IN THE SUPREME COURT OF MISSISSIPPI

2006-CA-01703
consolidated with
2007-CA-00821

NORMAN Q. THOMAS, JR., INDIVIDUALLY
AND ON BEHALF OF WILLIAM THOMAS
AND ANNA THOMAS, TWO MINORS — PLAINTIFF-APPELLANT

VS.

CLARK G. WARDEN, M.D., AND
MISSISSIPPI BAPTIST MEDICAL CENTER — DEFENDANTS-APPELLEES

Appeal from Circuit Court of the First Judicial District of Hinds County

AMICI CURIAE BRIEF OF THE MISSISSIPPI STATE MEDICAL ASSOCIATION, THE MISSISSIPPI HOSPITAL ASSOCIATION, THE MISSISSIPPI HEALTH CARE ASSOCIATION, THE MISSISSIPPI NURSES ASSOCIATION, AND THE MISSISSIPPI DENTAL ASSOCIATION IN SUPPORT OF DEFENDANTS

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INTRODUCTION

The 2002 tort reform measures challenged by plaintiff in this case are of vital interest to the undersigned *amici curiae* and to the public welfare of the people of this State. The reforms are a public policy response to a public policy crisis threatening the availability of medical care statewide. Expressing their judgment through combined action of the two political branches of state government (legislative *and* executive[1]), the people of this State determined that the medical care crisis stemmed from a widespread abuse of malpractice lawsuits. Through their political representatives, the people instituted these important reforms to limit abuse and to restore integrity to, and confidence in, the system. Since becoming effective in 2003, these reforms have helped to do just that. They should not be cast out on specious constitutional pretexts.

Plaintiff Norman Thomas himself admitted, in the trial court, that the certification requirement is a "rational" measure for preventing "frivolous and meritless lawsuits." R 197 (discussing MISS. CODE ANN. § 11-1-58). Pre-suit notice provisions are recognized as a reasonable way to allow a defendant "to investigate and attempt settlement of the claim prior to facing a lawsuit." *University of Miss. Med. Ctr. v. Easterling*, 928 So.2d 815, 819 (¶ 20) (Miss. 2006). In addition, a pre-suit notice provision creates an opportunity for cost-effective pre-suit investigation and communication that can prevent non-meritorious claims, or quickly resolve meritorious ones, avoiding litigation costs either way. The certification requirement reasonably mandates at least minimal pre-suit due diligence by counsel, providing protection against meritless claims. Both

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[1] The Governor proposed a bill and called the special session that enacted these provisions. The call set the legislative agenda for the session. *See* Op. Att'y Gen. Nos. 2002-0554 & 2002-0568, 2002 WL 31663401 & 31663424 (Miss.). This combined action of the two political branches in setting public policy illustrates the way the separation of powers doctrine, properly understood, requires a dispersal of power among the branches, rather than the arbitrary walls advocated by plaintiff. *See* Argument *infra* at 13.

requirements are reasonable and effective measures for discouraging meritless claims and preventing unnecessary lawsuits.

Both requirements were crafted to allow diligent plaintiffs multiple options for compliance and ample time to act. *See* MISS. CODE ANN. § 11-1-58, § 15-1-36 (15). The right to pursue a legal claim is "coupled with responsibility, including the responsibility to comply with legislative enactments, rules, and judicial decisions." *Arceo v. Tolliver*, 949 So.2d 691, 697 (¶ 13) (Miss. 2006). A diligent plaintiff with a legitimate claim can easily comply with these flexible enactments. Thomas resorts to constitutional attacks because, despite that flexibility, he came nowhere near achieving compliance. Thomas's non-compliance cannot be excused if the enactments are to have any remaining force. On this record, the "substantial compliance" theme can amount to nothing more than a smokescreen for an evisceration of the statutes, leaving meaningless shells.

Regarding § 11-1-58, Thomas admits his complaint was not "accompanied by" any form of "certificate," despite the provision's multiple certification options. MISS. CODE ANN. § 11-1-58(1). He thereby admits non-compliance. Thomas also never proved that any due diligence was ever actually accomplished. As defendants point out, Thomas never disclosed any expert support for any element of a claim, despite an ongoing obligation to respond to discovery. *See* Warden Brief at 14; MBMC Brief at 21 (citing R 18).

