

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2016-IA-00442-SCT

**PHILIP A. GUNN, SPEAKER OF THE
MISSISSIPPI HOUSE OF REPRESENTATIVES**

APPELLANT

V.

REPRESENTATIVE J.P. HUGHES, JR.

APPELLEE

BRIEF OF APPELLEE

**On Interlocutory Appeal
From the Circuit Court of Hinds County, Mississippi
First Judicial District**

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STATEMENT OF THE ISSUES

1. Does this Court have jurisdiction to hold the Speaker of the House accountable for a violation of Article 4, Section 59 of the Mississippi Constitution of 1890?
2. If so, should this Court exercise jurisdiction in this case?
3. If the Court chooses to exercise jurisdiction, should this case be remanded to the Circuit Court of Hinds County for a full hearing on the merits?
4. If the Court chooses not to remand this case and reaches the merits, is Speaker Gunn in violation of Article 4, Section 59, of the Mississippi Constitution of 1890?

STATEMENT OF THE CASE

This case does not concern a legislative rule or statute. This case directly implicates the Mississippi Constitution. No one, not even the Speaker of the Mississippi House of Representatives, is above the Constitution.

This Court held in *Tuck v. Blackmon* that it has subject matter jurisdiction to determine whether a legislator is following the procedural requirements contained in Article 4, Section 59, of the Mississippi Constitution. The question in this case concerns the standard of proof, namely whether the violation of Section 59 was done in a “manifestly wrong manner which did critical harm to the legislative process.” For that determination, a lower court record is essential. Denying Rep. Hughes the ability to develop a record is a denial of due process.

I. History of case and current procedural posture

The Appellee, J.P. “Jay” Hughes, Jr. (“Rep. Hughes”), is the duly elected State Representative from District 12 in Oxford, Mississippi. The Appellant, Philip Gunn, is the duly elected State Representative from District 56 in Clinton, Mississippi and is the Speaker of the Mississippi House of Representatives. (“Speaker Gunn”).

Article 4 of the Mississippi Constitution of 1890 established the Legislative branch of government. Sections 54-77 of Article 4 set forth the *Rules of Procedure* that the Legislature must follow. Section 59 states in relevant part:

Bills may originate in either House, and be amended or rejected in the other, and every bill shall be read by its title on three (3) different days in each House, unless two-thirds (2/3) of the house where the same is pending shall dispense with the rules; and *every bill shall be read in full immediately before the vote on its final passage upon the demand of any member...* Art. 4. § 59. Miss. Const. (1890) (emphasis added)

For the past several sessions, when a member of the House of Representatives would demand that a bill be read in full before a final vote, Speaker Gunn would have the text of the

bill played by a machine. Although the bills were played at a brisk pace, the members could still comprehend what was being said.

In the 2016 legislative session, however, when legislators sought to exercise their rights under Article 4, Section 59, Speaker Gunn retaliated by having the machine play at warp speed so that no member could understand what was being said. On the House floor, members began to refer to Speaker Gunn's machine as the "demon chipmunk."

On March 23, 2016, Speaker Gunn again set loose the "demon chipmunk" in response to a member's request to have a bill read aloud. Believing that Speaker Gunn was in violation of Article 4, Section 59 of the Mississippi Constitution of 1890, Rep. Hughes filed a Petition for Temporary Restraining Order and Request for Preliminary Injunction in the Circuit Court of Hinds County, Mississippi. R. 3-6, R.E. 3-6.

That same day, hearing the matter *ex parte*, the Honorable Winston L. Kidd, Circuit Court Judge of Hinds County, Mississippi, entered a temporary restraining order ("TRO") requiring that bills be played at a normal speed. Judge Kidd then set the case for a hearing on the merits for March 28, 2016. R. 8-9, R.E. 7-8.

