**IN THE SUPREME COURT OF MISSISSIPPI**

**REPRESENTATIVE BRYANT W. CLARK AND SENATOR JOHN HORHN** — **APPELLANTS**

**V.** — **CAUSE NO. 2017-CA-00750**

**GOVERNOR PHIL BRYANT, STATE FISCAL OFFICER LAURA JACKSON, THE MISSISSIPPI DEPARTMENT OF EDUCATION, AND STATE TREASURER LYNN FITCH** — **APPELLEES**

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# BRIEF OF THE APPELLANTS

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**ORAL ARGUMENT REQUESTED**

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## REQUEST FOR ORAL ARGUMENT

This is a case of tremendous constitutional importance. It concerns the cornerstone of Mississippi's constitutional system of government, and its outcome will touch the lives of an untold number of Mississippians – not the least of whom are its nearly half-million public schoolchildren.

Case law governing this case stretches back more than 100 years. The Court would benefit from the assistance of counsel in navigating that line of authority. Additionally, the chancery court proceedings in this case were unusually condensed. The Court would benefit from counsel's explanations of the course of those proceedings.

## STATEMENT OF THE ISSUES

The Mississippi Constitution's separation of powers doctrine is "strict"[1] and "absolute."[2] Under the separation of powers doctrine, the Legislature is the only branch of government authorized to make appropriations decisions. This appeal presents one question: does a statute allowing the Executive Branch to make appropriations decisions violate the separation of powers doctrine?

## STATEMENT OF ASSIGNMENT

Rule 16(d) of the Mississippi Rules of Appellate Procedure provides three reasons why the Supreme Court should retain this case.

First, Section 27-104-13's constitutionality is "a major question of first impression," as provided by Rule 16(d)(1).

Second, the legality of the Executive Branch's budget cuts is a "fundamental and urgent issue[ ] of broad public importance requiring prompt or ultimate determination by the Supreme Court," as provided by Rule 16(d)(2).

Third, this case presents "substantial constitutional questions as to the validity of a statute," as provided by Rule 16(d)(3).

## STATEMENT OF THE CASE

Between September 2016 and March 2017, Governor Bryant and State Fiscal Officer Jackson reduced the Legislature's Fiscal Year 2017 appropriations by more than $170 million.[3] In February and March 2017 alone, they decided to cut appropriations by $60 million, including roughly $20 million from Mississippi's perpetually cash-strapped

[1] *Gunn v. Hughes*, 210 So. 3d 969, 972 (Miss. 2017).
[2] *Id.* at 973.
[3] Record Excerpts ("R.E.") at 8; Record ("R.") at 12 (Complaint at 4). *See also* R.E. at 25-34; R. at 29-38 (Complaint at Exhibits 3 and 4).

public schools budget.[4] Governor Bryant and State Fiscal Officer Jackson made these budget cuts under the authority of Section 27-104-13 of the Mississippi Code.[5]

On May 17, 2017, Representative Bryant W. Clark and Senator John Horhn ("Legislators") filed suit in Hinds County Chancery Court against Governor Bryant and other Executive Branch officials.[6] The Legislators alleged that Section 27-104-13 of the Mississippi Code and the Executive Branch cuts performed thereunder violate the Mississippi Constitution's separation of powers doctrine. The Legislators requested declaratory, injunctive, and *mandamus* relief.[7]

The Hinds County Chancery Court convened a hearing on the Legislators' motion for preliminary injunction on May 31, 2017. The Chancery Court's questions did not directly address whether Section 27-104-13 violated the Mississippi Constitution's separation of powers doctrine. Instead, the Chancery Court focused on the possibility of deficit spending,[8] which is not at issue in this case.

