

## **REEVES V. GUNN: LIMITING LEGISLATOR STANDING AND EXPANDING THE GOVERNOR’S VETO POWERS**

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In response to the COVID-19 pandemic, the U.S. Congress allocated \$1.25 billion to Mississippi.<sup>1</sup> The Mississippi Legislature passed several bills for the appropriation of this money.<sup>2</sup> One of the bills was House Bill 1782, an omnibus bill appropriating money to several state government agencies.<sup>3</sup> Invoking Section 73 of the Mississippi Constitution, Governor Tate Reeves vetoed two provisions of House Bill 1782.<sup>4</sup>

The Speaker of the House and the Speaker Pro Tempore of the House filed suit against the Governor in the Hinds County Chancery Court to challenge his partial vetoes.<sup>5</sup> The Governor filed a motion to dismiss and a motion for summary judgment, and the Speaker and the Speaker Pro Tempore moved for judgment on the pleadings.<sup>6</sup> The chancery court sided with the Speaker and the Speaker Pro Tempore and granted the motion for judgment on the pleadings.<sup>7</sup> The Governor appealed to the Mississippi Supreme Court.<sup>8</sup> The Court reversed the chancery court’s decision, holding

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<sup>1</sup> *Reeves v. Gunn*, 307 So. 3d 436, 437 (Miss. 2020).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 437-38.

<sup>4</sup> *Id.* at 438. “[T]he 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.” *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

that the Mississippi Constitution allowed the Governor to partially veto the two provisions.<sup>9</sup>

In *Fordice v. Bryan*, the Mississippi Supreme Court ruled that individual legislators have standing to bring an action challenging a governor's partial veto.<sup>10</sup> According to *Harrison County v. City of Gulfport*, a party has standing to bring a suit when it has a "colorable interest" in the cause of action.<sup>11</sup> The standard for overruling precedent, according to *Payton v. State*, is where the precedent would "perpetuate error and wrong would result if the decisions were followed."<sup>12</sup>

Article 4, Section 73 of the Mississippi Constitution expressly grants power for partial vetoes of any part of a general appropriation bill to a governor.<sup>13</sup> *State v. Holder* interprets Section 73 to specifically allow for partial veto of general appropriation bills, which contain "several items of distinct appropriations."<sup>14</sup> A governor can only partially veto general appropriation bills, which must have portions that are "separable from each other as appropriations."<sup>15</sup>

In *Reeves v. Gunn*, the majority relied on *Payton* to prospectively overrule *Fordice* and held that individual lawmakers do not have "categorical" standing to bring a suit against a governor for violating the state constitution in his partial vetoes.<sup>16</sup> According to the majority, the decision in *Fordice* to allow individual lawmakers to bring suit against a governor for unconstitutional partial vetoes perpetuated both "error and wrong" by improperly inserting the Court's power into disputes between the legislative and executive branches of government.<sup>17</sup> Likewise, the majority reasoned that an individual legislator will not always suffer an actual adverse impact from a governor who vetoes a bill because the

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<sup>9</sup> *Id.* at 437.

<sup>10</sup> 651 So. 2d 998, 1003 (Miss. 1995). In *Fordice v. Bryan*, legislators challenged Governor Fordice's vetoes of parts of legislative bond and appropriation bills. *Id.* at 999-1000.

<sup>11</sup> 557 So. 2d 780, 782 (Miss. 1990).

<sup>12</sup> 266 So. 3d 630, 638 (Miss. 2019) (emphasis omitted) (quoting *Hye v. State*, 162 So. 3d 750, 755 (Miss. 2015)).

<sup>13</sup> MISS. CONST. art. 4, § 73.

<sup>14</sup> 23 So. 643, 644 (Miss. 1898).

<sup>15</sup> *Id.*

<sup>16</sup> 307 So. 3d 436, 439 (Miss. 2020).

<sup>17</sup> *Id.* at 438-39.

Legislature itself may cause the harm by declining to challenge a veto or because that legislator may have voted against the bill in the first place.<sup>18</sup> In the second half of its opinion, the majority held that the Governor did have the power to partially veto two provisions of House Bill 1782 because the bill was of an “omnibus nature” and contained distinct appropriations to subrecipients to whom the executive agencies who received the funds were to disburse the money.<sup>19</sup>

Justice Maxwell concurred in part and in result with the majority, but he challenged the majority’s reasoning and legal conclusions in overturning *Fordice*.<sup>20</sup> He critiqued *Fordice* in granting almost blanket standing to legislators because they are legislators,<sup>21</sup> and he questioned whether suits brought by individual legislators seeking redress for an injury to the entire legislative body should be heard by the courts.<sup>22</sup> However, he disagreed with the majority’s decision to overturn *Fordice* because the majority broke with the Court’s established practice of avoiding ruling on constitutional issues prospectively.<sup>23</sup>

In his dissent, Presiding Justice King first disagreed with the majority on the constitutionality of partial vetoes.<sup>24</sup> In his view, the partial vetoes of the Governor went beyond what is allowed under Section 73 of the Mississippi Constitution because he did not veto a distinct appropriation listed in House Bill 1782.<sup>25</sup> Instead, the Governor vetoed two provisions obligating executive agencies to distribute the money to certain subrecipients.<sup>26</sup> For a provision to be a “separate and distinct appropriation,” it must disburse money directly from the state treasury; legislative directives instructing executive agencies to further disburse treasury funds to

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<sup>18</sup> *Id.* at 439.

