

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

QUITMAN COUNTY, MISSISSIPPI,

Plaintiff-Appellant,

vs.

STATE OF MISSISSIPPI, Haley Barbour,  
in his official capacity as GOVERNOR, and James Hood,  
in his official capacity as ATTORNEY GENERAL,

Defendants-Appellees.

**FILED**

JUL 26 2004

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**FILED**

AUG - 4 2004

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

On Appeal From The Circuit Court Of The Eleventh Judicial District  
In And For Quitman County, Mississippi

*per order of*  
8/4/04

BRIEF OF *AMICI CURIAE* OF THE  
MISSISSIPPI CIRCUIT CLERKS' ASSOCIATION AND  
MISSISSIPPI CHANCERY CLERKS' ASSOCIATION  
IN SUPPORT OF APPELLEE QUITMAN COUNTY

ORAL ARGUMENT NOT REQUESTED

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**MOTION#** 2004-2291

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QUITMAN COUNTY, MISSISSIPPI,

Plaintiff-Appellant,

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in his official capacity as GOVERNOR,  
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ATTORNEY GENERAL,

Defendants-Appellees.

No. 2003-SA-02568

On Appeal From The Circuit Court of the Eleventh Judicial District In and For  
Quitman County, Mississippi

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* OF THE  
MISSISSIPPI CIRCUIT CLERKS' ASSOCIATION AND  
MISSISSIPPI CHANCERY CLERKS' ASSOCIATION  
IN SUPPORT OF APPELLEE QUITMAN COUNTY**

Pursuant to Mississippi Rule of the Appellate Procedure 29(a), *amici curiae* the following members of the Mississippi Circuit Clerks' Association and Mississippi Chancery Clerks' Association respectfully move this Court for leave to file the attached *amicus curiae* brief in support of Plaintiff-Appellant Quitman County, Mississippi.

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## INTRODUCTION AND INTEREST OF *AMICI*

*Amici* are the Members of the Chancery Clerks' and Circuit Clerks' Associations of the State of Mississippi. *Amici* write to provide the Court their perspective on an issue of substantial importance: whether the integrity of the Mississippi Judiciary depends upon the Courts having adequate resources for their operations, and whether that integrity has been jeopardized by the Mississippi Legislature's failure to fund indigent defense, requiring this Court to intervene. *Amici* believe that the state of indigent defense in Mississippi today, when considered together with the inadequate financial resources of the local courts and counties, now require this Court to intervene and to order a statewide system of indigent defense, thereby ensuring the efficient administration of justice in this State.

The Mississippi Circuit Clerks' Association is an organization whose mission is to promote a spirit of friendship and fellowship among the 82 counties, promote education and uniformity among the circuit clerk's offices and other courts in the state, and work closely with legislators, other organizations and county governments to provide the most efficient and effective services to the citizens of the state, while keeping expenditures within county budgets. Similarly, the Mississippi Chancery Clerks' Association was established to bring elected Chancery Clerks' of Mississippi's 82 counties together for self-improvement through programs of education and information, to promote better quality public service of elected officials, to share common problems, and to support legislation necessary for the common good of all of Mississippi's counties.

### **I. THE MISSISSIPPI CHANCERY AND CIRCUIT CLERKS' SERVE A CRITICAL ROLE IN MISSISSIPPI'S PROVISION OF JUSTICE.**

As a result of their similar missions, the Mississippi Chancery and Circuit Clerks' Associations share the important purpose of studying, understanding and promoting effective and

efficient justice in Mississippi. Perhaps even more importantly, the members of these associations work with and serve Mississippi's citizens and its many servants of justice. From the judiciary itself, to citizens haled before the state courts, to the multiple employees who work daily within the court system, the Circuit and Chancery Court Clerks' of Mississippi undertake the proverbial hard job of making the trains run on time. In so doing, *Amici* Association Members interact daily with prosecutors, defense attorneys, court personnel, stenographers, and the countless others who have to work within the limited budget allotted them, particularly in light of the financial crises many Mississippi counties now face. *Amici* are -- in no uncertain terms -- longstanding and faithful friends of the Mississippi courts. And in serving Mississippi and its many courts, *Amici* seek to ensure that the machinery of justice functions as well as it can within the limited budgetary resources available to them.

**II. MISSISSIPPI COUNTY RESOURCES, ALREADY STRAINED, ARE INADEQUATE TO ENSURE JUDICIAL AND COURT INTEGRITY.**

There is one financial reality facing all of Mississippi's 82 counties -- their budgets are strained and their financial resources are taxed to their limit. This is a fact that undoubtedly faces all of Mississippi's state and county governmental units alike. Nevertheless, it is also a financial crisis that falls particularly hard upon the poorest of Mississippi's counties, their citizens, and their governments. Like Quitman County, many of those counties have both small tax bases, and as a related consequence, large percentages of young and old citizens disproportionately dependent upon government services.

In the over forty years, since this Court ordered in *Conn. v. State*, 170 So. 2d 20 (Miss. 1964), that it is the obligation of the State to provide indigent defendants with counsel where they could not afford it, the Legislature of the State of Mississippi has failed to allocate funding to pay for that defense counsel. While that might be called an "unfunded mandate" by the

Legislature (a number of which have been placed upon the counties), for the counties, it is a heavy financial burden, driving some into near financial disaster. This hardship falls especially upon those counties with high levels of unemployment, a high level of government services and disproportionate levels of crime. Often those three attributes go hand in hand.

