

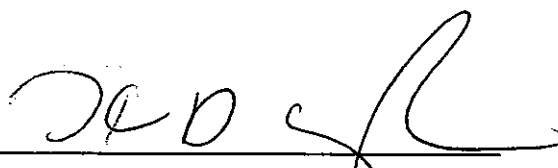
2009-CT-00984-SCTFS

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Court may evaluate disqualifications or recusal.

1. Jay Jones, Appellant
2. Kevin D. Camp, Attorney for Petitioner / Appellant
3. J. Michael Duncan, Attorney for Petitioner / Appellant
4. Tommy Savant, Former Ridgeland Municipal Prosecutor
5. Boty McDonald, Current Ridgeland Municipal Prosecutor
6. Harold B. McCarley, Jr., Ridgeland Municipal Court Judge
7. Edwin Y. Hannan, Madison County Court Judge
8. Samac S. Richardson, Madison County Court Judge

Respectfully Submitted,



KEVIN D. CAMP, MSB # [REDACTED]
Attorney for Appellant

TABLE OF CONTENTS

<u>INDEX</u>	<u>PAGE</u>
CERTIFICATE OF INTERESTED PERSONS.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE ISSUE.....	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT	
MISS. CODE ANN. § 11-51-81 OPERATES TO DENY AGGRIEVED PARTIES IN NINETEEN COUNTIES IN MISSISSIPPI THEIR FUNDAMENTAL RIGHT TO EQUAL ACCESS TO THE COURTS AS PROTECTED BY THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION AND IS UNCONSTITUTIONAL.....	3
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	10

TABLE OF AUTHORITIES

<u>CASE</u>	<u>PAGE</u>
<i>Albritton v. City of Winona</i> , 178 So. 799 (Miss. 1938).....	5
<i>Associated Press v. Bost</i> , 656 So.2d 113 (Miss. 1995).....	5
<i>Blackledge v. Perry</i> , 417 U.S. 21 (1974).....	7
<i>Chambers v. Baltimore & Ohio R.R.</i> , 207 U.S. 142 (1907).....	5
<i>Cleveland v. Mann</i> , 942 So.2d 108 (Miss. 2006).....	5
<i>Colten v. Kentucky</i> , 407 U.S. 104 (1972).....	7
<i>Johnson v. California</i> , 543 U.S. 499 (2005).....	6
<i>Rias v. Henderson</i> , 342 So.2d 737 (Miss. 1977).....	6
<i>Ryland v. Shapiro</i> , 708 F.2d 967 (5th Cir. 1983).....	3
<i>State v. Jones</i> , 726 So.2d 572 (Miss. 1998).....	5

<u>CONSTITUTIONAL AUTHORITY</u>	<u>PAGE</u>
Fourteenth Amendment to the United States Constitution.....	2,3,7
Article 3 § 14 Mississippi Constitution.....	2,4

<u>STATUTORY AUTHORITY</u>	<u>PAGE</u>
Miss. Code Ann. § 11-51-81 (Rev. 2004).....	2,3,4,6,7

<u>OTHER AUTHORITY</u>	
<i>Judiciary Directory & Court Calendar</i> (Delbert Hosemann, Secretary of State 2010)...	2,6

STATEMENT OF THE ISSUE

- I. MISS. CODE ANN. § 11-51-81 IS UNCONSTITUTIONAL IN THAT IT DENIES SOME AGGRIEVED PARTIES IN THIS STATE EQUAL ACCESS TO THE SUPREME COURT WHICH THUS INFRINGES ON THEIR EQUAL PROTECTION AND DUE PROCESS RIGHTS AS GUARANTEED IN THE UNITED STATES CONSTITUTION.**

SUMMARY OF THE ARGUMENT

Miss. Code Ann. § 11-51-81 is a statute which is in clear contradiction with the Fourteenth Amendment Equal Protection Clause of the United States Constitution. It is also in contradiction with the due process clause of the Mississippi Constitution.

