

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**  
**No. 2012-IA-00166-SCT**

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**CHARLES HOOKER, DAVID GATLIN**  
**NATHAN KERN AND ANTHONY MCCRAY**  
Appellants-Defendants

v.

**JIM HOOD, ATTORNEY GENERAL FOR THE STATE OF MISSISSIPPI,**  
**EX REL. THE STATE OF MISSISSIPPI**  
Appellee-Plaintiff

**BRIEF OF APPELLANT**  
**AARON BROWN**

INTERLOCUTORY APPEAL FROM THE CIRCUIT COURT OF  
HINDS COUNTY, MISSISSIPPI, FIRST JUDICIAL DISTRICT  
HONORABLE TOMMIE GREEN, SENIOR CIRCUIT JUDGE, PRESIDING

Edward Blackmon, Jr., MSB [REDACTED]  
BLACKMON & BLACKMON, PLLC  
907 West Peace Street  
Post Office Drawer 105  
Canton, Mississippi 39046  
Telephone: 601-859-1567  
Facsimile: 601-859-2311  
[edblackmon@blackmonlawfirm.com](mailto:edblackmon@blackmonlawfirm.com)

**ATTORNEY FOR APPELLANT AARON BROWN**

## **CERTIFICATE OF INTERESTED PERSONS**

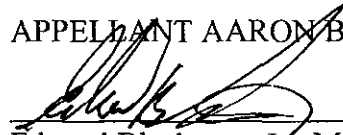
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court of Mississippi may evaluate possible disqualification or recusal.

1. Honorable Tomie T. Green, Senior Circuit Judge, Seventh District Circuit Court of Hinds County, Mississippi.
2. State of Mississippi, Appellee/Plaintiff.
3. Hon. Jim Hood, Attorney General for the State of Mississippi, ex rel. the State of Mississippi, Appellee/Plaintiff.
4. Hon. Jim Hood, counsel for Attorney General for the State of Mississippi, ex rel. the State of Mississippi, Appellee/Plaintiff.
5. Hon. Bridgette Wiggins, Special Assistant Attorney General, counsel for Attorney General for the State of Mississippi, ex rel. the State of Mississippi, Appellee/Plaintiff.
6. Hon. Christopher Epps, Commissioner of Mississippi Department of Corrections, Appellee/Defendant.
7. David K. Scott, Special Assistant Attorney General, counsel for Hon. Christopher Epps, Commissioner of Mississippi Department of Corrections, Appellee/Defendant.
8. Charles Hooker, Appellant/Defendant.
9. David Gatlin, Appellant/Defendant.
10. Nathan Kern, Appellant/Defendant.
11. Anthony McCray, Appellant/Defendant.
12. Thomas M. Fortner, ERIK M. LOWERY, P.A., counsel for Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray, Appellants/Defendants.
13. Erik M. Lowrey, ERIK M. LOWERY, P.A., counsel for Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray, Appellants/Defendants.
14. Richard A. Filce, ERIK M. LOWERY, P.A., counsel for Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray, Appellants/Defendants.
15. Kirby Tate, Appellant/Defendant.

16. Sylvia S. Owen, counsel for Kirby Tate, Appellant/Defendant.
17. Katherine Robertson, Appellant/Defendant.
18. Luther T. Munford, PHELPS DUNBAR, LLP, counsel for Katherine Robertson, Appellant/Defendant.
19. Robert Gregg Mayer, PHELPS DUNBAR, LLP, counsel for Katherine Robertson, Appellant/Defendant.
20. John M. Colette, .101-IN M. COLLETTE & ASSOCIATES, counsel for Katherine Robertson, Appellant/Defendant.
21. Charles W. Pickering, Sr., CHARLES W. PICKERING SR. LAW OFFICE, counsel for Katherine Robertson, Appellant/Defendant.
22. Azikiwe Kambule, Appellant/Defendant.
23. Joshua Howard, Appellant/Defendant.
24. Cynthia A. Stewart, CYNTHIA A. STEWART, P.A., counsel for Azikiwe Kambule and Joshua Howard, Appellants/Defendants.
25. Aafram Sellers, counsel for Appellant/Defendant Joshua Howard.
26. Edward Blackmon Jr., BLACKMON & BLACKMON, PLLC, counsel for Azikiwe Kambule, Appellants/Defendants.
27. Emily Rebecca Hentz, Putative Intervenor.
28. Alison Oliver Kelly, counsel for Emily Rebecca Hentz, Putative Intervenor.
29. Haley Barbour, in His Capacity as Governor of the State of Mississippi at the Time of the Events Alleged in this Suit, Amicus Curiae in the Circuit Court ("Former Governor Haley Barbour, Amicus Curiae").
30. Charles E. Griffin, BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, counsel for Former Governor Haley Barbour, Amicus Curiae.
31. E. Barney Robinson III, BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, counsel for Former Governor Haley Barbour, Amicus Curiae.
32. Benjamin M. Watson, BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, counsel for Former Governor Haley Barbour, Amicus Curiae.

