IN THE SUPREME COURT OF MISSISSIPPI

NO. 2012-IA-00166-SCT

IN RE: CHARLES HOOKER, DAVID GATLIN, NATHAN KERN, AND ANTHONY MCCRAY

ATTORNEY GENERAL JIM HOOD'S BRIEF ON INTERLOCUTORY APPEAL

JIM HOOD, MS BAR NO[redacted]
ATTORNEY GENERAL
MEREDITH M. ALDRIDGE, MS BAR NO[redacted]
BRIDGETTE W. WIGGINS, MS BAR N[redacted]
ALEXANDER KASSOFF, MS BAR NO.[redacted]
SPECIAL ASSISTANT ATTORNEYS GENERAL

Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone No. (601) 359-3680
Facsimile No. (601) 359-2003

CERTIFICATE OF INTERESTED PERSONS

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

JIM HOOD, Attorney General for the State of Mississippi, *ex rel.* THE STATE OF MISSISSIPPI, plaintiff.

JIM HOOD, BRIDGETTE WIGGINS, ALEXANDER KASSOFF, and MEREDITH M. ALDRIDGE, attorneys for plaintiff THE STATE.

NATHAN KERN, DAVID GATLIN, CHARLES HOOKER, ANTHONY MCCRAY, JOSEPH OZMENT, AARON BROWN, JOSHUA L. HOWARD, AZIKIWE KAMBULE, KATHERINE ROBERTSON, KIRBY GLENN TATE, defendants named in the First and Second Amended Complaints filed in the Circuit Court below.

THOMAS M. FORTNER, RICHARD A. FILCE, and ERIK M. LOWREY, PA attorneys for defendants KERN, GATLIN, HOOKER and MCCRAY.

EDWARD BLACKMON, BLACKMON & BLACKMON, CYNTHIA A. STEWART attorneys for defendants BROWN and KAMBULE.

SYLVIA S. OWEN, LUTHER T. MUNFORD, ROBERT GREGG MAYER and PHELPS DUNBAR, LLP, attorneys for defendant ROBERTSON.

AAFRAM Y. SELLERS, attorney for defendant HOWARD.

CHRISTOPHER EPPS, in his official capacity as Commissioner of the Mississippi Department of Corrections, defendant named in the First and Second Amended Complaints filed in the Circuit Court below.

DAVID K. SCOTT, attorney for defendant EPPS.

GOVERNOR PHIL BRYANT, in his official capacity as Governor of the State of Mississippi, defendant named in the Second Amended Complaint filed in the Circuit Court below.

ROBERT G. WAITES and JACK L. WILSON, attorneys for defendant GOVERNOR PHIL BRYANT.

HALEY BARBOUR, former Governor of the State of Mississippi.

CHARLES E. GRIFFIN, E. BARNEY ROBINSON, III, BENJAMIN M. WATSON, MELISSA BALTZ and BUTLER SNOW O'MARA STEVENS & CANNADA, PLLC, attorneys for HALEY BARBOUR.

The following persons have a direct interest in the subject matter of this case that could be substantially affected by the outcome of these proceedings. Each person listed below is currently a JOHN/JANE DOE defendant in the lawsuit filed in the Circuit Court below, but has not yet officially been named as a defendant before interlocutory appeal was granted. Each person listed received a purported full, complete, and unconditional pardon for felony crimes from former Governor HALEY BARBOUR on or before January 10, 2012 that is disputed for failure to comply with Section 124 of the Mississippi Constitution:

DOUGLAS DUANE BURCHAM
KENNETH CARVER
AUBREY ORLANDO FRATESI
KEVIN JEROME HATCHES
PAMELA YVETTE JACKSON
ROY MICHAEL LATHAM
SHELLY ANN RAY (SELF)
HARDY MCCORMICK, JR.
STEVEN CHARLES ADAMS
THOMAS CLIFFORD AILES
MICHAEL ARMSTRONG
JIMMY AVERA
ROBERT BARQ
MELANIE BEELAND
LARRY BELL
VINCENT BELL
MICHAEL BELLIPANI
JAMES BLACK
ELDRIDGE BONDS
FRANK BORDERS
KARLTON LEE BRADLEY
DWIGHT BRELAND
JOHN SPRINGER BUCHANAN
HENRY BYRD
JEANETTE (WALKER) CAIN
BUSTER CALDWELL
GERALD CALHOUN
ANDREW CAMPHOR
PERRY CAUTHEN
JESS CESSNA
JAMES CHENAULT
BOBBY HAYES CLARK
VICTOR C. COLLINS
DANIEL MAC DOBBINS

EARNEST SCOTT FAVRE
STEPHEN MARK FORD
RANDY SCOTT FORTENBERRY
JIMMY (JAMIE) FRANKS
ROCK ALLEN GERALD
GREGG PATRICK GIBBES
NORMAN LEE GIVENS
SHARRION PATRICE (WASHINGTON) GRANT
JAMES L. GRANTHAM
THOMAS GRAZIOUSI
ROBERT GREGG
LOUIS E. GRIFFIN
ASHLEY GUNTER
JAMES L. HANKINS
LARRY HARPER
WAYNE HARRIS
JUDY LYNN (EICHELBERGER) HAWKINS
WILLIAM HENDERSON
DANIEL WAYNE HENDON
KIMARIO HENTZ
DOUGLASS HINDMAN
SIM COLLINS HOLIFIELD
OLIN HUNTER HOPE
JESSIE HOUSTON
MICHAEL JAMES
ANON JORDAN
THOMAS KENDALL
WILLIE JAMES KIMBLE
CHRISTOPHER KOLB
MICHAEL DEREK KNAUSS
BOBBY JOE LEE
TERRY JAMES LEE
BETTY JEAN (BOOTH) LINSTON
AMY DOUGLAS (MOONEY) LOVE
EARNEST CARL LOWERY
MICHAEL MATTHEW
JOHNNY MCCOOL
WALTER JAMES MCKEE
JOHN ALLEN MITCHELL
CLINTON JASON MOFFITT
JOHN BECKETT MONAGHAN
ELLIS RAY MOONEYHAM
CHARLES NEWBY
DAVID WILLARD NEWCOMB
GUY BLAN NEWCOMB
DANNY LAMAR PEACOCK

SHIRLEY PETERS
CAROL FOSTER PINKSTON
COREY POWELL
RICHARD EARL PRICE
CONSTANCE PRUITT
LISA (BROGDON) RALSTON
KENNETH BERNARD RATLIFF
SAMUEL REID
EVERETT RODGERS
JOHN ROSE
DEMETRIUS SANFORD
ANTHONY SANSING
BILLY RAY SIMS
LESLIE SMITH
LINDA (EICHELBERGER) SMITH
WESLEY SPEARS
ROBIN SPAEATH
TYRONE STEELE
THOMAS STEWART
NEIL FOWLER STRICKLAND
EMMA (BUSH) STUCKEY
PAUL JAMES SULLIVAN
TAMMY KAY (JONES) SWANSON
MITCHELL TANKSLEY
STEVEN A. THOMPSON
SAMUEL TISDALE
LEON TURNER
SHELLEY WADE
BURTON WALDON,
BOBBY (BOB) JEAN WALLACE
DONNA WALTERS
NARQUITA WATSON
KATHRYN LINDSAY WELCH
ANTHONY WEST
JENNIFER JOEL WILDER
AARON WILLIAMS
COREY D. WILLIAMS
RALPH WORTHY
CHARLES YATES
NATHANIEL CUNNINGHAM
CLARENCE JONES
PATRICIA DIANE SOUTHERLAND
MARION LEE UPCHURCH
PAUL JOSEPH WARNOCK
DONALD DWIGHT ADCOCK
PATRICIA AMACKER

WILLIAM BARDWELL
BOOKER T. BARNES
LARRY RAY BOOKER
HARRY BOSTICK
LEE BRACKEEN
MARY (HARTHCOCK) BROWER
BOBBY NEAL BROWN
AARON CLAY BUTLER
DANIEL CALEB CAMPBELL
MICHAEL L. COLLUM
ALLISON B. DAZET
STANLEY DUNCAN
PEGGY SUE EILAND
RUSSEL GLEEN FERGUSON
LATASHIA (LATISHA) GILBERT
MATTHEW NELSON GODFREY
MICHAEL DAVID (DAVIE) GRAHAM
JEFFREY LEE HAIRE
ROBERT HENDERSON
THOMAS LEVI HOWELL
BENJAMIN EARL HUSSEY
JACK MARTIN MILLER/MARTIN MILLER JACK
PHILLIP JACKSON
APRIL MICHELLE JOHNSON
SHUNDRELL JOHNSON
MICHAEL JONES
JIMMY MCNEESE
HAROLD MILLER
JUSTIN NUNNERY
ROSLYN MURRAY (MARIE) ROBERTSON
LARRY DARNELL ROBY
REGGIE ROGERS
PERRY SIMS
SHIRLEY ANN SMITH
ROGER (STAKLEY) STEAKLEY
ROBERT EDWARD STANFIELD
CLEMMIE ROGERS STEWART
JIMMY THOMAS
MARION THOMPSON
STEVEN TODD THOMPSON
BRENDA L. (DIXON) TRAVIS
LEON TURNER
CLARENCE TYER
LATON CELLIOUS UPCHURCH
CAROL DENISE WILLIAMS
SHIRLEY WINSTON

CHARLES JEROME YOUNG

In addition to the persons listed above with a direct interest in the subject matter of this case that could be substantially affected by the outcome of these proceedings, numerous other persons have been publicly identified and widely reported as likewise having an interest in pardons issued by Former Governor HALEY BARBOUR to certain JOHN DOE defendants who have not yet been officially named as defendants in this matter. For example, in Campell Robertson and Stephanie Saul, *List of Pardons Included Many Tied to Power*, N.Y. *Times* (Jan. 27, 2012) at A1, the following persons were specifically identified as having supported, opposed, or otherwise connected to requests for clemency of certain defendants, and/or unidentified pardonees, listed above:

DON WALLER
HIRAM EASTLAND, JR.
BOB DUNLAP
JOHN CHAMPION
JIM GREENLEE
MARY RUTH ELLIS

THIS the 7th day of February, 2012.

COUNSEL FOR PLAINTIFF/APPELLEE
JIM HOOD, Attorney General for the State of Mississippi, *ex rel.* the State of Mississippi

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS ii

TABLE OF CONTENTS viii

TABLE OF AUTHORITIES xi

STATEMENT OF THE ISSUES 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 7

SUMMARY OF THE ARGUMENT 10

ARGUMENT 13

I. The standard of review: Only questions of law are reviewed on interlocutory appeal, and the are reviewed de novo. 13

II. It is well settled that the judiciary has the authority and responsibility to review the constitutionality of acts performed by the Governor. 14

III. The judiciary has the authority and responsibility to review whether a Governor's exercise of the pardon power exceeded the limits imposed by the Constitution. 16

A. The Governor's constitutional pardon power is not absolute; the framers of the 1890 Constitution imposed several strict limits on it. 16

B. The significance of the Constitution's limitations on the pardon power cannot be overstated; Section 124 provides the citizens and the judiciary with important constitutional protections. 18

1. The publication requirement in Section 124 is a constitutional right guaranteed to the citizens. 19

2. The "30-day" requirement protects the citizens from last-minute, ill-conceived pardons awarded to the politically connected. 19

3. That "no pardon shall be granted until" the publication requirement is satisfied is a limitation on the Governor's ability to invade the province of the judiciary. 20

C. It is well settled the courts review whether pardons were issued in strict obedience to the law as a means to protect their authority and to protect constitutionally enshrined rights of citizens. 21

D. Appellants' arguments that the State, citizens, and the judiciary are powerless to enforce the terms of Section 124 because it is a mere "procedural rule" subject to a "harmless error" standard or other defenses are desperate and unsupported claims. 26

IV. The plain meaning of the phrase "published for thirty days" has repeatedly been held to require that publication begin at least thirty days before the event, and to require inclusion of the notice in each issue of the newspaper (whether daily or weekly) during the thirty-day period. 29

A. When the framers utilize precise requirements, such as "published for thirty days," the terms must be applied as written. 29

B. Section 124 requires publication for a full 30 days before a pardon is effective, not 28 days and not once a week for four weeks. 31

C. Former Governor Barbour's law firm agrees with the above interpretation of Section 124. 37

D. Section 124's publication requirement applies to the Trusty-Defendants. 37

V. The Trusty-Defendants' estoppel argument fails for five reasons. 39

A. The State cannot be estopped from performing a governmental function. 40

B. This Court has established that estoppel is unavailable if its use would be inconsistent with the public interest. 41

C. Estoppel is a fact-driven defense not suitable for interlocutory appeal. 41

D. The Trusty-Defendants' estoppel claim is contradicted by the facts. 41

1. January 13, 2004 - November 27, 2011 42

2. November 28, 2011 42

3. After 5:00 p.m. on December 6, 2011 43

4. December 9, 2011 44

5. January 13, 2011 42

E. The estoppel claims are legally incorrect. 45

1. The Trusty-Defendants did not rely on any representation made to them by Scott, the Attorney General, or any member of the Attorney General's staff. 46

2. Reliance would not be reasonable. 46

3. Scott's statement was accurate. 47

4. The failure to properly publish was the result of decisions made by former Governor Barbour. 47

5. Neither estoppel doctrine advanced by Appellants applies. 47

6. Because Scott was not authorized to counsel or assist the Trusty-Defendants, estoppel is not applicable to the State. 48

CONCLUSION 49

CERTIFICATE OF SERVICE 50

TABLE OF AUTHORITIES

FEDERAL CASES

Haym v. U.S., 7 Ct. Cl. 443, 1800 WL 1556 (Ct. Cl. Dec. Term 1871) 31

Marbury v. Madison, 5 U.S. 137 (1803) 27

STATE CASES

Allen v. Bennett, 823 So. 2d 679 (Ala. 2001) 48

Amer. Oil Co. v. Marion County, 192 So. 296 (Miss. 1939) 48

Anderson v. Commonwealth, 107 S.W.3d 193 (Ky. 2003) 23

Bailey v. Estate of Kemp, 955 So. 2d 777 (Miss. 2007) 47

Barbour v. Delta Corr. Facility Auth., 871 So. 2d 703 (Miss. 2004) 27

Barbour v. State ex rel. Hood, 974 So. 2d 232 (Miss. 2008) 14, 15, 30

Barrett ex rel. Callaghan v. Maitland, 246 S.W. 267 (Mo. 1922) 35

Box v. State, 437 So. 2d 19 (Miss. 1983) 18

Broom v. Henry, 100 So. 602 (Miss. 1924) 15, 29

Brown v. Ogg, 1882 WL 6381 (Ind. Nov. Term 1882) 32

Byrd v. Miss. Power Co., 943 So. 2d 108 (Miss. Ct. App. 2006) 13, 41

Ex parte Wren, 63 Miss. 512 (Miss. 1886) 26

City of New York v. City Civil Serv. Comm'n., 458 N.E.2d 354 (N.Y. 1983) 40, 48

Commonwealth v. Vickey, 412 N.E.2d 877 (Mass. 1980) 20

Conway v. Mississippi State Board of Health, 173 So. 2d 412 (Miss. 1965) 47

Cunningham v. State, 44 S.W.2d 739 (Tex. Crim. App. 1931) 19, 33

Ellis v. Ellis, 651 So. 2d 1068 (Miss. 1995) 14

Fordice v. Bryan, 651 So. 2d 998 (Miss. 1995) 27

Gandy v. Reserve Life Ins. Co., 279 So. 2d 648 (Miss. 1973) 28, 40

Greenville County v. Kenwood Enters., Inc., 577 S.E.2d 428 (S.C. 2003) 48

Hatfield v. City of Covington, 197 S.W. 535 (Ky. Ct. App. 1917) 32

Hemba v. Miss. Dept. of Corrections, 998 So. 2d 1003 (Miss. 2009) 14

Henritzy v. Harrison County, 178 So. 322 (Miss. 1938) 34

Holder v. State, 23 So. 643 (Miss. 1898) 27

Hughes v. Hosemann, 68 So. 3d 1260 (Miss. 2011) 26, 35

Hunt v. Wright, 11 So. 608 (1892) 26

In re Municipal Boundaries of City of Southaven, 864 So.2d 912 (Miss. 2003) 41

Jamison v. Flanner, 228 P. 82 (Kan. 1924) 2, 16, 20, 23

Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority, 1 P.3d 63 (Cal. 2000) 41

Lawson v. Gibson, 24 N.W. 447 (Neb. 1885) 32, 33

Lee v. Memorial Hosp. at Gulfport, 999 So. 2d 1263 (Miss. 2008) 29

Lower Terrebonne Refining & Mfg. Co. v. Police Jury of Parish of Terrebonne, 40 So. 443 (La. 1906) 33

LW v. CWB, 762 So. 2d 323 (Miss. 2000) 6

McCurdy v. Baker, 1873 WL 623 (Kan. Jan. Term 1873) 32

Miss. Windstorm Underwriting Ass'n v. Union Natl. Fire Ins. Co., 2012 WL 231560 (Miss. Jan. 26, 2012 21

Montgomery v. Cleveland, 98 So. 111 (Miss. 1923) 22, 24, 38

Moore v. Bell Chevrolet-Pontiac-Buick-GMC, LLC., 864 So. 2d 939 (Miss. 2004) 5

Office of Governor, Division of Medicaid v. Johnson, 950 So. 2d 1033 (Miss. Ct. App. 2006) 5

O'Hara v. City of South Fort Mitchell, 290 S.W.2d 455 (Ky. 1956) 32

Oktibbeha County Bd. of Educ. v. Town of Sturgis, 531 So. 2d 585 (Miss. 1988) 48

PMZ Oil Co. v. Lucroy, 449 So. 2d 201 (Miss. 1984) 46

Pope v. Wiggins, 69 So. 2d 913 (Miss. 1954) 24

Presley v. Miss. State Highway Comm'n, 608 So. 2d 1288 (Miss. 1992) 26

Prince George's County Comm'rs v. Clarke, 1872 WL 5684 (Md. June 18, 1872) 32

Pro-Choice Miss. v. Fordice, 716 So. 2d 645 (Miss. 1998) 19

Rathbun v. Baumel, 191 N.W. 297 (Iowa 1922) 20

Raveis Real Estate, Inc. v. Comm'r of Revenue Servs., 665 A.2d 1374 (Conn. Super. Ct. 1995) 40

Rawls Springs Utility Dist. v. Novak, 765 So. 2d 1288 (Miss. 2000) 41, 48

Salts v. Gulf Natl. Life Ins. Co., 743 So. 2d 371 (Miss. 1999) 5

Senor v. Bd. of Whatcom County Comm'rs, 42 P. 552 (Wash. 1895) 30

Sievertsen v. Employment Appeal Bd., 483 N.W.2d 818 (Iowa 1992) 48

Simmons Housing, Inc. v. Shelton ex rel. Shelton, 36 So. 3d 1283 (Miss. 2010 47

Southworth v. Glasgow, 132 S.W. 1168 (Mo. 1910) 35

State Dep't of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981) 48

State ex rel. Allain v. Miss. Public Serv. Comm'n, 418 So. 2d 779 (Miss. 1982) 27, 40

State ex rel. City of Kansas City v. Renick, 57 S.W. 713 (Mo. 1900) 15

State ex rel. Maurer v. Sheward, 644 N.E.2d 369 (Ohio 1994) 23, 28

State ex rel. Moore v. Molpus, 578 So. 2d 624 (Miss. 1991) 27, 28

State v. Dunning, 1857 WL 3554 (Ind. May 25, 1857) 2, 16

State v. Kirby, 51 So. 811 (Miss. 1910) 23

State v. Leak, 1854 WL 3325 (Ind. Nov. 29, 1854) 3, 5, 17, 31

State v. Metts, 88 So. 525 (Miss. 1921) 25

State v. Powell, 27 So. 927 (Miss. 1900) 30

State v. Wood, 187 So. 2d 820 (Miss. 1966) 20

Tax Commission. Reliance Mfg. Co. v. Barr, 146 So. 2d 569 (Miss. 1962) 40

Tolbert v. Southgate Timber Co., 943 So. 2d 90 (Miss. Ct. App. 2006) 28

Tuck v. Blackmon, 798 So. 2d 402 (Miss. 2001) 26

Weible v. Univ. of So. Miss., 2011 WL 5027203 (Miss. Ct. App. Oct. 18, 2011) 46

Whitaker v. Beach, 1874 WL 656 (Kan. Jan. Term 1874) 32

Windham v. Latco of Miss., Inc., 972 So. 2d 608 (Miss. 2008) 46

STATE STATUTES

Miss. Code Ann. § 97-11-3 48

Miss. Code § 1013 (1871) 36

Miss. Code Ann. § 1580 (1892) 36

Miss. Code § 2437 (Rev. 1880) 36

Miss. Code Ann. § 4339 (1892) 36

STATE RULES

Mississippi Rule of Appellate Procedure 5 ..... 13, 41

Mississippi Rule of Civil Procedure 6(d) 6

OTHER AUTHORITIES

6 Harv. L. Rev. 109, 117-18 (1892) 17

31 C.J.S. Estoppel §147 40

69 Tex. L. Rev. 569, 611 (Feb. 1991) 20

Eric Clark, The Mississippi Constitutional Convention of 1890: A Political Analysis, M. A. Thesis, Univ. of Miss., May 1975 ..... 3, 17

Mississippi Practice Series: Encyclopedia of Mississippi Law § 19:24
(Jeffrey Jackson and Mary Miller, eds., rev. 2011) 27

STATEMENT OF THE ISSUES

1. Is the judiciary powerless to interpret and enforce the constitutional limitations placed upon a governor's pardon authority, especially when the constitutional limitations are protections afforded to the citizens and to the judiciary itself?

2. Should this Court depart from the decisions of numerous courts holding that the plain meaning of the phrase "published for thirty days" requires that publication must begin at least thirty days before the event, and that the notice must appear in each issue of the newspaper (whether daily or weekly) during that thirty-day period, especially when those decisions reflect the common understanding of that phrase at the time the 1890 Constitution was drafted?

STATEMENT OF THE CASE

After gaining independence from the King of England, the people of this nation established a government on the principle that authority flows from, and is limited by, the consent of the governed. A governor has no royal prerogative to grant pardons. The "pardoning power is neither inherently nor necessarily an executive power, but is a power of government inherent in the people." *Jamison v. Flanner*, 228 P. 82, 87 (Kan. 1924). "The governor, then, simply by virtue of his office as such, takes no power touching pardons . . . . He derives his power from the constitution and laws alone." *State v. Dunning*, 1857 WL 3554, at *2 (Ind. May 25, 1857).

The Mississippi Governor's limited pardon authority exists only by virtue of Section 124 of the Constitution. That section defines — and clearly restricts — his authority. It states in part as follows:

> in cases of felony, after conviction *no pardon shall be granted* ***until*** the applicant therefor shall have published for thirty days, in some newspaper in the county where the crime was committed, and in case there be no newspaper published in said county, then in an adjoining county, his petition for pardon, setting forth therein the reasons why such pardon should be granted.

Miss. Const. art. 5, § 124 (emphasis added). The plain meaning of the phrase "published for thirty days" has repeatedly been held by courts to require that (1) publication must begin at least thirty days before the event, and (2) the notice must appear in each issue of the newspaper (whether daily or weekly) during that thirty-day period. Judicial opinions and statutory language from the time of the 1890 constitutional convention, as well as the Constitution's plain language, evidence that the phrase "for thirty days" is *not* synonymous with "give thirty days notice" or "publish once a week for four weeks."

Because pardons are "in derogation of the law," and "the heedlessness with which they had been granted had become a serious evil," various states, including Mississippi, revised their constitutions and "attempted to provide for some check upon this abuse . . . ." *See State v. Leak*, 1854 WL 3325, at *3 (Ind. Nov. 29, 1854). Neither the Constitution of 1832 nor the Constitution of 1869 contained the publication requirement. The publication requirement was deliberately added to the 1890 Constitution as a direct limitation on the Governor's authority and as protection for the citizens and the judiciary from Governors' previous abuse of the pardon authority. *See* Eric Clark, The Mississippi Constitutional Convention of 1890: A Political Analysis, M. A. Thesis, Univ. of Miss., May 1975, at 11 ("There was a widespread belief, held not just by agrarians, that the 1868 constitution gave too much power to the governor. . . . [His] pardoning powers were too broad.").

