

FILED

JUN 22 2015

In the Circuit Court of Forrest County, Mississippi

**Carter Carroll and  
Kim Bradley**

*Joseph Rawson*  
FORREST COUNTY CIRCUIT CLERK  
**Plaintiffs**

vs.

CI14-0212

**Johnny L. Dupree, in his official capacity as  
Mayor of the City of Hattiesburg**

**Defendant**

**Motion to Intervene**

I, Joseph Rawson, come now and, pursuant to Rule 24 of the Mississippi Rules of Civil Procedure and move this Court to for an Order Granting Leave for me, Joseph Rawson, to intervene in the above styled and numbered cause, thereby allowing me, Joseph Rawson, to file a Motion to Dismiss, a copy of which is attached hereto as Exhibit "A" unto this Court. I say to the Court as follows, to wit:

**Introduction**

1. I, Joseph Rawson, am a resident and also a qualified elector of the City of Hattiesburg, residing in Ward 4. I am also a businessman and taxpayer; doing business in, and paying taxes to the City of Hattiesburg.<sup>1</sup>
2. This Court, the Circuit Court of Forrest County, has personal jurisdiction over me, and this is the proper venue to hear my application.
3. The Court lacked jurisdiction to act on the original complaint of the Plaintiffs'.<sup>2</sup>
4. This Court lost jurisdiction to grant relief to the Plaintiffs when making determination of a purely

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<sup>1</sup> See my Affidavit, attached as Exhibit "B."

<sup>2</sup> See arguments concerning the standing of the Plaintiffs in my Motion to Dismiss, Exhibit "A."

political matter in its Order to Grant Plaintiffs' Motion for Modification of Order on the 3<sup>rd</sup> of February, 2015.<sup>3</sup>

5. I, Joseph Rawson, hereby seek and pray to intervene in the above styled action, on behalf of the Defendant, acknowledging that I am not the subject of the action, nor liable for failure to perform the duty being sought by the Plaintiffs in this action.

6. The intervention I apply for is necessary to move the Court to seek relief from this action for want of jurisdiction, which is described in my Motion to Dismiss, attached as Exhibit "A." This attachment should be perused carefully, as this prospective motion provides the framework that gives substantial weight and understanding to the issues before the Court, before hearing the grounds for intervention presented hereinafter. The aforesaid Motion to Dismiss accompanies the herein motion to intervene with regard to Rule 24(c) of the Mississippi Rules of Civil Procedure, however the nature of defenses, and relief sought in said Motion to Dismiss, engenders the form of a motion to dismiss to be the most practical form available to present, in accordance with Rule 12(b) MRCP, a "facial attack"<sup>4</sup> on the subject matter jurisdiction in this Action brought to the Court.

#### **Intervention by Right**

7. It has been a well founded and wise tradition in our courts that strangers not interfere in the controversies between parties to action without demonstrating a direct interest in the property or transaction involved in the controversy, and also further demonstrating that the disposition of the case could possibly impair or impede the intervenor's ability to protect that interest.

8. The matter before the Court is an issue of Mandamus, which in itself is extraordinary, discretionary, and concerns a matter in the public interest. In order to intervene on behalf of the

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3 It is in the interest of the administration of justice that the Court presume a quorum of Council members joined as plaintiffs in the determination of loss of jurisdiction, with regard to the order mentioned. Also, the Defendant conceding that a person was not qualified for appointment should not be construed as a failure to perform duty when the Court has not been given clear and convincing evidence that the office even exists, or may exist consistently with statutes.

4 "A facial attack alleges the court lacks jurisdiction as a matter of law, regardless of the determination of factual disputes." Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213 (Miss. 2005)

Plaintiffs', I would need to demonstrate an interest in excess of the general public. I claim no such elevated interest, and make it clear that my interest in this matter bears no weight above another person; yet make it clear that the matter before the Court must be in my interest, even if such interest is shared amongst the public.

9. I recognize the longstanding hesitance for our Courts to bring to judicial review the acts of other branches of our government without an interest that is either colorable, or in excess of the interest of the general public. A likely reason for this jurisprudence is that, in many cases, the court in question would be looking at an issue that affects the public generally; and the issue would likely require and encroachment of the judiciary into another branch of our government.

10. The remedy of a person with an interest shared by the general public who cannot otherwise intervene in proceedings where a court has made determination concerning a matter of a purely political nature, such determination giving that court a reputation of having the capability of determining the purely political matters of other branches, is only penal, and not sufficient to correct the error and bring the administration of justice back to its proper place.

11. When an interest in the general public comes before a court, and the parties are pleading to the court in their official capacity, or have an interest in the exercise of power in their official capacity,<sup>5</sup> and in the proceedings the court makes a determination on a purely political matter, encroaching upon another branch of government, the ability of any person to protect the public interest before the court is seriously impaired. The nature of the judicial power, and how it is exercised, by virtue of its power to decide matters in controversy, is the best department for the general public to demonstrate an encroachment of one of the branches of government.