**III. ONLY AN ORDER OF THIS COURT WILL ENSURE THAT THE COURT SYSTEM IS BALANCED, AND THAT ITS INTEGRITY IS A LIVING, WORKING REALITY.**

The Courts of Mississippi fulfill many rolls and duties. They mete out justice for the poor and rich alike. They solve problems, and they protect society. They send a message of governmental fairness and equality under the law, and they are often the meeting place of citizens from around Mississippi to convene and engage in the important work of society.

This Court has held that it has the inherent authority to order the Legislature to cure its “failure to allocate sufficient funds” for the Judicial branch. *Quitman v. State*, 807 So. 2d 401 (2001). Thus, in 1912, this Court said that “[t]he inherent powers of a court are such as result from the very nature of its organization, and are essential to its existence and protection, and to the due administration of justice.” *Fuller v. State*, 57 So.2d 806, 807 (Miss. 1912) (citing *Watson v. Williams*, 36 Miss. 331 (Miss. Err. App. 1850)).” This Court also explained in *Hosford v. State*, 525 So. 2d 789 (Miss. 1988), that this inherent authority is essential to the separation of powers at the heart of Mississippi’s constitutional structure:

The same Constitutional requirement for our courts to exist obviously carries with it the duty on the part of the legislative branch to provide sufficient funds and facilities for them to operate independently and effectively. Any holding otherwise would emasculate the constitutional mandate for three separate and co-equal branches of government by reducing courts to supplicants only of the Legislature.

This discretionary authority of the Legislature is wide indeed, but it does not cover quite all the spectrum. If it fails to fulfill a constitutional obligation to enable the judicial branch to operate

independently and effectively, then it has violated its Constitutional mandate, *and the Judicial branch has the authority as well as the duty to see that courts do not atrophy*. No court created by the Constitution is required to accept conditions which prevent it operating independently and effectively. Such court also has the duty under our governmental system to protect its own integrity. It likewise has the inherent authority as part of a separate and co-equal branch to make such orders to insure that independence and integrity.

*Id.* at 797-98 (emphasis added).<sup>1</sup>

Finally, in *Quitman v. State*, 807 So. 2d 401 (2001), this Court reaffirmed and made clear that the provision of criminal justice to all men, irrespective of race, creed, color, or ability to pay, is a critical aspect of the Judiciary's inherent authority to fulfill its constitutional mandate:

The question raised by the County's allegations is whether, assuming the State has failed in its duty to provide effective indigent defense, the county-based system has resulted in the inability of the judiciary to operate in an independent and effective manner to the extent that this Court *must, of necessity, interfere in this traditionally legislative function and order the Legislature to establish a statewide, state-funded system of indigent criminal defense*.

*Quitman*, 807 So. 2d at 410 (emphasis added).

Moreover, the Court in *Quitman* firmly rejected the State's argument that funding was the Legislature's sole prerogative:

The State argues that the financing of public defenders is a legislative matter for which the courts can provide no remedy. The State asserts that because there exists no constitutional restriction on the ability of the State to allocate the costs of indigent defense between the State and counties, the system of indigent defense is a public policy decision solely within the purview of the Legislature. . . .

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<sup>1</sup> As a result, if the "Legislative branch fails in its constitutional mandate to furnish the absolute essentials required for the operation of an independent and effective court, then no court affected thereby should fail to act," and characterized their powers in such circumstances as an "absolute duty [] to act" and "act promptly." *Id.* See also, *Wilson v. State*, 574 So. 2d at 1341 ("Since the state funds the prosecution in these cases, why not the defense?").

Though questions of this nature are traditionally legislative affairs, this Court has recognized that where the Legislature fails to act, the courts have the authority and the duty to intervene. This Court addressed the Legislature's failure to allocate sufficient funds for the courts to operate in *Hosford v. State*, 525 So. 2d 789 (Miss. 1988). In *Hosford*, poor courtroom conditions including loud noises and poor temperature control led the circuit court to petition this Court for assistance so that the county courthouse would have adequate operating facilities. . . . Certainly, if adequate facilities are essential to the administration of justice, so is effective representation.

In short, this Court's authority is crystal clear. This Court has the power and duty to intervene to protect the court system, and, from the perspective of *Amici*, Mississippi Chancery and Circuit Court Clerks', the time for such intervention has arrived.

#### CONCLUSION

*Amici* Chancery and Circuit Court Clerks' Associations of Mississippi hereby request that the Court rule in favor of Quitman County's request for a statewide, state-funded indigent defense system.

Dated: July 26, 2004

Respectfully submitted,



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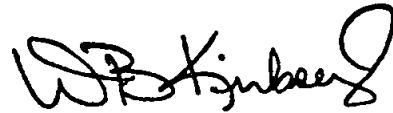


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26<sup>th</sup> day of July, 2004, I caused to be served by hand delivery, a copy of the foregoing Motion for Leave to File Brief of *Amici Curiae* of the Mississippi Circuit Clerks' Association and Mississippi Chancery Clerks' Association in Support of Appellee Quitman County on the following:

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