33. Melissa Baltz, BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, counsel for Former Governor Haley Barbour, Amicus Curiae.
34. Hon. Phil Bryant, in his official capacity as Governor of the State of Mississippi.
35. Hon. Robert G. Waites, counsel for Hon. Phil Bryant, in his official capacity as Governor of the State of Mississippi.
36. Hon. Jack L. Wilson, counsel for Hon. Phil Bryant, in his official capacity as Governor of the State of Mississippi.

APPELLANT AARON BROWN



Edward Blackmon, Jr., MSB #3354

## TABLE OF AUTHORITIES

Cases.....State v. Metts, 88 So.525, 530 (Miss. 1921); p. 10

Statutes and Rules.....Section 124 Mississippi Constitution; p. 7, 9, 11

Mississippi Constitution of 1890 and VI §§ 144, 173

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## STATEMENT OF ISSUE

Appellant, Aaron Brown, joins in the Statement of Issue, set out in the Brief of appellants, Charles Hooker, David Gatlin, Nathan Kern, and Anthony McCray. In addition, Appellant Brown, list the following additional Issue for consideration by the Court.

- I. Whether Section 124 requires publication daily, weekly, or other, as a condition for pardon?

## **STATEMENT OF THE CASE**

Appellant Aaron Brown, joins in the statement and adopts the record excerpts of the case set out in the Brief of Appellants, Charles Hooker, David Gatlin, Nathan Kern, and Anthony McCray. In addition, he sets out the following specifics to his case.

### **A. Statement of Facts**

Appellant Aaron Brown is a felon convicted under the laws of the State of Mississippi of Murder, concealed weapon and possession of control substance in Hinds County, Mississippi on December 12, 1990.

Appellant Aaron Brown was issued a Pardon by former Governor Haley Barbour on or before January 10, 2012. Prior to Appellant Brown being released pursuant to Governor Barbour's Pardon, State Attorney General Jim Hood filed suit in the First Judicial District of Hinds County Circuit Court seeking to nullify the Pardons of approximately 200 former state felons, including, Appellant Brown .

Attorney General Hood sought and obtained a hearing without notice to Appellant Brown before the Honorable Judge Tomie Green, Circuit Court Judge, Hinds County, Mississippi on his Petition for a Temporary Restraining Order. An Order was entered on January 11, 2012 by Judge Green granting the relief sought in the Petition for Temporary Restraining Order. (C.P. 43, R.E. 11).

Attorney General Hood followed the January 11, 2012 Order by filing a First Amended Verified Complaint (C.P. 63, R.E. 52), in which he for the first time, named Appellant Aaron Brown as a party defendant.

Appellant Brown filed a Special Appearance for Purposes of Motion to Dismiss. (C.P.) The matter was set by Judge Green for hearing on January 23, 2012. Judge Green after hearing



from the attorneys for the respective parties, entered an Order extending the Temporary Restraining Order for an additional 11 days.

The Court entered an Order on January 26, 2012 extending the TRO. (C.P. 540 R.E. 28)

Appellant Brown on January 31, 2012, filed his Answer and Defenses to the Second Amended Complaint. Thereafter, on February 1, 2012 Appellant Brown filed for Writ of Prohibition and/or Mandamus and Emergency Stay.

This Court by Order dated February 2012, stayed the proceedings in the trial court, and set times for briefing and argument before the Court.

### **SUMMARY OF ARGUMENT**

Appellant, Aaron Brown, joins in the Summary of the Argument set out in the Brief of appellants, Charles Hooker, David Gatlin, Nathan Kern, and Anthony McCray.

### **STANDARD OF REVIEW**

Appellant, Aaron Brown, joins in the Standard of Review set out in the Brief of appellants, Charles Hooker, David Gatlin, Nathan Kern, and Anthony McCray.