Speaker Gunn filed a Motion to Dissolve the TRO with the Circuit Court.¹ R. 10-27, R.E. 9-26. Before the Circuit Court could rule, however, Speaker Gunn filed a Motion to Stay in this

¹ Attached to Speaker Gunn's Motion to Dissolve the TRO is the affidavit of Andrew Ketchings, the Clerk of the Mississippi House of Representatives. For purposes of this appeal, Mr. Ketchings' affidavit is garden variety hearsay. M.R.E. 801. Since it would be inadmissible at any hearing on the merits of this case, this Court cannot consider it in determining whether or not Speaker Gunn is in violation of Article 4, Section 59 of the Mississippi Constitution of 1890.

For example, Speaker Gunn suggests on p. 26 of his brief that "The uncontradicted affidavit of Andrew Ketchings, the Clerk of the House, explains that every member is provided with electronic equipment which allows instantaneous access to the text of every bill, and that paper copies are provided upon request." The reason the affidavit is uncontradicted is because Rep. Hughes was not given the chance to contradict it. Rep. Hughes has every right to cross examine Mr. Ketchings.

Court along with a Petition for Interlocutory Appeal by Permission, or in the Alternative, for Extraordinary Writ of Prohibition of Mandamus.

Without explanation, this Court dissolved the TRO and stayed all proceedings in the Circuit Court. R. 30-31, R.E. 27-28. This was a unique occurrence. Since this Court terminated proceedings in the Circuit Court before a final hearing on the merits, there is no record in the lower court that contains the admissible facts surrounding the controversy.

After the legislative session ended, Rep. Hughes requested that this Court lift the stay in the Circuit Court and remand the case back to the Circuit Court for a full hearing on the merits of his request for an injunction. Alternatively, Rep. Hughes asked that should the Court not lift the stay and remand the case back to Circuit Court, he be allowed to file with the Court a voice recording of the “demon chipmunk.” Both requests were denied by this Court.

In its En Banc Order, the Court granted interlocutory appeal and ordered an expedited briefing schedule. The Court asked the parties to address the following issues: 1) whether the judiciary has jurisdiction over this dispute in light of Sections 1 and 2, Article 1 of the Mississippi Constitution and/or 2) whether this Court should refrain from exercising its jurisdiction over the issues raised in this matter. R. 37-38 R.E. 29-30. The Court also instructed the parties to address the cases of *Hunt v. Wright*, 11 So. 608 (1892) and *Tuck v. Blackman*, 798

Furthermore, Speaker Gunn’s assertion that his violation of Section 59 is of no consequence, since there are other ways for members to learn what is contained in bills prior to a final vote, is simply not something this Court can take “judicial notice” of in making a determination. This Court can only take notice of a fact that is not subject to reasonable dispute. *Russell v. State*, 126 So. 3rd 145, 148 (Miss. App. 2013).

Rep. Hughes is entitled to present evidence in the lower Court of the heavy handed tactics used by Speaker Gunn in ramming through legislation without allowing time for adequate consideration or debate. Should the case proceed to a full hearing on the merits, Rep. Hughes believes that the evidence will show that even the majority of Speaker Gunn’s own Republican colleagues have no idea what is in most bills they vote on.

So. 2d 402 (Miss. 2001), which discuss the power of the judiciary to determine whether legislative procedural actions run afoul of the Mississippi Constitution.

However, Justice King, joined by Justice Kitchens, objected to the refusal of the Court to remand the case and objected to the grant of interlocutory appeal. In so doing, Justice King indicated that the following matters would be more properly addressed in the Circuit Court of Hinds County:

1. Does the Speaker of the House have the authority to determine constitutional issues?
2. If so, what is the source of the Speaker's authority to determine constitutional issues?
3. What is the purpose, or what are the purposes, of that portion of Article 4, Section 59, that requires that a bill be read in full upon the demand of any member?
4. What authority can be cited that supports your opinion as to the purpose, or those purposes, that you have identified?
5. Did other methods exist by which the House could comply with the dictates of Article 4, Section 59, and still have responsibly attend to legislative business?
6. If there are other methods by which the House could have complied with the dictates of Article 4, Section 59, and still have responsibly attended to legislative business, what are they?
7. If there are no other methods by which the House could have complied with the dictates of Article 4, Section 59, and still have responsibly attended to legislative business, why not?

