On the Side of the Angels?

Updating the Mississippi Supreme Court's View of the Judicial Role, 2004-2008

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Judges, as James Madison knew, are not angels. To their bewilderment, I often tell law students that the doctrine of separation of powers relies on this key anthropological insight. It is right there in Madison's famous *Federalist* 51: "[i]f men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary." Madison, of course, was referring to the balance of legislative, executive, and judicial powers, but his point applies equally to the subject of this paper: the role of a court. Perhaps more than any other public official, judges are tempted to extend their power, in order to solve, directly and creatively, the pressing matters of justice in the cases before them. If improperly exercised, the judicial power distorts the balance of governmental authority in favor of our least-accountable officials.

As with any public official, once judges have broadened powers—whether properly constituted or not—they prune them rarely. However, the Mississippi Supreme Court has, over the past three decades, proven the exception. As explained in a previous white paper by James W. Craig and Michael B. Wallace, from 1980 to 2004, the Mississippi Supreme Court gradually reduced its interpretive reach in key areas such as statutory interpretation and the law of standing.

This paper updates Craig and Wallace's work and shows that, over the past four years, the Mississippi Supreme Court has continued on that path. The focus will be on the court's performance as an interpreter of statutes, since that area provides the largest sampling of decisions. At the same time, the paper will note some cases where the court has not been as restrained. As one justice has recently observed,

> I am convinced that a majority of this Court is committed to both the doctrine of separation of powers and the rejection of judicial activism. Nevertheless, backsliding can take place on a court as easily as in a church.[1]

I. STATUTORY CONSTRUCTION

How a court interprets statutes is a bellwether of its restraint. This is so because, under the guise of technical "rules" of statutory construction, activist courts may subtly rewrite laws to further the judges' own policy preferences. Such favored approaches include the search for laws' "spirit" or "purposes" that override the purposes gathered from the plain terms of the laws themselves. As Craig and Wallace illustrated, while this was an ingrained habit with the Mississippi Supreme Court throughout the 1980s and 1990s, the court became more willing to leave undisturbed those choices the legislature had actually inscribed on the law. A review of the court's statutory interpretation decisions over the past four years confirms this more restrained approach. It is particularly evident with respect to a statute such as the Mississippi Tort Claims Act ("MTCA"), a law that makes hard choices in painful cases—just those cases in which activist judges are tempted to do "justice" in disregard of the law's terms and the judges' own legitimate power.[2]

For example, *University of Mississippi Medical Center v. Easterling* presented the wrenching case where, after an infant died following a laparotomy,

* *Assistant Professor of Law, University of Mississippi.* *I am grateful to the Federalist Society for its support of the research and writing of this paper, and to Christopher Morris for his excellent research assistance. I am particularly indebted to the esteemed professors Robert A. Weems and Guthrie T. Abbott of the University of Mississippi Law School, without whose superb work on the Mississippi Supreme Court I could not have completed this project. All opinions are, however, my own.*

the mother's claim was dismissed because she failed to comply with the 90-day notice provision of the Mississippi Tort Claims Act.[3] Overruling the circuit court's softening of the notice provision, the Mississippi Supreme Court ruled that "strict compliance [with the 90-day rule] was required." The court overruled prior decisions allowing "substantial compliance" with the rule.[4] Resisting the temptation to bend the law in the face of tragic facts, the court cited its "constitutional mandate to faithfully apply the provisions of constitutionally enacted legislation," and declined to disturb the policy choice enacted in the limitation provision.[5]

A year after *Easterling*, the court reaffirmed its strict interpretation of the MTCA's limitation provisions in *Caves v. Yarbrough*.[6] In this important decision, the court refused to temper the MTCA's one-year statute of repose with a "discovery rule" that would suspend the limitation period until the plaintiff discovered his cause of action.[7] The court found that the law's "clear" and "unambiguous" terms forbade it from "judicially amending" the statute to include a discovery rule. Because of its recent embrace of a restrained method of statutory interpretation, the court was compelled to overrule prior decisions that had performed exactly such "judicial amendments." [8]