The power to pardon is a check on the judiciary. When a Governor exceeds his constitutional pardon authority, he is directly and unconstitutionally infringing on an expressly reserved constitutional right of the people, as well as the authority of the judiciary. It is this critical check on the Governor's pardon authority that this Court is duty bound to interpret and enforce for the protection of the citizens and for the protection of the Court's own constitutional authority to enforce the law through criminal judgments.

During his last days and hours in office, former Governor Haley Barbour issued full, complete, and unconditional pardons to approximately 200 convicted felons. The former Governor's actions purportedly erased the criminal records of felons convicted of crimes such as murder, manslaughter, aggravated assault, kidnapping, assault on a law enforcement officer, robbery, burglary, shooting into an occupied dwelling, felony DUI, sex crimes, drug sales and possession, bribery, and voter fraud. *See* Exhibit A to the Complaint, Appellee's Record Excerpt

(R.E.) 1. Far from measured and studied acts of an executive, these rushed pardons were issued to approximately fifty-six felons who failed to make any publication. Approximately 122 of the pardons were issued to felons who either began publishing less than thirty days before the date of their pardons or published for fewer than the required number of days.[1] To date, twenty-two felons have been determined to have satisfied the publication requirement, and their pardons are not challenged.[2]

This case is not about the former Governor's motivation for pardoning. The wisdom of his decision to release inmates convicted of serious felonies (including murder, aggravated assault, and armed carjacking), and to allow former inmates convicted of such felonies to own guns, to vote, and, in some cases, to avoid registration as sex offenders, is not an issue. Former Governor Barbour's intentions, and whether his actions were in good faith, neglectful, or intentional, are not relevant. The sole question is whether former Governor Barbour issued those pardons in violation of Section 124 of the Constitution of 1890.

In light of the numerous facially invalid pardons, Attorney General Jim Hood, *ex rel.* the State of Mississippi ("the State"), brought an action for injunctive and declaratory relief in the

---

[1] Several of the pardons contain factual errors evidencing the less-than-thorough manner in which the applications were reviewed and considered, such as the wrong county of conviction or the wrong middle name of the recipient. Given that pardons were issued in instances of no publication and in instances in which varying states of incomplete or untimely publishing had occurred, it is clear that the former Governor's actions were not the result of a studied reading of Section 124.

[2] Before the case was stayed by this Court's February 1st order, the Attorney General had provided the trial court with a draft stipulation listing the twenty-two felons whose pardons were not being challenged because the felons had complied with the notice requirements of Section 124.

Circuit Court of Hinds County, Mississippi, First Judicial District.[3] The action seeks to declare null, void, and unenforceable those pardons issued by former Governor Barbour in violation of Section 124. *See* Complaint, R.E. 1.

Presented with sufficient evidence of the invalidity of at least some of the pardons, on January 11, 2012, the circuit court entered a temporary restraining order ("TRO"), granting injunctive relief that required the recently pardoned and released trusties from the Governor's Mansion to inform the Mississippi Department of Corrections (MDOC) of their location on a daily basis.[4] *See* Order, R.E. 2. These out-of-custody "Trusty-Defendants" are Joseph Ozment, Charles Hooker, David Gatlin, Nathan Kern, and Anthony McCray. *Id.* The TRO further prohibited MDOC from releasing from custody any inmates who had received invalid pardons. *Id.* As of January 11, MDOC had in its custody five inmates who had received facially invalid

---

[3] Venue is proper in Hinds County. The general circuit court venue statute provides that

> [c]ivil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, if a corporation, in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.

Miss. Code Ann. § 11-11-3(1)(a)(i). First, Hinds County is proper because the suit names as a defendant the MDOC Commissioner in his official capacity. Also, there is a pending amendment to the complaint which adds Governor Bryant as a defendant in his official capacity. Venue for an action against a state official is proper in Hinds County, the seat of state government. *Moore v. Bell Chevrolet-Pontiac-Buick-GMC, LLC.*, 864 So. 2d 939, 944-45 (Miss. 2004); *Office of Governor, Division of Medicaid v. Johnson*, 950 So. 2d 1033 (Miss. Ct. App. 2006). Second, "a substantial alleged act or omission occurred" and a "substantial event that caused the injury occurred" in Hinds County. Each pardon affirmatively states that it was signed in Hinds County by the Governor and attested to in Hinds County by the Secretary of State. Finally, venue that is good for one defendant is good for all. *Salts v. Gulf Natl. Life Ins. Co.*, 743 So. 2d 371, 374 (Miss. 1999).

[4] The Attorney General has not sought and does not seek to have the out-of-custody defendants returned to prison through the process of a preliminary injunction. *See* Motion for Temporary Restraining Order and Preliminary Injunction, R.E. 6.

pardons. *See* Order, R.E. 2. These "In-Custody Defendants" are Aaron Brown, Joshua L. Howard, Azikiwe Kambule, Katherine Robertson, and Kirby Glenn Tate. At a hearing on January 23, 2012, the trial court extended the TRO to February 3, 2012, when it was scheduled to hear arguments and receive evidence as to whether a preliminary injunction should be issued to preserve the *status quo* until the case can be decided on the full merits. *See* Order, R.E. 3.

At the hearing on Monday, January 23, counsel for Trusty-Defendants Hooker, Gatlin, Kern and McCray demanded that the trial court consider their motion to dismiss. The motion was provided to the State on the Saturday before the hearing. *See* Motion, R.E. 4. The movants insisted that their motion be immediately considered, even though it had not been noticed for a hearing and despite the lack of sufficient notice required by Mississippi Rule of Civil Procedure 6(d).[5] At the movants' insistence, the trial court considered and correctly denied the motion. *See* Order, R.E. 5. The trial court would have committed reversible error had it granted the motion to dismiss on only one day's notice to the State. *See, e.g., LW v. CWB*, 762 So. 2d 323, 326 (Miss. 2000) (reversing motion to dismiss granted on two days' notice).[6]

Trusty-Defendants Hooker, Gatlin, Kern, and McCray petitioned this Court for immediate review of their denied motion to dismiss; however, some of the issues in their petition were not in their last-minute motion to dismiss. Defendants Brown, Tate and Robertson later filed petitions also seeking immediate appellate relief. On February 1, this Court granted the

---

[5] Movants filed a Supplemental Special Appearance in which they asked the court to be relieved of the Rule 6(d) requirement.

[6] On January 23, 2012, the State filed a Second Amended Complaint that added current Governor Phil Bryant as a defendant. R.E. 7. Unaware of the amended complaint, on January 23rd former Governor Barbour filed a motion for leave to file an *amicus curiae* brief, citing the absence of former Governor Bryant as a reason that his involvement in the suit was necessary. The trial court granted Barbour leave to file the brief. The trial court has taken under advisement the proposed amended complaint adding Governor Bryant. Order, R.E. 8.

petitions for interlocutory appeal, ordered that terms of the TRO should remain in place, and stayed further proceedings in the trial court.

STATEMENT OF THE FACTS

On January 6, 2012, former Governor Barbour issued full, complete, and unconditional pardons to Trusty-Defendants Ozment, Hooker, Gatlin, Kern, and McCray. *See* Exhibit B to the Motion for Preliminary Injunction (Mot. Pre. Inj.), R.E. 6. Each felon was in the custody of MDOC serving a lengthy sentence when the putative pardons were issued. Each served at the Governor's Mansion as a "trusty" during former Governor Barbour's tenure. Each failed to comply with Section 124's publication requirement.

- Hooker was convicted of the felony of murder in Coahoma County in 1992. He received a life sentence. He was pardoned on January 6, 2012, and released from custody. His notice was published in the *Clarksdale Press Register* in Coahoma County, which comes out twice a week, on Wednesdays and Fridays. His first notice was published on December 14, 2011, less than thirty days before his pardon was granted. The notice then appeared in the next six issues, for a total of seven issues spanning just twenty-three days. *See* Exhibit E to Mot. Pre. Inj., R.E. 6.

- Gatlin was convicted of the felonies of murder, aggravated assault, and burglary of a dwelling in Rankin County in 1993. He received sentences of life, twenty years, and ten years. He was pardoned on January 6, 2012, and released from custody. His notice was published once a week for four weeks, for a total of just twenty-eight days, in *The Rankin Record*, a weekly paper in Rankin County. Publication began on December 15, 2011, less than thirty days before his pardon was granted. *See* Exhibit D to Mot. Pre. Inj., R.E. 6

- Kern was convicted of the felonies of burglary in 1972, robbery in 1974, and robbery again in 1982, all in Coahoma County. He received a life sentence for the 1982 conviction. He was pardoned on January 6, 2012, and released from custody. His notice was published in the *Clarksdale Press Register* in Coahoma County, which comes out twice a week, on Wednesdays and Fridays. His first notice was published on December 14, 2011, less than thirty days before his pardon was granted. The notice then appeared in the next six issues, for a total of seven issues spanning just twenty-three days. *See* Exhibit C to Mot. Pre. Inj., R.E. 6

- McCray was convicted of the felony of murder in Pike County in 2001. He received a life sentence. He was pardoned on January 6, 2012, and released from custody. He did not publish any notice before January 6th. MDOC later arranged for notice of his pardon to be published in *The Enterprise-Journal*, a daily paper in Pike County, beginning on or about January 15, 2012, after his pardon was granted. *See* Exhibit G to Mot. Pre. Inj., R.E. 6

- Ozment was convicted of the felonies of murder, conspiracy, and armed robbery in DeSoto County in 1993. He received a life sentence. He was pardoned on January 6, 2012, and released from custody. His notice was published in *The DeSoto Times-Tribune* in DeSoto County, which comes out three times a week, on Tuesdays, Thursdays, and Saturdays. His first notice was published on December 13, 2011, only twenty-four days before his pardon was granted. The notice then appeared in the next seven issues, for a total of eight issues spanning just twenty-five days. *See* Exhibit H to Mot. Pre. Inj., R.E. 6

On January 10, 2012, former Governor Barbour granted full, complete, and unconditional pardons to In-Custody Defendants Aaron Brown, Joshua L. Howard, Azikiwe Kambule, Katherine Robertson, and Kirby Glenn Tate. *See* Exhibit I to Mot. Pre. Inj., R.E. 6. Each of these felons was in the custody of MDOC when the putative pardons were issued, and remain in custody. Each failed to comply with Section 124's publication requirement.

- Defendant Aaron Brown was convicted of the felonies of murder, carrying a concealed weapon, and possession of a controlled substance in Hinds County in 1990 and 1997. His notice was published once a week for four weeks in *The Clarion-Ledger*, a daily paper in Hinds County, beginning on September 29, 2011. *See* Exhibit J to Mot. Pre. Inj., R.E. 6.

- Defendant Joshua L. Howard was convicted of the felony of statutory rape in Hinds County in 2009. His notice was published once a week for four weeks in *The Clarion-Ledger*, a daily paper in Hinds County, beginning on November 29, 2011. *See* Exhibit K to Mot. Pre. Inj., R.E. 6.

- Defendant Azikiwe Kambule was convicted of the felonies of accessory after-the-fact to murder and armed carjacking in Madison County in 1997. His notice was published once a week for four weeks, for a total of 28 days, in the *Madison County Herald* in Madison County, beginning on November 3, 2011. *See* Exhibit L to Mot. Pre. Inj., R.E. 6.

- Defendant Katherine Robertson was convicted of the felony of aggravated assault in Madison County in 2007. Her notice appeared in *The Clarion-*

Ledger, a daily paper in Hinds County, which is not the county "where the crime was committed," Miss. Const. art 5, § 124. Publication began on January 8, 2012, less than thirty days before her pardon was granted. She later placed her notice in the *Madison County Herald*. *See* Exhibit M to Mot. Pre. Inj., R.E. 6.

- Defendant Kirby Glenn Tate was convicted of the felonies of possession of oxycodone, delivery of marijuana, and possession of marijuana with intent in Lauderdale County in 2003 and 2004. His notice was published once a week for four weeks in the *Meridian Star*, a daily paper in Lauderdale County, beginning on December 14, 2011, only twenty-three days before his pardon was granted. *See* Exhibit N to Mot. Pre. Inj., R.E. 6.

Former Governor Barbour's putative pardons for defendants Kern, Gatlin, Hooker, McCray, Ozment, Brown, Robertson, and Tate are unconstitutional for at least two reasons. First, the pardons were issued less that thirty days before the publications began; i.e., each of these defendants published less than thirty days before the date of his or her putative pardon. Each clearly failed to publish an application "for thirty days." Second, six of these defendants' notices have run, or are scheduled to run, once a week for only four weeks, a total of only twenty-eight days, and not "for thirty days." The notices of the other two — Brown and Howard — appeared once a week in a daily newspaper, which does not constitute "published for thirty days." Miss. Const. art.5, § 124. For either or both of these reasons, not one of these pardons is valid under Section 124.

Former Governor Barbour's putative pardons for defendants Howard and Kambule are also invalid under Section 124. Each of these defendants published more than thirty days prior to the date their purported pardons were issued on January 10, 2012. However, each of these defendants published only once a week for four weeks, or a total of 28 days. Their applications were not published "for thirty days." None of their pardons satisfies Section 124.

Finally, and a critical matter for this Court to consider, this lawsuit extends beyond the currently named In-Custody Defendants and Trusty Defendants. Before the stay, the State was in the process of amending the complaint to add as defendants approximately fifty-six felons who did not publish at all but nonetheless received pardons. The State was also adding approximately 122 felons who were granted pardons but who either began publishing less than thirty days before the date of their pardons or published for fewer than the required number of times. These defendants are currently listed as "John and Jane Does." *See* First Amended Complaint, R.E. 9; Order, R.E. 10. Legal issues addressed during this interlocutory appeal may well impact scores of facially invalid pardons issued to convicted felons.

SUMMARY OF THE ARGUMENT

Section 124 of the Mississippi Constitution gives the Governor the power to grant pardons, but it also imposes clear, important limits on that authority. Those limits must be respected. They were put in place deliberately by the framers of the Constitution in 1890; they did not exist in Mississippi's earlier Constitutions. Historical evidence shows that the limits were intended to curb abuses of the pardon power. To ignore them — or to interpret them loosely — would frustrate the framers' intentions.

The pardon power, to begin with, is not an inherent power of the Governor, or even necessarily an executive power. It is a power of government inherent in the people. The people, through the Constitutional Convention of 1890, delegated it to the Governor, but with important restrictions.

Along with limitations such as banning the granting of pardons in felony cases to anyone not yet convicted, the current Constitution requires that before a felon may receive a valid pardon, he or she must publish notice of the application for the pardon in a certain way. That

provision grants to the people of Mississippi an important constitutional right. It is the right to know about a potential pardon, and, implicitly, to comment on its propriety.

The limits on the Governor's power to pardon also give an important right to the judiciary. The pardon power is a "check" on the judiciary's power, consistent with the scheme of checks and balances evident in the Constitution's tripartite plan for government. But it is not an unlimited check. The limits the framers put in place serve to keep the balance from tilting too far and undermining the separation of powers. The judiciary can, and must, enforce those limits to protect its rights under the Constitution.

The Constitution does not oblige the Governor to act on any comments the public may make. But it does require in no uncertain terms that citizens receive notice.

The notice must strictly conform to Section 124's mandatory directions. It must — before a pardon can be issued — be "published for thirty days, in some newspaper in the county where the crime was committed, and in case there be no newspaper published in said county, then in an adjoining county, [and it must set forth] the reasons why such pardon should be granted." Miss. Const. art. 5, § 124. Publication for thirty days is a bright-line rule. And, as this Court has cautioned, a rule that is not enforced is no rule.

Further, by specifically mandating that applications must be published at least thirty days before the granting of a pardon, Section 124 limits a Governor's ability to grant eleventh-hour pardons. The pressure to issue pardons on a Governor in his final hours in office is no doubt intense. Requiring a "set-back" of thirty days provides protection for the citizens by mandating that the pardon process must have begun at least thirty days before a pardon issues. The requirement insulates a Governor, whether he desires the insulation or not, from at least some of the pressure of last-minute appeals for pardons.

It is against this backdrop that the Court considers those matters of law presented in this interlocutory appeal.

The judiciary has the exclusive power to construe the Constitution and to define the powers of the three branches of government. The Governor does not have, and this Court should not cede to him, the authority to unilaterally determine how far into the judiciary's authority he may tread by means of the pardon power.

It is well settled that the judiciary has the authority and responsibility to review the constitutionality of acts performed by the Governor. This court has repeatedly, and for good reason, held that the Governor is not above the law and his acts are reviewable. Just as this Court will review the constitutionality, but not the wisdom, of statutes drafted by the Legislature, the actions of the Governor, as a co-equal entity, are subject to judicial review.

Similarly, the judiciary has the authority and responsibility to review whether the Governor's exercise of the pardon power exceeded the limits imposed by the Constitution. The general rule is clear. Courts do not review the wisdom of a pardon, just as the wisdom of statutes is not subject to judicial review. However, as in any other area of a Governor's authority (whether it be his authority to issue partial vetoes or to arrange an election ballot), a Governor's act of granting a pardon is subject to the strict limitations in the Constitution, and the judiciary may — and in this case should — enforce those constitutional limitations by declaring the pardons invalid. Nothing about pardons alters the rule that the courts can review a Governor's past actions. If anything, judicial review is more important because the pardon power affects the constitutional rights of the citizens and the judiciary.

The framers' use of the precise words "published for thirty days" in Section 124 indicates their intent to require more than a mere single publication thirty days before the pardon, as well

as their intent to require more than publication once a week for four weeks. "Published for thirty days" has repeatedly been held by courts to require that publication must begin at least thirty days before the event, and that the notice must appear in each issue of the newspaper (whether daily or weekly) during that thirty-day period. Judicial opinions and statutory language from the time of the 1890 constitutional convention, as well as the Constitution's plain language, evidence that the phrase "for thirty days" is *not* interchangeable with the phrases "give thirty days notice" or "publish once a week for four weeks." Had the framers intended a single publication or four weekly publications, they knew very well how to phrase that requirement. Where the framers employed precise requirements, such as "published for thirty days," the terms must be applied as written. Section 124 requires publication for a full thirty days before a pardon is valid, not twenty-eight days and not once a week for four weeks.

Finally, the estoppel argument raised by four of the named defendants fails for multiple reasons. The State cannot be estopped from performing a governmental function. Estoppel cannot be applied to deny the constitutional protection afforded the citizens and the judiciary because estoppel is unavailable if its use would be inconsistent with the public interest. Further, estoppel is a fact-driven defense that is not suitable for interlocutory appeal and has not yet even been raised in the trial court.

ARGUMENT

I. The standard of review: Only questions of law are reviewed on interlocutory appeal, and they are reviewed de novo.

The Court's February 1st order limited this matter to an interlocutory appeal. "Interlocutory appeals, pursuant to the rule, must involve questions of law only." *Byrd v. Miss. Power Co.*, 943 So. 2d 108, 112 (Miss. Ct. App. 2006); M.R.A.P. 5. Fact issues, or mixed questions of law and fact, are inappropriate for interlocutory review. *See Byrd*, 943 So. 2d at

112. This is especially true when the case has been stayed in its infancy and before a full presentation of the facts to the trial court.

Also, matters not presented to the trial court cannot be presented for the first time on appeal. *Hemba v. Miss. Dept. of Corrections*, 998 So. 2d 1003, 1008-09 (Miss. 2009). This limitation is even more important when constitutional questions are at issue. *Ellis v. Ellis*, 651 So. 2d 1068, 1073 (Miss. 1995).

II. It is well settled that the judiciary has the authority and responsibility to review the constitutionality of acts performed by the Governor.

This court has repeatedly, and for good reason, held that the Governor is not above the law and that his acts are reviewable. Just as this Court will review the constitutionality, but not the wisdom, of statutes drafted by the Legislature, the actions of the Governor, as a co-equal entity, are subject to judicial review. No man or branch of government is above the law. In 2008, this Court clearly stated the law on this issue: "No governor, or for that matter, any government official, can exercise power beyond their constitutional authority." *Barbour v. State ex rel. Hood*, 974 So. 2d 232, 239 (Miss. 2008) (citing *Fordice v. Bryan*, 651 So. 2d 998, 1003 (Miss. 1995)). The Governor must act "within the limits of the power conferred upon him by the Constitution and the laws." *Hood*, 974 So. 2d at 239. As this Court recognized in *Barbour v. Berger*, No. 2008-M-01534-SCT (Miss. Sept. 18, 2008) (en banc order), a Governor's assertion that he is not subject to an injunction or mandamus neither removes his action from judicial review, nor prohibits declaratory relief.[7]

> The rationale behind these cases [limiting injunctive or mandamus relief] is that the Governor is a constitutional officer who must be allowed to perform his or her duties without prior restraint or interference from the courts. That is not to say,

---

[7] The *Berger* order can be viewed online at http://www.scribd.com/doc/6097085/Barbour-v-Berger-Order.

> however, that the acts of the Governor and Secretary of State are beyond review of the courts. *Once an act is performed, it is then subject to judicial review* and, if the act is found to have violated the law, the constitutional officer is subject to the penalties provided by law.

Berger at 5 (citing *Barbour v. State ex rel. Hood*, 974 So. 2d at 239 (emphasis added)). Of course, this proposition had been well settled before 2008. As this Court restated in 1924, when the Governor has acted, "this court has uniformly held, as in accord with the overwhelming weight of authority, that the legality of the act is a judicial question for the courts." *Broom v. Henry*, 100 So. 602, 603 (Miss. 1924).

The *Broom*, *Hood*, and *Berger* opinions also lay to rest the now-tired argument that any declaratory relief pertaining to a governor's past act is barred as a "backdoor writ of prohibition." The State's original and amended complaints seek a declaratory judgment that the previously issued pardons are invalid. They do not seek a writ or injunction against the Governor. *See* R.E. 1, 7, 9. As explained in *Broom*, "[i]n this case there was no attempt by either party to compel the Governor to act or to refrain from acting. Both Governors have acted in this matter, and the question here presented is the legality of these acts." *Broom*, 100 So. at 603.

The "overwhelming weight of authority" referred to by the *Broom* Court firmly supports the judiciary's duty to protect the Constitution from wanton violation by a Governor. It underscores the importance of the judiciary's role:

> When the judiciary is required to pass judgment on the validity of an act of a co-ordinate branch of the government, challenged as being in conflict with the constitution, it exercises the very highest duty intrusted to it, and the most important.

State ex rel. City of Kansas City v. Renick, 57 S.W. 713, 714 (Mo. 1900). The judiciary must jealously guard its authority to interpret and apply the law — its principal purpose in the Constitution's tripartite system.

III. The judiciary has the authority and responsibility to review whether a Governor's exercise of the pardon power exceeded the limits imposed by the Constitution.

The general rule is clear. Courts do not review the wisdom of a pardon, just as the wisdom of statutes is not subject to judicial review. However, just as in any other area of a Governor's authority (whether it be his authority to issue partial vetoes or to arrange an election ballot), a Governor's act of granting a pardon is subject to strict limitations in the Constitution, and the judiciary will enforce those constitutional limitations by declaring the pardon invalid.[8] Nothing about pardons alters the rule that the courts can review a Governor's past actions. If anything, judicial review is more important because the pardon power affects two important rights — the right of the citizens to have notice, and the right of the judiciary to have its orders carried out.

A. The Governor's constitutional pardon power is not absolute; the framers of the 1890 Constitution imposed several strict limits on it.