12. Being the best branch of government to hear controversy, the Court should take, even most

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<sup>5</sup> The statutory provisions for standing in this Mandamus Action limit the Plaintiffs to appearing before the Court as private persons with an elevated interest, which happens to be a power to be exercised in their official capacities. The private person provision works best when it is a private person who has a personal right being impaired from the failure of an official to perform duty. A court should be wary of a claim of interest in exercising a governmental power from a private person who holds office.

especially, challenges to its jurisdiction with respect to the judiciary encroaching another department, from a potential intervenor who can demonstrate where the Court has already breached the Political Question Doctrine<sup>6</sup> clearly, and the parties in the action have not raised an issue concerned with a potential determination of a question of a purely political nature.

13. No party currently before the Court that has made an argument concerning the jurisdiction of the Court with regard to the standing of the Plaintiffs in this matter. The Court needs to consider that, if the Court has not been given reason by either party, and the Court takes notice that the parties in the action are before the Court as officers either in their official capacity, or claiming interest in the exercise of a power in that official capacity; the Court may be swindled into making determinations that are of a purely political nature, when two branches of a local government, by and through their attorneys, wish to direct the attention of the people to the behavior of a court, regardless of the final determination of same court, for purely political reasons.

14. No person, when the actions of the judiciary are engaged in a matter of the public interest, where only public rights are claimed, are visibly in breach of the separation of powers doctrine, determining issues that are of a purely political nature; be denied the right to intervene upon that court and correct the judicial error, when there is clear and abundant evidence that the parties have neglected to keep the judiciary away from political matters.<sup>7</sup> It is under such unusual circumstances, where intervention can be shown to be the least restrictive, and most judicially economical vehicle, to protect the people against the encroachment of any branch, against another, and that said intervention works to correct the administration of justice and bring the action to being, such that, upon correction, the intervenor loses right and power to intervene, and must subsequently withdraw from the action.<sup>8</sup>

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<sup>6</sup> Described and examined in my Motion to Dismiss, Exhibit "A."

<sup>7</sup> The very fundamental issues to be brought before the Court, in my Motion to Dismiss, attached as Exhibit "A," have not been raised in the pleadings in the cause of action.

<sup>8</sup> Even though the motion I wish to bring before the Court is dispositive, it need not have to be, but merely persuade the Court to correct an error involving encroachment. Once such an error is corrected, and the intervenor can make no substantial claim that their interest is not being represented, nor that their ability to protect this interest is impeded or impaired, the intervenor loses standing. Lack of standing could be corrected by another Council

15. An intervention of this nature must be an intervention by right. An encroachment of the judiciary into another branch of government in an issue that must, by virtue of the grounds for intervention, be reviewed *de novo*.<sup>9</sup> An intervention of this nature should be taken by the Court as moving the Court to reconsider, and must not be possible for the Court to have discretion in such an intervention.

### **Interest in Subject Matter**

16. I wish to closely describe the nature of my interest in this action. The matter before this Court is expressly and exclusively in the public interest.<sup>10</sup> It has always been a long standing tradition in our form of government that the power to write law shall never be fully vested in a single person, yet a body of officers. The people are represented by the holders of the seats of the legislative body. In the City of Hattiesburg, there are no seats in the Council that represent the people at large, yet each Council member represents a geographically distinct ward.<sup>11</sup> The Plaintiffs petition for Mandamus to enable them to exercise their legislative power in the public interest of the municipality.<sup>12</sup> The legislative power of the City of Hattiesburg is derived from the political power which is vested in the people<sup>13</sup>, and is how the exercise political power of the people is actually constituted to be implemented with regard to the capacity of that branch of government.<sup>14</sup> As a qualified elector of the City of Hattiesburg, being a person who shares political power with others in the municipality, I have an inherent interest in the exercise of this power as implemented in its legislative form and also a necessity to protect the exercise of this power from being incorrect or improper.

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member joining the Plaintiffs, then jurisdiction is then established, and my standing, yet not interest, is lost.

9 A "de novo standard of review is applied to questions of law, legal conclusions, and jurisdictional questions." *Aladdin Constr. Co., Inc. v. John Hancock Life Ins. Co.*, 914 So. 2d 169, 174 (Miss. 2005)

10 Complaint of Plaintiffs, 9

11 Complaint of Plaintiffs, 9

12 Complaint of Plaintiffs, 17

13 Mississippi Constitution, Article 3, Section 5

14 Mississippi Constitution, Article 1, Section 1 describes the separation of powers, while in *Myers v. City of McComb*, 943 So. 2D 1 (Miss. 2006), Paragraph 19, the Supreme Court notes numerous times where it has held that Article 1 of the Constitution applies to municipalities.