The Chancery Court convened a conference in its chambers.[9] Afterward, the Legislators moved to convert the motion for a preliminary injunction into a motion for a

[4] R.E. at 8-9; R. at 12-13 (Complaint at 4-5).
[5] R.E. at 9-10; R. at 13-14 (Complaint at 5-6).
[6] R.E. at 6-7; R. at 10-11 (Complaint at 2-3).
[7] R.E. at 12-13; R. at 16-17 (Complaint at 8-9).
[8] R.E. at 58; R. at 209 (Transcript at 18) ("THE COURT: Excuse me. If you don't dispute that the State has to operate on a balanced budget, how then would you proceed with your argument that whatever monies that have been promulgated by the Legislature simply is not there in revenue funds? It's just not there."); R.E. at 60; R. at 210-11 (Transcript at 19-20) ("THE COURT: The bottom line is regardless of whether the revenue is there – let's say there's a shortfall in the revenue source – that the Legislature, in their budget-making authority, determined shall be promulgated to each overall agency, but in this instance particularly . . . MAEP, and that at this juncture the money simply is not there because there's a shortfall in the projected revenue. You budgeted for a dollar; you only brought in seventy cents, and because you budgeted for a dollar, then a dollar shall be paid. Is that what your argument is?"); R.E. at 70; R. at 220 (Transcript at 30) ("THE COURT: Okay. Let's say in that same fiscal year the money is not there, and I'm still going back to the very core question that I have. If the money is not there, then where does it come from?").
[9] R.E. at 81; R. at 232 (Transcript at 41).

permanent injunction. The Chancery Court agreed to the conversion,[10] and denied the motion for a permanent injunction.[11]

The Chancery Court entered Final Judgment on June 2, 2017. The Legislators noticed this appeal that same day.

## SUMMARY OF THE ARGUMENT

The Mississippi Constitution's separation of powers doctrine provides that "no officer of one department may perform a function 'at the core' of the power properly belonging to either of the other two departments."[12] The separation of powers doctrine is "strict"[13] and "absolute."[14] It does not yield for the sake of convenience.[15] It makes no exceptions.[16]

For more than a century, this Court has held repeatedly that budget-making is a core power of the Legislature. In 1905, this Court noted, "the control of the purse strings of government is a legislative function. Indeed, it is *the* supreme legislative prerogative . . . ."[17] In 1983, this Court explained, "[c]onstitutionally, budget-making is a legislative prerogative and responsibility in Mississippi."[18] And in 1995, the Court reiterated its longstanding view "that the budget-making power is a legislative duty."[19]

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[10] R.E. at 82-83; R. at 233-34 (Transcript at 42-43).
[11] R.E. at 84-89; R. at 235-40 (Transcript at 44-49).
[12] *Dye v. State ex rel. Hale*, 507 So. 2d 332, 343 (Miss. 1987) (quoting *Alexander*, 441 So. 2d at 1345-46).
[13] *Gunn*, 21 So. 3d at 972.
[14] *Id.* at 973.
[15] *Alexander v. State ex rel. Allain*, 441 So. 2d 1329, 1333 (Miss. 1983) (explaining that "the issue presented is whether Article I, Sections 1 and 2 should be interpreted faithfully to accord with its language or whether it should be interpreted loosely so that efficiency in government through permissive overlapping of departmental functions becomes paramount to the written word" before rejecting the latter interpretation).
[16] *Id.* at 1335 ("We must conclude the intention of the draftsmen was that there be no exceptions to the mandates that the powers of government be held and exercised in three separate and distinct departments and that no person holding office in any one department should have or exercise any power properly belonging to either of the others.").
[17] *Colbert v. State*, 39 So. 65, 66 (Miss. 1905) (emphasis added).
[18] *Alexander*, 441 So. 2d at 1339.
[19] *Moore v. Bd. of Supervisors of Hinds Cty.*, 658 So. 2d 883, 887 (Miss. 1995).

This Court's decisions are clear: under the Mississippi Constitution's separation of powers doctrine, the Legislative Branch is the only branch of government authorized to make appropriations decisions.