Regarding § 15-1-36 (15), Thomas admits that he did not honor the 60-day notice period with respect to either defendant, even with notice counted from the day of mailing (rather than of receipt). Since the day-of-mailing rule already diminishes actual notice to a degree, no further diminution can be excused without substantially impairing the statute. Thomas's brazen reliance, with respect to Dr. Warden, on a mailing that was returned stamped "not deliverable as addressed"

shows what a nullity Thomas actually seeks to make of the statute.[2] Thomas is also in the bizarre position of affirmatively relying on the provision he seeks to nullify – admitting that his complaint was untimely but for the tolling effect of the § 15-1-36 (15) notice period.[3] It is difficult to see how such a dilatory plaintiff can be permitted to have the law both ways.

SUMMARY ARGUMENT

The defendants demonstrate in their briefs that the challenged reforms are valid and constitutional as, among other things, falling easily within the bounds of what this Court has always recognized as substantive public policy, which the Legislature has every right to control. Instead of repeating those points, the *amici* will focus on a dangerous fallacy underlying Thomas's main argument – i.e., the contention that the separation of powers doctrine requires *exclusive* judicial control over procedural matters. Justice Hawkins effectively exposed the fallacy of that contention almost 20 years ago in *Hall v. State*, 539 So.2d 1338, 1359 (Miss. 1989) (dissenting). His words of warning should not be forgotten. Although misleadingly billed as a defense of constitutional structure, Thomas's argument actually undermines the essence of the separation of powers doctrine, and it must be rejected.

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[2] *See* R 59 (RE Tab 3). *Cf.* Thomas Brief at 3 (relying on date of "not deliverable" mailing), R 34 (same).

[3] *See, e.g.,* Thomas Brief at 3.

ARGUMENT

I. The Separation of Powers Doctrine Mandates Judicial Restraint On All Matters of Public Policy, Including Procedural Matters.

Thomas asks this Court to embrace an extreme view of the separation of powers doctrine that would empower the judiciary to set aside legislation for any perceived conflict with judge-made procedural rules. But this extreme view subverts the doctrine it purports to protect. It is one thing to recognize judicial authority to make and codify purely procedural rules, as this Court has properly done. But it is quite another to declare that the Legislature has no authority to make laws that affect judge-made rules. Thomas's argument, which depends on the latter, radical assertion, cannot be reconciled with a reasonable view of the separation of powers doctrine. Thomas is urging this Court to charge "over the brink" of constitutional illegitimacy that Justice Hawkins stridently warned about in *Hall v. State*, 539 So.2d 1338, 1359 (Miss. 1989) (dissenting). This Court should refuse to do so.

A reasonable view of the separation of powers doctrine mandates, at the very least, judicial restraint with respect to legislation, including legislation with procedural elements or effects. The wisdom of, and need for, judicial restraint on procedural matters was emphasized recently by the concurrence in *Wolfe v. City of D'Iberville*, 799 So.2d 142 (Miss. App. 2001) (Southwick, J., joined by Judges McMillan, Lee and Chandler). Urging restraint, the *Wolfe* concurrence observed, "[w]hen different branches of government have powers that affect the same subject matter, there will inevitably be areas of potential overlap or conflict." 799 So.2d at 149 (¶ 31). Thus "a branch of government could be commended for not insisting on exercising its full range of power." *Id.* at ¶ 30. "In all events, the well-considered and important limits to the judiciary's powers should be maintained." *Wolfe*, 799 So.2d at 151 (¶ 37).

Among the reasons for calling for judicial restraint, the *Wolfe* concurrence noted the inherent difficulty – if not impossibility – of reliably distinguishing purely procedural matters from important issues of public policy. *Id.* at 150 (¶ 33) ("No Mississippi precedent that I have found gives extensive commentary on what is practice and procedure and what is beyond those categories."). In fact, "[t]he line between substance and procedure, although it can be drawn in other contexts with some measure of success, is unworkable as a means for defining legislative jurisdiction." William H. Page, *Constitutionalism and Judicial Rulemaking: Lessons from the Crisis in Mississippi,* 3 MISS. C.L. REV. 1, 42 (1982).[4] Justice Hawkins put it more bluntly: "To attempt to clearly separate rules into 'substantive' and 'procedural' is a quagmire . . . ." *Hall,* 539 So.2d at 1364 (dissenting).