Section 14, Article 3 of the Mississippi Constitution provides that persons shall not be deprived of life, liberty or property without due process of law. This statute operates to deny aggrieved parties in nineteen (19) counties in the State of Mississippi the automatic right to appeal their convictions to the Mississippi Supreme Court in order to have a truly independent appellate court review the case. Such a restriction is in clear contradiction with the due process clause in that an aggrieved party's liberty may be restricted without such party having the unfettered right of appeal as do aggrieved parties in Mississippi's other sixty-three (63) counties.

Access to the courts of this country and this State is a fundamental right of each and every citizen. This statute touches upon and infringes that fundamental right in denying the automatic right of appeal to the Supreme Court for the aggrieved parties in these counties. Because access to the courts is a fundamental right, the appropriate standard of constitutional review in this case is a strict scrutiny review. This statute does not survive the strict scrutiny test because there is no compelling government interest in denying certain aggrieved parties equal protection and access to the Supreme Court and an independent appellate court. The statute is also not a narrow one in that it affects every aggrieved party in those nineteen (19) counties adversely. These counties are the most populous counties in the state, with a combined population

of 1,556,265 residents. *Judiciary Directory & Court Calendar* (Delbert Hosemann, Secretary of State 2010).

Finally, this statute restricts equal access to the Supreme Court where an independent body of judges can collectively review the case being appealed by the aggrieved party. The statute applies only to aggrieved parties in nineteen (19) counties in this state. Such parties in those nineteen (19) counties cannot appeal to the Supreme Court unless there is a constitutional question involved in their appeal and either a circuit court judge or a Supreme Court judge signs off on the appeal. Aggrieved parties in Mississippi's other 63 counties have no such requirement to meet, and possess the automatic right to appeal their convictions to the Supreme Court. Having an appeal process restricting a fundamental right of certain Mississippi citizens to the full access of the court system does not comport with the requirement that all aggrieved parties should have equal access to the courts of this State.

ARGUMENT

I. MISS. CODE ANN. § 11-51-81 OPERATES TO DENY RESIDENTS OF NINETEEN COUNTIES IN THE STATE OF MISSISSIPPI THEIR FUNDAMENTAL RIGHT TO EQUAL ACCESS TO THE COURTS AS PROTECTED BY THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

There is no right more fundamental than the right of every American citizen to have equal access to our country's justice system. The Fourteenth Amendment to the United States Constitution states that "No State shall make or enforce any law which shall . . . deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. One of the most fundamental rights which is protected under

the Fourteenth Amendment is the right of access to the court system. *Ryland v. Shapiro*, 708 F.2d 967, 972 (5th Cir. 1983). Miss. Code Ann. § 11-51-81 operates to deny the citizens of nineteen (19) counties in Mississippi their fundamental right to equal access to the courts in the State of Mississippi.

Miss. Code Ann. § 11-51-81 reads as follows:

"All appeals from courts of justices of the peace, special and general, and from all municipal courts shall be to the county court under the same rules and regulations as are provided on appeals to the circuit court, but appeals from orders of the board of supervisors, municipal boards, and other tribunals other than courts of justice of the peace and municipal courts, shall be direct to the circuit court as heretofore. And from the final judgment of the county court in a case appealed to it under this section, a further appeal may be taken to the circuit court on the same terms and in the same manner as other appeals from the county court to the circuit court are taken: Provided that where the judgment or record of the justice of the peace, municipal or police court is not properly certified, or is not certified at all, that question must be raised in the county court in the absence of which the defect shall be deemed as waived and by such waiver cured and may not thereafter be raised for the first time in the circuit court on the appeal thereto; and provided further that there shall be no appeal from the circuit court to the supreme court of any case civil or criminal which originated in a justice of the peace, municipal or police court and was thence appealed to the county court and thence to the circuit court unless in the determination of the case a constitutional question be necessarily involved and then only upon the allowance of the appeal by the circuit judge or by a judge of the supreme court."