Governors have no inherent right to pardon. They derive that authority strictly from the terms of the Constitution. *See Jamison v. Flanner*, 228 P. 82, 87 (Kan. 1924); *State v. Dunning*, 1857 WL 3554, at *2 (Ind. May 25, 1857). The publication requirement in Section 124 was not a part of the 1832 and 1869 Constitutions. *Compare* Miss. Const. of 1832, art 5, § 10 *and* Miss. Const. of 1869, art. 5, § 10 *with* Miss. Const. (of 1890), art 5, § 124. The requirement was added to the 1890 Constitution as a deliberate limitation on the governor's pardon power to protect the

---

[8] According to Appellants, any act committed to the exclusive authority of the Governor is beyond judicial review. One may observe that only the Governor may sign legislation into law, yet legislation he signs is subject to judicial review. Indeed, if the Appellants' contention is true, judicial review of the constitutionality of statutes would be "twice" forbidden as statutes are the result of an act committed exclusively to the Legislature (drafting legislation) and an act committed exclusively to the Governor (signing legislation into law). Yet even the combined effort of the two co-equal branches is subject to judicial review and remedy when the Constitution is infringed.

citizens and the judiciary from previous abuse. The drafters sought to "prevent the abuse of the so-called power of pardon," and to "show the apprehensions felt lest the Governor be not a man to be trusted." 6 Harv. L. Rev. 109, 117-18 (1892) (discussing Mississippi's 1890 Constitution); *see also* Eric Clark, The Mississippi Constitutional Convention of 1890: A Political Analysis, M. A. Thesis, Univ. of Miss., May 1975, at 11 ("There was a widespread belief, held not just by agrarians, that the 1868 constitution gave too much power to the governor. It was charged that his patronage and pardoning powers were too broad, and that he should not be allowed unlimited succession in office.") Because pardons are "in derogation of the law," and "the heedlessness with which they had been granted had become a serious evil," various states, including Mississippi, revised their constitutions and "attempted to provide for some check upon this abuse . . . ." *See State v. Leak*, 1854 WL 3325, at *3 (Ind. Nov. 29, 1854).

The official 1890 Convention Journal, and contemporaneous newspaper accounts of Convention proceedings, corroborate this view of the framers' intent. During consideration of the publication requirement on September 25 and 27, 1890, the framers rejected numerous proposed amendments to the requirement, including ones that would have:

- relieved an applicant of the duty to publish if he submitted an affidavit that he was unable to do so;
- required the Governor or the Secretary of State to make the publication; and
- done away with the publication requirement altogether because it would be a hardship.

See Jackson *Daily Clarion Ledger*, September 26, 1890, at 1; Jackson *Daily Clarion Ledger*, September 27, 1890, at 1 (copies affixed). Multiple attempts to defeat the publication requirement were countered by the argument that publication of notice of a pardon application might prevent unwise grants of pardons — that Governors would make better decisions based on

information that public would furnish after receiving notice. *Id.*; Journal of the 1890 Constitutional Convention (copies affixed). Newspaper reports recount that delegates saw secrecy in the pardoning process as a problem and viewed the publication requirement as a means to increase transparency. *See* Jackson *Daily Clarion Ledger*, September 27, 1890, at 1.

B. The significance of the Constitution's limitations on the pardon power cannot be overstated; Section 124 provides the citizens and the judiciary with important constitutional protections.

Section 124 has provided at least four important safeguards for more than 120 years:

- It recognizes that the citizens have reserved to themselves – and protected by explicit inclusion in the Constitution – the right to be informed that a felon is being considered for a pardon in time to respond and oppose the pardon.
- It sets a specific time period in which a pardon applicant must publish, preventing the Governor from handing out eleventh-hour pardons, without notice, through a flawed and rushed process.
- It provides an important restraint on a Governor's power to "check" the judiciary. Under the system of checks and balances inherent in the Separation of Powers doctrine, the pardon power is a check on the judiciary's enforcement of the laws through criminal judgments, but it must be, and is, limited.
- It prescribes the manner and duration of publication to ensure that notice is widely disseminated in potentially affected communities. This requirement is consistent with the public's right to be informed of any felon's pardon application.

A word about the public's right to be informed of and oppose pardons is in order. The Appellants and former Governor Barbour have previously argued that the publication requirement in Section 124 is unimportant constitutional surplusage because the Governor can issue a pardon regardless of the public outcry.[9] The framers considered the provision so significant that they waged two floor fights over it at the 1890 Convention. The Governor's self-

[9] Following this logic, the First Amendment right to petition one's government is unimportant and unenforceable because your legislator is not legally obligated to act in accordance with your sentiment.

interested questioning of the wisdom of the requirement is irrelevant. The Constitution is the Constitution, the law is the law, and a rule is a rule. *See Box v. State*, 437 So. 2d 19, 21 (Miss. 1983) ("A rule which is not enforced is no rule."). "Regardless of the result, this Court must enforce the articles of the Constitution as written." *Pro-Choice Miss. v. Fordice,* 716 So. 2d 645, 652 (Miss. 1998). As a Texas court stated when invalidating an election held with less than the required notice, "[t]he result [of the balloting] may have been the same, but one is legal and the other is void, simply because one follows the law and the other has nothing to support it." *Cunningham v. State*, 44 S.W.2d 739, 741 (Tex. Crim. App. 1931).

1. The publication requirement in Section 124 is a constitutional right guaranteed to the citizens.

Through Section 124 the citizens reserved to themselves and constitutionally protected a right of notice (and, by implication,) comment. That much is clear from the mere existence of the publication requirement. The Governor cannot wantonly deny that right to the citizens of Mississippi.

2. The "30-day" requirement protects the citizens from last-minute, ill-conceived pardons awarded to the politically connected.

As, apparently, with the pardons at issue, the pressure that a Governor feels to issue pardons in his final hours in office is undoubtedly intense. Requiring a "set-back" of thirty days provides protection for the citizens by mandating that the pardon process must have begun at least thirty days before a pardon issues. This thirty-day requirement ensures that the pardon process — from start to finish — can occur in no less time than thirty days. This requirement insulates a governor, whether he desires the insulation or not, from at least some of the pressure of last-minute appeals for pardons.

3. That "no pardon shall be granted until" the publication requirement is satisfied is a limitation on the Governor's ability to invade the province of the judiciary.

The pardon power is a direct check on the judiciary. It also serves to check the power of the entire criminal justice system — prosecutors, grand juries, and so forth. The framers obviously thought that the pardon power was important enough to include in the Constitution, and an argument can be made that it serves an important purpose. But it can, and has been, abused. Hence Section 124's limitations on that check. The Governor's authority to overturn and erase criminal convictions handed down in judgments of the judiciary is limited for good reason. And those limitations are enforceable. Those limitations are exceptionally important for this Court.

The pardon power is also an indirect check on the legislature, which makes the laws. *See Commonwealth v. Vickey*, 412 N.E.2d 877, 881 (Mass. 1980); *see also* 69 Tex. L. Rev. 569, 611 (Feb. 1991) (noting a pardon's "potential to frustrate the functioning of coordinate branches of government"); *Jamison v. Flanner*, 228 P. 82, 86 (Kan. 1924) ("A pardon issued to one fairly convicted of the violation of law, which is just when applied to him, is bad, and tends to demoralization of government.").

While judicial review of pardons is addressed directly below, it is actually here that the Appellants' contention that the constitutional limitations of a Governor's pardon power are unenforceable first fails. The fact that the pardon power is an element of the checks and balances implicit in the Separation of Powers doctrine resolves any doubt as to whether its limitations are judicially reviewable and enforceable. It is the judiciary that has the exclusive "power to construe the Constitution and thus define the powers of the three branches of our Government." *State v. Wood*, 187 So. 2d 820, 831 (Miss. 1966). The Governor does not have, and this Court

should not cede to him, the authority to unilaterally determine how far into the judiciary's authority he may tread by means of a pardon. *See Rathbun v. Baumel*, 191 N.W. 297, 302 (Iowa 1922) (addressing pardons and stating that a "court can protect its own judgments by an inquiry into the question as to whether or not the instrument that vacates them is itself valid."); *cf. Miss. Windstorm Underwriting Ass'n v. Union Natl. Fire Ins. Co.*, 2012 WL 231560, at *13 (Miss. Jan. 26, 2012) ("I can think of no more dangerous perversion of our system of government than to say that the executive branch of government should interpret its own powers. Next thing you know, we'll be deferring to our law enforcement agencies' interpretation of the Fourth Amendment." (Dickinson, J., dissenting)).

An example drives this point to conclusion. Section 124 as it reads today states that "no pardon shall be granted before conviction." Miss. Const. art. 5, § 124. Imagine the following scenario which, according to Appellants, would be unreviewable and without remedy. A hypothetical circuit court is in the middle of a murder trial when the Governor pardons the defendant before conviction and without publication. The Governor demands that the defendant be immediately released. No principled reading of our jurisprudence could support an argument that the judiciary is powerless to protect its authority in such an example — or, for that matter, in this proceeding.

C. It is well settled that courts review whether pardons were issued in strict obedience to the law as a means to protect their authority and to protect constitutionally enshrined rights of citizens.

As explained above, the general rule is clear: the wisdom of a pardon is not reviewable, but the Governor's compliance with the constitutional limitations on his pardon power is. This important distinction was apparently lost on the Appellants. Simply stated:

- On the one hand, the Constitution gives the Governor unfettered power and discretion to consider the merits of a particular pardon application — to decide

whether someone deserves to receive a pardon. That power is exclusively granted to the Governor.

- On the other hand, the Governor cannot exercise the pardon power (or any other power) in derogation of the Constitution. The Constitution sets several limits on the manner in which the pardon power can be exercised. And those limits — and whether the Governor acted within them — are precisely what the courts can, and, in this case must, review.

No case previously cited by Appellants contradicts these principles, and this case falls squarely in the second category.

This Court has, in fact, already reviewed the legality of a pardon in *Montgomery v. Cleveland*, 98 So. 111 (Miss. 1923). The pardon in that case was issued by the Lieutenant Governor acting as Governor. *Id.* at 111-14. The Court reviewed whether the pardon was constitutionally valid and held that it was. *Id.* at 115. The *Montgomery* Court took time to note that the "petition for pardon filed *and with publication properly proved* was on file in the office of the Governor of the state of Mississippi." *Id.* at 111 (emphasis added). As in the case before this Court today, the question was whether the exercise of the pardon power was constitutional.[10]

Courts around the United States have recognized that the constitutional validity of a Governor's exercise of the pardon power is reviewable. "All of the cases agree that judicial authority extends to the determination of whether, in a given case, the pardoning power has been validly exercised." Judicial Investigation of Pardon by Governor, 65 A.L.R. 1471 (citing, among other cases, *Montgomery*).

---

[10] The *Montgomery* Court also provided guidance on strict adherence to the terms of the Constitution. The dissent argued that the Governor was not absent from the state in the constitutional sense because he was in Memphis, "only a few miles from the state line, in telephone call from his office, only 7 hours' run by railroad from the capital, and was there only about 6 hours." 98 So. at 117 (Anderson, J., dissenting). Similar to rejecting an argument that twenty-eight days of publication should be considered to be thirty, the *Montgomery* majority concluded that being absent from the state includes being only a mile or two outside of the state boundary.

- In *State ex rel. Maurer v. Sheward*, the Ohio Supreme Court held: "Even though courts may not review the substantive decision of the Governor on whether to exercise clemency in a particular case, courts may consider whether constitutionally authorized limitations on the clemency power have been respected. . . . An attempted pardon that is granted without adherence to constitutionally authorized requirements is invalid and is not immune to challenge." *State ex rel. Maurer v. Sheward*, 644 N.E.2d 369, 373 n.3 (Ohio 1994).

- In *Anderson v. Commonwealth*, the Kentucky Supreme Court stated, "And it is outside the power of the courts to alter or expand upon the Governor's [pardon] order where the executive order itself does not otherwise violate the Constitution." *Anderson v. Commonwealth*, 107 S.W.3d 193, 196 (Ky. 2003). Logically, it follows that the *Anderson* court considered itself empowered to review whether a pardon order violated the Constitution.

- In *Jamison v. Flanner*, the Kansas Supreme Court explained, "When the court's attention is called to the pardon it will not inquire into the motives which prompted the pardoning official to issue the pardon, for to do so would be to usurp the pardoning power; but the court will inquire into the authority of the pardoning official to issue the particular pardon in question . . . ." *Jamison v. Flanner*, 228 P. 82, 85 (Kan. 1924). The court held that commutation of a sentence granted without the notice required by law was void, although it was apparently valid on its face. The decision listed over sixty cases in which the validity of a pardon has been reviewed by courts and concluded that "[p]erhaps this list is not complete, but it is sufficient at least to show the variety of the proceedings in which the courts have been called upon to pass upon the authority of the pardoning official and the validity of pardons and to construe their effect." *Id.*

The Appellants have previously relied on three cases, but none supports the proposition that the judiciary is prohibited from reviewing whether the pardon power has been exercised within its constitutional limitations. In *State v. Kirby*, 51 So. 811 (Miss. 1910), the sole issue was whether the legislature may impose restrictions on the Governor's pardon authority in addition to those already found in Section 124. The court said no; the only restrictions are those imposed by Section 124. That proposition, true as it is, does not assist Appellants because the issue in *this case* — the publication requirement — is imposed directly by the Constitution and not by statute.

Appellants have also cited *Pope v. Wiggins*, 69 So. 2d 913 (Miss. 1954). In *Pope*, the Governor had issued a conditional suspension of a sentence (it was not a case about a pardon). *Id.* at 913-14. The Governor could revoke the clemency upon violation of a condition. *Id.* at 914. The decision whether to revoke, like the discretionary decision whether to grant, is not subject to judicial review. The provisions in Section 124 that limit the Governor's power to issue pardons were not at issue. Again, there is a critical distinction between the Governor's absolute power to decide the merits of a pardon application, and the Governor's utter lack of power to act in derogation of Section 124's requirements. Any claim that *Pope* supports the proposition that the Governor's exercise of the pardon power is immune from judicial review betrays a lack of understanding of that distinction.[11]

So too with *Montgomery v. Cleveland*, 98 So. 111 (Miss. 1923), another case the Appellants cited. Consider the subject under discussion in *Montgomery*: "[H]e is the sole judge of the sufficiency of the facts and of the propriety of granting the pardon . . . ." *Id.* "When a proper application is presented to the Governor, he is under duty to consider it; he has power to consider it . . . ." *Id.* "[I]f the application is meritorious, he grants the pardon; if it is otherwise, he refuses it." *Id.* This entire discussion was about the Governor's power under Section 124 to evaluate pardon applications, consider the merits, and decide whether to grant or deny clemency. It had nothing to do with the alleged, though in fact non-existent, power of the Governor to issue a pardon without regard to Section 124's limitations.

---

[11] Perhaps part of the confusion stems from the term "conditions." In *Pope*, the term refers to conditions the Governor, at his discretion, may attach to an act of clemency. It has nothing to do with the conditions that the Governor must meet under Section 124 to issue a valid pardon. The Governor has complete discretion with regard to the former, but none with regard to the latter.

There is one dissent in a Mississippi case which, at first glance, may seem to lend support to the Appellants' position. But it is easily distinguishable. In *State v. Metts*, 88 So. 525, 527 (Miss. 1921), this Court held that the Governor's "demotion" of Oxford from a city to a town violated state statutes and was invalid. The dissenting opinion of a lone justice contained the following dicta:

> The Governor has many questions to decide in the performance of his duties, and his decisions on these questions are final and conclusive on the other departments of the Government. For instance, he is limited in granting a pardon to such cases as where publications have been made for 30 days in a newspaper of the county, but his decision as to whether the publication was made is not open to judicial review.

Id. at 530 (Ethridge, J., dissenting). This view was not shared by the other justices, none of whom joined the dissent. In fact, the majority in *Metts* declared that the judiciary had the authority to review a Governor's acts and declared that the Governor acted in violation of state law. *Id.* The dissenting opinion cited no Mississippi law, or any other authority, for support. It was pure dicta. And it is contrary to all the existing law explained in the preceding paragraphs. Interestingly, seven years after *Metts*, in his treatise *Mississippi Constitutions*, Justice Ethridge had this to say about Section 124: "His [the governor's] power to grant pardons is full and complete *when the conditions imposed by the Constitution are complied with.*" George H. Ethridge, *Mississippi Constitutions* (1928) (emphasis added).

The Appellants' previous filings ignore the obvious distinction between reviewing the wisdom of a pardon and reviewing the constitutionality of the Governor's action. But they cannot overcome the important public safeguard embodied in the conclusion that "judicial authority extends to the determination of whether, in a given case, the pardoning power has been validly exercised." 65 A.L.R. 1471.

D. Appellants' arguments that the State, citizens, and the judiciary are powerless to enforce the terms of Section 124 because it is a mere "procedural rule" subject to a "harmless error" standard or other defenses are desperate and unsupported claims.

The protections afforded to the citizens and the judiciary by Section 124's publication requirement are fundamental to our principles of government and to the method of checks and balances contained in our Constitution. The notice requirement is not a mere a procedural rule addressing solely the internal workings of the Governor's office; its protections and obligations are not "addressed to" and do not "end with" the Governor. *See Presley v. Miss. State Highway Comm'n*, 608 So. 2d 1288, 1297 (Miss. 1992) (*superseded on a different point by Miss. Code § 11-46-6*) (noting that the Legislature must follow constitutional procedures when enacting legislation and if "not done," the judiciary is "compelled to so declare."). Section 124 extends well beyond the Governor's office by placing obligations on the applicant and providing a protection to the citizens and judiciary.[12]

---

[12] That Section 124 places burdens on those outside the Governor's office (the applicant) and protects those outside the Governor's office (the citizens and judiciary) undermines Appellants' previous citation to decisions in which the Court avoided becoming the procedural referee or parliamentarian within the legislative process. *Cf. Ex parte Wren*, 63 Miss. 512 (Miss. 1886) (declining to examine legislative journals to determine whether amendments approved by House and Senate were jettisoned from version of bill presented to governor); *Hunt v. Wright*, 11 So. 608 (1892) (abstaining from review of whether certain laws were enacted in accord with constitutional provisions where the laws' constitutional defects were not manifestly apparent); *Tuck v. Blackmon*, 798 So. 2d 402, 409 (Miss. 2001) (disclaiming authority to invalidate parliamentary ruling of state Senate's presiding officer when ruling was not "arbitrary" or "manifestly wrong"). Even in those cases the Court recognized its duty to enforce the constitution. *Tuck* observed that courts can strike down "manifestly wrong" legislative interpretations of constitutional restrictions on the lawmaking procedures. 798 So. 2d at 406. The *Wright* Court authorized judicial "disregard" of "[e]very act which bears on its face evidence of disregard of the constitution." 11 So. at 610. And this Court has invalidated statutes when the procedure for their adoption violated the Constitution. *See, e.g., Presley*, 608 So. 2d at 1298 (*superseded on a different point by Miss. Code § 11-46-6*). Indeed, just last year this Court reiterated that it will review whether the "form" required by the Constitution is followed and will do so to protect the public. *Hughes v. Hosemann*, 68 So. 3d 1260, 1264 (Miss. 2011) (discussing pre-election review of whether the amendment conforms to the form proscribed by the

Appellants' contention that the judiciary can review and enforce only those provisions of the Constitution that contain explicit reference to judicial review is similarly wrong. "Judicial review is a check that is not expressly granted by the Mississippi Constitution; it is an implied power." *See* James L. Robertson, 3 Mississippi Practice Series: Encyclopedia of Mississippi Law § 19:24 (Jeffrey Jackson and Mary Miller, eds., rev. 2011). No doubt the framers of the 1890 Constitution were aware of this implied power, as they convened nearly a century after *Marbury v. Madison*, 5 U.S. 137 (1803).

Appellants contend that "there is no express or implied remedy" for a violation of Section 124 of the Constitution.[13] There is indeed a remedy. It is for a court to declare the pardons void, and there is plenty of precedent for such a declaratory judgment. *See, e.g., Barbour v. Delta Corr. Facility Auth.*, 871 So. 2d 703 (Miss. 2004); *Fordice v. Bryan*, 651 So. 2d 998 (Miss. 1995); *Holder v. State*, 23 So. 643 (Miss. 1898). In each of these cases, this Court reviewed an act of the Governor and declared the act to be unconstitutional and "thus a nullity." *See Delta Corr. Facility*, 871 So. 2d at 711.[14] Similarly, the pardons in today's case are nullities

---

Constitution).

[13] Appellants previously argued that the only check on the Governor's granting of pardons in violation of the publication requirement was the "court of public opinion." It was not lost on the former Governor that fewer proper publications meant fewer citizens who knew of his planned pardons in advance. His actions stymied review in the court of public opinion just as Appellants' arguments now seek to stymie review in this Court.

[14] Appellants wrongly claim that the Attorney General lacks standing to bring this action because he has suffered no particular harm. Standing in general is a broad concept in our law and requires only that the party have a "colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant . . . or as otherwise authorized by law." *State ex rel. Moore v. Molpus*, 578 So. 2d 624, 632 (Miss. 1991). The State of Mississippi, through the Attorney General, has a colorable interest and, separately, the Attorney General is authorized by law to sue. The Attorney General's interest in this case arises because of his "paramount" duty to protect the public. *State ex rel. Allain v. Miss. Public Serv. Comm'n*, 418 So. 2d 779, 782 (Miss. 1982). The Attorney General is authorized by law to conduct this

and void for failure to conform to the Constitution's requirements. *See State ex rel. Maurer v. Sheward*, 644 N.E.2d 369 (Ohio 1994) ("An attempted pardon that is granted without adherence to constitutionally authorized requirements is invalid . . . ."); *see also Tolbert v. Southgate Timber Co.*, 943 So. 2d 90, 100 (Miss. Ct. App. 2006) (there exists in our law "a remedy for every wrong").

Citing the principle that errors committed during a criminal trial may be deemed harmless, Appellants have previously asked this Court to extend that concept beyond all recognized bounds to declare the violation of Section 124 to be "so unimportant and insignificant" as to be unworthy of enforcement. It is difficult to see how the harmless-error doctrine, which is a judicially developed means for appellate courts to review actions of a trial court, applies to the issue before the Court today. It is the Constitution that gives a Governor his or her authority and, at the same time, limits the Governor's authority. *E.g.*, Miss. Const. art 5, § 124. That the framers of the 1890 Constitution explicitly added the publication requirement as a new limit on the Governor's pardon authority demonstrates that the framers considered it significant and important. The intense public outrage over former Governor Barbour's pardons demonstrates that the citizens of Mississippi do not consider the failure to provide them with their constitutionally protected notice to be unimportant and insignificant. Further, that the Governor exceeded his constitutional authority and intruded into the realm of the judiciary in

---

litigation as he has "the right to institute, conduct and maintain all suits necessary for the enforcement of the laws of the state, preservation of order and the protection of public rights." *Gandy v. Reserve Life Ins. Co.*, 279 So. 2d 648, 649 (Miss. 1973). Without question, the pardoning of scores of felons, including convicted murderers, by former Governor Barbour is a matter of statewide interest. As was the case in *State ex rel. Moore v. Molpus*, "[t]here can be no serious doubt of the standing of the Attorney General, in his official capacity, to bring this action on behalf of the State of Mississippi." *Molpus*, 578 So. 2d at 632.

violation of the Separation of Powers doctrine is hardly an issue that this Court should declare to be unimportant or insignificant.

Finally, citing the lone dissenting justice in *Metts*, Appellants claim that if this Court affirms its well-established position that unconstitutional acts of the Governor are subject to judicial review and correction, this Court would be establishing "new law" that should be only prospective in application. Judicial review of a governor's acts is a hoary principle of our law. *See Broom*, 100 So. at 603. With respect to the *Metts* dissent, suffice it to say that dicta from dissents do not amount to binding "law." *Lee v. Memorial Hosp. at Gulfport*, 999 So. 2d 1263, 1266 at n.3 (Miss. 2008). When this Court reviews the constitutionality of the pardons, the *Metts* dissent will retain as much precedential effect as it does currently — none. It is accordingly frivolous to assert that some "new principle of law" would arise from the ashes of Ethridge's opinion. Moreover, an opinion stating that the judiciary will review whether pardons were issued in violation of the Constitution would not change the substantive law pertaining to pardons set forth in Section 124. Appellants cannot be heard to claim a due process harm by the mere fact that a Court will determine whether *existing law* has been followed.