To minimize the risk of encroachment on the Legislature's indisputable authority in matters of public policy, the *Wolfe* concurrence recommended limiting any exclusionary view of judicial rule-making authority narrowly "to conduct occurring within a court, from the time the matter was properly commenced in that court until it is disposed of by the court." *Wolfe,* 799 So.2d at 150 (¶ 33). It cautioned that matters outside these "core functions in the day-to-day operations of courts," such as statutes of limitation, should be recognized as being legitimate public policy questions for the Legislature. *Id.* Under *Wolfe*'s proposed criteria, the reform provisions at issue in this appeal must be regarded legitimate public policy questions for the Legislature.

In keeping with the role of an intermediate court, the *Wolfe* concurrence was measured and diplomatic in its calls for restraint, and as a result, it likely understated the risks of an exclusionary view. Dissenting in *Hall,* Justice Hawkins was not so constrained. His blunt warnings deserve

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[4] Justice Hawkins deemed Professor Page's work to be "required reading for any student of this question." *Hall,* 539 So.2d at 1365.

careful attention, first, because they are supported by an abundance of solid authority, citations to which are dispersed throughout his long and somewhat disjointed "little essay." *Hall*, 539 So.2d at 1350. Adding to the weight of that authority, Justice Hawkins also brought to the table the insight of a member of the Court who personally participated in the original adoption of the rules. As Justice Hawkins notes, it was his arrival on the Court that created majority support for views that led to the adoption of the rules. *Id.* at 1351 n.1. In the resulting controversy, Justice Hawkins was one of the justices targeted in a Senate bill for removal from office. *Id.* By the time of *Hall*, he was the only veteran of the rules controversy who remained on the Court. *Id.* ("I am the only remaining member of this Court who bears the scars of voting for adoption of the Rules").[5]

Justice Hawkins believed that "[a]doption of the MRCP was a necessity in order to remove outmoded impediments to the functioning of the judiciary." *Hall*, 539 So.2d at 1359. But he was also certain that judicial rule-making power, as announced in *Newell v. State*, 308 So.2d 71 (Miss. 1975), and expressed in the adoption of the rules, was limited to steps that were "conducive to the proper administration of justice" *and* that also implicated "*no important public policy considerations*." *Id.* at 1362-63 (emphasis added). Strict adherence to these limiting principles is necessary, in Justice Hawkins's well-supported view, to avoid encroachment on the Legislature's proper role in establishing public policy.

Thus as "a charter subscriber to this Court's assertion of authority in adopting rules of procedure," Justice Hawkins adamantly rejected the *Hall* dicta on which Thomas's argument so heavily depends. Justice Hawkins found any suggestion that the Court's rule-making authority

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[5] The intensity of controversy that surrounded the original adoption of the rules may no longer be widely known or remembered. For a detailed account, see Page, 3 MISS. C.L. REV. 1 at 4-9.

could supersede to the Legislature's authority to legislate on *any* matter affecting public policy, including procedural matters, to be constitutionally baseless:

> My quarrel is with the holding of exclusivity of the majority that the Legislature has no Constitutional authority to pass laws dealing with evidence or procedure. . . . [¶] . . . Not only in Mississippi, but generally throughout the United States it has been accepted that the Legislature was exercising a Constitutional prerogative in passing procedural or evidentiary statutes. . . . [¶] . . . Clearly, the authors of our 1890 Constitution, as did the framers of our previous state constitutions, recognized that it was the Legislative branch which enacted statutes on court procedures. It would be a gross distortion of history to state otherwise. . . . [¶] . . . [I]f [*Newell*] had purported to remove from the Legislative branch authority to enact procedural statutes which do not infringe upon some Constitutionally-guaranteed right of a litigant, i.e. to remove from the Legislature this subject matter jurisdiction, I reject it entirely. That would not only be dictum, but hokum as well. . . . . I do not for one moment believe the Court meant this. The Court's own conduct for the next six years shows no intent whatever to assert unto itself the sole authority to promulgate rules.

Hall, 539 So.2d at 1350, 1352, 1347-58.

Justice Hawkins recognized that the "necessity" of adopting rules unilaterally in order to accomplish long-delayed and much needed reform had already taken the Court to the outer limit of its constitutional authority:

> We should be brutally honest. It was this Court, not the Legislature, which stretched the import of the Constitution's words to their limit in asserting *we* had the power under our Constitution to promulgate blanket rules. . . . . To do so, we had to claim an "inherent power," thereby conceding we had no specific grant of authority. That court procedures hopefully have been immeasurably improved by our action should not blind us to the inescapable fact that we, not the Legislature, have stretched our authority to the limit under our Constitution. And, it is most unlikely we would even have asserted this authority in the first place had the Legislature fulfilled its responsibility.