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The court's deference to the legislature has not been confined to the MTCA's time limits. For example, in *Powell v. Clay County Board of Supervisors*, the Court ruled that the plain language of the MTCA afforded sovereign immunity to county government employees against the wrongful death claim on behalf of a county jail inmate who fell to his death from a county-operated garbage truck.[9] In a case of first impression, *Mississippi Department of Transportation v. Allred*, the court ruled that the statute's $50,000 damages cap plainly applied to a single tortious occurrence, regardless of the number of governmental entities sued.[10] Reaffirming *Allred* the following year in *Estate of Klaus ex rel. Klaus v. Vicksburg Healthcare LLC*, the court ruled that a different cap—this one limiting a wrongful death plaintiff's noneconomic damages against healthcare providers to $500,000—likewise applied to a single occurrence, regardless of the number of plaintiffs. The court rebuffed the dissent's argument that the statute was ambiguous and that, to honor the legislature's real "intent," the damages cap should apply to each plaintiff separately:

> [T]he dissent's suggestion that this Court should redress the perceived legislative error by judicial fiat requires an act of judicial activism. To properly preserve the separation of powers mandated by [art. I, §§ 1-2 of] the Mississippi Constitution … this Court should act with restraint.

The court has also taken a restrained approach to interpreting statutes addressing venue,[11] *forum non conveniens*,[12] subpoenas,[13] punitive damages,[14] and workers' compensation.[15] In another example, when ruling that a wrongful death statute forbade severance of a case into three separate lawsuits, the court remarked that it was "ever mindful of our duty… not to legislate."[16]

A significant trend towards tightening party-joinder requirements in mass tort claims began with the court's decision in *Janssen Pharmaceutica, Inc. v. Armond*.[17] The court reversed a permissive interpretation of Mississippi Rule of Civil Procedure 20 that allowed joinder in a mass tort action of all plaintiffs, provided venue was proper for only one

plaintiff.[18] *Janssen* adopted a stricter reading of the phrase "transaction or occurrence" from the rule, thereby limiting trial courts' discretion to allow broad joinder of claims.[19] Following the decision, the court also promulgated amendments to the Mississippi Rules of Civil Procedure, apparently designed to enforce the court's more restrictive understanding of the party-joinder rules.[20]

The court has also refused to water down the statutory requirements for products liability claims,[21] termination of child support,[22] issuance of restraining orders,[23] and extension of long-arm jurisdiction.[24] Significantly, the court has declined to create novel causes of action by "creatively" interpreting statutes. For instance, in *Laurel Yamaha, Inc. v. Freeman*, the court found the relevant motor safety statutes did not create a claim for "negligent entrustment" against a motorcycle dealer who sold a motorcycle to an eighteen-year-old.[25] The court remarked that "it is the task of the Legislature and not this Court to make the laws of this state" and that it was "unwilling to impose duties which were not expressly created by statute." Similarly, in *Warren v. Glascoe*, the court ruled that a statute requiring a minor with a learner's permit to be accompanied by a licensed driver did not make the licensed driver vicariously liable for the permittee's negligence.[26] Finally, in *Franklin Collection Service, Inc. v. Kyle*, the court ruled that the statutory medical privilege did not apply to a medical bill.[27] Observing that the statute had given way to the Mississippi Rules of Evidence, the court went out of its way to underscore that, even if it applied, the statute's "very specific language" would not extend to a medical bill:

> [T]his Court has no right, prerogative, or duty to bend a statute to make it say what it does not say. No citation of authority is necessary for the proposition that courts, judges, and justices sit to apply the law as it is, not make the law as they think it should be.

Of course, the court must, at times, interpret genuinely ambiguous statutes. Such occasions, as discussed already, provide a ready pretext for using "legislative intent" to inject judges' personal proclivities into a decision.[28] The current court frankly admits the difficulty of these cases and seeks a careful interpretation of ambiguous language.[29] For example, in a pair of significant decisions, *Scaggs v. GPCH-GP, Inc.* and *Pope v. Brock*, the court construed a new rule requiring plaintiffs to provide sixty days' notice prior to beginning certain medical malpractice actions.[30] The sixty-day period extended the normal two-year limitations period, but just how was unclear: did a new sixty-day limitation run from the date of notice, or was the original two-year period simply tolled for sixty days?[31] Finding the statute ambiguous, the court deployed a general rule that excludes from a limitation period any time when a person is "prohibited by law" from prosecuting a lawsuit, and ruled that the 60-day notice requirement therefore tolled the two-year limitation.[32] In both cases, the court signaled its awareness of the "legislative intent" problem. In *Scaggs*, the court wrote that its "primary objective" in cases of ambiguity was "to adopt that interpretation which will meet the true meaning of the Legislature." In *Pope*, the court was more explicit:

> The phrase 'intent of the Legislature' is often used when what is really meant is 'intent of

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the statute.' Our duty is to carefully review statutory language and apply its most reasonable interpretation and meaning to the facts of a particular case. Whether the Legislature intended that interpretation, we can only hope, but we will never know.