IV. The plain meaning of the phrase "published for thirty days" has repeatedly been held to require that publication begin at least thirty days before the event, and to require inclusion of the notice in each issue of the newspaper (whether daily or weekly) during that thirty-day period.

A. When the framers utilize precise requirements, such as "published for thirty days," the terms must be applied as written.

A constitutional provision's specific language must be faithfully and strictly construed. As this Court has explained,

> when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have

> power to declare what the Constitution is, according to their own views of what it ought to mean.

Barbour v. State ex rel. Hood, 974 So. 2d 232, 239 (Miss. 2008) (quoting *Dred Scott v. Sandford*, 60 U.S. 393, 621, 15 L. Ed. 691 (1857) (Curtis, J., dissenting)). A court should not destroy through loose construction a specific requirement imposed by the Constitution. *See Senor v. Bd. of Whatcom County Comm'rs*, 42 P. 552, 553 (Wash. 1895) ("[I]t is [the courts'] bounden duty to see that the provisions of the constitution are maintained inviolate, and that the right of the citizen to implicitly rely upon its plain guaranties shall not be destroyed by construction . . . .").

More than a century ago, this Court held that fixed standards employed by the framers must be given their precise effect. For example, in *State v. Powell*, this Court held that constitutional provisions setting the number of votes required to take certain actions must be strictly construed. *State v. Powell*, 27 So. 927, 935 (Miss. 1900). If the Constitution says a two-thirds majority of county electors is required to change the county seat, that means a two-thirds majority and not one vote less. *Id.* If the Constitution says a majority of electors is required to enact an amendment, change the seat of government, or form a new county, that means a majority. *Id. Almost* a two-thirds majority, or *almost* a majority, is not sufficient.

When specific language is used in connection with pardons, those standards must be met. Consider the manner in which courts have interpreted language contained in conditional pardons. American jurisprudence has long recognized that pardons are extraordinary acts requiring strict adherence to any conditions on them. Pardons alter the legal status and rights of their recipients forever. Specific conditions for a pardon may not be ignored or read out of existence. As one federal court long ago explained, failure to meet all the conditions for a pardon renders it invalid:

"He who claims the benefit of a pardon must be held to strict compliance with its conditions." *Haym v. U.S.*, 7 Ct. Cl. 443, 443, 1800 WL 1556, at *1 (Ct. Cl. Dec. Term 1871). Strict obedience to the limitations and requirements for pardons also serve the goal of preventing gubernatorial abuse of the power.

> Pardons and remissions are in derogation of the law, and should never be extended except in cases which, could the law have foreseen, it would excepted from its operation; yet the heedlessness with which they had been granted had become a serious evil. Our new constitution, article 5, section 17, attempted to provide for some check upon this abuse; but the most effective corrective will be found in the **strict application** to those acts of executive grace of the rules of law by the Courts.

Leak, 1854 WL 3325 at *3 (emphasis added).

B. Section 124 requires publication for a full 30 days before a pardon is effective, not 28 days and not once a week for four weeks.

The plain meaning of the phrase "published for thirty days" has repeatedly been held to require that publication shall begin at least thirty days before the event, and that the notice must be included in each issue (whether daily or weekly) of the newspaper during that thirty-day period. "Published for thirty days" is not the same as "give thirty days notice," which requires merely a one-time publication. Nor is "published for thirty days" the same as "publish once a week for four weeks." The framers undoubtedly knew how to phrase a requirement for "once a week for four weeks" or to "give thirty days notice" if that was their intent. Instead, the words "for thirty days" have a different meaning. Judicial decisions rendered in the late 1800s, as well as phrases used in statutes enacted at that same time, evidence the common understanding of "publish for thirty days."

- "The language is: 'Public notice of the time and place of sale, for at least thirty days before the day of sale, by advertisement in some newspaper.' The preposition 'for,' as used in the language quoted, requires, as it seems to us, an insertion in each successive issue of the paper up to the day of sale, the first one being more than thirty days prior thereto. In the

authority cited by counsel the language was 'at least sixty days,' the preposition 'for' being omitted. **The difference is obvious.**" *McCurdy v. Baker*, 1873 WL 623, at *2 (Kan. Jan. Term 1873) (emphasis added).

- "[T]he notice must appear in **every issue** of the paper during [the prescribed period]." *Brown v. Ogg*, 1882 WL 6381, at *3 (Ind. Nov. Term 1882) (interpreting statute requiring notice "for" sixty days) (emphasis supplied).

- "[T]he notice must be first published at least thirty days prior [to the event], and continued in each successive issue of the paper up to the day of [the event]. In other words, in **every issue** of the paper between the first insertion of the notice and the day of the [event], the notice must appear." *Whitaker v. Beach*, 1874 WL 656, at *1 (Kan. Jan. Term 1874) (emphasis supplied).

- "According to the prevailing view the preposition 'for,' as used in section 3069, *supra*, when given its full meaning, determines the interpretation of the requirement, and the notice must be published continuously **in all the issues** of the newspapers." *Hatfield v. City of Covington*, 197 S.W. 535, 537 (Ky. Ct. App. 1917) (emphasis supplied).

- "The meaning of the statute, therefore, is that the notice shall be published during at least thirty days before the day of sale. Not necessarily in a daily paper, — a weekly, no doubt, will answer the requirements of the statute, — but the publication must be continued for at least 30 days." *Lawson v. Gibson*, 24 N.W. 447, 448 (Neb. 1885).

- "When therefore [the newspaper editor] certifies that it was published for thirty days, he must mean that it was published **in every paper that was issued during those thirty days**. Had it been otherwise, he would have said that thirty days' notice was given by publication for one week or two weeks, as the case might be." *Prince George's County Comm'rs v. Clarke*, 1872 WL 5684, at *6 (Md. June 18, 1872) (emphasis supplied).

- "Where there is a daily newspaper, publication 'for' three weeks means publication every day for three weeks, excluding Sundays." *O'Hara v. City of South Fort Mitchell*, 290 S.W.2d 455, 457 (Ky. 1956).

The holdings in these cases that the notice must appear "in every paper that was issued during those thirty days" is important. *See Clarke*, 1872 WL 5684, at *6; *Whitaker*, 1874 WL 656, at *1; *Hatfield*, 197 S.W. at 537. Published for thirty days means that the average person opening his paper during that thirty-day period (whether the paper be published daily, every day

but Saturday, bi-weekly, or weekly) will expect to find the notice. The publication will span thirty days no matter how many times the paper is published during that time.

Further, publishing "for thirty days" when the publication is required in a weekly paper means that the notice must appear five times and not merely four times. Otherwise, the notice will appear for only twenty-eight days, and not for thirty days. *E.g., Cunningham v. State*, 44 S.W.2d 739, 741 (Tex. Crim. App. 1931); *Lawson v. Gibson*, 24 N.W. 447, 448 (Neb. 1885).

The math is simple. A weekly newspaper is on the newstands, available to the public, for seven days before it is replaced by the next issue. So the first weekly insertion of a legal notice covers the first seven of the thirty days. The second spans seven more, for a subtotal of fourteen. The third, seven more, bringing the subtotal to twenty-one. A fourth issue, available to the public for another seven days, brings to twenty-eight the number of days of publication of the notice. To reach a total number of publication days greater than twenty-eight — for example, to reach thirty — the notice would have to appear one more time. That is, it would have to be published in a fifth consecutive weekly issue of the newspaper.[15]

This reasoning has been upheld by various courts. For example, the Louisiana Supreme Court found that it took five consecutive insertions in a weekly paper of a notice of an election, where a statute required publication for thirty days. *Lower Terrebonne Refining & Mfg. Co. v. Police Jury of Parish of Terrebonne*, 40 So. 443, 444 (La. 1906).

By requiring the notice to appear in every issue of the newspaper published over the thirty-day period, the framers were adroitly accounting for the fact that newspapers publish at

---

[15] For example, assume the newspaper was published weekly beginning on the first day of the month. A notice run four times would appear on the 1st, the 8th, the 15th and the 22nd. When the newspaper was published on the 29th, the notice would not be in the newspaper. Therefore, no notice would appear during the 29th and 30th days.

different intervals. They wanted to notice to appear the maximum possible number of times during the thirty-day period while still accounting for the newspaper's schedule.[16] If a county is served by a daily paper, the notice must run daily. If by a newspaper published only on the weekdays, the notice must appear every Monday through Friday within the thirty-day period (which would be for four whole weeks and then two days of the fifth week). If a weekly, the notice must appear five times during the thirty days. The cleverness of the phrasing is in both its flexibility and its requirement for the maximum number of publications possible. So it is clear that "for thirty days" is vastly different than "once a week for four weeks."

In contrast, Appellants contend that thirty days is not thirty days. They say that even if the paper publishes daily, "publish for thirty days" actually means "publish once a week for four weeks." Appellants cite *Henritzy v. Harrison County*, 178 So. 322 (Miss. 1938), which analyzed a different publication requirement contained in a statute and, frankly, misunderstood the very Missouri decision it relied on.

First, that *Henritzy* was construing a statute is significant. Statutory construction contains elements of deference and loose construction that are appropriate given that the Legislature can easily amend a statute to clarify or correct a judicial or executive interpretation. Constitutional interpretation is different. The interest protected by Section 124's notice requirement is one held by the public at large and sufficiently important to have been included in the Mississippi Constitution. The *Henritzy* case involved, by contrast, a statutory private property interest.

---

[16] Requiring the maximum number of insertions during the thirty-day period addressed a fundamental concern of the framers: if Governors unwisely exercised the pardoning power, it could be for lack of information that publication might furnish. Delegates believed secrecy in the pardoning process was a problem and viewed the publication requirement as a means to increase transparency. *See* Jackson *Daily Clarion Ledger*, September 27, 1890, at 1.

Although *Henritzy* statutory interpretation is not binding on the interpretation of Section 124, even if it were, this Court has recognized the higher duty of correctly interpreting the Constitution — a duty that includes clarifying erroneous precedent.

> A Constitution, however, is much more important and sacred than a decision of any court. The people by the Constitution establish a policy for the good of the people themselves. Where a court misconstrues the Constitution or misjudges a case, and its attention is called to it in the proper way, it should make a correction at the earliest date possible.

Hughes v. Hosemann, 68 So. 3d 1260, 1272 (Miss. 2011) (Randolph, J., specially concurring and joined by six justices). Returning to the basic reading of "publish for thirty days," with or without support from *Henritzy*, it is clear that the framers did not use the phrase "once a week for four weeks."

Second, the *Henritzy* opinion relied exclusively on an opinion from the Supreme Court of Missouri addressing the construction of the phrase "not less than fifteen days' previous notice." *Southworth v. Glasgow*, 132 S.W. 1168, 1170 (Mo. 1910). That Missouri court in *Glasgow* and the *Henritzy* court were reviewing two very different requirements. What *Henritzy* did not comprehend, and what the same justice who wrote *Glasgow* later amplified, is that the meaning of"not less than X days' previous notice" differs greatly from a requirement to "publish for X days." The justice who wrote in *Glasgow* made this point in *State ex inf. Barrett ex rel. Callaghan v. Maitland*, 246 S.W. 267, 270 (Mo. 1922). In *Barrett*, the Missouri court examined the phrase "published for at least 30 days" and stated that *Glasgow*, which interpreted the phrase "not less than fifteen days' previous notice," was inapplicable. *Barrett*, 246 S.W. at 270. Thus, the Missouri Supreme Court, upon which the *Henritzy* Court relied in reaching its opinion, disagreed with the conclusion reached in *Henritzy*. Section 124's requirement of publication "for

thirty days" is not parallel to the statutes in *Henritzy* and *Glasgow*, and Appellants' reliance on the *Henritzy* opinion is misplaced.

Finally, Appellants' assertion, whether premised on *Henritzy* or other arguments, that Section 124 is satisfied by publishing once a week for four weeks is contradicted by the specific wording chosen by the framers. Had the drafters of the 1890 Constitution intended to require publication once a week for four weeks, they knew how to say so.

For example, Section 234 of the 1890 Constitution permits the Legislature to consider a change in boundaries or taxation of the Yazoo-Mississippi Delta Levee District only after publication of the proposed bill for "four weeks prior to the introduction thereof into the Legislature. . . ." Miss. Const. art. 11, § 234. The same framers deliberately chose to require "thirty days" rather than "four weeks" in Section 124. Moreover, lawmakers at the time of the 1890 convention knew all too well how to express a weekly-for-X-weeks requirement if that was their intention. *See, e.g.*, Miss. Code Ann. § 1580 (1892) ("A license to retail liquors shall not be granted unless the petition therefor, with the full names of the petitioners, be published, so as to be easily read, for three weeks during the month which it is required to remain on file."); Miss. Code Ann. § 4339 (1892) ("and notice of the time at which the dockets will be taken up, according to the order, shall be published by the clerk, in a newspaper published in Jackson, if there be one, for the period of three weeks"); Miss. Code § 2437 (Rev. 1880) ("the clerk of the court shall cause a notice to be published, once a week for four weeks, in some newspaper published within the county or in some convenient county"); Miss. Code § 1013 (1871) ([The] order shall, within twenty days after it is granted, be published once a week, for four consecutive weeks, in some public newspaper . . . ."). Section 124's requirement of publication "for thirty

days" is simply not the same as "once a week for four weeks": one deals in days, the other in weeks; one says four, the other thirty.

While the meaning of "publish for thirty days" is critical to the resolution of this case, it will not affect every recipient of former Governor Barbour's pardons. Approximately fifty-six recipients failed to make any publication. Another approximately 122 of the pardons were issued to felons who either began publishing less than thirty days before the date of their pardons or published for fewer than the required number of days.

C. Former Governor Barbour's law firm agrees with the above interpretation of Section 124.

Finally, should there be any doubt as to the conclusion that "publish for thirty days" requires inclusion of the notice in each issue of the newspaper (whether daily or weekly) during that thirty-day period, this Court need only turn to the"handbook" for publishing legal notices in Mississippi authored by Butler, Snow, O'Mara, Stevens & Cannada, PLLC, and distributed to newspapers. *See* Synopsis of Publication Fees for Public Notices (copy affixed). The handbook recites that Section 124 requires publication "for 30 days." *See* Entry ZZZ, "Reprieves and Pardons." In contrast, the handbook notes that other publication requirements are satisfied by merely publishing weekly. *See, e.g.,* Entry CCCC, "Publication of Resolution Prior to Authorizing A Loan to A Public Agency." The difference between "publish for thirty days" and "publish once a week for four weeks" is simply too obvious to ignore.

D. Section 124's publication requirement applies to the Trusty-Defendants.

Although the Trusty-Defendants did not raise this issue before the trial court, they now assert that they were not "applicants" for pardons — as if their pardons came as complete surprises to them. They conclude, therefore, that the publication requirement does not apply to them. This contention is, at heart, a factual argument to be resolved by the trial court. Whether

the Trusty-Defendants applied for pardons informally, formally, or not at all is a question of fact. It is hard to imagine that the Trusty-Defendants' desire to be pardoned was *never* expressed to the Governor or any member of the Governor's staff.

Even in 1923, Governors maintained files in which applications for pardons were kept, along with proof of proper publication. In the first two paragraphs of *Montgomery v. Cleveland*, 98 So. 111 (Miss. 1923), this Court noted that:

> The case comes here on an agreed statement of facts, which is as follows: "That the relator on the 11th day of November, 1922, was a convict in the Mississippi State Penitentiary, and that he had properly had published and filed in the office of the Governor of the state a petition praying that he be granted a pardon for the offense of which he had been convicted, and that on the 11th day of November, 1922, that said petition for pardon filed and with publication properly proved was on file in the office of the Governor of the state of Mississippi."

Former Governor Barbour had a duty to obtain applications for pardons and affidavits or proof of publication from the appropriate newspapers. By his own admission, there were no files for the five Trusty-Defendants.

Moreover, every aspect of the relationship between the former Governor Barbour and the Trusty-Defendants establishes that they were, in fact, applicants for pardons. The former Governor's trial court amicus brief stated that the Defendant-Trusties had no paper pardon applications because they were "living files" evaluated on a daily basis by the former Governor. The former Governor knew that he was evaluating the trusties for possible pardons, and the Defendant-Trusties knew that they were being evaluated. The only people who did not know were the citizens who, by virtue of Section 124, had the constitutionally protected right to know. As a legal matter, the obvious import of Section 124 — that the public must be made aware of impending for pardons — cannot be so easily cast aside by the Governor in effect announcing that a trusty will be considered for a pardon automatically and need not formally apply. Further,

the Governor's state of mind (whether he thought the Trusty-Defendants were applying for pardons or were just expecting "no application needed" pardons) is irrelevant to the protection afforded the citizens and the judiciary by Section 124. A trusty seeking a pardon by working in the Mansion is, by any reasonable interpretation, an applicant for a pardon.

Second, the legal contention that Section 124 does not require the Trusty-Defendants to publish is false. Even the former Governor does not believe that. Thirty-one days before he pardoned the Defendant-Trusties, he ordered MDOC to publish the notices.

An application for a pardon is a condition precedent to the issuance of the pardon. Section 124 explicitly states that "no pardon shall be granted until the applicant" has published. Miss. Const. art. 5, § 124. The requirement contains no exceptions for alleged "non-applicants." Petitioners' contention that they did not apply for pardons may, in fact, provide an additional legal basis for invalidating their pardons.

V. The Trusty-Defendants' estoppel argument fails for five reasons.

The Trusty-Defendants assert that the Attorney General is "equitably estopped" from contesting the validity of the pardons because the Special Assistant Attorney General assigned to MDOC "undertook to publish the notices for Appellants." Pet. at 25. This Court should reject this argument for five reasons:

- The State cannot be estopped from performing a governmental function.
- Estoppel cannot be applied to deny the constitutional protection afforded the citizens and the judiciary; estoppel is unavailable if its use would be inconsistent with the public interest.
- Estoppel is a fact-driven defense not suitable for interlocutory appeal.
- The estoppel claim is contradicted by the facts.
- The estoppel claim is legally incorrect.

A. The State cannot be estopped from performing a governmental function.

The Attorney General is performing a governmental function in bringing this lawsuit. He is required to do so because "[p]aramount to all of his duties, of course, is his duty to protect the interest of the general public. *State ex rel. Allain v. Miss. Public Serv. Comm'n*, 418 So. 2d 779, 782 (Miss. 1982). He must "conduct and maintain all suits necessary for the enforcement of the laws of the state, preservation of order and the protection of public rights." *Gandy v. Reserve Life Ins. Co.*, 279 So. 2d 648, 649 (Miss. 1973).

In *Reliance Manufacturing Company v. Barr*, the (ironically named) plaintiff alleged that it suffered because it relied on representations made by the Tax Commission. *Reliance Mfg. Co. v. Barr*, 146 So. 2d 569, 573 (Miss. 1962). This Court rejected the plaintiff's argument that such reliance should estop the Tax Commission. *Id.* at 574. The Court reiterated that "the State cannot be estopped from performing a governmental function." *Id.* (citing 31 C.J.S. Estoppel §147, p. 433; and opinions of appellate courts of Cal., Ga., Colo., La., Ill., and Mich.).[17]

Even if, hypothetically, a Special Assistant Attorney General had made a misrepresentation to the Governor's office — although none did, actually — the Attorney General would still not be estopped from performing his paramount duty. As one court explained it:

> An administrative agency, charged with the protection of the public interest, is certainly not precluded from taking appropriate action to that end because of mistaken action on its part in the past. . . . Nor can the principles of equitable estoppel be applied to deprive the public of the protection of a statute because of mistaken action or lack of action on the part of public officials.

---

[17] The *Reliance* Court did note that authorities have generally held that "the defense of equitable estoppel may apply to a state 'in a proper case.'" However, the Court then concluded that stopping the State from performing a government function is not a "proper case." *Id.* at 100.

Raveis Real Estate, Inc. v. Comm'r of Revenue Servs., 665 A.2d 1374, 1379 (Conn. Super. Ct. 1995) (ellipsis in original); *see also City of New York v. City Civil Serv. Comm'n.*, 458 N.E.2d 354, 361 (N.Y. 1983) ("estoppel may not be applied to preclude a State or municipal agency from discharging its statutory responsibility.").

B. This Court has established that estoppel is unavailable if its use would be inconsistent with the public interest.

A party claiming equitable estoppel against a governmental entity must show that estoppel is not inconsistent with the "public interest." *In re Municipal Boundaries of City of Southaven*, 864 So.2d 912, 918 (Miss. 2003). It would be contrary to the public interest if the State of Mississippi, through the Attorney General, were estopped from protecting the rights of the citizens and the judiciary guaranteed in Section 124 of the Constitution. Thus, estoppel will not stand against the government in this instance. *See Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority*, 1 P.3d 63, 70 (Cal. 2000) ("neither the doctrine of estoppel nor any other equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public").

C. Estoppel is a fact-driven defense not suitable for interlocutory appeal.

The burden of establishing the factual elements of estoppel is on the party asserting the estoppel, and the elements must be established by a preponderance of the evidence. *Rawls Springs Utility Dist. v. Novak*, 765 So. 2d 1288, 1292 (Miss. 2000). Whether the factual (and legal) elements of estoppel exist is a question for the trial court. Fact issues, or mixed questions of law and fact, are inappropriate for interlocutory review. *See Byrd v. Miss. Power Co.*, 943 So. 2d 108, 112 (Miss. Ct. App. 2006) ("Interlocutory appeals . . . must involve questions of law only."); M.R.A.P. 5.

D. The Trusty-Defendants' estoppel claim is contradicted by the facts.

The facts concerning the publication of notices — or rather, the lack of proper publication — are a bit strange, but not hard to understand. The Trusty-Defendants have tried to portray Special Assistant Attorney General David Scott as a bad actor who "undertook" and then failed "to publish the notices." A review of the timeline and underlying facts tells a far different story.

1. January 13, 2004 – November 27, 2011

Governor Barbour has stated that he intended from his first day in office to continue what he believed to be a tradition of pardoning the trusties who served at the Governor's Mansion. For seven years and eleven months, neither the Governor nor the Trusty-Defendants took any steps to publish notice of the Trusty-Defendants' impending pardons.

2. November 28, 2011

At the request of the MDOC Commissioner Epps, David Scott contacted Darryl Neely, Governor Barbour's Policy Advisor for Corrections, to ensure that the Governor's office was aware of the Constitution's publication requirements. *See* November 28 Text Message, Pet. at 27 ("Please look at Section 124 MS Constitution in reference to pardons and notice. Call me when you get a chance. David Scott."). Evidence will show that Neely responded by telephone to Scott that the Governor's office was aware, but that the Governor had already decided that publication was not necessary.

3. After 5:00 p.m. on December 6, 2011

Governor Barbour apparently changed his no-publication decision on December 6th, only thirty-one days before he issued pardons to the Trusty-Defendants. After the close of business on December 6th, Neely sent a cell phone text message to Scott to inform MDOC that "Top Guy"

wanted MDOC to "run the notice for those currently housed at MDOC."[18] *See* Texts, Pet. at 27. Neely was clearly instructing MDOC, an executive branch agency under the control of the Governor, to place the notices. Scott confirmed that Neely was giving instructions directly to MDOC — not to Scott or the Attorney General — when Scott responded by saying "MDOC will take care of those in custody." Neely knew that Scott was acting only as a representative of MDOC when he thanked Scott for being part of the "team effort." *See* Texts, Pet. at 28.

After the close of business on December 6th, Neely provided only the names of Mansion trusties who were to receive pardons, leaving MDOC to research what crimes they had committed, to draft the notices, to determine which newspapers they should be in, to contact the newspapers, and to pay the newspapers. Further, Neely also asked MDOC to identify and contact MDOC field officers for several other pardon recipients to inform them of the publication requirement, thereby complicating MDOC's tasks. *See* Texts, Pet. at 28-30.