Justice King is correct- in order to answer most of these questions on appeal the parties will be required to speculate as to what the facts may have shown in the lower court. The only exception would be questions 1-2. Even though Speaker Gunn apparently believes that his interpretation of the Constitution is paramount, the ultimate power and responsibility of interpreting the Constitution rests with the Judiciary.²

SUMMARY OF THE ARGUMENT

Speaker Gunn is not above the law. He is required to abide by the mandatory requirement set forth in Article 4, Section 59 of the Mississippi Constitution of 1890 that “every bill shall be read in full immediately before the vote on its final passage upon the demand of any member...” Art. 4. § 59. Miss. Const. (1890).

The case at bar is controlled by this Court’s 2001 opinion in *Tuck v. Blackmon*, 798 So. 2d 402 (2001), wherein the Court held that if a legislative body exercises its responsibilities in a “manifestly wrong manner that does critical harm to the legislative process,” judicial intervention is justified. *Tuck*, 798 So. 2d at 407. Consequently, the judiciary has jurisdiction to determine whether or not Speaker Gunn’s actions were manifestly wrong and did critical harm to the legislative process.

Making this determination requires a complete record. Therefore, this case should be remanded to the Circuit Court of Hinds County, Mississippi. Only on remand can the record be fully developed. Not allowing Rep. Hughes to make a full record in the lower court would violate his due process rights guaranteed to him by the *Fourteenth Amendment* to the United States Constitution.

² *State v. Wood*, 187 So. 820, 831 (Miss. 1966) (“[T]his Court has the power to construe the Constitution and thus define the powers of the three branches of our Government.”).

If the Court chooses to address the merits, it should find that Speaker Gunn's actions violate both the letter and the spirit of the Mississippi Constitution. This Court may take judicial notice of Speaker Gunn's actions. Common sense dictates that if no one can understand what you are saying, you are not reading. Speaker Gunn essentially admits that his machine plays at a speed that no member can understand. This is a clear violation of the Mississippi Constitution.

Speaker Gunn's actions have made a mockery of the legislative process and he should be enjoined from any further violation of Article 4, Section 59 of the Mississippi Constitution of 1890

ARGUMENT

While this Court does give due deference to the legislative branch, it has never relinquished the ability to hold legislators accountable when they violate the Mississippi Constitution of 1890. As much as he may wish otherwise, this Court's precedent makes clear that Speaker Gunn is not above the law.

This Court can also not avoid its responsibility to hold Speaker Gunn liable for his violation of Article 4, Section 59 of the Mississippi Constitution. It is within this Court's power, and also its duty, to determine whether any government official has acted outside his constitutional authority. See *Barbour v. State ex rel. Hood*, 974 So. 2d 232, 239 (Miss. 2008).

I. Judicial Review of Constitutionally Mandated Legislative Procedures.

Article 4, Sections 54-77 of the Mississippi Constitution of 1890 are subdivided into *Rules of Procedure*. These are constitutionally mandated procedures that the legislative branch must follow in carrying out its responsibilities. That they are enshrined in the Constitution demonstrates their importance and- unlike mere internal procedural rules that legislative bodies can amend at will- these provisions remain mandatory until the Constitution is amended.

Pre twentieth century, this Court was reluctant to intervene in cases where complainants alleged that these constitutional provisions had been violated. This view, however, has evolved over time. The current standard adopted by this Court allows for judicial review of these constitutionally mandated legislative procedures in compelling circumstances.

A. *Hunt v. Wright* - A nineteenth century Court refuses to get involved.

Two years after the ratification of the Mississippi Constitution of 1890, this Court decided the case of *Hunt v. Wright*, 11 So. 608 (Miss. 1892). *Hunt* dealt with an application for a license to sell alcohol. *Hunt*, 11 So. at 608. When the tax collector refused to issue the license, the applicant petitioned for a writ of mandamus from the Circuit Court of Sharkey County seeking to compel the tax collector to issue the license. The Circuit Court dismissed the petition, and the applicant appealed to this Court. *Id.* at 609.