Hall, 539 So.2d at 1359.

Justice Hawkins accordingly recognized that any further expansion of the Court's claim of rule-making power would lead the Court into actions devoid of legitimate constitutional support:

> The majority now clearly carries us beyond any power we have asserted, and over the brink. It is one thing to assert, as I hope justifiably we have done, that we have Constitutional authority to adopt rules of procedure. It is quite another for the majority to assert the Legislature has *no* Constitutional power, *no* Constitutional authority on its own to enact procedural or evidentiary statutes, even when dictated by broad public policy and necessity. The Mississippi Constitution gives this Court no such authority.

Id.

Justice Hawkins reasonably believed "[i]t takes only a modest scrutiny to see the flaws in the contention that the 'separation of powers' grants this Court 'inherent' *exclusive* authority to promulgate rules" (the contention Thomas makes in this case). *Hall*, 539 So.2d at 1353. An abundance of authority supports that view. To begin with, as he and others have pointed out,[6] the Mississippi Constitution contains multiple *explicit* references to the Legislature's authority to regulate *procedural* aspects of "cases" consigned to the judiciary for decision. MISS. CONST. § 90. Most conspicuously, § 90 specifies "enumerated cases" that the Legislature must "provide[] for" by "general laws" only, to the exclusion of "local, private or special laws." *Id.* The "enumerated cases" of § 90 include the matter of "[r]egulating the practice in courts" generally. MISS. CONST. § 90(s). Also referenced are the more specific "cases" of "[g]ranting divorces," "[p]roviding for changes of venue in civil and criminal cases," and "[s]electing, drawing, summoning, or empaneling grand or petit juries." *Id.* (a), (c), & (n). Other explicit constitutional references to legislative authority in procedural matters may be found in § 31 (granting to the Legislature the authority to allow for verdicts by "nine or more jurors" in "all civil suits tried in the circuit and chancery court") and in § 163 (in the judiciary article (Article 6), providing that the Legislature "shall provide by law for" cases transferred between chancery and circuit, including any

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[6] *Hall*, 539 So.2d at 1353; Page, 3 MISS. C.L. REV. 1 at 38, text & n.228.

"reformation of the pleadings"). MISS. CONST. §§ 31, 163. The Constitution contains no comparable references with respect to judicial power. To the contrary, the Constitution now contains an explicit limitation on judicial power.[7]

Technically, § 90 is an itemized limitation on legislative power (one prohibiting private laws), not a grant. That no itemized grant of legislative power is to be found in the Constitution demonstrates none was needed. It was universally understood, in Mississippi as elsewhere, that legislative power, by definition, included the power to make laws affecting legal procedures. *See Hall*, at 1351-52; Page, 3 MISS. C.L. REV. 1 at 4, 26.

Thus, in Mississippi as elsewhere, procedural legislation dates to the "earliest days of statehood." Page, 3 MISS. C.L. REV. 1 at 4 text & n.23 (citing the "Circuit Court Act of 1822" and "significant amendments to common law practice . . . adopted in 1823 , 1824 , 1828, 1830 , 1836, 1837, 1838, 1840, 1842, and 1846. *See* MISS CODE, ch. 59, arts. 2-13 (1848)"). "Every codification of Mississippi statutes since 1857 has contained a procedural code for circuit and chancery courts." *Id.* n.24. "[T]he present state constitution was adopted in 1890 – the heyday of legislative control." *Id.* at 26. "It is beyond question that the framers of the Mississippi Constitution in 1890 understood that the legislature had the power to enact procedural statutes" since "[t]hroughout the latter part of the nineteenth century, procedure in Mississippi was governed, as in most other states, by statute." *Id.* As Justice Hawkins observed, "[i]t is historical fact that the Mississippi Legislatures did for at least 130 years enact statutes on practice and procedure in courts of this state, statutes 'at the core of the judicial function.'" 1351.

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[7] The Constitution now provides as follows: "The Supreme Court shall have such jurisdiction as properly belongs to a court of appeals and shall exercise no jurisdiction on matters other than those specifically provided by this Constitution or by general law." MISS. CONST. § 146. The limiting clause was added by constitutional amendment in 1983. *See Hall*, 539 So.2d at 1350, 1358-59 (Hawkins, dissenting).