However, one can find examples where the court did not show absolute restraint in reading the plain terms of the law. Even in these cases, the court seldom demonstrates the kind of creativity in statutory construction that characterizes activist courts in other states. For example, in *Cousin v. Enterprise Leasing Co.*, the court had to decide whether a car rental company violated its statutory duty to rent only to "duly licensed" drivers when it rented to a driver with a facially-valid license that was in fact suspended.[33] The court essentially read other sections of the rental car law—imposing specific duties with regard to comparing signatures and recording license information—as glossing the "duly licensed" language to mean "facially valid and unexpired."[34] The court also drew on comparable cases from other states construing similar, but not identical, statutory duties. The dissenting justices accused the majority of "injecting an exception" into the clear language of the statute, an exception that would be better left to the legislature. In *Cousin*, the court may have relaxed its rigor in statutory interpretation, but it is difficult to say the court thus veered into judicial activism. If the legislature disagrees with the court's understanding of the "intent of the statute," the legislature can easily amend it.

In *Hartman v. McInnis* (a decision alluded to at the beginning of this paper), the court applied a rule requiring a foreclosing mortgagee to establish the "fair market value" of the foreclosed properties in order to establish a right to a deficiency judgment. In the eyes of two dissenting justices, however, the problem is that the "fair market value" rule was invented by previous courts and had no grounding in any statutory language. The dissent thus chastised the majority for perpetuating this relic of an ostensibly bygone era of judicial activism:

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> When called upon to interpret and apply statutes in recent years, this Court has moved toward a textualist policy, that is, a strict application of statutes as they are written. Today, this Court backslides. Hopefully, the majority opinion represents no more than a temporary departure—a brief lapse of judgment—by some whose voting record and frequently-proclaimed disdain for judicial activism suggested the majority's analysis (or lack thereof), and agreed with the view set out below.

But, as the dissent itself suggests, *Hartman* likely does not signal a return to the days of activism. The majority only declined to discard an apparently longstanding rule, albeit one not anchored to any statutory mandate. Furthermore, it seems from the tenor of the dissent that the question of changing the rule was not a focus of the appeal.

A potentially more serious disregard of statutory language was presented in *Magnolia Healthcare, Inc. v. Barnes ex rel. Grigsby*.[35] In that case, the court had to determine when a person may make, as a surrogate, a health-care decision for someone who is mentally or physically disabled. The relevant statute provided that a surrogate health-care decision

could be made "if the patient has been determined by the primary physician to lack capacity."[36] The court admitted that the record was devoid of any such determination by a physician. Nonetheless, the court found the statutory requirement fulfilled because of the court's own appraisal from the record that the patient "lacked the capacity to manage her affairs or make appropriate medical decisions on her own behalf."

Two dissenting justices sharply attacked the majority for creating an "exception to the statutory requirement" that "serves as a substitute for the actual language included in the statute." In their view, "[a] more obvious and blatant example of judicial activism would be difficult to find." It is hard to resist the conclusion that in this case the majority ignored a clear statutory requirement because, based on difficult facts, it believed the underlying "purposes" of the law had been achieved. No harm, of course, may have been done, but the decision now stands for the proposition that the statutory requirement—and the concrete safeguard the legislature created for disabled persons' autonomy in making health-care decisions—may be judicially altered under the right facts.

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II. STANDING

In their previous white paper, Craig and Wallace identified additional benchmarks for measuring the relative restraint of the Mississippi Supreme Court. Key among those was the doctrine of standing, which is a set of threshold rules that regulates the kinds of interests and injuries parties may seek to vindicate before the courts. Looser standing requirements create a wider canvas on which activist judges can legislate their own preferences. As an enabler of the court's activism, Craig and Wallace identified broad standing rules in Mississippi that would invite the attorney general, other public officials, and even private citizens to bring abstract questions before the courts.[37] The authors indicated that, more recently, the court had begun to interpret standing rules with greater restraint, seeking to rein in the tendency to allow standing to plaintiffs who could allege only abstract and non-individualized harms.[38]

While it appears there have not been any significant developments in the Mississippi law of standing since Craig and Wallace's paper, the court's decision in *City of Picayune v. Southern Regional Corp.* is worth noting.[39] That case addressed whether private citizens had standing to challenge the management of a hospital by a non-profit charitable corporation. Answering that question, the court summarized Mississippi's general law of standing and, seemingly with approval, wrote the following:

> It is well settled that Mississippi's standing requirements are quite liberal. This Court has explained that while federal courts adhere to a stringent definition of standing [limited to Article III "cases and controversies"]… the Mississippi Constitution contains no such restrictive language. Therefore, this Court has been 'more permissive in granting standing to parties who seek review of governmental actions.'[40]

But the court emphasized that, to have standing, an individual's claim "must be grounded in some legal right recognized by law, whether by state or by common law."[41] The court then proceeded to deny standing to the citizen-plaintiffs on the ground that the relevant corporation statute limited challenges to "the Attorney General, a director or by a member or members in a derivative proceeding."[42] Thus,

despite the court's reiteration of the permissive standing rules in Mississippi, its decision in *City of Picayune* took a restrained position and limited private-citizen standing by the plain terms of the relevant statute.

CONCLUSION

The foregoing discussion amply demonstrates that the Mississippi Supreme Court has continued to reduce the scope of its power. This paper closes with a discussion of the court's recent handling of political questions, which, as Craig and Wallace explained, is another sure index of restraint insofar as the court appropriately defers the resolution of controversial questions to coordinate branches of government.[43] In *Barbour v. State ex rel. Hood*, Governor Haley Barbour's writ setting a special election to fill Senator Trent Lott's vacated U.S. Senate seat was challenged by Attorney General Jim Hood as violating, among other things, a Mississippi election statute.[44] Hood argued that the plain terms of the statute required the special election to take place within ninety days (that is, before March 19, 2008) of the governor's writ (issued on December 20, 2007). Barbour argued, however, that the statute allowed him to set the special election on the day of the November 8, 2008 general election. The resolution of this dilemma turned on the interpretation of a confusingly written statute, and precisely on whether the word "year" meant "calendar year" or "365-day period."[45]

The court approached the question with understandable delicacy, declaring itself "ever mindful of the wisdom of our predecessors in exercising caution and exhibiting reluctance to inject themselves in election matters." Indeed, the court took just the route suggested by that quotation. It found that the election statute did not address the peculiar situation presented—where a U.S. Senator resigns in the same year as a general election (2007), but *after* that year's general election had already been held. The court simply did not know how the terms of the statute applied to that strange state of affairs, and thus deferred to the governor's decision to set the special election in November 2008. One justice bitterly dissented, accusing his colleagues of ignoring the plain language of the election law as well as "reason and common sense."

The court simply did not know how the terms of the statute applied to that strange state of affairs, and thus deferred to the governor's decision to set the special election in November 2008.

For present purposes, the point is not whether the majority correctly read the statute, but rather the majority's posture of deference toward a coordinate branch of government in the resolution of a delicate political question. The majority analogized its position to a court affording *Chevron* deference to an agency's statutory construction, and refused to find the governor's interpretation unreasonable. The "void" in the election statute's coverage, reasoned the majority, "is unquestionably within the Legislature's province to amend, should it be so inclined."[46] Notably, the debate between majority and dissent took place on the grounds of judicial restraint. The majority found a gap in the statute and deferred to the governor (and to future legislative amendments). The dissenting justice accused the majority of "judicial legerdemain" and charged it with "abandon[ing] its recent trend to [sic] apply a strict standard of statutory construction."[47]

The one concurring justice agreed with the majority's result, but on the grounds that having a special election in March, instead of November, would "place an undue financial burden on the taxpayers of Mississippi" and would deprive the citizens of Mississippi of "the opportunity and time

to get to know the candidates and their positions on issues before electing a United States Senator to fill this vacancy for the next four years."[48] The reader was told that "an expedited special election is not fair to the voters or the candidates. Mississippians deserve better."

The reasons given by the concurring justice may be wise and well meant. But the question is whether, had the majority adopted his view, it would have been a proper or improper exercise of judicial power. In judging the work of the Mississippi Supreme Court, answering that question is how the people should ascertain whether their court remains on the side of the angels.

Endnotes

1 Hartman v. McInnis, __ So.2d __, 2007 WL 4200613 at *20 (Miss. Nov. 29, 2007) (Dickinson, J., concurring in part and dissenting in part).

2 The "Mississippi Tort Claims Act" commonly refers to §§ 11-46-1 through 11-46-23 of the Mississippi Code. *See, e.g.,* Mississippi Dept. of Transp. v. Allred, 928 So.2d 152, 154 (Miss. 2006).

3 928 So. 2d 815 (2006); *see* Miss. Code Ann. § 11-46-11(1) (90-day notice requirement).