During the text message exchange, Scott did not tell Neely that *he personally* would place the notices. Scott did not say that the Attorney General would place the notices. Scott did not say that the Office of the Attorney General would place the notices. In fact, Scott's response to Neely was neither a misrepresentation of existing fact nor a promise that was not fulfilled: MDOC did place the notices. By December 8th, within a day after beginning the task on December 7th, and following receipt of the names of the pardon applicants late on December 6th, MDOC — the Governor's own agency — had contacted newspapers to arrange publication of the notices.

---

[18] Why former Governor Barbour decided to have a state agency, using state resources, publish the notices when Section 124 clearly places that burden on the applicants is unexplained. Nor is it fathomable why former Governor Barbour, an attorney and a state officer sworn to uphold the Constitution, decided at some point that no publication was required.

4. December 9, 2011

The evidence will show that by Friday, December 9th, MDOC had followed the Governor's laundry list of eleventh-hour tasks. MDOC's communications director — not David Scott — emailed the Governor's Office on Friday, December 9th, to inform it that the earliest any of the notices could be published would be Monday, December 12th, and that several notices would start after that date because they would run in weekly or twice-weekly newspapers that did not publish until later in that week.

5. January 13, 2011

After the public outcry over the hundreds of pardons, and after the failure to publish came to light, former Governor Barbour spoke to the press. He confirmed that he had asked MDOC, his executive branch agency, to place the notices. He did not claim that he asked Scott or the Attorney General to.[19] Recognizing that he did not provide the names of the pardon recipients until after the close of business on December 6th, the former Governor stated that MDOC got the notices to the newspapers on December 8th. However, as he acknowledged, by December 8th it was too late:

> In the case of the inmates at the Governor's Mansion, the Department of Corrections sent the publication to the appropriate newspapers on December 8th before the start date. Unfortunately for some technical reasons about deadlines and the practice of the newspapers, they didn't get finished running.[20]

Former Governor Barbour conceded that by the time his office gave MDOC the information, after the close of business on December 6th, it was already impossible for some of the notices to

---

[19] It is apparent that the theory that Scott was to blame was developed after this press conference. During the press conference, former Governor Barbour forthrightly stated, "I take the blame."

[20] The transcript of the news conference is not yet in the record because the preliminary injunction hearing was stayed.

be published before December 13th or 14th. He said, "We found out that some of them didn't get published until the 13th or the 14th because that was the next time they published legal advertisements."

Former Governor Barbour's most telling admission was his statement that MDOC had done everything it could, since he had not supplied the names of the pardon recipients to MDOC until after the close of business on December 6th:

> That is something I would have done differently and also I wish we would have done a little better job, and I don't know whose fault it is so I take the blame, in knowing that sending it a couple of days earlier to the newspapers *isn't good enough.* You know, it would be better to send it ten days early rather than two days early.

(emphasis added). It was a series of poor decisions on the part of former Governor Barbour and the Trusty-Defendants that resulted in the notices being untimely. Until December 6, the former Governor did not believe that any publication was necessary. The Trusty-Defendants apparently relied on former Governor Barbour to determine if publication was necessary and to arrange publication, although the legal burden under Section 124 is theirs. Former Governor Barbour wrongfully agreed to arrange the publications. He did not order MDOC to arrange the publications until after the close of business on December 6th, a mere thirty-one days before he pardoned the Trusty-Defendants.

Shamelessly, the former Governor and the felons he pardoned have now publicly and falsely maligned a civil servant whose "fault" lies in having *warned* the Governor's office of the need to publish, in having *responded* to an after-hours text message sent by the Governor's advisor, and in having *conveyed* the Governor's instructions to an agency that is under the direction and control of the Governor. This is no estoppel argument. It is a ruse.

E. The estoppel claims are legally incorrect.

Far from establishing that the Attorney General is "estopped" from enforcing the Constitution, the Trusty-Defendants fail to make out even a *prima facie* allegation of equitable estoppel. This Court has spelled out the requirements:

> To establish equitable estoppel, which should only be used in exceptional circumstances and must be based on public policy, fair dealing, good faith, and reasonableness, there must be (1) belief and reliance on some representation; (2) a change of position as a result thereof; and (3) detriment or prejudice caused by the change of position.

Windham v. Latco of Miss., Inc., 972 So. 2d 608, 612 (Miss. 2008) (internal citations and punctuation omitted). It has also remarked that "[t]he law does not regard estoppels with favor, nor extend them beyond the requirements of the transactions in which they originate." *PMZ Oil Co. v. Lucroy*, 449 So. 2d 201, 206 (Miss. 1984) (citing *McLearn v. Hill*, 177 N.E. 617, 619 (Mass. 1931)).

1. The Trusty-Defendants did not rely on any representation made to them by Scott, the Attorney General, or any member of the Attorney General's staff.

The Trusty-Defendants do not identify a single statement made *to them* by Scott, the Attorney General, or any member of the Attorney General's staff. Any representation made to the Trusty-Defendants was made by the former Governor or his staff.[21]

2. Reliance would not be reasonable.

It would not be reasonable for Trusty-Defendants to have relied on any representation by former Governor Barbour that he would have his executive agency place and pay for the notices

[21] Moreover, it is beyond all bounds of equity for former Governor Barbour and the Trusty-Defendants to contend that an attorney's act of relaying an eleventh-hour text message from the Governor to the Governor's own agency somehow estops the Attorney General from enforcing the Constitution.

for them. Section 124 of the Constitution places the legal obligation exclusively on the applicants.

3. Scott's statement was accurate.

Scott's actual statement that he would pass along the Governor's instruction to MDOC and that MDOC would place the notices was accurate. As the case cited by Appellants in footnote 12 of their Petition for Interlocutory Review instructs, there can be no claim of estoppel when the statement was true or the representation was not breached. *Weible v. Univ. of So. Miss.*, 2011 WL 5027203, at *14 (Miss. Ct. App. Oct. 18, 2011).[22] MDOC, as the Governor's agency, did place the notices in newspapers. Scott did not represent that, having received only minimal information thirty-one days before the pardons were issued, MDOC would be able to place the notices in compliance with the Constitution. And Neely did not ask for any commitment concerning when the notices would be placed.

4. The failure to properly publish was the result of decisions made by former Governor Barbour.

Estoppel, as an equitable remedy, is not available to cover one's own failings — either those of former Governor Barbour or of the Appellants.

5. Neither estoppel doctrine advanced by Appellants applies.

Appellants rely exclusively on equitable estoppel and quasi-equitable estoppel. *See* Pet. at 32-33. Neither doctrine applies. Equitable estoppel prohibits a party from denying the existence of material fact. *See Simmons Housing, Inc. v. Shelton ex rel. Shelton,* 36 So. 3d 1283, 1287 (Miss. 2010). Scott's statement that MDOC would place the notices was not a statement of existing fact, but a statement about *an event yet to occur*. For that reason alone, equitable

[22] Although no mandate has issued for this case yet, Appellants cited it, so it is included in this discussion, too.

estoppel does not apply. "Quasi-estoppel" prevents a party from benefitting from a transaction or position and then taking an inconsistent position to avoid the obligations that correspond to those benefits. *See Bailey v. Estate of Kemp*, 955 So. 2d 777, 782 (Miss. 2007). This contractual remedy is inapplicable because Scott did not receive the benefit of any bargain, and, to the extent he had any "obligation," he fulfilled it.[23]

6. Because Scott was not authorized to counsel or assist the Trusty-Defendants, estoppel is not applicable to the State.

Scott has no authority as an attorney for MDOC to — and, in fact, did not — obligate himself or the Office of the Attorney General to assist a convicted felon.It is a "well-established rule in Mississippi that the doctrine of equitable estoppel cannot be applied against the state or

---

[23] Similarly, an argument that the Attorney General or State is estopped by any alleged misstatement of law is barred as a matter of law. In *Conway v. Mississippi State Board of Health*, 173 So. 2d 412 (Miss. 1965), a physician's license to practice medicine was rendered void when he, relying on letters written by the State Board of Health, failed to file his license in the proper manner. In a chancery court challenge to the revocation of his license, the physician argued that the State was estopped from revoking his license as he had "relied" to his detriment on the written representations of the State Board of Health. The Supreme Court rejected the argument that the mistake of an agency changes a statutory requirement or renders a statute unenforceable. "The letters by the Secretary of the State Board of Health could not have the effect of altering the statute and it is not estopped thereby from pursuing the other duties imposed upon it by [the] Mississippi Code." *Id.* at 415; *see also Oktibbeha County Bd. of Educ. v. Town of Sturgis*, 531 So. 2d 585, 589 (Miss. 1988) (lease which violated law was void and estoppel cannot be argued); *Amer. Oil Co. v. Marion County*, 192 So. 296 (Miss. 1939) (county cannot be estopped by the "negligence or affirmative acts" of its employees); *accord Greenville County v. Kenwood Enters., Inc.*, 577 S.E.2d 428, 436 (S.C. 2003) ("The general rule is that administrative officers of the state cannot estop the state through mistaken statements of law."); *Allen v. Bennett*, 823 So. 2d 679, 686 (Ala. 2001) ("The doctrine of equitable estoppel is not a bar to the correction of a mistake of law"); *Sievertsen v. Employment Appeal Bd.*, 483 N.W.2d 818, 820 (Iowa 1992) (recognizing the "line of cases" holding that the State cannot be estopped from correcting a mistake of law); *City of New York v. City Civil Service Comm'n*, 458 N.E.2d 354, (N.Y. Ct. App. 1983) ("estoppel may not be applied to preclude a State . . . agency from discharging its statutory responsibility. This is particularly true where, as here, the estoppel is sought to be applied to perpetuate . . . a misreading of constitutional and statutory requirements."); *State Dep't of Revenue v. Anderson*, 403 So. 2d 397, 400 (Fla. 1981) (recognizing the "general rule" "that the state cannot be estopped through mistaken statements of law").

its counties where the acts of their officers were unauthorized." *Rawls Springs Utility Dist. v. Novak*, 765 So. 2d 1288, 1292 (Miss. 2000). The former Governor and Appellants know that Scott represents MDOC, not the Appellants. If would have been beyond Scott's authority to assist or counsel a felon. *See* Miss. Code Ann. § 97-11-3 (making it a crime for the Attorney General to "in any manner, consult, advise, counsel, or defend" a person charged with a crime).

Conclusion

For the reasons set forth above, any and all relief requested by the Appellants, including the dismissal of the complaint, should be denied. The case should be remanded to the trial court so that it may proceed through adjudication and subsequent appellate review.

This the 7th day of February, 2012.

By: JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

Alexander Kassoff

JIM HOOD, MSB N[redacted]
ATTORNEY GENERAL
MEREDITH M. ALDRIDGE, MSB N[redacted]
BRIDGETTE WIGGINS, MSB No[redacted]
ALEXANDER KASSOFF, MSB No. [redacted]
SPECIAL ASSISTANT ATTORNEYS GENERAL

Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680

CERTIFICATE OF SERVICE

This is to certify that I, Alexander Kassoff, a Special Assistant Attorney General for the State of Mississippi, have caused to be mailed this date, first-class postage prepaid, a true and correct copy of the foregoing Response to the following:

Honorable Tomie T. Green
Circuit Court Judge, Seventh District
First Judicial District of Hinds County, MS
Post Office Box 327
Jackson, MS 39205

David K. Scott, Esq.
Mississippi Department of Corrections
723 North President street
Jackson, MS 39202

Thomas M. Fortner
Attorney at Law
Erik M. Lowrey, P.A.
525 Corinne Street
Hattiesburg, MS 39401

Richard A. Filce
Attorney at Law
Erik M. Lowrey, P.A.
525 Corinne Street
Hattiesburg, MS 39401

Cynthia A. Stewart, Esq.
118 Homestead Drive, Suite C
Madison, MS 39110

Alison Oliver Kelly, Esq.
Alison Oliver Kelly, PLLC
Post Office Box 1644
Jackson, MS 39215

Sylvia S. Owen, Esq.
Owen Law Firm
Post Office Box 7252
Tupelo, MS 38802

Edward Blackmon, Jr., Esq.
Blackmon & Blackmon
907 W. Peace Street

Canton, MS 39046

John M. Colette, Esq.
190 E. Capitol Street, Suite 475
Jackson, MS 39201

Charles E. Griffin
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Post Office Box 6010
Ridgeland, MS 39158-6010

This 7th day of February, 2012

ALEXANDER KASSOFF

JOURNAL

OF THE

PROCEEDINGS

IN THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF MISSISSIPPI.

1868.

PRINTED BY ORDER OF THE CONVENTION.

JACKSON, MISSISSIPPI:
E. STAFFORD, PRINTER.
1871.

Mr. Cutrer moved the adoption of his amendment, and on a call of the ayes and noes, the amendment was adopted by the following vote, viz:

YEAS—Abbay, Alcorn, Baird, Barnett, Boothe, Bunch, Burkitt, Campbell, Chrisman, Coffey, Cutrer, Dabney, Denny, Donald, Edwards, Ervin, Eskridge, Farish, Finley, Ford, George, Gore, Hamblett, Hamilton, Hathorn, Henderson of Harrison, Henry, Hooker, Hudson, Johnson, Keirn, Lacey, Lee of Madison, Lee of Oktibbeha, Lee of Yazoo, Martin of Adams, Mayes, McDonald of Benton, McDonnell of Monroe, McGehee of Franklin, McGehee of Wilkinson, McLean of Grenada, McLaurin of Sharkey, McNeily, Melchior, Montgomery, Morgan, Muldrow, Murff, Noland, Packwood, Paxton, Potter, Reagan of Leake and Newton, Regan of Claiborne, Reynolds, Simonton, Simrall, Smith of Warren, Sykes, Talbot, Taylor, Wilkinson, Winchester, Yerger.—65.

NAYS—Arnold, Arrington, Bailey, Baskett, Bell, Binford, Bird, Blair, Boone, Boyd, Carter, Dean, Dillard, Dyer, Featherston, Ferguson, Fewell, Fontaine, Glass, Guynes, Hannah, Harris, Hart, Henderson of Clay, Jamison, Jones, Kennedy, Kittrell, Lester, Love, Magruder, Marett, Martin of Alcorn and Prentiss, McClurg, McLain of Amite and Pike, McLaurin of Rankin, McLaurin of Smith, Mendenhall, Miller, Morris, Patty, Powel, Puryear, Rhodes, Richards, Robinson of Rankin, Robinson of Union, Rotenberry, Smith of Jasper, Spence, Sullivan, Thompson, Turner, Ward, Watson, Webb, Witherspoon, Mr. President—58.

ABSENT AND THOSE NOT VOTING—Messrs. Allen, Fearing, Guyton, Holland, Isom, Odom, Palmer, Sexton, Street and Wyatt—10.

Pending further consideration of the report of the Committee and amendments thereto, the Convention adjourned until to-morrow morning at 9:30 o'clock.

R. E. WILSON, Secretary.

TWENTY-FIRST DAY.

THURSDAY, September 4, 1890.

The Convention was called to order at 9:30 o'clock a.m. by President Calhoon.

Prayer by Rev. Irvin Miller.

The roll was called and the following delegates answered to their names viz:

PRESENT.—Mr. President, Abbay, Alcorn, Allen, Arnold, Arrington, Bailey, Baird, Barnett, Bassett, Bell, Binford, Bird, Blair, Boone, Boothe, Boyd, Bunch, Burkitt, Campbell, Carter, Chrisman, Coffey, Cutrer, Dabney, Dean, Denny, Dillard, Donald, Dyer, Edwards, Ervin, Eskridge, Farish, Fearing, Featherston, Ferguson, Fewell, Finley, Fontaine, Ford, George, Glass, Gore, Guynes, Hamblett, Hamilton, Hannah, Harris, Hart, Hathorn, Henderson of Clay, Henderson of Harrison, Henry, Hooker, Hudson, Jamison, Johnson, Jones, Keirn, Kennedy, Kittrell, Lacey, Lee of Madison, Lee of Oktibbeha, Lee of Yazoo, Lester, Love, Magruder, Marett, Martin of Adams, Martin of Alcorn and Prentiss, Mayes, McClurg, McDonald of Benton, McDonnell of Monroe, McGehee of Franklin, McGehee of Wilkinson, McLain of Amite and Pike, McLean of Grenada, McLaurin of Rankin, McLaurin of Sharkey, McLaurin of Smith, McNeily, Melchior, Mendenhall, Miller, Montgomery, Morgan, Morris, Muldrow, Murff, Noland, Odom, Packwood, Palmer, Patty, Paxton, Potter, Powel, Puryear, Reagan of Leake and Newton, Regan of Claiborne, Reynolds, Rhodes, Richards, Robinson of Rankin, Robinson of Union, Rotenberry, Sexton, Simonton, Simrall, Smith of Jasper, Smith of Warren, Spence, Street, Sullivan, Sykes, Talbot, Taylor, Thompson, Turner, Ward, Watson, Webb, Wilkinson, Winchester, Witherspoon, and Yerger.—129.

ABSENT—Messrs. Guyton, Holland, Isom and Wyatt.—4.

The Journal of yesterday was read and approved.

Mr. Harris by unanimous consent, submitted the following report of the Judiciary Committee which was read, ordered printed and to lie upon the table subject to call. As follows to-wit:

REPORT FROM COMMITTEE ON JUDICIARY.

The Judiciary Committee have had under consideration the resolution of the Convention, as follows:

"Resolved, That the Committee on the Judiciary are hereby instructed to inquire into the constitutional power of this Convention to adopt finally on behalf of the people of Mississippi the Constitution which may be framed by it, without a submission of the question of ratification or rejection to the qualified electors of the State; and that they report their conclusion to the Convention."

And to the inquiry contained in the resolution, reply: that the proposition that the work of a Constitutional Convention in revising or framing a Constitution requires for its validity, a ratification by a vote of the people, has no sup-

port in any principle of constitutional law, and is merely a political theory or doctrine which has in some of the States acquired authority from usage. The doctrine has never prevailed in this State, and has here, no sanction from usage.

The State was admitted to the Union in 1817 with a Constitution made final and absolute by the Convention which framed it. The Constitution of 1832, was not referred to the people for their approval, and with the exception of the single instance of the Constitution of 1869, the fruit of the reconstruction legislation of Congress, no Constitutional Convention has ever referred the question of adoption or rejection of its action to the people.

The view repeatedly acted on by the people of this State is, that a Constitutional Convention, called by the recognized authority, has the inherent power to give to the Constitution it may adopt complete obligatory effect without submitting it for ratification to the people, and the opposing view has not found acceptance in Mississippi, and cannot be said to have a place in her Constitutional system.

If the Legislature which called the Convention into being had required it to submit its work to the people for approval, a question which has been much discussed might have arisen, that is, the question of the power of the Legislature thus to limit the discretion of a Constitutional Convention. That Legislature however, after defining the functions of the Convention to be "to revise and amend the present State Constitution, or enact a new Constitution"—language which imports final action, declined on a direct vote, to insert in the Convention act a provision requiring the enacted Constitution to be submitted to the people for ratification or rejection. This action evinces an intention to leave the Convention free to exercise its recognized discretion over the subject of submission.

The opinions of political theorists on the question of the submission of constitutions for popular ratification are only influential as advice to the Constitutional Convention. It is idle to invoke them as propositions of Constitutional law.

The Committee therefore express the opinion with confidence that the Convention may constitutionally make the Constitution or amendments which it shall adopt absolute and final without submitting the question of ratification or rejection to the qualified voters of the State.

W. P. HARRIS, Chairman.

Mr. Richards offered the following resolution, which was adopted:

Resolved, That the Secretary of this Convention be instructed to issue and transmit to Miss Nettie Guerry, daughter of Gen. N. D. Guerry, deceased, late a member of this Convention, a pay certificate for eighty-four ($84.00) dollars; the same being the per diem due him from August

12, 1890, to September 1, 1890; and the Auditor of Public Accounts shall issue his warrant for the same.

Mr. Burkitt submitted a section to be inserted in the new Constitution:

To prescribe the time in which acts passed by the Legislature shall be signed by the Governor.

Which was read and referred to the Legislative Committee.

Mr. Taylor submitted the following, which, without being printed, was referred to the Elective Franchise, Apportionment and Elections Committee, as follows to-wit:

Add to the list of election: That all male citizens of the United States over 18 and under 21 years. (except Indians, idiots and lunatics) who have resided in this State one year and in the county and precinct where they offer to vote six months next preceding the election at which they propose to vote, and who are able to read and write, and who own $500 worth of property in their own right, or whose parents or either of them are possessed of property to the value of $500.

Mr. Miller introduced an ordinance requiring the Legislature to enact a law prohibiting what is known as "Indian Ball Plays," which was read and referred to the Committee on General Provisions.

Mr. Witherspoon offered an amendment to be inserted in the new Constitution, providing for the enacting of laws to restrain the power of cities, towns or incorporated villages, from borrowing money, contracting debts, etc., which was read and referred to the Corporations Committee.

Mr. Glass submitted the following, which was read and referred to the Legislative Committee:

No law passed by the Legislature, except the general appropriation act or acts appropriating money for the expenses of the Legislature, shall take effect until promulgated. A law shall be considered promulgated when the sheet acts are published.

Mr. Jones proposed an amendment as follows:

To amend Article XIII, by adding a section providing for calling conventions, as follows:

SECTION —. The Legislature may at any time, by a two-thirds vote, authorize a vote to be taken upon the question whether a convention shall be held for the purpose of revising or amending this Constitution, or enacting another Constitution; and if at such election a majority of the votes cast shall be in favor of a convention, the Governor shall, by proclamation, order an election to be held for delegates to such convention, on a day not less than three months, and within six months after the question has been voted on; said election to be conducted under the same rules and in the same manner provided by law for the election of Representatives. The convention shall consist of not less than

the number of members of the House of Representatives, and shall convene in not less than three months from the date of their election.

Which was read and without being printed, was referred to the Committee on General Provisions.

Mr. Packwood proposed an amendment relative to requiring two-thirds of each branch of the Legislature to pass a donation or gratuity, which was referred to the Committee on General Provisions.

Mr. Noland offered the following, which was referred to the Committee on Rules:

Resolved, That a Standing Committee on Public Health shall be raised, to consist of seven members.

Mr. Noland offered the following, which was read and referred to the Committee on General Provisions:

Resolved, That all Confederate soldiers shall be exempt from jury service and from work on the public roads.

Mr. Yerger, Chairman of the Executive Committee, submitted the following report of that committee, which was read, ordered to be printed, and lie upon the table subject to call, viz:

EXECUTIVE.

SECTION 1. The chief executive power of this State shall be vested in a Governor, who shall hold his office for four years, and who shall be ineligible as his immediate successor in office.

SEC. 2. The Governor shall be elected by the qualified electors of the State. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Secretary of State, who shall deliver them to the Speaker of the House of Representatives, at the next ensuing session of the Legislature; during the first week of which session, the said Speaker shall open and publish them, in presence of both houses of the Legislature. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, then one of them shall be chosen Governor, by the joint ballot of both houses of the Legislature. Contested elections for Governor shall be determined by both houses of the Legislature, in such manner as shall be prescribed by law.

SEC. 3. The Governor shall be at least thirty years of age, and shall have been a citizen of the United States twenty year, and shall have resided in this State five years next preceding the day of his election.

SEC. 4. He shall receive for his services five thousand dollars per annum.

SEC. 5. He shall be Commander-in-Chief of the army and

navy of the State, and of the militia, except when they shall be called into the service of the United States

SEC. 6. He may require information, in writing, from the officers in the Executive Department, on any subject relating to the duties of their respective offices.