In this regard, the Mississippi Legislature and the framers of the 1890 Mississippi Constitution were doing nothing more than faithfully following the federal model of separation of powers, as exemplified by the federal Constitution, which has to be recognized as the archetypal expression of the doctrine.[8] The power of Congress to legislate procedural matters has never been questioned. It was not by accident that one of the first orders of business for the new Congress after ratification was to adopt the Judiciary Act of 1789, addressing procedural matters large and small.[9] 1 Stat. 73. Chief Justice Marshall regarded the existence of Congressional "power to make laws" with respect to *all* aspects of judicial procedure (including, in the particular case, the execution of federal judgments) "to be one of those plain propositions which reasoning cannot render plainer." *Wayman v. Southard*, 23 U.S. 1, 22 (1825). "The only inquiry," he wrote, "is how far has this power been exercised?" *Id.*

As exemplified by the federal Constitution, separation of powers has nothing to do with any purported distinction between procedural and substantive lawmaking. It has to do, rather, with separating the power of *lawmaking* (legislating) from the power of *judging* – i.e., of rendering dispositve judgments in specific cases. The core power of the legislature is to make laws; that of the judiciary is to decide cases. *See, e.g.*, *Wayman*, 23 U.S. at 46 ("The difference between the departments undoubtedly is that the legislature makes, the executive executes, and the judiciary construes the law." (Marshall, C.J.)). The core judicial power is "not merely to rule on cases, but to *decide* them, subject to review only by superior courts." *Plaut v. Spendthrift Farm, Inc.*, 514

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[8] Thomas concedes the authority of the federal model by claiming to rely upon it. Brief at 12-13.

[9] The Judiciary Act "was passed by the first congress assembled under the constitution, many of whose members had taken part in framing that instrument, and is contemporaneous and weighty evidence of its true meaning." *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888).

U.S. 211, 218-19 (1995). "'[A] judgment conclusively resolves the case' because 'a 'judicial Power' is one to render dispositive judgments.'" *Id.* at 219.

A legislature's lawmaking therefore does not encroach on judicial power until it attempts to "retroactively command[] the . . . courts to reopen final judgments." *Plaut*, 514 U.S. at 219. "'A legislature without exceeding its province cannot reverse a determination once made, in a particular case; though it may prescribe a new rule for future cases.'" *Id.* at 222 (quoting *The Federalist No. 81* at 545 (J. Cooke ed. 1961)). The framers' "sense of a sharp necessity to separate the legislative from the judicial power [was] prompted by the crescendo of legislative interference with private judgments of the courts" in the colonial period. *Plaut*, 514 U.S. at 221. "The Framers . . . lived among the ruins of a system of intermingled legislative and judicial powers [in which] colonial assemblies and legislatures functioned as courts of equity of last resort, hearing original actions or providing appellate review of judicial judgments." *Id.* at 219. The framers intended the "separation of the legislative from the judicial power in the new Constitution" as a "cure" for that "system of legislative equity." *Id.* at 221.

A legislature does not encroach on judicial power by making laws "that do not reverse a determination once made, in a particular case" – no matter how procedural the law (or rule) may otherwise be. *Plaut*, 514 U.S. at 222 (quoting *The Federalist No. 81*). "Rules of pleading and proof can . . . be [statutorily] altered [even] after the cause of action arises [citation omitted] and even, if the statute clearly so requires, after they have been applied in a case but before final judgment has been entered."[10] *Id.* at 229.

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[10] Finality is construed in the broadest possible sense for a separation of powers analysis to include all possible appeals or other action by the judicial "department." *Plaut*, 514 U.S. at 227. "It is the obligation of the last court in the hierarchy that rules on the case to give effect to Congress's latest enactment, even when that has the effect of overturning the judgment of an inferior court, since each court, at every level, must 'decide according to existing laws.'" *Id.*

"The essential balance created by this allocation of authority" (514 U.S. at 222) not only *allows* the legislature to alter procedural rules even while cases are pending; it also *requires* that the legislature be allowed to do so. The balance assumes the "Legislature would be possessed of power to 'prescrib[e] the rules by which the duties and rights of every citizen are to be regulated.'" *Plaut*, 514 U.S. at 222 (quoting *The Federalist No. 78* at 523). Just as legislative power must be constrained from interfering with the judgments of courts in specific cases; judicial power must also be constrained from interfering with legislative judgments regarding public policy expressed in general law, even procedural law. *Id.* The need for balance works both ways.