17. The interest in the exercise of political power is a direct interest that is indirectly exercised by the legislative branch of our municipality. With respect and regards to the qualifications necessary for the application of mandamus, my interest does exceed the interest of other taxpayers and businessmen, and I do not apply to intervene on behalf of the Plaintiffs.

18. I have a direct interest in the exercise of executive power in the City of Hattiesburg, as the exercise of executive power is a derived exercise of the political power of the people. The executive power being called into question in this action is the power to direct the appointment of a person to an office.

19. I have a direct interest in the exercise of judicial power over the City of Hattiesburg, or even the officers of the municipality, as the exercise of judicial power is a derived exercise of the political power of the people.

20. I have a further interest in the exercise of judicial power over the City of Hattiesburg, when the judicial power exceeds its departmental limits and engages in behavior most appropriately exercised in either the legislative or executive branches, and the only remedy available is penal to the judiciary, and the Court has not been properly informed by any current party that it has exceeded its power.

21. I desire to make it clear that the interest in the aforementioned powers of our government(s)<sup>15</sup> is not special to me, Joseph Rawson, but is an interest shared by other residents of the City of Hattiesburg, and I claim no elevated interest in this matter. The foregoing arguments are presented to the Court to establish that an interest exists, and that this interest is a direct interest, even if the exercise of this interest is derived.

#### **Adequacy of Representation by Current Parties in Action**

22. It is impossible for the Plaintiffs before the Court to adequately represent my interest in this

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<sup>15</sup> Interest in both executive and legislative powers correspond to municipal powers, while judicial power corresponds to the State of Mississippi.

matter. I am an adult resident and qualified elector of the City of Hattiesburg, residing in Ward 4. Plaintiff Kim Bradley represents Ward 1,<sup>16</sup> while Plaintiff Carter Carroll represents Ward 3.<sup>17</sup> The majority of Council members are not plaintiffs in this case. Also, there are no Council members joined with the Defendant in this matter.

23. In order for my will, as well as the will of the people not residing in the wards of the two Plaintiffs, to be adequately represented, one more Council member must come before this Court, in order for a simple majority of Council members to be present before the Court representing all of the people of the municipality. I want it known to the Court that do not take issue with my Council member not being present before the Court with respect to the issue of adequate representation, rather, It is the fact that it is only a minority of the Council that is present before this Court that I hold as the grounds for demonstrating my interest of having legislative representation before the Court being inadequately represented.

24. The Defendant in this matter never raised any of the truly fundamental issues that are brought before the Court in my Motion to Dismiss, attached as Exhibit "A." The Court has already exceeded its jurisdiction by issuing orders based on the complaint of a minority of legislators, regulating the executive power of the City of Hattiesburg without any clear and unambiguous law as basis for those judicial orders.

25. In this Action, which is purely in the public interest, where both Parties before this Court hold elective office, where also the record clearly demonstrates where determination has already been made on a question of a purely political nature, and where also no party has made sound argument objecting to an order that violates the Political Question Doctrine; a lack of representation becomes unavoidably evident and such negligent representation cannot be allowed to become the vehicle that steals the political structure of government from the people.

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<sup>16</sup> Complaint of Plaintiffs, 6

<sup>17</sup> Complaint of Plaintiffs, 5

### **Timeliness of Intervention**

26. The original complaint before this Court was filed on November 6, 2014. Without regard to the standing of the Plaintiffs, the application seemed necessary and supported by the facts. On the 4<sup>th</sup> of June, 2015, I attended the Court to observe the proceedings of the status conference, hear the testimony and evidence provided, and also to hear the determination of the Court.<sup>18</sup> Upon hearing the evidence, the arguments presented before the Court, and the determination, it became abundantly clear that intervention was necessary to inform the Court that it lacked the jurisdiction to hear the case and that the Court had already exceeded the limits of its judicial power.

27. Our Supreme Court recognizes that “timeliness in regards to intervention is not limited to chronological considerations, but is to be determined from all the circumstances.”<sup>19</sup> The circumstances in the matter before this Court began unusually, since the Writ of Mandamus is an extraordinary writ. Beyond the extraordinary nature of the action, the proceedings have progressed into a highly unusual state that could possibly endanger how justice is administered and governments regulated in the future. The proceedings have already reached the stage where the Court has exceeded its jurisdiction, and a challenge to the jurisdiction of this Court to proceed past its jurisdictional limits is timely.<sup>20</sup>

28. With regard to the prejudice experienced by any party currently engaged in the proceedings with respect to when this motion is filed, I cannot determine the extent, if any, that will be experienced. However, I am very willing to answer responses and objects on that issue when presented to the Court.

### **Practical Matters**

29. With regard to my ability to protect my interest, the exercise of my political power, as

<sup>18</sup> See my Affidavit, attached as Exhibit “B.”