SEC. 7. The Governor shall have the power to convene the Legislature in extra session whenever in his judgment the public interest requires it. Should the Governor deem it necessary to convene the Legislature in extra session, he shall do so by public proclamation in which he shall state the subject and matters to be considered by the Legislature when so convened; and the Legislature when so convened, as aforesaid, shall have no power to consider or act upon subjects or matters other than those designated in the proclamation of the Governor, by which the session is called. He may convene the Legislature at the seat of the government, or at a different place, if that shall become dangerous from an enemy, or from disease; and in case of a disagreement between the two houses, with respect to time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next stated meeting of the Legislature.

SEC. 8. He shall, from time to time, give the Legislature information of the state of the government, and recommend to their consideration such measures as he may deem necessary and expedient.

SEC. 9. It shall be his duty to see that the laws are faithfully executed.

SEC. 10. In all criminal and penal cases, excepting those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines, and in case of forfeiture, to stay the collection, until the end of the next session of the Legislature, and to remit forfeitures, by and with the consent of the Senate. In cases of treason, he shall have power to grant reprieves, by and with the consent of the Senate, but may respite the sentence until the end of the next session of the Legislature. *Provided*, that no pardon shall be granted before conviction, and *provided further*, that in cases of felony after conviction no pardon shall be granted until after the applicant therefor shall have published for thirty days, in some newspaper in the county where the crime was committed, and in case there be no newspaper published in said county then in an adjoining county, his petition for pardon, setting forth therewith the reason why such pardon should be granted.

SEC. 11. There shall be a seal of the State kept by the Governor, and used by him officially, and be called the great seal of the State of Mississippi.

SEC. 12. All commissions shall be in the name, and by the authority of the State of Mississippi, be sealed with the

great seal of the State, and signed by the Governor, and be attested by the Secretary of State.

SEC. 13. All vacancies, not provided for in this Constitution, shall be filled in such manner as the Legislature may prescribe.

SEC. 14. There shall be a Lieutenant-Governor, who shall be elected at the same time, in the same manner, and for the same term, and shall possess the same qualifications as the Governor.

SEC. 15. He shall, by virtue of his office, be president of the Senate. In committee of the whole, he may debate on all questions, and when there is an equal division in the Senate, or on a joint vote of both houses, he shall give the casting vote.

SEC. 16. He shall receive for his services the sum of five hundred dollars per annum.

SEC. 17. When the office of Governor shall become vacant, by death or otherwise, the Lieutenant-Governor shall possess the powers and discharge the duties of said office, and receive the same compensation as the Governor, during the remainder of the said term. When the Governor shall be absent from the State, or unable from protracted illness to perform the duties of his office, the Lieutenant-Governor shall discharge the duties of said office and receive said compensation, until the Governor be able to resume his duties; but, if from disability or otherwise, the Lieutenant-Governor shall be incapable of performing said duties, or if he be absent from the State, the President of the Senate *pro tempore* shall act in his stead; but if there be no such president, or if he is disqualified by like disability, or be absent from the State, then the Speaker of the House of Representatives shall assume the office of Governor, and perform said duties, and receive the same compensation as the Governor; and in case of the inability of the foregoing officers to discharge the duties of Governor, the Secretary of State shall convene the Senate, to elect a president *pro tempore*.

SEC. 18. In case the election for Lieutenant-Governor shall be contested, it shall be decided in the same manner as that of the Governor.

SEC. 19. The Secretary of State shall be elected by the qualified electors of the State; shall be at least twenty-five years of age, and a citizen of the State five years next preceding the day of his election, and shall continue in office during the term of four years; he shall keep a correct register of all the official acts and proceedings of the Governor; and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the Legislature, and shall perform such other duties as may be required of him by law.

SEC. 20. A State Treasurer, and Auditor of Public Ac-

counts shall be elected by the qualified electors of the State, shall hold their offices for the term of four years, unless sooner removed, and shall possess the same qualifications as the Secretary of State; and together with the last named officer, shall receive such compensation as may be provided by law. Said Treasurer and Auditor of Public Accounts shall be ineligible to immediately succeed themselves or each other in office.

SEC. 21. A sheriff, coroner, treasurer, assessor and surveyor, shall be elected in each county by the qualified electors thereof, who shall hold their offices for four years, unless sooner removed. Said sheriff and treasurer shall be ineligible to immediately succeed themselves or each other in office.

SEC. 22. All officers named in this article shall hold their offices during the term for which they were elected, unless removed by impeachment or otherwise, and until their successors shall be duly qualified to enter on the discharge of their separate duties.

Mr. Mayes, chairman of the Committee on Bill of Rights and General Provisions, submitted the following special report:

To the President of the Constitutional Convention:

SIR—Your Committee on Bill of Rights and General Provisions respectfully present the following special report:

A great many propositions for alterations in, and additions to the Constitution, have been referred to your Committee, as it thinks, erroneously. Such propositions should have been referred to other committees, since their subjects matter do not fall within the province of this Committee; and any action on them by it would probably produce confusion and conflicting reports.

Your Committee therefore respectfully requests, that it be relieved from the further consideration of the following propositions, and that the same be referred to other committees, as follows:

First—To the Committee on the Executive:

1. Proposition No. 4, Section 2, by Mr. Regan of Claiborne, as to Pardons.
2. Proposition No. 4, Section 4, by Mr. Regan, as to terms and Succession of Officers.
3. Proposition No. 88, Section 1, by Mr. Patty, as to Deposits by the Treasurer.
4. Proposition No. 88, Section 2, by Mr. Patty, as to the Treasurer's Accounts.
5. Proposition No. 130, by Mr. Gore, as to a Commissioner of Agriculture.

Secondly—To the Committee on the Legislature:

1. Proposition No. 4, Section 3, by Mr. Regan of Claiborne, as to the Veto.

Mr. Cutrer was allowed to withdraw his amendment heretofore submitted.

Mr. Cutrer submitted the following amendment.

Amend by adding at the end of the ordinance the words following, to-wit:

But such validation shall not have the force nor effect, in any court, nor at any time to validate any sale of any of said lands improperly or illegally entered as aforesaid, for any taxes, assessments, or levies whatsoever, made before the adoption of this ordinance.

On motion of Mr. Baird, the amendment of Mr. Cutrer was laid on the table—Mr. George was excused from voting, being interested.

Mr. Burkitt offered the following amendment to the ordinance:

Amend by inserting after the word "faith," in the fourth line, the following: "and now held in possession by the parties entering, their heirs or grantees."

Pending further consideration of the question, at 6:15 o'clock p.m., the Convention adjourned until to-morrow morning at 9 o'clock.

R. E. WILSON, Secretary.

FORTIETH DAY—MORNING SESSION.

THURSDAY, September 25, 1890.

The Convention was called to order at 9:05 o'clock, a.m., by President Calhoon, and on motion a recess was taken for thirty minutes.

The Convention was again called to order at 9:35 o'clock.

Prayer by Rev. Irvin Miller.

(Mr. Fewell was called to the chair.)

The roll was called and the following delegates answered to their names, viz:

PRESENT—Mr. President, Abbay, Alcorn, Allen, Arnold, Bailey, Baird, Barnett, Bassett, Bell, Binford, Bird, Blair, Boone, Boothe, Boyd, Burkitt, Carter, Chrisman, Coffey, Cutrer, Dabney, Dean, Denny, Dillard, Donald, Dyer, Edwards, Ervin, Eskridge, Farish, Fearing, Featherston, Ferguson, Fewell, Finley, Ford, George, Glass, Gore, Guynes, Guyton, Hamblett, Hamilton, Hannah, Hathorn, Henderson of Clay, Henderson of Harrison, Henry, Hooker, Hudson,

WHEREAS, The sad intelligence has reached this city of the death of the Hon. John W. C. Watson, at his residence in Holly Springs on yesterday; therefore be it

Resolved, That this Convention do now, in respect to his memory and long life of usefulness, adjourn until 4 o'clock this evening

And the Convention accordingly, at 1:15 o'clock, adjourned until 4 o'clock p.m.

AFTERNOON SESSION.

The Convention was called to order at 4 o'clock, by Mr. Fewell, President *pro tempore*.

Mr. Robinson of Rankin, moved that the consideration of the report of the Committee on Education, with the substitutes thereto pending, be postponed until Wednesday next, October 1st. and that the substitute offered by Mr. Jamison to said report be printed and lie upon the table and be considered with said report and substitutes now pending.

Mr. McClurg, by unanimous consent, was granted leave to make the Journal show the correction of a typographical error in the first line of the sixth clause of proposition No. 136, wherein the word "capitation" is erroneously printed "corporation," which was accordingly done.

Mr. Yerger, Chairman of the Committee on the Executive Department, moved that the report of that Committee be taken from the table, and to consider the same by section, which was carried.

The first section was read, and on motion of Mr. Yerger, adopted.

Mr. Thompson moved to strike out section 2 of the Committee's report, as the subject matter contained therein had already been acted on in the report of the Committee on Franchise, which motion was carried.

Mr. Dean moved to strike out Section 3.

Mr. Burkitt moved to amend Section 4 by striking out "$5,000.00," and insert "$3,500.00 in said Section.

Mr. Boyd offered the following substitute for Section 4, and the amendment thereto.

He shall receive for his services such compensation as may be fixed by law, which shall neither be increased nor diminished during his term of office, which was adopted, and on further motion said substitute was adopted in lieu of said Section 4.

On motion of Mr. Yerger, Sections 5 and 6 were adopted.

Mr. Thompson moved to amend Sec. 7, by striking out the words, "and the Legislature when so convened as aforesaid, shall have no power to consider, or act upon subjects or matters other than those designated in the proclamation of

the Governor by which the session is called." See lines 5, 6 and part of 7.

Mr. Abbay moved to amend Sec. 7, so as to read after the word "called" in the 7th, line of said Section, except impeachment and examination into the accounts of State Officers, which was accepted by the Committee.

Mr. George moved to ammend by inserting the following: they may also act on and consider such other matters as the Governor may, in writing, submit to them while in session, which was accepted by the Committee.

The question recurring upon the adoption of the amendment of Mr. Thompson, it was rejected; and the section as amended was adopted.

On motion, Sections 8 and 9 were adopted.

Mr. Love moved to ammend Sec. 10, by striking out all after the word "granted" in line 7, and add the following: except upon the recommendation, in writing, of the Attorney-General, District Attorney and the Judge before whom conviction was had, or any two of them.

Mr. Guyton moved to ammend the amendment of Mr. Love, by adding and a majority of the jury that sat on the trial of said case.

On motion, the amendment of Mr. Love, and the amendment thereto, was laid on the table.

Mr. Thompson moved to add to end of Sec. 10; *Provided*, That if the applicant shall make affidavit; that he is unable to procure the publication of his petition for pardon, the Governor shall, if he is satisfied that the affidavit is true, consider the application, and shall have power to act thereon, which was on motion, laid on the table.

Mr. Muldrow moved to strike out all after the word "Conviction," in 6th and 7th lines of Section 10, which was laid on the table.

Mr. Dillard offered the following substitute for Section 10:

SEC. —. Neither the Governor nor the Legislature shall grant reprieves or pardons in cases not capital, or remit or stay the collection of fines or forfeitures. In capital cases, the Governor may grant temporary respites, and with the consent of the Senate, grant full pardon in cases of manifest propriety only, but no pardon shall be granted before conviction and the exhaustion of all legal remedies, and no pardon shall be granted on the pretext that the convict did not have a fair trial, or on account of newly discovered evidence, unless such evidence be within itself conclusive of innocence, and be moreover duly substantiated by the oath of a credible person or person, or by dying declaration duly authenticated.

Which was laid on the table.

Mr. Regan of Claiborne, offered the following, which was laid on the table:

Amend Section 10 in first line, after "impeachment" insert, "the Governor with Secretary of State and Attorney-General shall constitute a Board of Pardons." And strike out "he" and insert "who" in the first line. Then strike out "he" wherever it otherwise occurs, and insert "they" in lieu of same.

Mr. Noland offered the following, which, on motion, was rejected:

Amend Section 10 by adding thereto the following: "and in all cases where reprieves or pardons are granted, the Governor shall transmit, in writing to the Legislature, his reasons for granting the same.

Mr. Dillard submitted the following amendment, which was tabled:

Amend by striking out all after "pardons," in line two down to and including "Senate" in fourth line.

Mr. Magruder moved to strike out all after the word "Legislature" in the sixth line of said section, and insert the following:

"No pardon shall be granted before conviction."

Which was laid on the table.

Mr. McGehee of Franklin, offered the following:

Amend by adding after Circuit Judge, "and by at least one of defendant's attorneys.

Mr. Mendenhall offered the following:

Amend Section 10 by striking out the following words in line seven, after the word "conviction," "*and Provided further*, That in cases of felony, after conviction no pardon shall be granted until after the applicant therefor shall have published for thirty days in some newspaper in the county where the crime was committed; and in case there shall be no newspaper published in said county, then in an adjoining county, his petition for pardon, setting forth therewith the reasons why such pardon should be granted."

Mr. Burkitt called the previous question on the adoption of Section 10 as reported by the Committee, which was sustained, and by a further vote the said section was adopted.

Mr. Calhoon gave notice that he would to-morrow morning, move a reconsideration of the vote whereby so much of the tenth section as required a publication in a newspaper to be made by an applicant for a pardon, was adopted.

At 6:05 o'clock, p.m., the Convention adjourned until 9:15 o'clock, a.m., to-morrow.

R. E. WILSON, Secretary.

Mr. Arnold, who would have voted aye, with Mr. Finley, who would have voted no. Mr. Hamilton, who would have voted aye, with Mr. Bell, who would have voted no, and Mr. Fewell, who would have voted aye, with Mr. Richards, who would have voted no.

Mr. Burkitt moved to adopt the majority report of the Committee, which was carried.

Mr. Eskridge submitted the following motion:

To reconsider the action of the Convention in adopting the substitute of Mr. Sexton, to the ordinance reported by the Judiciary Committee, validating the title to swamp lands.

At 5:50 o'clock p.m. the Convention adjourned until to-morrow morning at 9:30 o'clock.

R. E. WILSON, Secretary.

FORTY-SECOND DAY—MORNING SESSION.

SATURDAY, September 27, 1890.

The Convention was called to order at 9:30 o'clock a.m. by President Calhoon.

(Mr. Fewell in the chair.)

The roll was called and the following delegates answered to their names, viz:

PRESENT—Mr. President, Abbay, Alcorn, Bailey, Baird, Bassett, Bell, Bird, Blair, Boone, Boothe, Boyd, Burkitt, Campbell, Carter, Chrisman, Coffey, Dean, Denny, Dillard, Donald, Dyer, Edwards, Ervin, Farish, Fearing, Featherston, Ferguson, Fewell, Finley, Ford, George, Guynes, Guyton, Hamblett, Hannah, Henderson of Clay, Henderson of Harrison, Henry, Holland, Isom, Jamison, Johnson, Jones, Keirn, Kennedy, Kittrell, Lee of Yazoo, Magruder, Marett, Martin of Adams, Martin of Alcorn and Prentiss, McClurg, McDonald of Benton, McGehee of Franklin, McGehee of Wilkinson, McLain of Amite and Pike, McLaurin of Smith, McLaurin of Sharkey, McNeily, Mendenhall, Montgomery, Morgan, Morris, Murff, Noland, Odom, Packwood, Palmer, Paxton, Powel, Puryear, Regan of Claiborne, Reynolds, Rhodes, Robinson of Rankin, Robinson of Union, Rotenberry, Smith of Jasper, Smith of Warren, Spence, Sullivan, Talbot, Turner, Ward, Watson, Webb, Winchester, Witherspoon, Wyatt, Yerger.—91.

ABSENT—Messrs. Allen, Arnold, Arrington, Barnett, Bin-

ford, Bunch, Cutrer, Dabney, Eskridge, Fontaine, Glass, Gore, Hamilton, Harris, Hart, Hathorn, Hooker, Hudson, Lacey, Lee of Madison, Lee of Oktibbeha, Lester, Love, Mayes, McDonnell of Monroe, McLean of Grenada, McLaurin of Rankin, Melchior, Miller, Muldrow, Patty, Potter, Reagan of Leake and Newton, Richards, Sexton, Simonton, Simrall, Street, Sykes, Taylor, Thompson and Wilkinson—42.

The above delegates were absent with leave of the Convention.

The Journal of yesterday was read and approved.

Mr. Love asked permission to have the following entered upon the Journal of the Convention, which was done:

I voted against the minority report of the Committee on Prohibition and the Whiskey Traffic, contrary to my personal views and wishes, for I earnestly desire to see every saloon in the State abolished, believing they are a curse upon our civilization, but I came here committed to my constituents to insert no clause in the Constitution on the whiskey traffic.

Mr. Regan of Claiborne, submitted the following, and asked that it be spread upon the the Journal of the Convention, which was granted, as follows:

While I do not propose to estop any person from following his inclinations, and while I do not approve of the prohibition policy, yet I am opposed to the saloon. Therefore I vote yea on this minority report of the Committee on Temperance and the Liquor Traffic.

Mr. Calhoon called up his motion heretofore submitted to reconsider the vote heretofore had, whereby Section 10 of the report of the Executive Committee, wherein is contained a provision requiring the publication of applicants for pardon, was adopted.

Mr. Guynes called the previous question on the adoption of the motion; which call was sustained, and on a further vote, the motion was defeated.

Mr. Yerger moved to take up the regular order, viz: The report of the Executive Committee, which was carried.

On motion the supplemental report of said Committee numbered 236, was considered.

Section 10 of said supplemental report was amended by striking out the words "said general" where they occur in line four, and insert in lieu thereof the word "such," after which the section was adopted.

Mr. Dillard moved to amend Section 11, by striking out the following words in the first line, "exercise the right of veto and he may," which was accepted by the Committee, and on motion the section as amended, was adopted.

The Convention then resumed the consideration of the main report of the Committee.

Daily Clarion-Ledger.

...—NO. 178. JACKSON, FRIDAY EVENING, SEPTEMBER 26, 1890. .50 CTS. PE...

THE CHIEF EXECUTIVE.

HIS TERM OF OFFICE FIXED AT FOUR YEARS.

LONG TALKS FOR PROHIBITION.

An Effort to Put Temperance in the Constitution and Outlaw the Saloons—Some Earnest Speeches for and Against the Proposition.

FORTIETH DAY.

THURSDAY, Sept. 25, 1890.

AFTERNOON SESSION.

Convention met pursuant to adjournment.

On motion of Mr. Robinson, of Rankin, the consideration of the report on Education was postponed till Wednesday morning next at 10 o'clock.

On motion of Mr. Yerger, the report of the Committee on Executive was taken up and considered by sections.

1st section, that the Governor shall hold office four years and be ineligible as his immediate successor. Adopted.

2nd section, relating to election returns for Governor, contests, etc., was taken up, and on motion of Mr. Street, the same was stricken out with a view to substituting a section in Franchise report applicable.

3rd section, that Governor shall be at least 30 years a citizen of the United States, and shall have resided in this State five years next preceding his election. Adopted.

4th section, provides salary, $5000.

Mr. Dean moved to strike out the section.

Mr. Boyd moved to substitute, that he shall receive such compensation as may be fixed by law; and Mr. George moved to add "which shall not be increased or diminished during his term of office." Adopted.

Section 5, that Governor shall be commander-in-chief of the army and navy, etc. Adopted.

Section 6, that he may require information of the heads of the departments, etc. Adopted.

Section 7, giving power to Governor to convene Legislature in extra session, etc.

Mr. Thompson moved to strike out the words "and the Legislature, when so convened, shall have no power to consider or act upon subjects other than those designated in the proclamation calling the session."

After some remarks by Mr. Thompson in support of this amendment, Mr. Calhoon suggested that if such a provision is to be inserted in the Constitution, it should be included in the article on Legislative Department.

Mr. Thompson said it was the unanimous opinion of the Legislative Committee that no such provision should be in the Constitution. A Legislature, if called, should not be hampered, but left free to take up any other measure the public interest may require.

Mr. Yerger insisted that the clause reported was wise and judicious and should be retained. It was, among other things, in the interest of economy.

Mr. Booth favored the suggestion that if the clause should be in the Constitution, it is in the wrong place, but it should be omitted altogether.

Mr. Dillard supported the motion to strike out. So-called economy should not interfere with the rights of the people.

Mr. [illegible]

Mr. Muldrow's amendment was rejected.

Mr. Dillard: Amend section so as to strike out the power to remit fines and forfeitures. Tabled.

Gov. Alcorn suggested that instead of convicts being required to make publication, that the Governor, or Secretary of State, give notice that A. B., etc., has applied for pardon.

Mr. Magruder moved to strike out so much as requires publication, and insert "no pardon shall be granted before conviction." Tabled—48 to 33.

Mr. Dillard offered a substitute for section 10, introduced by Mr. Sullivan on a former day. Tabled.

Mr. Noland's amendment rejected, and section 10, as reported by the Committee was adopted.

Mr. Calhoon gave notice that he would to-morrow morning, move a reconsideration of so much of section 10 as required the publication of petition.

Adjourned at 6:05 to 9:15 to-morrow morning.

FORTY-FIRST DAY.

THURSDAY, Sept. 26, 1890.

President Calhoon called the Convention to order at 9:15 a. m.

Prayer by Hon. Irvin Miller.

After the call of roll, several delegates were granted leave of absence, until Monday next, and Mr. Richards until Wednesday morning next.

On motion of Mr. Simrall, the report of the Judiciary Committee was made the special order for Monday next at 12 o'clock.

Mr. Hannah, of Choctaw, offered an ordinance amending Apportionment Article so as to strike out Choctaw from First Representative District and insert Grenada, and strike out Grenada from Eighth District and insert Choctaw.

Mr. Montgomery presented a memorial from the supervisors of Bolivar county suggesting additional tax on railroads in the Delta for the better protection of the levees. Referred to Committee on Corporations.

Mr. Thompson, for Legislative Committee, submitted an additional report, that all printing, stationery, etc., required or ordered by Legislature, shall be furnished by the lowest responsible bidder, etc., etc. Ordered printed.

Mr. Dillard offered an amendment to Supplemental report of Legislative Committee, as to the mode of making appropriations.

The special order—the report of the Committee on Temperance and the Liquor Traffic—were taken up. The majority report recommended no action on the subject. The minority report, signed by Messrs. Chrisman and Hamilton, concluded with the recommendation that a provision be inserted in the Constitution, that all saloons and tippling houses where vinous and spirituous liquors and other intoxicating drinks are kept for sale are hereby declared to be public nuisances and may be suppressed or abated by prosecution in the name of the State, or upon the complaint of any citizen. The Legislature shall enact such laws as are necessary to enforce the provisions of this section.

Mr. Chrisman made an earnest and eloquent appeal for the adoption of the foregoing, and commanded the most profound attention to the close. This was not a proposition to prohibit the sale of liquor where it can now be done by law, but it is intended to prohibit the importing, transporting, or giving away, or dispensing in private hospitality; it is not a proposition to make people good, or make them moral, but it is a proposition to banish the saloon curse from the State. He described the [illegible]

The speaker closed by saying that while he had not been able to impress his views on the main question before the Convention, he would give its solution of the Franchise problem his hearty support, but he would be proud to link his name with this section, and if the Convention will adopt it it will be immortal. Judge Chrisman spoke nearly an hour, and had the vote then been taken, the indications were that the minority report would have been adopted.

Mr. Fewell offered an amendment, to insert after "sale" in first line, the words, "to be drunk on the premises." He had always opposed saloons and tippling houses, but prohibition, as it had been advocated in this State, was the worst form of intemperance; the movement was directed and controlled by a lot of cranks whom no man can follow with self-respect. He wanted whiskey sold as coal oil is sold. No man can advance an argument in favor of the saloon, and he portrayed its evils in graphic terms.

Mr. Chrisman said he would accept Mr. Fewell's amendment.

Mr. McLaurin, of Sharkey, offered an amendment that no liquors shall be sold of lower than 100 proof.

Mr. Chrisman—I don't want to go into the business of purifying the article, and therefore move to table the amendment, and it was tabled.

Gen. Lee moved to amend by inserting after "sale" the words "and all drug stores where vinous, spirituous or malt liquors are sold in violation of law."

[To be continued.]