### **ARGUMENT**

Appellant, Aaron Brown, joins in the Argument set out in the Brief of appellants, Charles Hooker, David Gatlin, Nathan Kern, and Anthony McCray. In addition, Appellant Aaron Brown submits the following additional Argument to be considered by the Court.

Section 124 of the Mississippi Constitution grants the authority to pardon in the Governor of the State of Mississippi. This power is vested solely in the Governor, in the executive branch, and not to the Attorney General or the Courts, both of which are part of the judicial branch of government. Miss. Const. of 1890 and VI §§144, 173.

Under our Constitution, the Governor has the power to grant a pardon for any reason, or no reason. Judge Etheridge, as early as 1921, spoke to the clear constitutional authority vested in the governor in his dissenting opinion in *State v. Metts*, 88 So. 525, 530 (Miss. 1921). Justice Etheridge with scholarly insight, stated that the “decision as to whether the publication was made is not subject to judicial review”. This view on the separation of power has held steadfast in numerous opinions by his Court.

Appellant Brown, published his Notice of application for Pardon on September 29, 2011, October 6, 2011, October 13, 2011 and October 20, 2011 in the Clarion Ledger newspaper. (C.P. 492) The first publication was one hundred and two (102) days prior to the pardon granted to Appellant Brown, and the last publication was seventy (70) days prior to Appellant’s pardon.

Section 124, provides in part that:

... [i]n cases of a felony, after conviction no pardon shall be granted until the applicant thereof shall have published for thirty days, in some newspaper in said county, then in an adjoining county, his petition or pardon, setting forth therein the reasons why such pardon shall be granted.

This Court should take judicial notice that in 1890, as it is in 2012, most counties in the State of Mississippi did not have daily newspapers. Some did not have weekly newspapers. Given this irrefutable fact, the framers of our Constitution could not have intended that there be thirty consecutive publications, or that the publication be made over the course of a thirty-week period. The interpretation now being advanced by the Attorney General requires a construction of Section 124 that has no logical application to the era of its enactment, nor contemporarily.

Clearly, the publication provision of Section 124 is procedural only. The Section is silent as to whether its application is for consecutive days, weeks, or just a date of publication thirty (30) days prior to the granting of a pardon.

The likely-hood is that the framers of our Constitution were well aware of the publication limitations in the various counties of this State, and thereby took that into account in the enactment of this provision,

An equally vague and unexplained provision of this very same section of Section 124, is the requirement that publication set forth therein, "the reason why such pardon should be granted." What if there was no reasons given, or just one reason, could the pardon be challenged on this ground? Not likely. This provision too, is procedural. Only the Governor is left to consider and determine whether any such reason, reasons, or no reason are sufficient to warrant a pardon. Imagine, what if we were here arguing the constitutional sufficiency of the reasons given for requesting a pardon? Given the desired and requested reconstruction of Section 124, it is entirely plausible that this subject area is next up.

It was never intended under our Constitution that the judiciary would stand as filter or screen for gubernatorial pardons. It's just the opposite, the pardon is the last and final word in the criminal justice process. The facts, law and circumstances of the crime, are not compelled by the doctrines of due process and stare decisis. To now declare that Appellant Brown's pardon is reviewable by the Court would mean that the judiciary could thrust itself into executive branch of government with the power to oversee all acts of pardon granted by the Governor. It would no longer be the exercise of "chief executive power" as contemplated under Section 124 of the Constitution. It would then be Chief Executive/Judiciary power.

### **CONCLUSION**

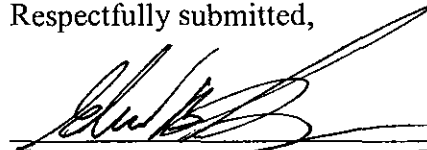
The Court should resist the plea that it dismantled more than one hundred years of recognized and accepted separation of the powers of our three branches of government. The branches operate best when their functions remain separate as mandated by the Constitution.

The three branches of government have on occasion pushed and nudged each other, but never have one or the other been overtaken by a sister branch, as is threaten in the lower Court.

For reasons stated herein, as well as that which is set forth by the Hooker Appellants brief, the decision of the trial court should be reversed and rendered, ant dismissed at Appellees costs.

This the 7<sup>th</sup> day of February, 2012.