The Executive Branch's budget cuts, under authority assumed from Section 27-104-13, therefore violate the separation of powers doctrine. By arbitrarily changing the funding amounts appropriated by the Legislature, the Executive Branch usurps the Legislature's exclusive authority to make the state budget. This encroachment of the Legislature's power is expressly forbidden by the Mississippi Constitution. "Under our Constitution the *final* budget-making power is vested in the legislature because it has the *ultimate* responsibility of appropriation . . . ."[20]

The Hinds County Chancery Court's decision to the contrary was in error. This Court should reverse the Chancery Court and render judgment in favor of the Legislators.

## ARGUMENT

### A. The Separation of Powers Doctrine Forbids Any Branch of Government From Using Another Branch's Core Powers.

The separation of powers doctrine is the constitutional cornerstone of Mississippi's system of government. Unlike the United States Constitution, which leaves the separation of powers implicit, Mississippi's Constitution explicitly forbids the branches of government from exercising one another's core powers. To eliminate any doubt as to the inflexibility of the separation of powers doctrine,[21] the Framers of the 1890 Mississippi Constitution moved the already-explicit principle from the Bill of Rights into the Constitution's very first two sections.

[20] *Alexander*, 441 So. 2d at 1340 (emphases added).
[21] *Id.* at 1335 ("We conclude, as we must, from this history and language that the drafters of the 1890 Constitution intended to strengthen the constitutional mandate for separation of powers in this state.").

Article I, Sections 1 and 2 of the Mississippi Constitution provide:

> The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.[22]
>
> 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. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.[23]

This Court's seminal decision on the separation of powers doctrine is *Alexander v. State ex rel. Allain*.[24] In that case, this Court considered the constitutionality of several commissions that included members of both the Legislative and Executive Branches. This required the Court to consider "whether Article I, Sections 1 and 2 should be interpreted faithfully to accord with its language or whether it should be interpreted loosely so that efficiency in government through permissive overlapping of departmental functions becomes paramount to the written word."[25]

After reviewing the history of the separation of powers doctrine in Mississippi, the *Alexander* Court concluded that the 1890 Constitution's drafters intended "that there be *no exceptions* to the mandates that the powers of government be held and exercised in three separate and distinct departments and that no person holding office in any one department should have or exercise any power properly belonging to either of the others."[26]

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[22] Miss. Const., art. I § 1.
[23] Miss. Const., art. I § 2.
[24] *Alexander*, 441 So. 2d 1329.
[25] *Id.* at 1333.
[26] *Id.* at 1335 (emphasis added).

This Court has since reaffirmed that, under Mississippi's rigid separation of powers doctrine, "no officer of one department may perform a function 'at the core' of the power properly belonging to either of the other two departments."[27]

The strict and absolute nature of Mississippi's separation of powers doctrine was reaffirmed recently in *Gunn v. Hughes*.[28] In that case, the Court refused to intervene in a dispute between legislators about a constitutional provision requiring the reading of bills on the House floor. To reach its decision, the Court confronted language from *Tuck v. Blackmon*,[29] which suggested that the Court could intervene, at its discretion. The *Gunn* Court explicitly overruled *Tuck*'s suggestion and reiterated — twice — that the Mississippi Constitution's separation of powers doctrine is "absolute."[30]

### B. Budget-Making Is a Core Power of the Legislature. It is the Only Branch Authorized to Make Appropriations Decisions.

Inherent to Mississippi's separation of powers doctrine is the principle of nondelegation: one branch of government cannot delegate its core powers to another branch.[31] The doctrine traces its origins at least as early as John Locke's *Second Treatise of Government*. In that treatise, Locke explained, "[t]he Legislative cannot transfer the Power of Making Laws to any other hands. For it being but a delegated Power from the People, they, who have it, cannot pass it over to others . . . ."[32]

