section 23-15-927 is a general law within the election code. It states that the 'executive committee' maintains jurisdiction over election contests. Miss. Code Ann. § 23-15-927 (Rev. 2007). Only after the 'executive committee has wrongfully failed to act,' may the complainant seek judicial review, which is unlike a complaint in a civil matter." Section 23-15-927 – a statute nearly identical to the one addressed in ***Wimley*** – requires a plaintiff wishing to contest an election to attach two attorney certificates to the petition. This procedural requirement has nothing to do with jurisdiction.

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[17] Mississippi Code Section 11-51-3 states that "an appeal may be taken to the Supreme Court from any final judgment of a circuit or chancery court in a civil case . . . ." *See also* ***Casino Magic Corp. v. Ladner***, 666 So. 2d 452, 456 (Miss. 1995) ("A right of appeal is statutory.") (quoting ***Bickham v. Dep't of Mental Health***, 592 So. 2d 96, 97 (Miss. 1991)); ***Miller Transporters Ltd. v. Johnson***, 252 Miss. 244, 249 (1965) ("The right to appeal is a statutory privilege, granted and defined by the legislature."); ***McMahon v. Milam Mfg. Co.***, 115 So. 2d 328, 330 (Miss. 1959) ("Appeals are regulated by statute, and only lie in cases provided by statute.") (citing ***State ex rel. Brown v. Poplarville Co.***, 119 Miss. 432 (1919); ***Jones v. Cashin***, 133 Miss. 585 (1923); ***Craig v. Barber Bros. Contracting Co.***, 190 Miss. 182 (1940)); ***Jackson v. Gordon***, 194 Miss. 268 (1943) ("Appeals are matters of right, and are allowable only in cases provided by statute.").

¶35. The Legislature certainly has full authority to require a contestant – as a prerequisite to filing an election contest – to obtain certificates from two attorneys who believe the contestant's claim has merit. But just exactly like the statute we struck down in ***Wimley***, Section 23-15-927 states that the contestant's "petition for judicial review ***shall not be filed*** unless it bears the certificate[s]."[18] This legislative foray into the procedural requirements for filing a petition in the Circuit Court is a clear violation of Section 2 of the Mississippi Constitution.

In Rule 81, this Court improperly granted the Legislature the power to promulgate certain rules of procedure.

¶36. Without addressing and distinguishing Section 2 of the Constitution, the majority cites Rule 81(a)(4)[19] of the Mississippi Rules of Civil Procedure – a Court-made rule that purports to grant to the Legislature a portion of this Court's constitutional rule-making powers. But this Court has no power or authority to grant powers to the Legislature. And from the day Rule 81 was adopted until today, this Court has neither disclosed nor explained to the bench or bar this Court's purported authority to delegate to the Legislature a portion of this Court's power to promulgate the rules of procedure to be followed in the courts. Indeed, our Constitution strictly and expressly forbids it.

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[18] Miss. Code Ann. § 23-15-927 (Rev. 2007) (emphasis added).

[19] Miss. R. Civ. P. 81(a)(4).

¶37. In my view, this is an example of this Court having the power to do what it does not have the right to do. The exercise of that power (as in the adoption of Rule 81) does not make it right.

¶38. Rule 81 purports to delegate to the Legislature the judicial power to promulgate certain procedural statutes. [20] Rule 81 states that the Mississippi Rules of Civil Procedure "are subject to limited applicability in [certain] actions which are generally governed by statutory procedures."[21] Again, I find this to be a clear Section 2 violation.

¶39. The Legislature's powers are granted by the Constitution[22] – not by this Court. So according to Section 2 of the Constitution, if the Legislature has the constitutional power to enact *any* procedural rules for the courts, then, it has the exclusive power to enact them *all*. But if, as I believe, and as this Court held in ***Newell***, the Constitution grants that power to this Court, then it is this Court's duty and responsibility to exercise that power without sharing it. And I reject the notion that Rule 81 – or any other Court-made rule – may supersede Article 1, Section 2 of the Mississippi Constitution.

The United States Attorney General's failure to object to the amendment to Section 23-15-933 is meaningless.

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[20]Miss. R. Civ. P. 81.

[21]*Id.*

[22]Miss. Const. art. 4, § 33.

¶40. The majority finds it "worth noting that the United States Attorney General made no objection" to the amendment to Section 23-15-933 that requires the attachments to the petition. It is unclear why the majority thinks this is important. I do not.

CONCLUSION

¶41. While others may find comfort in the proposition that this Court's rule may overpower a clear constitutional provision, I do not. Rule 81's delegation of this Court's rule-making powers is indefensible and inherently unconstitutional. And while I agree with the majority that we do not ordinarily address constitutional issues that were are not raised by the parties, I reject the majority's notion that I must wait for a litigant to raise an issue that calls into question my own constitutional mandate and responsibility. Article 1, Section 2 of our Constitution addresses the powers and responsibilities of this Court and its justices, not the litigants.

¶42. So in my view, dismissal of Gloria Jackson's election petition was and is improper, and any discussion of whether dismissal should be with or without prejudice is beside the point.

KITCHENS, KING AND COLEMAN, JJ., JOIN THIS OPINION.