4 *See, e.g.,* City of Pascagoula v. Tomlinson, 741 So. 2d 224 (Miss. 1999) (allowing substantial compliance with the 90-day notice provision).

5 *Cf.* Saul v. Jenkins, 963 So. 2d 552 (Miss. 2007) (under plain language of Miss. Code Ann. § 15-1-36, nursing home can claim benefit of sixty-day notice provision only if it is a licensed institution).

6 __ So. 2d __, 2007 WL 3197504 (Miss. Nov. 1, 2007).

7 *See* Miss. Code Ann. § 11-46-11(3) (Rev. 2002).

8 Observing that "in recent years this Court has recognized its duty to apply a strict standard of statutory construction, applying the plain meaning of unambiguous statutes," the court repudiated decisions such as *Barnes v. Singing River Hospital*, 733 So. 2d. 199 (Miss. 1999): "[w]e recognize, without citation of any authority to do so, this Court in years past 'incorporated' a discovery rule into the MTCA, stating simply that 'justice is best served by applying a discovery standard to such cases.'"

9 924 So. 2d 253 (Miss. 2006) (interpreting Miss. Code Ann. § 11-46-9(1)(m)); *see also* Collins v. Tallahatchie County, 876 So. 2d 284 (Miss. 2004) (interpreting a different section of the governmental immunity statute, § 11-46-9(1)(d), to afford discretionary immunity to a justice court judge for allegedly abusing his discretion in failing to send an arrest warrant to the sheriff's office in a domestic violence case).

10 928 So. 2d 152 (Miss. 2006) (interpreting Miss. Code Ann. § 11-46-15(1)).

11 *See* Medical Ins. Co. of Miss. v. Meyers, 956 So.2d 213 (Miss. 2007) (language of Miss. Code Ann. § 11-11-3 indicates venue is proper where substantial acts or omissions occurred (and not where the cause of action accrued), and does not allow the "piling" of acts or events to establish venue).

12 *See* Goodwin v. Culpepper Enter., Inc., 963 So.2d 1166 (Miss. 2007) (amended *forum non conveniens* rule, Miss. R. Civ. P. 82(e), did not apply retroactively).

13 *See* Syngenta Crop Protection, Inc. v. Monsanto, 908 So.2d 121 (Miss. 2005) (plain language of Miss. Code Ann. § 79-4-15.10(a) does not allow a Mississippi trial court to subpoena out-of-state documents from nonresident nonparty corporations).

14 *See* Shelter Mut. Ins. Co. v. Dale, 914 So.2d 698 (Miss 2005) (language of Miss. Code Ann. § 63-15-43(2)(b) does not prevent an insurer from excluding coverage for punitive damages by amendatory endorsement to its automobile liability policies).

15 *See* Federated Mut. Ins. Co. v. McNeal, 943 So.2d 658 (Miss. 2006) (Mississippi Worker's Compensation Act, Miss Code Ann. § 71-3-71, unambiguously provides that an insurance company, having paid compensation benefits to an injured employee, has the right to reimbursement from the employee's recovery against a third party, regardless of whether the recovery made the employee whole).

16 Rose v. Bologna, 942 So.2d 1287, 1290 (Miss. 2006) (interpreting Miss Code Ann. § 11-7-13).

17 866 So.2d 1092 (Miss. 2004).

18 The court distinguished prior decisions which had seemingly taken a more permissive stance on joinder. *See, e.g.,* American Bankers Ins. Co. v. Alexander, 818 So.2d 1073 (Miss. 2001).

19 *See* Miss. R. Civ. P. 20(a) (allowing joinder where

persons assert a right to relief "in respect of or arising out of the same transaction, occurrence, or series of occurrences").

20 *See, e.g.,* Miss. R. Civ. P. 20, cmt. ("[t]he phrase 'transaction or occurrence' requires that there be a distinct litigable event linking the parties."); Miss. R. Civ. P. 42, cmt. ("[i]n exercising its discretion to consolidate cases or particular issues, the Court must recognize that on some issues consolidation may be prejudicial").

21 *See* Williams v. Bennet, 921 So.2d 1269 (Miss. 2006) (plaintiff failed to advance a design defect claim in a case involving a handgun that discharged when dropped, because he did not establish the necessary elements of proof under Miss. Code Ann. § 11-1-63).

22 *See* Edmonds v. Edmonds, 935 So.2d 980 (Miss. 2006) (Miss. Code Ann. § 95-5-23 (since amended) did not provide for termination of child support by emancipation when minor child sentenced to life imprisonment).