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[27] *Dye v. State ex rel. Hale*, 507 So. 2d 332, 343 (Miss. 1987) (quoting *Alexander*, 441 So. 2d at 1345-46).
[28] *Gunn v. Hughes*, 210 So. 3d 969 (Miss. 2017).
[29] *Tuck v. Blackmon*, 798 So. 2d 402 (Miss. 2001).
[30] *Gunn*, 210 So. 3d at 973 (explaining that the political question doctrine "cannot be considered a matter of discretion given the Mississippi Constitution's absolute separation of powers"); *id.* at 974 (holding that *Tuck* "ran afoul of . . . the Mississippi Constitution's absolute separation of powers").
[31] *See Dye*, 507 So. 2d at 343 ("[N]o officer of one department may perform a function 'at the core' of the power properly belonging to either of the other two departments.") (quoting *Alexander*, 441 So. 2d at 1345-46). *See also* Miss. Const., art. I § 2.
[32] *Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen*, 952 S.W.2d 454, 465 (Tex. 1997) (quoting John Locke, *Second Treatise of Government*, 380-81 (2nd Treatise) (Cambridge University Press 1960)).

In Mississippi, budget-making is a purely legislative responsibility that cannot be delegated. For more than 100 years, this Court has observed:

> [T]he control of the purse strings of government is a legislative function. Indeed, it is the supreme legislative prerogative, indispensable to the independence and integrity of the Legislature, and not to be surrendered or abridged, save by the Constitution itself, without disturbing the balance of the system and endangering the liberties of the people.[33]

"Under our Constitution the *final* budget-making power is vested in the legislature because it has the *ultimate* responsibility of appropriation . . . ."[34] Like other forms of lawmaking, appropriations decisions are, by their very nature, policy decisions. When the Legislature makes an appropriation, it decides what share of the state's revenue to make available to an agency or program – often at the expense of other agencies or programs – based on legislators' collective policy judgment about the priorities of the state.[35] For that reason, appropriations decisions "must be approved and voted upon by legislative members only."[36]

In *Alexander*, this Court explained:

> [c]onstitutionally, budget-making is a legislative prerogative and responsibility in Mississippi. The legislature has the power and prerogative to provide for the collection of revenues through taxation and other means and to appropriate or direct the expenditure of monies so raised. Though subject to gubernatorial veto, the primary budget-making responsibility vests in the legislature.[37]

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[33] *State v. Bd. of Levee Comm'rs for Yazoo-Mississippi Delta*, 932 So. 2d 12, 22 (Miss. 2006) (quoting *Colbert*, 39 So. at 66).
[34] *Alexander*, 441 So. 2d at 1340 (emphases added).
[35] *See Alexander*, 441 So. 2d at 1341 (holding that constitution allows governor to submit a proposed budget to the Legislature, but that the Legislature "has the ultimate responsibility of appropriation by which it can honor the budget by appropriating, in whole or in part, or refusing a budget request by non-appropriation").
[36] *Moore v. Bd. of Sup'rs of Hinds Cnty.*, 658 So. 2d 883, 888 (Miss. 1995).
[37] *Alexander*, 441 So. 2d at 1339.

This Court has since reaffirmed that "the budget-making power is a legislative duty."[38]

### 1. No Statute That Allows Executive-Branch Reductions to Legislative Appropriations Could Survive Under Mississippi's Separation of Powers Doctrine.

Section 27-104-13 of the Mississippi Code does exactly what this Court says is forbidden by the separation of powers doctrine: it authorizes one branch of government to wield another branch's core power.[39] Specifically, in the event of a revenue shortfall, the statute grants the Executive Branch unilateral authority to change the Legislature's appropriation amounts.[40] This blatantly violates this Court's decisions stretching back more than 100 years. These decisions uniformly hold that control of the government's purse strings belongs to the Legislature alone.[41] Therefore, the statute is facially unconstitutional.

This is not the first case to require that conclusion. In 2010, this Court held that Section 27-104-13 granted the Executive Branch unconstitutional authority.