A claim to exclusive judicial authority over procedure is not only unnecessary for maintaining the "essential balance created by" the separation of powers (514 U.S. at 222); it affirmatively upsets the balance. "There is no power over substantive law without a power over procedure." Page, 3 MISS. C.L. REV. at 40. Judicial decisions make law, but incremental lawmaking by the judiciary was expected to be constrained by the limitations of its core function of deciding specific cases and by legislature's right to "prescribe a new rule for future cases." *Plaut*, 514 U.S. at 222 (quoting *The Federalist No. 81*). *See also id.* at 223 ("The Judiciary would be, 'from the nature of its functions, . . . the [department] least dangerous to the political rights of the constitution,' . . . because the binding effect of its acts was limited to particular cases and controversies") (quoting *The Federalist No. 78*).[11] Thomas's theory upsets this essential balance of power, undermining the essence of doctrine it purports to protect. *See Hall*, 539 So.2d at 1364 (Hawkins, J., dissenting) ("When we hold we have the *exclusive* authority in this area we negate the most basic principle of our government, that of checks and balances.").

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[11] *See also* Page, 3 MISS. C.L. REV. 1 at 29-30, 32-33.

Thomas's extremist view can be rejected, and a constitutional balance of power can be preserved, without undermining this Court's legitimate rule-making power. That legislative power extends to judicial procedures does not mean judicial power does not also. Exclusionary notions to the contrary misconceive the separation of powers doctrine. The "doctrine does not 'divide the branches into watertight compartments,' nor 'establish and divide fields of black and white.'" *Plaut*, 514 U.S. at 245 (Breyer, J., concurring; quoting Justice Holmes). It "does not create a 'hermetic division among the Branches' but 'a carefully crafted system of checked and balanced power.'" *Id.* "[T]he unnecessary building of such walls is, in itself, dangerous, because the Constitution blends, as well as separates, powers in its effort to create a government that will work for, as well as protect the liberties of, its citizens." *Id.* (citing *The Federalist No. 48* (J. Madison)). "We must remember that the machinery of government would not work if it were not allowed a little play in its joints." *Id.*, 514 U.S. at 266 (Stevens, J., dissenting, quoting Holmes).

It is thus not by chance that the Mississippi Constitution itself literally speaks of a "distribution" or division of power. MISS. CONST. Article I ("Distribution of Powers"); MISS. CONST. § 1 ("powers . . . shall be divided"). Justice Hawkins was correct that a "dispersal" of power is what is required:

> [T]he very strength of separation of powers is dependent upon *no branch* being absolutely independent. [¶] "Madison saw clearly that the point of the separation of powers was not some aesthetically pleasing distribution of every government function but the effective dispersal of power among separate, and to some degree, antagonistic parties."

Hall, 539 So.2d at 1353 (quoting Richard S. Kay, *The Rule-Making Authority and Separation of Powers in Connecticut,* 8 CONN. L. REV. 1, 40 (1975)).

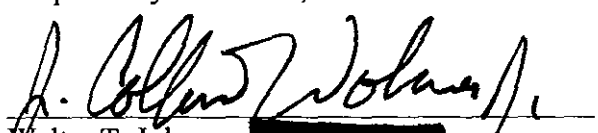
A claim of *exclusive* judicial authority over procedural matters subverts the proper dispersal of power.[12] Judicial authority over procedural matters "conducive to the proper administration of justice" implicating "no important public policy considerations" does not. *Hall*, 539 So.2d at 1362-63. This Court should recognize the wisdom of Justice Hawkins dissenting views in *Hall* and reject Thomas's argument.

CONCLUSION

The judgment should be affirmed.

Dated: February 20, 2008.

Respectfully submitted,



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[12] The rules themselves contradict such a claim, since they make multiple references to continuing legislative authority over procedural matters. Rule 81 alone specifies at least 12 types of "actions" that remain "generally governed by *statutory procedures*" (a term that would be an oxymoron in Thomas's view of the world). MRCP 81(a) (emphasis added). *See also, e.g.*, MRCP 1 (referencing deference to any "*statute* applicable to [certain] proceedings"); MRCP 6(a) (referencing "period[s] of time prescribed or allowed . . . by any applicable *statute*"); MRCP 11 ("Except when otherwise specifically provided by *statute*, pleadings need not be verified or accompanied by affidavit"); MRCP 17 ("party authorized by *statute* may sue in his representative capacity") (emphasis added throughout).

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the above and foregoing paper to be delivered by United States mail, postage prepaid, to the following counsel of record:

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THIS, the 20th day of February, 2008.

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