REMARKABLE COINCIDENCE.

How the Memphis Commercial Makes Up Its Telegrams.

On September 22d the CLARION-LEDGER published an account of the growing of bananas at Jackson, Miss., by Prof. J. R. Dobyns.

On 24th inst. the Memphis Commercial published a telegram dated Jackson, Tenn., telling of the growing of bananas at that place by Prof. J. R. Dobyns. And what is more remarkable six sentences of the telegram contain the exact words of the article as published in the CLARION-LEDGER, proving beyond doubt that the Commercial or its correspondents are guilty of plagiarism. The articles are published in parallel columns below:

Clarion-Ledger Article.	The Commercial's Telegram.
A representative of the CLARION-LEDGER accompanied Prof. J. R. Dobyns to his home Monday morning where he received an ocular demonstration of the fact that under proper conditions and attention, bananas will grow to perfection in this climate. Last spring one year ago Prof. Dobyns planted a single bulb or sprout on the south side of his residence, [illegible]	JACKSON, Tenn., Sept. 23.—Prof. J. R. Dobyns has successfully demonstrated that bananas will grow in this latitude. Last spring, one year ago, the professor planted a single bulb, or sprout, on the south side of his residence, [illegible]

A SEVERE C...

FRANCHISE REPO... ...TWEEN WIND ...

THAT INGENIOUS ...

"Never Before In ... Civilized People W... able Jugglery Place... Law of a State," Sa... Post.

A decided majority ... State has opposed the ... chise Committee. Th... the Vicksburg Post, ... criticisms made:

The contrivance cal... constructed by the Fr... is built upon Senator ... of what he terms an ... but which is more acc... in the political vernac... der." The details, ma... George plan which was ... nounced by the press ... summer, but the spirit ... vades and intuses it th... oise practical operation ... plained so that the enti... workings may be clearl...

First and foremost, ... arrangement of the cou... gerrymander of the rep... State holding a 60,000 ... Legislature is given a ... both branches. If all th... jority is voted and hon... Senator George's purpo... convention was the p... ballot box), then the Le... have a white majority.

Next, each county is ... votes in a so-called El... State officials as it is ent... tatives in the Legislatu... all the negroes voting a... counted, a minority of ... State officers. This res... gerrymander as the Leg... ment.

But the legislative and ... of the government are t... minority of the legal vo... This means, of course, t... of the entire State Gover... legislative and judicial, ... Chancellors are appoint... out.

This leaves out of the ... county officers, and the ... is given full and con... designating the manner ... or appointment. It w... jected to by Col. Muldro... report of the Committee ... sticking out in the air o... the report did not prele... suffrage, and the nonex... wards brought in to m... by turning this question ... latter.

The whole scheme, wit... cation and crooked lines ... to any thinking man. ... not be plainer if it was ...

[illegible] … Mr. Street the same was … [illegible] … reported, it was tabled.

… that … shall be at … years … a citizen of the United States … shall have resided in this State five … next preceding his election. Adopted.

… salary … Secretary, $3000.

Mr. … moved to strike … the section.

Mr. … moved to … that he … receive … compensation as may … by law, and Mr. George moved to add "and … shall not be increased or diminished during his term of office." Adopted.

Section 7, that Governor shall be commander-in-chief of the army and navy, etc. Adopted.

Section …, that he may require information of the heads of the departments, etc. Adopted.

Section …, giving power to Governor to convene Legislature in extra session, etc.

Mr. Thompson moved to strike out the words "and the Legislature, when so convened, shall have no power to consider or act upon subjects other than those designated in the proclamation calling the session."

After some remarks by Mr. Thompson in support of this amendment, Mr. Calhoon suggested that if such a provision is to be inserted in the Constitution, it should be included in the article on Legislative Department.

Mr. Thompson said it was the unanimous opinion of the Legislative Committee that no such provision should be in the Constitution. A Legislature, if called, should not be hampered, but left free to take up any other measure the public interest may require.

Mr. Yerger insisted that the clause reported was wise and judicious and should be retained. It was, among other things, in the interest of economy.

Mr. Boothe favored the suggestion that if the clause should be in the Constitution, it is in the wrong place, but it should be omitted altogether.

Mr. Dillard supported the motion to strike out. So-called economy should not interfere with the rights of the people.

Mr. Abbay moved to insert after the word "called" except impeachment and examination into the accounts of State officers. Accepted by Committee and adopted.

Mr. George moved to amend that they may also consider such other matters as the Governor may in writing submit to them during the session. Accepted by Committee.

Mr. Henderson, of the Committee, supported the report.

Mr. Miller, of Leake, favored the report of the Committee. His people, he was very certain, were opposed to long sessions of the Legislature, and when called in extra session, they wanted them restricted to the special object for which they may be assembled.

The motion by Mr. Thompson to strike out was lost by a vote of 60 to 29.

Sections 8 and 9, as to informing Legislature of the state of the government, and to see that the laws are faithfully executed, were adopted.

Section 10, relating to reprieves, pardons, remitting fines, etc., was taken up.

Mr. Love moved to amend by striking out all after the word granted, and insert "upon the recommendation of the Lieutenant-Governor, the Attorney General and the judge before whom conviction was had or any two of them."

Mr. Hogan moved to amend by inserting after "impeachment," the words: the Governor, with Secretary of State and Attorney General shall constitute a Board of Pardons, and strike out "he" and insert "who" in the first line; then strike out "he" wherever it occurs, and insert "they" in lieu of same.

By Mr. Noland—Amend section 10 by adding: but in all cases when reprieves or pardons are granted, the Governor shall transmit, in writing, to the Legislature, and his reason for granting the same.

Mr. Packwood moved to amend amendment by striking out Lieutenant Governor, and insert District Attorney in lieu thereof. Accepted.

Mr. Calhoon thought it would be unwise to make any change in the present system.

Mr. Muldrow disapproved of the requirement that petition for pardon shall be published thirty days in a newspaper.

Mr. McLaurin, of Rankin, could not see any improvement in the present mode of pardon. He saw no necessity for a board of pardons or so much advertising.

Mr. Guynes moved to amend Mr. Love's amendment by adding: And a majority of the jury that rendered the verdict on the trial.

Mr. Yerger supported the section as reported by the Committee. He particularly objected to having the district attorney a member of the board of pardons.

Mr. Guyton's amendment was rejected.

Mr. McGehee moved to amend by adding after circuit judge: and at least one of the defendant's attorney's.

Mr. Thompson offered a proviso, that if applicant for pardon makes affidavit that he is unable to have such publication made, the Governor may consider application without such publication.

Mr. Dillard moved to table all amendments relating to a board of pardons. Carried.

Mr. Thompson's amendment was tabled.

Mr. Muldrow moved to strike out so much of section as requires publication.

Gen. Lee favored this amendment, and thought the ends of justice would be better subserved by not dividing the responsibility.

Gen. Martin approved the publishing of petitions for pardon. Many who now sign such petitions would not do so if their names were to be published.

The … report of the Judiciary Committee was made the special order for Monday next at 12 o'clock.

Mr. Hannah, of Choctaw, offered an ordinance amending Apportionment Article so as to strike out Choctaw from First Representative District and insert Grenada, and strike out Grenada from Eighth District and insert Choctaw.

Mr. Montgomery presented a memorial from the supervisors of Bolivar county suggesting additional tax on railroads in the Delta for the better protection of the levees. Referred to Committee on Corporations.

Mr. Thompson, for Legislative Committee, submitted an additional report, that all printing, stationery, etc., required or ordered by Legislature, shall be furnished by the lowest responsible bidder, etc., etc. Ordered printed.

Mr. Dillard offered an amendment to Supplemental report of Legislative Committee, as to the mode of making appropriations.

The special order—the report of the Committee on Temperance and the Liquor Traffic—were taken up. The majority report recommended no action on the subject. The minority report, signed by Messrs. Chrisman and Hamilton, concluded with the recommendation that a provision be inserted in the Constitution, that all saloons and tippling houses where vinous and spirituous liquors and other intoxicating drinks are kept for sale are hereby declared to be public nuisances and may be suppressed or abated by prosecution in the name of the State, or upon the complaint of any citizen. The Legislature shall enact such laws as are necessary to enforce the provisions of this section.

Mr. Chrisman made an earnest and eloquent appeal for the adoption of the foregoing, and commanded the most profound attention to the close. This was not a proposition to prohibit the sale of liquor where it can now be done by law, nor is it intended to prohibit the importing, transporting, or giving away, or dispensing in private hospitality; it is not a proposition to make people good, or make men moral, but it is a proposition to banish the saloon curse from the State. He described the saloon that was first planted on our streets by foreigners—with its glare and blaze of light, mirror and cut-glass, licentious pictures—a maelstrom and pit-fall for our young men, where they come in contact with convivial wits, thieves, gamblers, murderers, and where they qualify themselves for the criminal calendar. The saloon is un-American. Liquors were first sold, as other merchandise in the family grocery; the "doggery" was its first and appropriate name, but with the influx of foreign population it was planted on our streets and called the saloon. It came to this country with the Sunday concert and the beer garden. He had no prejudice against the foreigners, and recognized the fact that many of the best citizens of this country were foreign born, but it is a fact that every fifth man in the United States is a foreigner or the descendant of a foreigner, and nine out of ten of the 200,000 who stand behind the bar in the saloons of this country, are foreigners.

He discussed the majority report, and he could not understand why they should declare its consideration "impracticable and inopportune" when five States have Constitutional Prohibition, and forty-one counties in this State have outlawed the traffic in intoxicating drinks. There is an element in this State that does not stand in awe of the saloon—you may call them cranks, if you please, but they consider it practicable and opportune to knock saloons on the head whenever they get a chance.

He related the circumstances under which the majority report was prepared; that the Franchise question was the all-absorbing problem, and it was in the midst of the anxiety on that subject that gentlemen, after the most superficial consideration, expressed the wish to be relieved of it. The majority report is not predicated on a condition of facts to sustain it. It reminded him of the fellow who got sea sick, when a fellow passenger told him, "Go to the railing, Jim, and give it up." But Jim said no, "I can't do that—that dinner costs me a dollar!" He knew that it would be hard for the members of the Committee to give up the position they had taken, but he earnestly appealed to reconsider and vote for the section proposed. He knew there were some members of that Committee, and some members of this Convention who never would vote: Although half persuaded, they would say, as did Paul to Felix, "Go thy way for this time—at a more convenient season I will call for thee."

He claimed that this Convention cannot escape the issue. To ignore it is to decide for the saloon. There is in this State a Prohibition party, and they speak through their Executive Committee, and that committee gave notice that it would demand some advance along the line of legal prohibition, and the section proposed is the very mildest form of advance which it is possible for their body to make.

The speaker discussed the saloon from an economic stand-point. The pitiful sum of $150,000 per annum that it pays into the State Treasury was not to be considered against the debauchery and crime growing out of the sale. He cited the case of Washington county that pays $29,000 a year to the State. As the saloon keeper expects to make ten dollars for every one dollar invested, the amount expended in that county is fully $290,000. "Where does that money come from? The proceeds of 8,000 bales of cotton! And what does the county get back? $8,000 for its distributive school fund. He would not discuss the crime, the heart-aches, the loss in work-producing power.

[To be continued.]

REMARKABLE COINCIDENCE.

How the Memphis Commercial Makes Up Its Telegrams.

On September 22d the CLARION-LEDGER published an account of the growing of bananas at Jackson, Miss. by Prof. J. R. Dobyns.

On 24th inst. the Memphis Commercial published a telegram dated Jackson, Tenn., telling of the growing of bananas at that place by Prof. J. R. Dobyns. And what is more remarkable six sentences of the telegram contain the exact words of the article as published in the CLARION-LEDGER, proving beyond doubt that the Commercial or its correspondents are guilty of plagiarism. The articles are published in parallel columns below:

Clarion-Ledger Article.	The Commercial's Telegram.
… Prof. J. R. Dobyns … demonstrated that under proper conditions and attention, bananas will grow to perfection in this climate. Last spring one year ago Prof. Dobyns planted a single bulb or root near the south side of his residence, having first made the place rich with proper fertilizers. In one year the plant put out four shoots, which grew straw, etc., to about ten feet high. In the fall the tops of these shoots were cut off, and the plant protected with straw, etc., from the wintry blasts. This spring the covering was removed and the plant began a vigorous growth, not only the four old stems, but several new ones coming and growing rapidly, until they are now one great mass of the grandest foliage, rich, dark, green and thrifty. Three of the last year's stems matured a big bunch of fine, large bananas, which are still green, but larger and finer than can be found on the Jackson market, and there is no doubt they will ripen nicely when cut off the stem. Prof. Dobyns is naturally very proud of his banana crop, and takes pleasure in showing it and explaining the manner of its growth.	A representative of … Jackson, Tenn., Sept. … Prof. J. R. Dobyns … has successfully demonstrated that bananas will grow to perfection … Last spring one year ago Prof. Dobyns planted a single bulb or root near the south side of his residence, having first made the place very rich with proper fertilizers. In one year the plant put out four shoots, which grew … about ten feet high. In the fall the tops … were cut off, and the plant protected with straw, etc., from the wintry blasts. This spring the covering was removed and the plants began a vigorous growth—not only the four old stems, but several new ones coming and growing rapidly, until they are now one great mass of the grandest foliage, rich, dark, green and thrifty. Three of the last year stems matured a big bunch of fine, large bananas, which are still green, but larger and finer than can be found on the Jackson market, and there is no doubt they will ripen nicely when cut off the stem. Prof. Dobyns is naturally very proud of his banana crop, and takes pleasure in showing it and explaining the manner of its growth.

Women Preachers and Voters.

Dr. H. F. Sproles, pastor of the Jackson Baptist church, writes the following to the Baptist Record:

There is a somewhat general desire, which has received wide expression, to know what the Baptist church in Jackson and its pastor think about woman preaching, and what interest the Baptist women of Jackson are taking in the woman suffrage question in the Constitutional Convention. This common desire warrants the following statements:

As to the official ministration of the gospel by women, the church and its pastor accept and act upon the instruction of the Holy Spirit through the Apostle Paul, "Let your women keep silence in the churches; for it is not permitted unto them to speak." I Cor. 14:34. "Let the women learn in silence with all subjection. But I suffer not a woman to teach nor to usurp authority over the man, but to be in silence." I Tim. 2:11-12. The reason for this injunction given in the following verse, shows that it was meant to be universal and perpetual and not local and temporary. "For Adam was first formed, then Eve. And Adam was not deceived, but the woman being deceived was in the transgression."

As to woman suffrage in the Convention, the women of the Jackson Baptist church, and so far as I know of the city generally, are taking no more interest in that question than they do in any other. When good speeches are to be made, they go to the Capitol for instruction and entertainment. It was natural that the attendance should be larger on the day in which woman suffrage was discussed than on other occasions, and that the speakers should receive boquets.

But really, so far as I know, the opinion is common among the women that the gentlemen introducing and advocating the question in the Convention neither earnestly desired nor expected to see the right of franchise extended to women. I am certain that the women of the church of which I am pastor are very little concerned about it. I do not know one of them who desires it.

Yazoo Sentinel: There never was a more direct and open invitation to fraud than that contained in the Franchise report, or else it means nothing: Every qualified elector shall be able to read any section of the Constitution of this State, or "he shall be able to understand the same when read to him, or give a reasonable interpretation thereof." That in quotations is the part to which we refer.

…summer, but the spirit of the Senator pervades and infuses it throughout. Its precise practical operation has not been explained so that the entire scheme in all its workings may be clearly understood.

First and foremost, by an ingenious arrangement of the counties, and a patent gerrymander of the representation, in a State holding a 60,000 negro majority, the Legislature is given a white majority in both branches. If all the 60,000 negro majority is voted and honestly counted (and Senator George's purpose in advocating a convention was the purification of the ballot box), then the Legislature will still have a white majority.

Next, each county is to have as many votes in a so called Electoral College for State officials as it is entitled to Representatives in the Legislature. So that with all the negroes voting and all their votes counted, a minority of voters will elect the State officers. This rests upon the same gerrymander as the Legislative apportionment.

But the legislative and executive branches of the government are thus secured to the minority of the legal voters in the State. This means, of course, the absolute control of the entire State Government—executive, legislative and judicial, for the Judges and Chancellors are appointed by the Governor.

This leaves out of the scheme only the county officers, and the Legislature is to be given full and complete power for designating the manner of their selection or appointment. It was vigorously objected to by Col. Muldrow that the original report of the Committee left the counties sticking out in the air unprovided for, as the report did not pretend to regulate the suffrage, and the annex report was afterwards brought in to meet this objection by turning this question over to the Legislature.

The whole scheme, with all its circumlocution and crooked lines, is perfectly plain to any thinking man. Its purpose could not be plainer if it was declared in the bill of rights that "one of the inalienable rights of a minority of voters is to rule the majority," and that to carry this principle into effect the present scheme is constructed.

As a "sop to Cerebus," to the white men in the black counties, the Australian ballot scheme is thrown in, which opponents assert is simply "an election trick which can in turn be tricked and evaded, which will prove nothing but a cloak for new frauds in elections."

The Constitution declares that all males over 21 years shall vote, and then comes along the Dortch law or Australian ballot law with a peculiar machinery which is expected to cut off all illiterates, though by the very terms of the Constitution they are given the right to vote. After telling the poor fool he may vote, the ballot is held just beyond his reach.

Never before in the history of civilized people was such jugglery placed in the organic law of a State. The men in the Convention who have determined that no illiterate white shall be deprived of his vote have maintained in fact their own consistency throughout, notwithstanding their apparent contradictions. No white illiterate is to be deprived of his vote.

SENATOR GEORGE.

His Action Defended by the Greenwood Enterprise.

The Greenwood Enterprise defends Gen. George's action in the Convention in the following grandiloquent manner:

It is really amusing to see certain ambitious politicians of the Convention continually "demolishing" Senator George. They start out by saying that they have been sadly disappointed by the course of the distinguished Senator. They came to the Convention with hopes that he had a plan which would solve the problem—change the inherent qualities of the negro, convert heterogeneity into homogeneity and inaugurate in our good State a most lovable and divinely utopian system of government. From that they wax warm, and grow hot, and from the mild manner of a disappointed patriot they assume the blood-thirsty air of the ferocious office-seeker. They charge the Senator with political cowardice, demagoguery, and all manner of political obliquities which they say he is resorting to in order that he may perpetuate his tenure in the Senate. They rant, rave and raise sand, and in the hot wind of their withering wit and the blasting blaze of their sarcasm they imagine that the victim of their assault like the unfortunate and disappointed, … stands out before the world a charred and charred spectre—the quintessence of political ugliness. But when they have finished and the congratulations of the little coterie of admirers have been offered—the perspiration evaporates from the noble brow, and blind fury gives place to sober thought, they sadly realize that instead of annihilating their victim, they have but bruised themselves and bored the country—not even a pimple is raised upon the noble form of the distinguished Senator. Their assaults have been as harmless to him as the frantic charges of a redbug upon the back of a lion.

Jackson Daily Clarion Ledger, Sept. 26, 1890

...aily Clarion-Ledger.

JACKSON, SATURDAY EVENING, SEPTEMBER 27, 1890. 50 CTS PER MONTH

LIEUT. GOV. ABOLISHED.

PRESIDENT OF SENATE TO SUCCEED THE GOVERNOR.

NO CONSTITUTIONAL PROHIBITION.

Convicts Must Have Their Petitions Published Before Executive Clemency can be Invoked---A Long List of Amendments and Speeches.

FORTY-FIRST DAY.

FRIDAY, Sept. 26, 1890.

(Continued from yesterday.)

MR. DILLARD,

Said his vote would be cast to suppress the saloon, which is the greatest enemy of the American people. He challenged the saloon as an open sepulchre—filled with rottenness and dead men's bones, and he asked the Convention to rise up as one man and condemn it. It is opportune and it is practicable, and the Convention can make itself immortal by suppressing this monster evil. He was a teetotler, but not a prohibitionist, but he wanted this evil, that no one could defend, removed from the State.

MR. RICHARDS, OF LOWNDES,

while in accord with much that had been said by Messrs. Chrisman, Powell and Dillard, said that there was a tacit understanding in his county that the question of the liquor trafic should not be considered in the Convention, and he could not, in good faith, consent to any action on that subject.

MR. ESKRIDGE, OF TALLAHATCHIE,

said he heartily approved of all measures looking to temperance, and had always fought against tippling houses and saloons, but, after an observation of three years since the saloons were closed in Tallahatchie county, he was convinced that the "jug" system was more demoralizing and disastrous than the open saloon. Many who before drank moderately, now drank to excess.

MR. MOLDROW,

said, that in his county, and generally throughout the State, it was by common consent, agreed that the temperance question was to cut no figure in this Convention. We should not, therefore, do anything that savored of snap-judgment. The Legislature is entirely competent to deal with the question.

MR. BLAIR,

did not believe the jug trade as bad as the saloon, and he was opposed to the latter, but in view of the fact that this question did not enter into the canvass for delegates, and that there was a general understanding it would not be considered here, it would be unfair on the people to engraft such a provision in the Constitution.

MR. WITHERSPOON,

called attention to the fact that it was not proposed to insert absolute prohibition in the Constitution—but the question is saloon or no saloon? His arraignment of the saloon was terrific, and when he asked, "Is there a man here who favors the saloon?" there was no response. It was competent for the Convention to act on this or any other subject affecting the public welfare. We are here to do right. Is the saloon a curse or a blessing? Let the Convention decide it.

MR. KENNEDY

wished to correct an impression that he was of foreign birth, and then took occasion to speak in behalf of foreign-born citizens; and he claimed that three-fourths of those who sell liquor are Americans. In his own town of West Point, there are six saloon keepers—3 Americans, 2 foreigners, and 1 coon! He resented the stigma on foreigners implied in the remarks of the gentleman from Lincoln.

MR. BELL

concurred in all that had been said against the evils of the saloon. They were a great curse, and he would like to see them removed. He had always fought the saloon. He was opposed to them. He could not agree in the statement that the jug trade was as bad as the open saloon, it was rare now to see a drunken man in his county; but while he was no friend to the saloon, he was opposed to the minority report. It was understood in his county that the Convention would not touch this exciting question. There was a tacit agreement to this effect, and he could not violate it.

GEN. FEATHERSTON.

The Convention had no jurisdiction of this subject. By universal consent, it was understood that the Convention would touch not, taste not, handle not, this question. He was opposed to groceries and gusting scenes there on Saturday afternoons, when the streets were blacked with thousands of negroes, many of them drunk and otherwise disorderly. And all the keepers of these saloons were of foreign birth. He favored Judge Chrisman's proposition because it would stop all elections on the saloon question, and remove a cause of periodical irritation. Local option is no relief, and the Legislature cannot or will not furnish a remedy and it is a duty this Convention owes to the white man, and especially to the negro, to find and apply a remedy that will be effective.

AFTERNOON SESSION.

Convention met pursuant to adjournment and resumed the pending order.

Mr. Blair offered the following amendment: Provided that this provision shall not affect any existing license to retail vinous or spirituous liquors.

GEN. LEE

said he did not rise to make a speech, but to give three reasons for voting for the section proposed by the gentleman from Lincoln: 1st. The county of Oktibbeha, which he has the honor to represent, boasts of never having had an open saloon. He felt assured, therefore, that he would not do violence to the feelings of the people of his county. 2nd. He had learned to love the young men of Mississippi, the future hope of our grand commonwealth, and for their welfare he would vote for the proposed section. 3rd. He regarded the saloon as the greatest curse to our modern civilization, as the greatest curse to our State. He would, therefore, in response to his conscience and the idea of right, vote for the proposition of the gentleman from Lincoln.

MR. POWEL, OF DESOTO,

said his was a prohibition county; that five years ago, although there was a negro majority of a thousand in DeSoto, the people declared for prohibition, and now if any man who would attempt to open a saloon in any neighborhood in that county would be socially ostracised. Public sentiment had gotten above the saloon. But this was not the question before the Convention. We were not here to consider that subject. He heartily agreed with Bishop Galloway that it should be pretermitted altogether. The old ship of State was already loaded down to the guards, and it is time to call a halt, look around and see what we are here for. The great object his people desire to see accomplished is to perpetuate the supremacy of the white race in Mississippi, and when we have secured that we shall have done all that the people ask or desire of this Convention.