In January 2010, the State Fiscal Officer announced a series of budget cuts under Section 27-104-13 to a number of areas of state government, including the Judiciary.[42] Within a week, this Court *sua sponte* declared those cuts to be unconstitutional. The Court first noted that Section 27-104-13, by its terms, contemplates cuts to "agencies" or to "the Mississippi Department of Transportation" (MDOT) — and that the Judiciary, as a branch of government, is neither an agency nor MDOT.[43]

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[38] *Moore*, 658 So. 2d at 887.
[39] *Id.*
[40] Miss. Code Ann. § 27-104-13.
[41] *See Colbert*, 39 So. at 66.
[42] *In re Fiscal Year 2010 Judicial Branch Appropriations*, 27 So. 3d 394, 395 (Miss. 2010).
[43] *Id.*

But this Court did not end its analysis there. It went on to reiterate that all statutes are presumed constitutional,[44] but "[t]o the extent the State Fiscal Officer interprets Section 27-104-13 to authorize reductions in the judicial branch's budget, we hold that such interpretation is inconsistent with the Constitution of the State of Mississippi."[45]

The *Fiscal Year 2010* Court had no reason to address the larger question of whether Section 27-104-13 as a whole was facially unconstitutional. Because of the *sua sponte* nature of the decision, the only issue before the Court was the cut to the Judiciary's budget. Therefore, a broader analysis of the statute was unnecessary. But *Fiscal Year 2010* unmistakably indicated that Section 27-104-13 exceeded constitutional limits.

### 2. Other State Supreme Courts Have Held That Executive Budget-Cut Statutes Violate the Separation of Powers Doctrine.

*Fiscal Year 2010* is not the only time that an executive budget-cuts statute has violated the separation of powers doctrine. Other state supreme courts also have found that similar executive budget-cut statutes are unconstitutional.

For example, in *Chiles v. Child A,*[46] the Florida Supreme Court held that its state constitution's separation of powers doctrine forbade executive branch officials from cutting the state budget. Similar to Article I, Section 2 of the Mississippi Constitution, the Florida Constitution provides, "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."[47] The Florida Supreme Court also shared the view that "the power to

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[44] *Id.*
[45] *Id.*
[46] *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260 (Fla. 1991).
[47] *Id.* at 263-64 (quoting Fla. Const., art. II § 3).

appropriate state funds is legislative and is to be exercised only through duly enacted statutes."[48] That court further explained that "budget-making" was not merely setting or increasing a budget — rather, "the power to *reduce* appropriations, like any other lawmaking, is a legislative function."[49]

These fundamental constitutional principles led the Florida Supreme Court to conclude that the statute authorizing executive-branch budget cuts was unconstitutional:

> The legislative responsibility to set fiscal priorities through appropriations is totally abandoned when the power to reduce, nullify, or change those priorities is given over to the total discretion of another branch of government. . . . To permit the [executive branch] to reduce specific appropriations in general appropriations bills would allow the legislature to abdicate its lawmaking function and would enable another branch to amend the law without resort to the constitutionally prescribed lawmaking process. This delegation strikes at the very core of the separation of powers doctrine, and for this reason [the executive budget-cuts statute] must fail as unconstitutional.[50]

The New Mexico Supreme Court similarly invalidated a governor's budget cuts on the basis of the separation of powers doctrine. In *State ex rel. Schwartz v. Johnson*,[51] that court explained that of the three branches of government, "[t]he legislature must exercise its exclusive power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government."[52] The court acknowledged that the executive branch had authority "to control how the money is to be allocated,"[53] but that this authority "is limited by the principle that the constitution vests the [legislative

[48] *Id.* at 265.
[49] *Id.* (emphasis in original).
[50] *Id.*
[51] *State ex rel. Schwartz v. Johnson*, 120 N.M. 820 (1995).
[52] *Id.* at 825 (citations and quotations omitted).
[53] *Id.* at 822.

branch] with authority *to determine the amount of state funds to be spent for particular purposes*."[54]

Other state courts have held that their separation of powers doctrines are not absolute. Comparing those more flexible views illustrates how strict and absolute the Mississippi Constitution is on this question.