23 *See* Jackson State Univ. v. Upsilon Epsilon Chapter, 952 So.2d 184 (Miss. 2007) (dissolving restraining order issued in favor of fraternity against university on grounds of failure of strict compliance with Miss. Code Ann. § 11-51-95).

24 *See* Sealy v. Goddard, 910 So.2d 502 (Miss 2005) (Mississippi long-arm statute, Miss. Code Ann. § 13-3-57, does not provide for personal jurisdiction over the nonresident heirs of a nonresident tortfeasor).

25 956 So.2d 897 (Miss. 2007) (interpreting Miss. Code Ann. §§ 63-1-6 & 63-1-63).

26 880 So.2d 1034 (Miss. 2004) (interpreting Miss. Code Ann. § 63-1-21).

27 955 So.2d 284 (Miss. 2007) (interpreting Miss. Code Ann. § 13-1-21).

28 Craig and Wallace indicated in their previous white paper that this was a common strategy of the more activist version of the court, which sought to formulate "that statement of [legislative] purpose which may best justify the statute today, given the world we live in" (quoting Stuart's Inc. v. Brock, 543 So.2d 649, 651 (Miss. 1989)).

29 One such politically significant case, *Barbour v. State*, will be discussed below.

30 *See* Scaggs v. GPCH-GP, Inc., 931 So.2d 1274 (Miss. 2006); Pope v. Brock, 912 So.2d 935 (Miss. 2005).

31 *See* Miss. Code Ann. § 15-1-36(15) (Rev. 2003) (providing that medical malpractice claims may not be begun "unless the defendant has been given at least sixty (60) days' prior written notice of the intention to begin the action," and providing additionally that if notice is served within sixty days of the expiration of the applicable limitations period, "the time for the commencement of the action shall be extended sixty (60) days from the service of the notice"); *see also* Miss. Code Ann. § 15-1-36(2) (two-year statute of limitations for medical malpractice claims).

32 *See* Miss. Code Ann. § 15-1-57 (excluding from limitation period the time when a person "shall be prohibited by law … from commencing or prosecuting any action or remedy"). The *Pope* Court also drew insight from the California Supreme Court's interpretation of a closely related statute.

33 948 So.2d 1287 (Miss. 2007).

34 *See* Miss. Code Ann §63-1-67(1)-(3) (Rev. 2004).

35 __ So.2d __, 2008 WL 95814 (Miss. Jan. 10, 2008).

36 *See* Miss. Code Ann § 41-41-211(1) (Rev. 2005).

37 *See, e.g.,* Van Slyke v. Bd. of Trustees, 613 So.2d 872 (Miss. 1993) (extending broad standing rules to private citizens); Fordice v. Bryan, 651 So.2d 998 (Miss. 1995) (allowing legislators and Attorney General to challenge Governor's veto as unconstitutional); Dye v. State ex rel. Hale, 507 So.2d 332 (Miss. 1987) (allowing senators to challenge the validity of internal legislative rules).

38 *See, e.g.,* City of Jackson v. Greene, 869 So.2d 1020 (Miss. 2004) (parents of public school children lacked standing to challenge city council's decision to confirm the appointment of school trustees); Bd. of Trustees v. Ray, 809 So.2d 627 (Miss. 2002) (interpreting Miss. Code Ann. § 7-5-1 as limiting state agency standing to sue another agency).

39 916 So.2d 510 (Miss. 2005).

40 *Id.* at 525-26 (Citations omitted).

41 *Id.* at 526.

42 *Id.*; *see* Miss. Code Ann. § 79-11-155.

43 *See, e.g.,* Mauldin v. Branch, 866 So.2d 429 (Miss. 2003) (holding that state courts have no power to impose congressional redistricting); Tuck v. Blackmon, 798 So.2d 492 (Miss. 2001) (declining to intervene in dispute between senator and Lieutenant Governor over whether conference committee bills should be read *in toto* on the senate floor before a vote).

44 974 So.2d 232 (2008).

45 *See* Miss. Code Ann. § 23-15-855 (providing that a special election to fill a vacant seat "shall be held within

ninety (90) days from the time the proclamation is issued… unless the vacancy shall occur in a year that there shall be held a general state or congressional election").

46 *Barbour*, 974 So.2d at 241.

47 *Id.* at 246 (Graves, J., dissenting) (citation omitted).

48 *Id.* at 244-45 (Easley, J., specially concurring).