On appeal, the issue was whether or not Chapters 37 (“dram shop”) and 108 (“privilege taxes”) of the Mississippi Code of 1892, which supported denial of the license, were properly enacted. *Id.* The applicant argued that the code sections were invalid because they were not adopted in conformance with the *Rules of Procedure* mandated by the Mississippi Constitution, specifically Sections 61-70. *Id.* In ruling for the appellee, the Court first noted the earlier view of the Court in *Ex Parte Wren*, 63 Miss. 512 (1886), which was decided prior to the adoption of the Mississippi Constitution of 1890. In *Wren*, the Court held that the legislature is “not subject to supervision and revision by the courts as to those rules of procedure prescribed by the constitution for its observance...” *Wren*, 63 Miss. at 534.

Although affirming the view in *Wren*, the Court in *Hunt* nevertheless dove right in to examine whether or not the legislature had violated the constitutionally mandated *Rules of Procedure*. In fact, the Court went so far as to designate certain sections of Article 4 as outside

the scope of the ruling in *Wren*.³ These sections, the Court held, were not merely procedural and should be reviewed by the Courts to make sure the constitutional mandate was followed. And so, while it is true that the Court in *Hunt* refused to exercise its power to review legislative actions, it did not find that it was powerless to do so.

There are also several important distinctions between *Hunt* and the case at bar. The main difference is that Section 59 was not at issue. The Court never addressed whether or not it had the power to review a violation of this particular Constitutional mandate.

To be sure, Speaker Gunn places all of his eggs in the *Wren* and *Hunt* basket. He cites these cases for the proposition that this Court simply does not have the power to review any legislative actions that violate the *Rules of Procedure* codified in the Mississippi Constitution of 1890. This position, however, is founded on cases from the nineteenth century and is outdated.

It is also a very dangerous view and could have a tremendous detrimental effect on our democracy if adopted by this Court. Speaker Gunn would be empowered to disregard any and all provisions of the Constitution contained in Sections 54-77. This would allow him to close the doors of the House to the public (Section 58); refuse to hold bills on a motion for reconsideration (Section 65); allow him to introduce bills within three (3) days of the end of the session (Section 67); or refuse to refer bills to committees (Section 74).

Fortunately, the modern Court takes a different view on its responsibility to “check” irresponsible and arbitrary legislative actions.

³Article 4. § 61. Miss Const. (1890)

Article 4. § 63. Miss Const. (1890)

Article 4. § 64. Miss Const. (1890)

Article 4. § 75. Miss Const. (1890)

B. *Dye v. State*- The modern Court holds that legislators are not above the law.

In *Dye*, two Senators sought a declaratory judgment in Hinds County Circuit Court that certain Senate rules were unconstitutional. *Dye v. State*, 507 So. 2d 332, 335 (Miss. 1987). The Senators argued that these rules, which allowed the Lt. Governor to appoint committees and refer bills to committees, violated Article 1, Sections 1 and 2 of the Mississippi Constitution of 1890. *Id.* at 336. The basis for this argument was the Senators' belief that the Lt. Governor was a member of the executive branch and the powers conferred to him by the Senate rules violated the separation of powers doctrine. *Id.* When the Circuit Court found in favor of the Senators, the Lt. Governor appealed to this Court. *Id.* at 337.

On appeal the Senators argued that their suit "presents a claim of rights arising under the Mississippi Constitution of 1890 and as such can only be decided by the Judicial Department of this state's government." *Id.* at 338. The Court agreed. While it noted that the general rule was for the Court to decline adjudication of controversies related to the internal affairs of that department, this did not mean that the Court did not have the ability to adjudicate that dispute. The Court held:

On the other hand, legislators nor the bodies in which they serve are above the law, and in those rare instances where a claim is presented that the actions of a legislative body contravene rights secured by the constitutions of the United States or of this state, it is the responsibility of the judiciary to act, notwithstanding that political considerations may motivate the assertion of the claims nor that our final judgment may have practical political consequences. *Id.*