For example, the New Hampshire Supreme Court has upheld that state's executive budget cuts statute based on its view that the state's separation of powers is *not* absolute.[55] That court has explained that its separation of powers "contemplates no absolute fixation and rigidity of powers between the three great departments of government. Instead, it expressly recognizes that, as a practical matter, there must be some overlapping among the three branches of government and that the erection of impenetrable barriers among them is not required."[56] Notably, the New Hampshire Supreme Court explicitly contrasted its view of the separation of powers with Florida's, which led the Florida Supreme Court to find its executive budget-cuts statute unconstitutional.[57]

The Vermont Supreme Court also affirmed an executive budget-cuts statute, but only after reiterating its view that its separation of powers doctrine is "a relatively forgiving standard."[58]

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[54] *Id.* (quotations omitted) (emphasis added).
[55] *New Hampshire Health Care Ass'n v. Governor*, 13 A.3d 145, 153 (N.H. 2011).
[56] *Id.* (citation and quotation omitted).
[57] *Id.* at 394 (explaining that the Florida Supreme Court's decision to strike down its executive budget-cuts statute "espoused a different view of the separation of powers doctrine from ours. . . . Our view, like that of the Vermont Supreme Court, is more forgiving.") (citations and quotations omitted).
[58] *Hunter v. State*, 865 A.2d 381, 392 (Vt. 2004) (quotation omitted).

But the Mississippi Constitution's separation of powers doctrine contemplates no such flexibility. It is not relatively forgiving or practical. It is "absolute."[59] It could never sanction the executive overreaching allowed by Section 27-104-13.

### C. The Executive Branch's Limited "Budget Control" Power Is an Administrative Power That Does Not Allow the Executive to Change the Legislature's Appropriations Decisions.

This case is not about "budget control," which is separate and distinct from the Legislature's "budget making" power.[60] Budget control is the Executive Branch's power "to administer the appropriation and to accomplish its purpose."[61] This power corresponds to the Executive Branch's general purpose, which is to "administer and enforce the laws as enacted by the legislature."[62] In other words, deciding how much money to *appropriate* is budget making; deciding how to *use* that appropriation is budget control.[63]

#### 1. The Constitution's Framers Intended the Legislature's Budget Power to be Superior to the Governor's.

In matters concerning the state budget, the Legislature's power far surpasses the governor's. As Justice Ethridge's landmark treatise *Mississippi Constitutions* explains, "[t]he legislative power is very broad and comprehensive. . . . The legislative department of any government having a division of powers is, by far, the most powerful and important department . . . ."[64] That fact is not some political accident: it was one of the chief designs of the Constitutional Convention of 1890.

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[59] *Gunn*, 210 So. 3d at 973.
[60] *Alexander*, 441 So. 2d at 1341 ("The budget control process presents a different issue in that it is an executive function.").
[61] *Id.*
[62] *Id.* at 1338.
[63] *See id.* at 1340 (Legislature has "ultimate" and "final" power to make appropriations).
[64] George H. Ethridge, *Mississippi Constitutions* (1928) at 26.

Among the concerns motivating the development of a new constitution in the late Nineteenth Century was "a widespread belief . . . that the 1868 constitution gave too much power to the governor."[65] By the time the delegates assembled, "[t]he convention was . . . rather hostile toward the governor's power."[66] As future Secretary of State Eric Clark explained in his master's degree thesis on the Convention, "[t]he constitution declared that the governor had the 'chief executive power' in the state, and the responsibility to 'see that the laws are faithfully executed.' Yet the governor was given little real power to carry out that charge."[67]

The Framers' purposeful limitation of the governor's power stretched across the functions of state government, including budget-making. "On the one hand, the governor was given the power to partially approve and partially veto appropriations bills, thus increasing his bargaining power and final authority to shape the law."[68] On the other hand, the Legislature retained the final authority to "determine[ ] the subjects of taxation, and the rates of taxation, the methods of assessing taxes and raising revenues; and how, and for what purpose, these revenues shall be spent."[69]

In other words, the governor has the ability to veto appropriations bills.[70] But subject only to this veto, the Constitution vests the final authority over budgeting matters in the Legislature.