<sup>19</sup> *Id.* at 441-42.

<sup>20</sup> *Id.* at 442 (Maxwell, J., concurring in part and in result).

<sup>21</sup> *Id.* at 444 (“*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.”).

<sup>22</sup> *Id.* at 447 (“[P]rudential concerns would certainly be eased if this Court entertained only those suits endorsed by the legislative body.”).

<sup>23</sup> *Id.* at 442.

<sup>24</sup> *Id.* at 447-50 (King, P.J., dissenting).

<sup>25</sup> *Id.* at 448-49.

<sup>26</sup> *Id.*

subrecipients are not “appropriations.”<sup>27</sup> Presiding Justice King then turned to disagree with the Court’s decision to overrule *Fordice*, arguing that the majority misconstrued *Fordice* to provide a “sweeping ‘categorical’ legislator standing by virtue of legislator status.”<sup>28</sup> Instead, he argued that the ruling in *Fordice* was limited to legislators who have standing by the prevailing standard under Mississippi law—adverse effect and colorable interest.<sup>29</sup>

Justice Coleman, in his dissent, agreed with the majority’s decision to overrule *Fordice* but disagreed with the majority’s decision to discuss the constitutionality of the Governor’s partial veto.<sup>30</sup> According to Justice Coleman, the “colorable interest” standard for standing is too amorphous and results in an unconstitutional expansion of the power of the judicial branch.<sup>31</sup> Then, he noted that parties without standing cannot invoke the Court’s jurisdiction.<sup>32</sup> The majority, therefore, went beyond its own reasoning in evaluating the merits of the appellees’ case after implicitly holding that the Speaker and the Speaker Pro Tempore lacked standing.<sup>33</sup>

Though, on its face, the *Reeves* decision limits the power of individual legislators from bringing forth their grievances to court,<sup>34</sup> it ultimately limits the effectiveness of the Mississippi judiciary to interpret the Mississippi Constitution. By limiting the process of challenging vetoes to a legislative process, Mississippi is deprived of any judicial check on a governor’s veto powers unless a legislator personally suffered an adverse impact.<sup>35</sup> If no individual legislator has standing based on his status as a lawmaker, then the Court shall likely never hear any case to determine the constitutionality of a veto. Therefore, the Court’s decision to overturn *Fordice* results in an unbalanced executive veto power.

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<sup>27</sup> *Id.* (citing MISS. CONST. art. 4, §§ 63-64).

<sup>28</sup> *Id.* at 450.

<sup>29</sup> *Id.* at 450-51.

<sup>30</sup> *Id.* at 453-55 (Coleman, J., dissenting).

<sup>31</sup> *Id.* at 453-54.

<sup>32</sup> *Id.* at 454.

<sup>33</sup> *Id.* (“The majority acknowledges that the *Fordice* Court was wrong and then decides to go ahead and also be wrong just one more time.”).

<sup>34</sup> *See id.* at 439 (majority opinion).

<sup>35</sup> *See id.*

Regarding the decision to ultimately uphold the partial veto as constitutional, Justice Coleman correctly argued that the majority contradicted its own overruling of *Fordice*.<sup>36</sup> Since the Court implicitly held that the legislators did not have standing, the Court did not have the power to even discuss the merits of the case.<sup>37</sup> Nevertheless, they did discuss it, and the Court's discussion sets precedent that allows a governor to essentially legislate.

Presiding Justice King's dissent correctly highlights how the Mississippi Constitution defines an appropriation as a distribution from the treasury of the state.<sup>38</sup> The majority has effectively ignored the plain text of the state constitution to expand the definition of an "appropriation."<sup>39</sup> From now on, the instructions for distributions of an appropriation to subrecipients are legally several and distinct appropriations subject to partial veto from a governor.<sup>40</sup> In granting such power to a governor, the majority has approved of a governor taking on the role of legislator in striking down the instructions attached to separate appropriations for state government agencies.<sup>41</sup>

In *Reeves*, the Mississippi Supreme Court overturned *Fordice* and upheld the Governor's partial veto of House Bill 1782. The decision to overturn *Fordice* disrupts the effectiveness of the judiciary by limiting a court's power to hear cases brought by individual legislators against a governor. In doing so, the Court granted governors more power to bring vetoes without judicial review to determine their constitutionality. The decision also expanded the power of the governor by allowing partial vetoes of specific instructions the Legislature gives to administrative agencies for disbursement of appropriated funds. Overall, the decision in *Reeves* seizes political power from the legislative and judicial branches and grants it to the governor.

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<sup>36</sup> *Id.* at 454-55 (Coleman, J., dissenting).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 448 (King, P.J., dissenting) (citing MISS. CONST. art. 4, §§ 63-64).

<sup>39</sup> *See id.* at 448-50.

<sup>40</sup> *See id.* at 441-42 (majority opinion).

<sup>41</sup> *See id.* at 450 (King, P.J., dissenting).