Dye makes clear that as much a Speaker Gunn may wish otherwise, he is not above the law. The Constitution is the supreme law of Mississippi, and "[n]o act prohibited by it can be given effectuality and validity." *Chevron U.S.A., Inc. v. State*, 578 So. 2d 644, 648 (Miss. 1991) (quoting *McGowan v. State*, 185 So. 826, 829 (1939)). Furthermore, the fact that holding Speaker Gunn accountable for his violation of the Constitution will harm him politically is not

grounds for this Court to refrain from getting involved in this case. See *Pro-Choice Mississippi v. Fordice*, 716 So. 2d 645, 652 (Miss. 1998) ("Regardless of the result, this Court must enforce the articles of the Constitution as written.") See also *Barbour v. State ex rel. Hood*, 974 So. 2d 232, 239 (Miss. 2008). ("[N]o Governor, or for that matter, any governmental official, can exercise power beyond their constitutional authority.").

C. *Tuck v. Blackmon*- The standard is set: judicial intervention into legislative procedure is justified in compelling circumstances

The case at bar is controlled by this Court's 2001 opinion in *Tuck v. Blackmon*, 798 So. 2d 402 (2001), wherein the Court held that if a legislative body exercises its responsibilities in a "manifestly wrong manner that does critical harm to the legislative process," judicial intervention is justified. *Tuck*, 798 So. 2d at 407. *Tuck* is also the first case to address an alleged violation of Article 4, Section 59 of the Mississippi Constitution of 1890.

Tuck featured a showdown between then Lt. Governor Amy Tuck and seven (7) Senators, all members of the legislative Black Caucus. *Tuck*, 798 So. 2d at 404. During the 2000 legislative session, the Senate was considering conference committee reports. *Id.* Senator Barbara Blackmon requested that the conference committee reports be read aloud and in full pursuant to Article 4, Section 59 of the Mississippi Constitution of 1890. *Id.* Lt. Governor Amy Tuck, who presided as the President of the Senate, ruled that Senator Blackmon was not entitled to have the conference report read aloud and in full since Section 59 only required that bills be read at the request of a Senator, not conference reports. *Id.*

Aggrieved, Senator Blackmon, and six of her colleagues, filed a complaint in the Chancery Court of Hinds County, seeking injunctive relief to compel Lt. Governor Tuck to read the conference reports in full and aloud. *Id.* at 405. This complaint was filed on April 30, 2000,

just days before the end of the legislative session. *Id.* The next day the Hinds County Chancellor, the Honorable Denise Owens presiding, entered a temporary restraining order, without notice, requiring that the conference reports be read aloud and in full. *Id.* She set the case for a full hearing for the next day. *Id.*

At the conclusion of that hearing, the Chancellor entered her order requiring full conference reports to be read immediately before a vote on final passage.⁴ *Id.* Tuck immediately sought a stay of that decision in this Court, which granted her request. *Id.*

On appeal, the Court took up the issue of jurisdiction. The Court noted its general rule that it should normally refrain from interfering with the Legislature's procedural rules. *Id.* And of course, the Court ultimately determined that it would not interfere with Tuck's interpretation of the requirements of Article 4, Section 59 of the Mississippi Constitution. *Id.* At no point, however, did the Court state that it lacked the power to rule on whether Tuck violated Section 59. On the contrary, the Court held that it did have the power to intervene and rule on a violation of the procedural rules of the Legislature in a situation where a legislative member "exercises the responsibility in a manifestly wrong manner which does critical harm to the legislative process." *Id.* at 407. Clearly, *Tuck* stands for the proposition that this Court does have the power to intervene and find legislative, procedural actions enshrined in our Constitution unconstitutional in certain, compelling circumstances. *Id.* at 410.