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[65] Eric C. Clark, The Mississippi Constitutional Convention of 1890: A Political Analysis at 10-11 (May 1975) (on file with Mississippi Department of Archives and History). *See also id.* at 10 (demands for an elected judiciary "were part of a general small farmer distrust of big government, especially of a strong governor").
[66] *Id.* at 136-37.
[67] *Id.* at 137.
[68] *Id.* at 137-38 (citing Miss. Const., art. IV § 73).
[69] Ethridge at 26.
[70] To be clear, the Executive Branch's budget cuts are not a form of a partial veto. By its very nature, a veto can occur only before legislation is enacted. Once legislation becomes law, any opportunity for a veto has passed. *See Clinton v. City of New York*, 524 U.S. 417, 439 (1998).

### 2. Changing the Legislature's Spending Decisions Does Not "Administer" the Budget. It Changes the Budget Altogether.

Governor Bryant's budget cuts exceed the role that the Framers envisioned for the governor. Any changes to the Legislature's appropriations decisions — including reductions to those appropriations — can be made only by the Legislature.

Again, the Florida Supreme Court's decision in *Chiles* is instructive. In *Chiles*, the executive branch officials performing budget cuts argued that their reductions did not constitute "appropriating."[71] The Florida court rejected that argument and explained that "the power to *reduce* appropriations, like any other lawmaking, is a legislative function."[72] The court "construe[d] the power granted in [the executive-branch budget-cuts statute] as precisely the power to appropriate."[73]

Similarly, the New Mexico Supreme Court recognizes the executive branch's authority "to control how the money is to be allocated"[74] — i.e., how already-appropriated money is to be distributed. This is the power of "budget control." It is purely executive and purely administrative. In contrast, the power of appropriation — the threshold decision of how much money should go to a state agency or program — is a purely legislative one. Therefore, by cutting legislative appropriations, the Executive Branch far oversteps its limited, administrative "budget control" authority.

*Fiscal Year 2010* implicitly makes the same point. The *Fiscal Year 2010* Court held that budget cuts to the Judiciary were beyond the Executive Branch's constitutional

[71] *Chiles*, 589 So. 2d at 265.
[72] *Id.* (emphasis in original).
[73] *Id.*
[74] *Schwartz*, 120 N.M. at 822.

power.[75] If these reductions to legislatively approved appropriations constituted "budget control," then they would have fallen within the Executive Branch's constitutional authority. But this Court was clear: these budget cuts were unconstitutional.

## CONCLUSION

Affirming Section 27-104-13 as constitutional would require this Court to overturn more than 100 years of precedent. For decades, this Court has recognized that no branch of government can wield another's core powers without violating the separation of powers, and that control of the state's purse strings lies exclusively with the Legislature. Section 27-104-13 violates both these principles. It is facially unconstitutional and must be permanently enjoined.

The Hinds County Chancery Court's decision to the contrary was incorrect. This Court should reverse the Chancery Court and render judgment in the Appellants' favor.

RESPECTFULLY SUBMITTED this Eleventh day of October 2017.

/s/ *Will Bardwell*
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[75] *Fiscal Year 2010*, 27 So. 3d at 395 ("To the extent the State Fiscal Officer interprets Section 27-104-13 to authorize reductions in the judicial branch's budget, we hold that such interpretation is inconsistent with the Constitution of the State of Mississippi.").

## CERTIFICATE OF SERVICE

I, Will Bardwell, hereby certify that, simultaneous with this brief's filing, I have served true and correct copies of the same on all counsel of record via the Court's electronic filing system. Additionally, I have served a true and correct copy via United States Postal Service mail, postage prepaid, upon the Honorable Patricia Wise, Hinds County Chancery Court, P.O. Box 686, Jackson, Mississippi 39205-0686.

SO CERTIFIED this Eleventh day of October 2017.

/s/ *Will Bardwell*
Will Bardwell
Counsel for the Appellants