This statute requires that the aggrieved parties in the nineteen (19) counties with county courts file their appeals from convictions in justice/municipal court in the county court of their respective county. After an appeal to the county court, such parties may then appeal the county court's decision to the circuit court. However, after an appeal to the circuit court, they are not given access to the Supreme Court and its review unless there is a constitutional question involved **and** the circuit judge or a Supreme Court judge allows the appeal to be filed. This is not so for aggrieved parties in Mississippi's other sixty-three (63) counties. Such parties in those counties, counties which have no

county court, may file their appeal directly with the circuit court and, if they desire, may then access the Supreme Court of the state in order to have their appeals heard.

Not only are the aggrieved parties in these nineteen (19) counties not allowed access to the Supreme Court without special permission, but the parties are also denied the same type of appellate review. The limited review afforded by the circuit courts must follow the prior holdings of the Mississippi Supreme Court and if the issues presented in a case have yet to be decided by the Mississippi Supreme Court, the circuit courts routinely affirm cases finding only "that the conclusions of law and findings of the trial judge are supported by credible evidence presented at trial and are not clearly erroneous or manifestly wrong . . ." (R. at 95). Unlike the limited review of the singular circuit court judge, appeals to the Supreme Court are at a minimum reviewed by a panel of three justices rather than a single circuit court judge who not only possesses concurrent jurisdiction with the county court judge whose decision is being appealed by the aggrieved party, but enjoys this position as the senior court. The limited review of the circuit court judges in these nineteen (19) counties is also done without a published opinion with the entire legal analysis available for both view and scrutiny by other legal professionals.

Section 14 of Article 3 of the Mississippi Constitution states that "(n)o person shall be deprived of life, liberty or property except by due process of law." Miss. Const. art. III, § 14. Applying this section to the substantive rights of citizens of the State of Mississippi, this clause is "now interpreted to mean that the government is without the right to deprive a person of life, liberty, or property by an act that has no reasonable relation to any proper governmental purpose, or which is so far beyond the necessity of

the case as to be an arbitrary exercise of governmental power.” *Albritton v. City of Winona*, 178 So. 799, 804 (Miss. 1938). This statute does in effect deny aggrieved parties in these nineteen (19) counties their due process rights. By restricting these parties’ right to appeal to the Supreme Court for the appropriate type of appellate review, this statute is depriving them of their liberties without according them their full and complete constitutional right of due process. There is indeed no reasonable government purpose in enforcing this statute, as it serves no legitimate purpose other than to restrict an aggrieved parties’ right to appeal.

In determining the constitutionality of this statute, this Court should apply the strict scrutiny test. Courts in Mississippi have applied the strict scrutiny test when dealing with the issue of a fundamental right. *Associated Press v. Bost*, 656 So.2d 113, 117 (Miss. 1995). See *State v. Jones*, 726 So.2d 572 (Miss. 1998). Both the United States Supreme Court and the Mississippi Supreme Court have held that a citizen’s access to the court system is a fundamental right which is protected by the Constitution. *Chambers v. Baltimore & Ohio R.R.*, 207 U.S. 142 (1907); *Cleveland v. Mann*, 942 So.2d 108 (Miss. 2006). Because this statute affects an aggrieved party’s access to the Supreme Court and the appropriate level of appellate review, it does touch upon and infringe a fundamental and constitutionally protected right. Therefore, the strict scrutiny test is the correct standard of review to be applied in this case.

In order for the State to abridge a person’s fundamental right and survive the strict scrutiny test, the State must show: (1) a compelling state interest in abridging the right; and (2) that the statute, law or rule is narrowly tailored and cannot be achieved in a less burdensome way. *Rias v. Henderson*, 342 So.2d 737, 739 (Miss. 1977). In cases