⁴ Unlike the current procedural posture of this case, the Senators in *Tuck* were allowed to present their case in the lower Court at a full hearing. On appeal, the Court took issue with the "rushed" nature of the lower Court proceedings, indicating that the Chancellor should have given Tuck more time to present her case in the lower Court. *Id.* at 410. The Court indicated that the Chancellor violated the "principles of fundamental fairness."

If not allowing Tuck more time to prepare her case in the lower court violated principles of fundamental fairness, surely not allowing Rep. Hughes the ability to even present his case in the lower Court is unfair.

Of course, the reason the Court did not find the circumstances compelling enough to intervene was because it deferred to Tuck's ruling that conference reports are not bills within the context of Section 59. The Court stated:

It is important to a proper understanding of Section 59 and its limited application to bills and not to conference reports to note that the section allows a member of the house to insist on a reading in full "immediately before the vote on its [the bill's] final passage." The adoption of a conference report is not the final passage of the bill which was presented to conference and reported back to the houses. The conference report does not go directly to the Governor for signature. Rather, the house where the bill originated engrosses a final version of the bill based on reconciling the different provisions passed by the separate houses and the conference report. The bill is then certified and sent to the Joint Committee on Enrolled Bills. The Lieutenant Governor and the Speaker notify their members of the bill's enrollment, and the title to the bill is read. ***At that time, immediately before final passage, a member may have the bill read in full.***

With this background and understanding of the Rules of Procedure set out in the Constitution and the rules and practices adopted and current in the Senate, the Lieutenant Governor ruled on Senator Blackmon's point of order. It is impossible for us to say that her ruling was arbitrary or manifestly wrong. *Id.* at 409. (emphasis added) (internal quotations omitted.)

Clearly, the Court refused to find Tuck in violation of Section 59 since the Senators were not asking for a final bill to be read. However, the Court acknowledged the right of any member to have a bill read in full before a final vote. *Id.*

Unlike *Tuck*, this is the main issue in dispute in the case at bar. If the *Tuck* Court found no violation of Section 59 because Tuck did not refuse to read a bill before a final vote, logic holds that Speaker Gunn's refusal to read an actual bill before a final vote is a violation of Section 59.

It is also important to note that the requirement in Section 59 that all bills be read contains the language "shall." This means that the provision is mandatory and cannot be ignored by the Speaker. See *Mayor and Board of Alderman v. State*, 102 Miss. 663, 684 (Miss. 1912) (holding that language "shall" in Article 4, Section 71 of the Mississippi Constitution of 1890

means that provision is mandatory and cannot be ignored by the legislature).⁵

Finally, at issue in this case is Rep. Hughes' personal right as a member of the House of Representative, and the personal right of all members of the House, to have any bill read, in full, prior to a final vote. This is a right guaranteed to him and his colleagues under the Mississippi Constitution of 1890. The Mississippi Supreme Court has made it clear that it will intervene in any case where an elected official's violation of the procedural rules of the Mississippi Constitution infringes upon a personal right. *In re Hooker*, 87 So. 3d 401, 402 (Miss. 2012).

Since the Court has the ability, and duty, to hold Speaker Gunn accountable in this case for a clear violation of Article 4, Section 59 of the Mississippi Constitution of 1890, this case should be remanded to the Circuit Court for a full hearing on the merits.

II. Rep. Hughes Should be Allowed to Make a Record in the Lower Court.

In Mississippi, it is well settled that an appeals court can only review what is before them. "Therefore, before we can address the merits of an appeal, we must have a complete record of the evidence presented, the rulings made, and the basis for the trial court's decision." *Pennington v. Dillard Supply, Inc.*, 858 So. 2d 902, 903 (Miss. Ct. App. 2003). See also *Hardy v. Brock*, 826 So. 2d 71, 76 (Miss. 2002) ("Mississippi appellate courts may not consider information that is outside the record.")