MR. ERVIN, OF LOWNDES,

made a statement as to the sentiment of the people of his county. If the delegates from his county had been nominated or endorsed by any prohibition club, he was not aware of it. They were supported by prohibitionists and antis alike; but the prevailing sentiment of the people of Lowndes, of all parties, was opposed to Constitutional Prohibition, and he should respect that sentiment and vote against the minority report. He had fought against whisky and saloons for ten years, but he did not propose to continue the fight on the line proposed.

MR. BOOTHE

had always opposed saloons; but there was a tacit understanding in North Mississippi, for a month before Convention, that this subject should remain where it belonged—with the Legislature. He was in favor of local option. Let each locality deal with it as it seems best. This Convention has nothing to do with the liquor traffic.

MR. PACKWOOD

said he was peculiarly situated. In the canvass for the Convention, the candidates were called out on this question and he responded that while he voted the dry ticket and favored local option, yet if elected, he would vote for non-action by the Convention. His competitors failed to respond, and as he was elected, he accepted the result as an expression by his people that they did not wish this disturbing and irritating question to come into this body. He believed in community independence, that each county should regulate this for itself. It would be an unfair thing—a species of snap-judgment for this Convention to take any action on the subject. When brought forward, it should be as an independent proposition. In the event the Constitution was submitted, this would be a most disturbing element.

MR. GUYTON,

offered the following amendment and spoke briefly in its support.

"The preceding section shall be submitted to the qualified electors of the State at the next general election to be voted on "For" or "Against," said section as a separate and distinctive proposition; and unless a majority of the qualified electors shall vote for said section, it shall not constitute any part of this Constitution."

Gen. Lee withdrew his amendment.

[Unidentified speaker — the start of this speech is not on this page:] experience at the bar and on the bench in connection with this subject; of the evasions of law, and the difficulty of finding a conviction for its violation in such cases. You cannot make men moral or wise by legislation any more than you can make the leopard change his spots. The local option principle should be allowed to operate until the people were better prepared than they are now for the more advanced step of Constitutional Prohibition. He came to the Convention with the firm conviction in his mind that this subject would not be touched. It certainly would not be wise or prudent to do so. It would not only complicate our difficulties but greatly surprise and irritate the people. They would feel that they had been mislead—that some advantage had been taken of them—that they had been overreached.

MR. GEORGE,

as a member of the majority of Committee, spoke a few earnest words in support of their report. The Committee expressed no opinion on the merits of prohibition—simply that it deemed action at this time inopportune and impracticable. The great and momentous questions involved in the franchise and other prime objects the Convention was called to consider would sufficiently divide our people without the addition of this disturbing element. The debate to-day—the most exciting on any subject yet before the Convention—confirmed him in this opinion. It would be a grave mistake, a great error, to adopt this as a part of the fundamental law. We should not assume jurisdiction of a question that, under all the circumstances, were better pretermitted. It is of the highest importance that the great work for which the Convention was called, and which it had in part accomplished, should be acquiesced in and accepted by the people.

MR. DYKE, OF PANOLA,

said that in general terms, he was a prohibitionist. His county was dry and believed in local option, and this is as far as we should go. He did not want to disturb the calm and serenity that now existed, as this would very certainly do. We want "white supremacy," and if we divide on minor issues, how can we hope to realize that? The saloon is a great curse to any people, but this was not the place to legislate against it.

MR. M'INNIS, OF LAWRENCE,

said his county had been dry for twelve years, and the people were satisfied with the results of local option, but intended voting to ascertain the wishes of the people on this particular question. He was invariably told by representative men of his county to keep this thing out of the Convention. He was inclined to the minority report, but felt compelled to vote for the majority report.

MR. MONTGOMERY,

expressed his objections to the minority report. It was precipitated so suddenly on the Convention that it came like a storm from a cloudless sky.

MR. GUYTON,

insisted that it would be the wise and proper course to give the people an opportunity to ratify or reject this particular provision.

MR. WITHERSPOON,

said it seemed to be the unanimous opinion that the saloon, per se, is a curse, and as it can only be perpetuated by the negro vote, he would never consent to submit a moral question to that character of vote.

No other delegate wishing to discuss the subject, Mr. Chrisman had five minutes for closing, and made the best possible use of his time. The simple issue was: for the saloon or against it; you vote for one or the other.

Mr. Guyton's amendment was rejected by a vote of 45 to 35; and the question recurring on the majority report, declaring the consideration of the subject impracticable and inopportune, was adopted by a vote of 72 to 17, as follows:

YEAS—Bassett, Carter, Chrisman, Coffey, Dillard, Guynes, Henderson of Clay, Marett, McLain of Amite and Pike, Palmer, Potter, Puryear, Regan of Claiborne, Robinson of Union, Turner, Witherspoon, Wyatt.—17.

NAYS—Mr. President, Abbay, Alcorn, Bailey, Baird, Barnett, Binford, Bird, Blair, Boothe, Boyd, Burkitt, Campbell, Dean, Denny, Donald, Dyer, Edwards, Ervin, Eskridge, Farish, Featherston, Ferguson, Ford, George, Guyton, Hamilton, Hannah, Henderson of Harrison, Henry, Holland, Isom, Jamison, Johnson, Jones, Kennedy, Kittrell, Lee of Yazoo, Lester, Love, Magruder, Martin of Alcorn and Prentiss, McClurg, McDonald of Newton, McDonnell of Monroe, McGehee of Wilkinson, McLaurin of Sharkey, McLaurin of Smith, McNeily, Mendenhall, Montgomery, Morff, Noland, Odom, Packwood, Paxton, Powel, Reynolds, Rhodes, Robinson of Rankin, Rotenberry, Simonton, Simrall, Smith of Jasper, Smith of Warren, Spence, Sullivan, Talbot, Ward, Watson, Webb, Winchester, Yerger.—72.

[Unidentified speaker — the start of this speech is not on this page:] on "caps," and in nine cases out of ten the publisher would get nothing for it.

Mr. Henry and Mr. Bell favored a reconsideration. The proposed publication would be a hardship and is unnecessary.

Mr. Boothe also favored a reconsideration. He was quite sure the expense of publication would be much greater than many supposed, as the petition must "set forth the reasons" why pardons should be granted.

Mr. Dean favored a reconsideration. The proposed publication would amount to a monopoly; and the cost would be regulated by the avarice of the publisher, and the cost might run up to fifty dollars.

Mr. Burkitt called attention to the fact that the cost of all such publications was regulated by law, and the allusion just made was to say the least very uncharitable. The press was quite as liberal and generous as the bar, and he would undertake to say that a majority of the publishers in this State would be willing to publish such petitions free of charge if the party was unable to pay.

Gen. Featherston said that after a long experience at the bar, and six years on the bench, he had never seen a person improperly convicted, but he had seen hundreds improperly acquitted. He was in favor of vesting in the Governor full authority to exercise the pardoning power without such conditions or restrictions.

Mr. Blair favored the publication. If Governors unwisely exercised the pardoning power, it is for want of information which such publications might furnish.

Mr. Dyer opposed publication, and therefore favored reconsideration.

Mr. Dillard said the poor man's racket was run here this morning as usual. There is no man so poor that he cannot, by himself or friends, make such publication.

The motion to reconsider was lost by a vote of 48 to 36, and the other sections of the article were taken up.

Several sections were adopted without amendment—as to great seal, filling vacancies, to suspend alleged defaulting revenue officers until investigation of accounts, and that Governor may veto parts of any appropriation bill and approve any part.

When section 14—providing for the office of Lieutenant-Governor was reached, Mr. Packwood moved to strike out that section.

Mr. Boyd offered as a substitute for sections 14 to 18, all relating to Lieutenant Governor, two sections, copied from the Constitution of 1832, providing that on death or disability of Governor, the President of Senate shall succeed, and in case of his death or disability, the Speaker of the House to succeed.

Mr. Ford did not think the office of Lieutenant-Governor should be abolished and gave some excellent reasons why it should be continued. It was recognized in all the States of the Union except nine.

Mr. McLain, of Amite, concurred. A Lieutenant-Governor was simply a Senator at-large, and was removed from considerations that usually control where presiding officers are elected.

Mr. Chrisman wanted the Lieutenant-Governor continued. The proposition to abolish the office was submitted to the people only a few years ago, and it was overwhelmingly rejected. He not only wanted the office continued, but the salary should be increased commensurate with its dignity. He paid a special compliment to the present incumbent. Gentlemen should not be so anxious to make a "record" as to want to abolish an office of so much utility. He was really ashamed of the proposition, but he supposed his advocacy of the Committee's report would condemn it.

Mr. Jones offered an amendment that the salary of Lieutenant-Governor shall be fixed by law, and Mr. Dillard an amendment that his salary shall be the same as Speaker of the House. Mr. Jones thought it would be very false economy to abolish this office, which thirty-three States had found to be useful.

Mr. Dillard wanted the office continued, but he concurred in the objection very generally expressed, that the compensation as now fixed amounted to a luxury. No man should receive money from the public treasury unless he has an opportunity of rendering services.

Mr. Henry was opposed to the office of Lieutenant-Governor, and he thought that this was the very general sentiment of the people. He regarded the office as superfluous.

Mr. Ward favored abolishing the office. It is useless extravagance, and he was ready to go on "record" helping to save the people $800.00 a year.

Mr. Jones withdrew his amendment and accepted that offered by Mr. Dillard.

Mr. Bell said he wanted the office abolished because the people wanted to get rid of it, and that was one principal reason why the people favored calling of this Convention. There is more unanimity on this subject than any other.

Mr. Featherston favored Mr. Boyd's substitute. The office of Lieutenant Governor

Convention would not touch this exciting question. There was a tacit agreement to this effect, and he could not violate it.

GEN. FEATHERSTON.

The Convention had no jurisdiction of this subject. By universal consent, it was understood that the Convention would touch not, taste not, handle not, this question. He was opposed to groceries and saloons, and had agreed in much that had been said of their evils, but this was not the time or the place to legislate against them.

Mr. Fewell said he was amazed that while everybody agreed that the saloon is a curse and monstrosity, yet they are opposed to its removal.

Just here a spirited colloquy occurred between Mr. Fewell and Mr. Burkitt—the latter characterizing the proposed section as a dodge and subterfuge, the adoption of which would disturb and distract the people throughout the State. He went on to say that there was an agreement in his county that this subject should not be brought into the Convention. A majority of 500 in his county had declared for the saloon.

Mr. Chrisman wanted to know if the majority was white or black, and Mr. Fewell asked if the agreement referred to was not confined to the four saloon keepers in Okolona. Mr. Fewell ventured the assertion that there were not one hundred and fifty respectable white people in Chickasaw county who wanted the saloon. He said he was an anti-prohibitionist, and therefore wanted to put this question beyond the pale of politics, by placing it in the Constitution as a settled policy of the State.

Gen. George said that disposition of it did not take it out of politics in Rhode Island and Kansas. It was so distracting in Rhode Island it had to be taken out, and in Kansas the prohibitionists had the law but the people had the whiskey. It was not settled by being put in the Constitution, but opened it good for future distraction.

GEN. MARTIN

spoke earnestly and eloquently in favor of minority report. He wanted the saloon removed, and he portrayed its great and increasing evils. Gentlemen had asked what are we here for? We are here to establish an organic law that will protect our people from wrong and injury, and to restrict the Legislature in its powers. He had recently been home, and made special inquiry into the saloon interest, and the Convention would be surprised to [illegible]

"The preceding section shall be submitted to the qualified electors of the State at the next general election to be voted on 'For' or 'Against,' said section as a separate and distinctive proposition; and unless a majority of the qualified electors shall vote for said section, it shall not constitute any part of this Constitution."

Gen. Lee withdrew his amendment.

GOV. ALCORN

commented on the remarks made by delegates that the saloon was odious, disgraceful, an outrage on society, etc., and yet he claimed that the saloon is acceptable to the people of the State, and the State had put a premium on it because of the revenue it yields. The gentleman from Lee (Mr. Blair) and others, were opposed to the saloons and yet when they come here, they are as meek as doves on this question, and for the very good reason they know that their people are not in favor of this sort of legislation. It would not be possible for the saloon to exist if the people were opposed to it, and it is idle to make a law not in harmony with the judgment of the people. People will drink whisky as long as it can be made, and it will be made as long as people drink it. Whenever we fail to enforce any law to that extent you demoralize the people, and the passage of such a law as the one proposed would be such an infringement on the rights and liberties of the people, they would disregard it. It were better to tear away all the saloons and let whisky come free. If whisky was cheap—if it was not such a luxury—if it was not dignified by public tax—there would be less drunkenness; but the higher you tax it, the more determined are people to use it. In Paris there are no saloon keepers. If you ask for water you get wine, and yet there are no drunkards there. The higher the tax you impose, and the severer the penalties for sale of liquor the more you increase the appetite for it.

MR. M'CLURG

said the question is not whether the saloon is a good or a bad thing, but whether this Convention should deal with it, and he was decidedly of opinion that it should not. Carroll county had tried local option in 1886, and again in 1888. His people were thoroughly posted on that question and they had rendered their verdict, and it was summed up in the report of the majority of the Committee. He had been for several years the Chairman of the Prohibition Executive Committee of his county [illegible]

Prentiss, McCurg, McDougall of Benton, McDonnell of Monroe, McGehee of Wilkinson, McLaurin of Sharkey, McLaurin of Smith, McNeily, Mendenhall, Montgomery, Murff, Noland, Odom, Packwood, Paxton, Powel, Reynolds, Rhodes, Robinson of Rankin, Rotenberry, Simonton, Simrall, Smith of Jasper, Smith of Warren, Spence, Sullivan, Talbot, Ward, Watson, Webb, Winchester, Yerger—72.

Also the following pairs—Fewell aye, Richards nay; Thompson aye, Muldrow nay; Sexton aye, Morgan nay; Bell aye, Hamilton nay; Lee aye, Boone nay; Martin aye, McLean nay; Wilkinson aye, Keirn nay. Total ayes 79; nays 24.

At 5:30 adjourned till 9:30 a. m. to-morrow.

FORTY-SECOND DAY.

SATURDAY, Sept. 27, 1890.

President Calhoon called Convention to order at 9:30 a. m., and called Mr. Fewell to the chair.

The following were read and spread on the Journal:

By Mr. Love, of Amite—I voted against the minority report of the Committee on Prohibition and the Whisky Traffic, contrary to my personal views and wishes, for I certainly desire to see every saloon in the State abolished, believing they are a curse upon our civilization, but I am here committed to my constituents to insert no clause in the Constitution on the whisky traffic.

By Mr. Regan, of Claiborne—While I do not propose to estop any person from following his inclination, and while I do not approve of the Prohibition policy, yet I am opposed to the saloon, therefore I vote aye on this minority report.

In accordance with previous notice, Mr. Calhoon moved a reconsideration of the vote adopting so much of section 9 on Executive as requires the publication of petitions for pardon.

The subject being again before the Convention, Mr. Calhoon made a brief statement of the reasons why publication should be dispensed with.

Mr. Yerger, chairman of the Committee, and Messrs. Baird, McLain, Martin of Adams, advocated the publication of petitions.

Mr. Abbay was opposed. Justice should be tempered with mercy, but this proposes to temper justice with money.

Mr. Morris was also opposed. [illegible]

Mr. Jones withdrew his amendment and accepted that offered by Mr. Dillard.

Mr. Bell said he wanted the office abolished because the people wanted to get rid of it, and that was one principal reason why the people favored calling of this Convention. There is more unanimity on this subject than any other.

Mr. Featherston favored Mr. Boyd's substitute. The office of Lieutenant Governor was an invention of the Convention of 1868. Any gentleman elected President of the Senate would be fully competent to fill the office of Governor. He referred to the vacancies that placed Mr. Whitfield of Lowndes and Judge Guion in the Executive office, and also to the vacancy occasioned by the resignation of Ames and impeachment of Davis when the President of Senate, the present Governor, succeeded. The voice of the people was for abolishing the office; they regarded it, in common parlance, as a fifth wheel to a wagon. No unnecessary offices should be put in the Constitution.

Mr. Yerger, chairman of the Committee, thought the office should be retained. Senators and presiding officers are not elected, primarily, with a view to their capacity for Governor, and this high and important office should not be subjected to the possibility of being unsuitably filled. The people preferred to know who was to fill that office in any contingency. If there was any popular objection, it was not to the office itself, but to the compensation that many think is too high and which the Committee proposed to reduce.

Mr. Morris favored retaining the office and thought the amendment offered by Mr. Dillard would remove all objections. The office is a wise and prudent link in the administration of the government.

Mr. McLaurin, of Sharkey, favored the report of Committee. He paid a nice tribute to Messrs. Sims, Shands and Evans, whom the people elected to this office, and who would have most creditably filled the office of Governor.

Mr. Dillard's amendment was adopted.

Mr. Boyd spoke for his substitute. He did not offer it for the purpose of making "a record." There was merit in it and it should not be whistled down by criticisms that amounted to personal reflections.

Mr. Calhoon was opposed to the office. He did not think there were ten men in Hinds county who did not expect this office abolished.

The question recurring on Mr. Boyd's substitute, it was adopted by a vote of 46 to 37. [illegible]

[illegible]

[illegible] and to the future of [illegible] desiring to see the Convention a success, and [illegible] beyond the criticism [illegible] urge a reconsideration of section five requiring [illegible] understand the Constitution [illegible] That part of the article [illegible] not be defended.

[illegible]ERN GIRLS RIDE.

[illegible] Without Being Taught [illegible] Perfect Dianas.

[illegible] Western girl, sweeping [illegible] of her fathers' ranche, or [illegible] fields of a Southern [illegible] would smile at the idea of being [illegible] ride. She learned, doing. With [illegible] skirt, long enough to [illegible] ankles, a soft woolen hat [illegible] she is put in the saddle [illegible] to "stay on" and [illegible] she does stay on, her [illegible] following on as he rides [illegible] though the way lies over [illegible] ditches, where the cows and [illegible] the deep banks or through [illegible] sensible canebrake, where [illegible] back the long, sharp, [illegible] from her face and push [illegible]

THE USELESS ONES.

[illegible] should not reason;
[illegible]
Argument is treason—
Bards should sing.

Statement is body-not question
[illegible] words;
Spirit-cries, suggestions,
Like the birds.

[illegible] and deduction
Who must preach;
[illegible] instruction
Who must teach;

But the poet only
Fills his part,
When the song bursts truly
From his heart.

For no purpose springing;
For no pelf;
He must do the singing
For itself.

Not in lines austerely
Let him build;
Not the surface merely
Let him gild.

Fearless, uninvited,
Like a spring;
Opal words, in lighted,
Let him sing.

As the leaf grows sunward
Song must grow;
As the stream flows onward
Song must flow.

Useless! Aye—for measure
Roses die,
But their breath gives pleasure—
God knows why!

"She's built for speed, forty feet long and a foot wide."

"Good Lawd!" ejaculated Tole, thrown off his guard, "what a hell [illegible] ain't nothin' but er hoss trough." After a moment he recovered from his surprise, and said in beguiling accents, "S'pose you tek er nap, suh, befo' the gentlemans come, so you'll feel fresh en lively."

He gently turned the sick man over, smoothed the pillow under his head, and soothed him to sleep.

Summer had passed and autumn had come, and nature was preparing herself to meet the death that winter brings. With the waning season the old planter's life had ebbed away, very slowly but surely, as if in sympathy with the approaching death of nature, he was going to his own painlessly, calmly, surrounded by his family and his old servants. Seeing these, a quarter of a century lapsed out of his life, and he still fancied himself back on his island home, surrounded by the slaves he had been raised with, and his old neighbors, dead this many a year. His servants viewed this phase of his sickness with superstitious sorrow.

"'E gwine berry fas'," said Mammy Dinah, wiping her eyes in the corner of her apron. "'E talk constant ob de dead, er sho sign 'e'll soon be wid 'em."

As the sun was setting Mr. Conner fell [illegible]

Convention Committees.

[illegible]

ELECTIVE FRANCHISE, APPORTIONMENT AND ELECTION—Patty, George, Alcorn, Martin, of Adams; Powel, Magruder, Hudson, Burkitt, McLean, of Grenada; Lester, Richards, Allen, Blair, Boyd, McNeily, Boothe, Simonton, Street, Dean, McClurg, Hooker, Morgan, Reagan, of Newton; McGehee, of Wilkinson; Carter, Binford, Bell, Harris, Street, Gurton, Puryear, Reynolds, Robinson, of Union; Watson, Reagan, of Claiborne; Montgomery.

[illegible] OF REFORMS AND GENERAL PROVISIONS—Kyle, Hudson, Dabney, Winchester, Morris, Henderson, of Harrison; Ward, Fearing, McLaurin, of Smith; Dyer, Edwards, Hart, McDonald, of Benton; Gore, Holland, Johnson, Lee, of Yazoo; Odom, Palmer, Rhodes, Webb.

PRINTING.—McNeily, Boyd, Burkitt, Fewell, Eskridge, Henderson, of Clay; McClurg.

MILITIA—W. S. Featherston, of Marshall; J. L. Alcorn, of Coahoma; William T. Martin, of Adams; J. Z. George, from the State-at-large; Stephen D. Lee, of Oktibbeha; John M. Simonton, of Lee; John F. Smith, of Jasper.

EDUCATION—Lee, of Oktibbeha; Regan, of Claiborne, Miller, Robinson, of Rankin; Donald, Richards, Isom, Jamison, Spence, Sullivan, Potter, Hannah, Hathorn, Guerry, Martin, of Alcorn, McDonnell, of Monroe; Love, Witherspoon, Murff, Denny, Melchoir, Smith, of Jasper; Eskridge, Sykes, Hudson, Martin, of Adams; Mayes.

CORPORATIONS AND INTERNAL IMPROVEMENTS [illegible]

RAILROAD TIME-TABLE.

Arrival and Departure of Trains at the Union Depot, Jackson.

ILLINOIS CENTRAL.

[illegible]

YAZOO AND MISSISSIPPI VALLEY.

[illegible]

VICKSBURG AND MERIDIAN.

[illegible]

NATCHEZ JACKSON & COLUMBUS.

[illegible]

GEORGIA PACIFIC R. R.

[illegible]

Attn: Bridget Wiggins
Fax: (601-369-4231
Date: 1/31/12
From: Holly Head,
Starkville Daily News

BUTLER | SNOW

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

Synopsis of Publication Fees for Public Notices

July 2010

Prepared by:

John C. Henegan
Donna Brown Jacobs
Malissa Wilson Winfield

For the
Mississippi Press Association

	SUBJECT	STATUTE (Year Last Amended)	RATES/REQUIREMENTS
ZZZ.	Reprieves And Pardons	Art. V. § 124	Legal rate; in cases of felony, after conviction no pardon shall be granted until the applicant therefore shall have published for 30 days, in some newspaper in the county where the crime was committed, and in case there be no newspaper published in said county, then in an adjoining county, his petition for pardon, setting forth why such pardon should be granted.
AAAA.	Itemized Account Of Levee Boards	Art. XI. § 239	Legal rate; once in a newspaper or newspapers in the district in which the levee board is situated.
BBBB.	Sale Of State Bonds	§ 57-75-15 (2009)	Legal rate; notice of sale published at least 1 time, not less than 10 days before the date of sale; in one or more newspapers published or having a general circulation in Jackson, Mississippi.
CCCC.	Publication Of Resolution Prior To Authorizing A Loan To A Public Agency	§ 57-75-17 (2004)	Once a week for at least 3 consecutive weeks in at least 1 newspaper published in the affected area. The first publication of such resolution shall be made not less than 21 days before the date fixed in such resolution for the authorization of the loan and the last publication shall be made not more than 7 days before such date.