such as this where a piece of legislation touches upon a fundamental right, the State bears the heavy burden of showing that it has a compelling interest which justifies the law. *Johnson v. California*, 543 U.S. 499 (2005). There is no compelling government interest in this case. Miss. Code Ann. § 11-51-81 serves no other purpose than to prevent some aggrieved parties in Mississippi from having equal access to the appropriate appellate courts of this state. While the state may argue that these nineteen (19) county courts help decrease the amount of litigation coming into the court of appeals and the Supreme Court, this possible interest is by no means compelling enough to justify the denial of equal access for aggrieved parties to the appellate courts and their review. Furthermore, this statute is not narrowly tailored to achieve a specific purpose. Having a statute such as this one that so broadly infringes upon the fundamental rights of the citizens of these nineteen (19) counties is by no means a narrowly tailored statute. Rather, it is very broad. It operates to affect not just a few, but rather 1,556,265 citizens in this state. *Judiciary Directory & Court Calendar* (Delbert Hosemann, Secretary of State 2010). Instead of being narrowly tailored to achieve a specific purpose, it operates to deny every aggrieved party in those nineteen (19) counties the automatic right of appeal to the Supreme Court and the appellate review provided by the Supreme Court, thereby infringing upon those aggrieved parties' fundamental right of equal access to the court system.

Further, the United States Supreme Court has held that because access to the court systems of this country is a fundamental, constitutionally protected right, once the States have developed a system of appellate review for criminal convictions, nothing can be done which would impede an aggrieved party's equal access to the courts.

Blackledge v. Perry, 417 U.S. 21 (1974). Rather, an aggrieved party's access to the court system for the purposes of appeal must be "free and unfettered." *Colten v. Kentucky*, 407 U.S. 104, 124 (1972). The right of equal access to the Supreme Court and its level judicial review for aggrieved parties in these nineteen (19) counties is indeed restricted and hindered by Miss. Code Ann. § 11-51-81. This statute prevents aggrieved parties in those counties from having the automatic right of appeal to the Supreme Court and the heightened review the Supreme Court provides. Rather, the only way those aggrieved parties may have their case heard by the Supreme Court is if a constitutional question is involved **and** a circuit court judge or a Supreme Court judge allows the appeal. Restricting the right of aggrieved parties in these nineteen (19) counties to appeal to the Supreme Court, and not restricting aggrieved parties in Mississippi's other sixty-three (63) counties, operates to deny aggrieved parties in these nineteen (19) counties equal access to the courts of this State and their equal protection under the law. Because these nineteen counties are the most populous in the state, this statute is placing a burden upon a large proportion of Mississippi residents. Such a restriction and hindrance upon the rights of these aggrieved parties to appeal their cases is in clear contradiction with the holdings of the United States Supreme Court and the Fourteenth Amendment to the United States Constitution.

CONCLUSION

Miss. Code Ann. § 11-51-81 is unconstitutional as it violates the Fourteenth Amendment Equal Protection Clause of the United States Constitution and the Due Process Clause of the Mississippi Constitution. The right of equal access to the courts of this State is a fundamental right, a right which this statute interferes with and hinders.

Denying the right of certain aggrieved parties in this state the free ability to appeal to the Supreme Court and the review given by the Supreme Court while allowing other aggrieved parties the right to an automatic appeal clearly contradicts the equal access requirement. Because of the statute's clear contradiction with both the U.S. Constitution and the Mississippi Constitution, this court should declare this statute unconstitutional and in doing so allow the aggrieved parties in these nineteen (19) counties the right of equal access to the Supreme Court and its review of the issues presented by the aggrieved parties seeking review.

CERTIFICATE OF SERVICE

I, Kevin D. Camp, do hereby certify that I have this day delivered a true and correct copy of the above, foregoing document in a manner prescribed by law to:

Honorable Judge Samac Richardson
Circuit Court Judge
P.O. Box 1662
Canton, MS 39046

Honorable Edwin Hannan
County Court Judge
P.O. Box 1626
Canton, MS 39046

Honorable Jim Hood
Attorney General of the State of Mississippi
P.O. Box 220
Jackson, MS 39205

Honorable Boty McDonald
321 Highway 51
Suite G
Ridgeland, MS 39157

Jay A. Jones, Appellant
120 Regatta Drive
Brandon, MS 39045

This service effected this the 19th day of July, 2010.



KEVIN D. CAMP, MSB # 
Attorney for Appellant