In the present case, however, Rep. Hughes was denied the ability to make his record and on appeal has further been denied a request to supplement the record. Only on remand can the record be fully developed. Currently, this Court has no information regarding the facts and

⁵ The majority of state Supreme Courts who have addressed mandatory procedural requirements contained in state constitutions related to the final passage of bills hold that provisions must be followed by the legislature. *Cohn v. Kingsley*, 5 Idaho 416 (Idaho 1897); *Roane Iron Co. v. Francis*, 130 Tenn. 694 (Tenn. 1915); *Kholman v. Wagner*, 130 Minn. 424 (Minn. 1915); *Carlton v. Grimes*, 237 Iowa 912 (Iowa 1946); *Plumley v. Hale*, 594 P. 2d 497 (Alaska 1979).

circumstances that occurred on and off the House floor during the 2016 legislative session and prompted Speaker Gunn to retaliate against certain members. Furthermore, only on remand can answers to Justice King's questions raised in his objection to the Order granting interlocutory appeal in this case be obtained.

Speaker Gunn, of course, objects to remand because he wants this Court, and not the lower Court, to first rule on what amounts to a 12(b)(6) motion. Speaker Gunn argues that Rep. Hughes entire complaint should be dismissed because of an alleged failure to properly allege injury under Rule 65(b).

This is a red hearing. The application of Rule 65(b), which deals only with TROs, is a moot exercise. This Court has already vacated the TRO and the 2016 legislative session has ended. For that reason, there is no need for any Court to issue a TRO at this point.

Furthermore, Rep. Hughes has clearly stated a claim for relief under the *Mississippi Rules of Civil Procedure*. His petition sets forth the alleged facts and circumstances that make up this controversy, the legal issues at stake, and the relief requested. *Mississippi Rule of Civil Procedure* 8 (a).⁶ There is no type of heightened pleading standard applicable to petitions for preliminary injunctions. Besides, Rep. Hughes should be freely allowed to amend his petition in the lower court to cure any alleged pleading deficiencies under *Mississippi Rule of Civil Procedure* 15 (a).⁷

⁶ Rule 8. General Rules of Pleading

(a) Claims for Relief. A Pleading which sets forth a claim for relief ... shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.

⁷ Rule 15. Amended and Supplemental Pleadings

(a) Amendments... On sustain a motion to dismiss for failure to state a claim upon which relief may be granted ... leave to amend shall be granted when justice so requires...

A. Denying Rep. Hughes the ability to make his record in the lower court would violate his due process rights.

Unless remand is granted in this matter to craft an ample record, Rep. Hughes will be denied his right to procedural due process. Each citizen has a property right in his lawsuit. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (“a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause”). “The Court traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances.” *Id.* at 429. Quoting *Zimmerman*, the Mississippi Supreme Court has recognized that “[i]t is without question that ‘a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause’ of the federal constitution.” *Albert v. Allied Glove Corp.*, 944 So. 2d 1, 6 (Miss. 2006).

Additionally, the Mississippi Constitution of 1890 creates multiple shields for citizens seeking redress through the court system. *See* Miss. Const. of 1890 art. 3, § 24 (“All courts shall be open; and every person for an injury done to him, in his land, goods, person or reputation, shall have a remedy by due course of the law, and right and justice shall be administered, without sale, denial, or delay”); Miss. Const. of 1890, art. 3, § 25 (“No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both”); Miss. Const. of 1890, art. 3, § 31 (“The right of trial by jury shall remain inviolate.”)

For the Court to fully and completely address the merits of this dispute it needs a complete Record on the purposes of Section 59 and why the Speaker chose not to follow the law.

And because Rep. Hughes has a constitutional right to fully prosecute his claim for relief, the best route to obtain a full and complete Record, and to protect Rep. Hughes' due process rights, is for the case to be remanded.

III. The Merits of the Case- Speaker Gunn's actions are in violation of Article 4, Section 59 of the Mississippi Constitution of 1890.

If the Court does not remand this case to the Circuit Court, and instead addresses the merits, it should find that Speaker Gunn's actions violate both the letter and the spirit of the Mississippi Constitution.