Respectfully submitted,



Edward Blackmon, Jr., MSB [REDACTED]

OF COUNSEL:

BLACKMON & BLACKMON, PLLC  
907 West Peace Street  
Post Office Drawer 105  
Canton, Mississippi 39046  
Telephone: 601-859-1567  
Facsimile: 601-859-2311

**CERTIFICATE OF SERVICE AND FILING**

I, Edward Blackmon, Jr., do hereby certify that I have caused on this day the delivery of instrument to the following, via hand delivery, First Class United States Mail, postage prepaid and/or e-mail:

Honorable Tomie T.  
Green Circuit Court  
Judge  
First Judicial District  
of Hinds County, Mississippi  
Hinds County  
Courthouse 407 East  
Pascagoula Street  
Jackson, MS 39201  
[fashley@co.hinds.ms.us](mailto:fashley@co.hinds.ms.us)

The Honorable Jim Hood  
Special Assistant Bridgette Wiggins  
Attorney General for the State of  
Mississippi P.O. Box 220  
Jackson, Mississippi 39201  
[jihood@ago.state.ms.us](mailto:jihood@ago.state.ms.us)  
[bwill@ago.state.ms.us](mailto:bwill@ago.state.ms.us)

Alison Oliver Kelly  
Alison Oliver Kelly,  
PLLC Attorney at Law  
P.O. Box 1644  
Jackson, MS 39215  
[kellymd10@aol.com](mailto:kellymd10@aol.com)

David K. Scott  
Mississippi Department of  
Corrections 723 North President  
Street  
Jackson, MS 39201  
[dscott@mdoc.state.ms.us](mailto:dscott@mdoc.state.ms.us)

Charles E. Griffin  
E. Barney Robinson III  
Benjamin M. Watson  
Melissa Baltz  
BUTLER, SNOW, O'MARA, STEVENS & CANNADA,  
PLLC 200 Renaissance at Colony Park, Suite 1400

1020 Highland Colony Parkway (39157)  
Post Office Box 6010  
Ridgeland, MS 39158-6010  
[charles.griffin@butlersnow.com](mailto:charles.griffin@butlersnow.com)  
[barney.robinson@butlersnow.com](mailto:barney.robinson@butlersnow.com)  
[ben.watson@butlersnow.com](mailto:ben.watson@butlersnow.com)  
[melissa.baltz@butlersnow.com](mailto:melissa.baltz@butlersnow.com)

Cynthia A. Stewart  
Cynthia A. Stewart, PA  
118 Homestead Drive, Suite C  
Madison, MS 39110  
[cstewart@mississippitrial.com](mailto:cstewart@mississippitrial.com)

Aafram Sellers  
5760 I-55 North, Suite 300  
Jackson, MS 39211  
[aafram@sellerslawfirm.net](mailto:aafram@sellerslawfirm.net)

Charles W. Pickering Sr.  
CHARLES W. PICKERING SR. LAW OFFICE  
P.O. Box 465  
Petal, MS 39465-0465

John M. Collette  
JOHN M. COLLETTE & ASSOCIATES  
The Pinnacle at Jackson Place  
190 East Capitol Street, Suite 475  
Jackson, MS 39201  
Post Office Box 861  
Jackson, MS 39205  
[icole83161@aol.com](mailto:icole83161@aol.com)


Luther T. Munford  
Robert Gregg Mayer  
PHELPS DUNBAR LLP  
4270 I-55 North  
Jackson, Mississippi 39211  
[munfordl@phelps.com](mailto:munfordl@phelps.com)  
[luther.munford@phelps.com](mailto:luther.munford@phelps.com)

Sylvia S. Owen  
Attorney at Law  
P. O. Box 7252  
Tupelo, MS 38802  
[OwenLawFirm@comcast.net](mailto:OwenLawFirm@comcast.net)

Thomas M. Fortner  
Richard A. Filce  
ERIK M. LOWERY, P.A.  
525 Corinne Street  
Hattiesburg, MS 39401  
[tom@eriklowreypa.com](mailto:tom@eriklowreypa.com)  
[rfilce@hotmail.com](mailto:rfilce@hotmail.com)

Robert G. Waites  
Jack L. Wilson  
Office of the Governor  
P.O. Box 139  
Jackson, MS 39205  
[bobby.waites@governor.ms.gov](mailto:bobby.waites@governor.ms.gov)  
[jack.wilson@governor.ms.gov](mailto:jack.wilson@governor.ms.gov)

This the 7<sup>th</sup> day of February, 2012.

  
Edward Blackmon, Jr.