Article 4, Section 59 of the Mississippi Constitution provides that *"every bill shall be read in full immediately before the vote on its final passage upon the demand of any member."* Art. 4. § 59. Miss. Const. (1890). Again, this is a mandatory provision that must be followed. See *Ivy v. Harrington*, 644 So.2d 1218, 1221 (Miss. 1994) (holding that a basic tenet of statutory construction constrains us to conclude that, unlike the discretionary nature of 'may,' the word 'shall' is a **mandatory** directive) (emphasis in the original)

Although there is no audio recording of the "demon chipmunk" in the record, this Court can take judicial notice of the fact that Speaker Gunn's machine played bills at an incomprehensible speed.⁸⁹ See *In re Validation of Tax Anticipation Note, Series 2014*, 187 So. 3d 1025, 1035 (Miss. 2016) (where the Supreme Court itself took notice of the minutes of a

⁸ Rep. Hughes Petition contains an internet link to the audio.

⁹ The Court cannot, on the other hand, take judicial notice of the facts alleged in Speaker Gunn's brief, such as the suggestion that each member in the House has a sufficient opportunity to read bills before a final vote. That is a fact that is in reasonable dispute.

board of supervisors and copies of public budgets); *Buel v. Sims*, 798 So. 2d 425, 430 (Miss. 2001) (collecting points of judicial notice).

Common sense dictates that if no one can understand what you are saying, you are not reading. Speaker Gunn's "demon chipmunk" is the very definition of capriciousness. It makes a mockery of the Mississippi Constitution. It is gibberish.

Speaker Gunn essentially admits on pages 27 and 32 of his brief that his machine plays at a speed that no member can understand. Every definition of the verb "read" contains some sort of reference to understanding and comprehending words. See e.g. Merriam Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/read>. There can be no doubt that Speaker Gunn is refusing to read the bills in full.

One must surmise that the Constitution gave a member the right to have the bill read in full before the final vote on its passage because that member might need to know what was in the bill before they voted. Although it is a safe assumption that all the members of the Mississippi House of Representatives are literate, many of them admittedly had problems fully ascertaining the scope of bills passed in the 2016 legislative session.¹⁰ In part, this was because it was not uncommon for bills hundreds of pages long to be voted on less than ninety (90) minutes after the final language were presented.

And so, Article 4, Section 59 of the Mississippi Constitution still has an important role to play in our democracy if for no other reason than it provides transparency to the legislative process. Speaker Gunn, who is clearly not a fan of transparency, would have this Court believe that this provision of the Mississippi Constitution of 1890 is simply outdated and that he should

¹⁰ An example of this fact is SB 2362, which allows the legislature to "sweep" special funds from state agencies into the general fund. With many state leaders and agency heads up in arms over the devastating consequences of this bill, some legislators are now claiming they did not know what was in the bill before they voted. Imagine if the bill had been read aloud before the vote.

be able to do whatever he wants. However, if Speaker Gunn thinks that Article 4, Section 59 of the Mississippi Constitution of 1890 is antiquated and unnecessary, he should seek to change the Constitution, not ignore it all together.

CONCLUSION

This Court has the power and the obligation to hold Speaker Gunn accountable for his blatant violation of the Mississippi Constitution of 1890. He is not above the law. After affirming its power to review Speaker Gunn's actions, this Court should remand this case to the Circuit Court of Hinds County for a full hearing on the merits. Alternatively, this Court should simply take judicial notice of Speaker Gunn's actions, find that he is in violation of the Constitution, and forever put to rest the "demon chipmunk."

This the 21st day of June, 2016.

Respectfully Submitted,

J.P. Hughes, Jr., Appellee

s/S. Ray Hill, III

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CERTIFICATE OF SERVICE

I, S. Ray Hill, III hereby certify that I electronically filed the foregoing with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Michael B. Wallace, Attorney for Phillip A. Gunn

Mark W. Garriga, Attorney for Tate Reeves

I also mailed a copy of the foregoing, via US Mail, to the following:

Honorable Winston L. Kidd

P.O. Box 327

Jackson, MS 39205

This the 21st day of June, 2016.

s/S. Ray Hill, III

S. RAY HILL, III MSB #100088