<sup>19</sup> Hood ex rel. State Tobacco Litigation (Miss. 2007) 958 So. 2d 790

<sup>20</sup> Burnette v. Hartford Underwriters Ins. Co., 770 So.2d 948 (Miss. 2000)



implemented in both parties before the Court, as a practical matter, the determinations this Court has already made has already crippled this in a very practical sense. Why would the people need a legislative branch, composed of many, when any one can plead to the Court to make law for them and enforce political policy through mandamus? When we vote for a legislator, should we vote for the person who can represent a ward of people before a court in order to get the court to protect our political power by enforcing policy, ignoring the whole legislative process?<sup>21</sup>

30. The practical matter of how political power is exercised, and the serious problems that encroachment of power presents, is often more mundane than the well grounded fear of a nefarious tyranny of a single branch, which we are vigilant to prevent. The Court is well equipped to deal in matters of law, and determine controversy, but is poorly equipped to make sure the departments of the municipality operate efficiently, or hearing concerns over whether it is more beneficial to change a zone, or grant a use permit upon review. While mundane, these practical matters are important to the people of a municipality, and the judicial power cannot effectively exercise powers that require learned persons, taught more than just the law, to help maintain the peace, safety, and welfare of the people.

31. The Court is enabled, by the people, to review any sort of matter, mundane or not, when there is an interest in protecting a personal right of a party before the Court, but it is very poorly equipped to administer and legislate to the municipality in any sort of practical manner. No authority is cited in the foregoing arguments concerning these practical matters, but it is hoped that the Court reflect and consider the importance of a person seeking to protect a matter in the public interest, where the best court to hear that person is the same court that has been called to hear claims concerning that matter, there being no other perceived remedy that would not incur additional restrictions.<sup>22</sup>

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21 This and the foregoing question are not meant for the Court to answer, but to seriously provoke a reflection of the role of the judiciary with respect the Separation of Powers Doctrine, that doctrine being clearly expressed in the Primary Article of Our Constitution.

22 It is apparently possible for a Chancellor to restrain a Mandamus Action, however, for the purposes of the

32. It is apparently possible to convince a Chancellor to restrain these proceedings, but this is different petition for yet another extraordinary order, and the Chancellor would have to review the record that already is possessed by this Court. It is not only that there exists another remedy, other than intervention, but it should be understood that the remedy of restraint is not adequate, nor appropriate, for a Court that needs to be corrected, yet is available for the people when a Court either cannot be corrected, or endangers a right that requires injunctive relief to protect.

### **Reputation**

33. I fear that the Court will gain the reputation of hearing a single council member of a municipality, claiming a legislative interest that requires a quorum, attempt to enforce their will upon the mayor of that municipality, by seeking a Writ of Mandamus.

34. I fear that the Court will gain the reputation of determining matters of a purely political nature when a quorum of council members of a municipality seek a Writ of Mandamus.

35. It is with concern for the reputation of the administration of justice here in Forrest County that I move this Court to grant me leave to intervene and save the reputation of the Court, help the people and officers of the City of Hattiesburg, and help maintain a stable and traditional system of government.

36. Without intervention, the Court would be unequipped and unable to determine its want of subject matter jurisdiction in this Action, if the Parties to the Action desire the appearance of jurisdiction in order to bolster their political influence, and in pursuit thereof, refrain or neglect to present an attack on the jurisdiction of the Court. In order to protect the reputation of the administration of justice here in Forrest County, and prevent the Court from being dragged into a dispute where the Court must determine matters of a purely political nature, this intervention is necessary.<sup>23</sup>

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<sup>23</sup> "Mississippi does not recognize 'special appearances' except where a party appears solely to object to the court's jurisdiction over her person on grounds that she is not amenable to process." *Isom v. Jernigan*, 840 So. 2d 104, citing *Mladinich v. Kohn*, 250 Miss. 138, 156, 164 So.2d 785, 791 (1964). Special appearances to challenge the

**Conclusion**

37. Wherefore, it is with these premises most carefully considered that I, Joseph Rawson, seek and pray for the Court to Grant me Leave to Intervene in this Action and thereby present my Motion to Dismiss unto this Court for the relief described therein.

Respectfully submitted, this the 22<sup>nd</sup> day of June 2015 ~~2012~~.

Sincerely,



Joseph Rawson

Joseph Rawson  
612 North Main Street  
Hattiesburg, MS 39401

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Court's jurisdiction are currently limited to challenging personal jurisdiction, rather than subject matter jurisdiction, leaving intervention as the only available option for relief.

**Certificate of Service**

I, Joseph Rawson, hereby certify that a copy of the above and foregoing document on the following, by delivering same to their office addresses through either hand delivery, or first class United States mail, postage prepaid, on this the 22<sup>nd</sup> day of June, 2015:

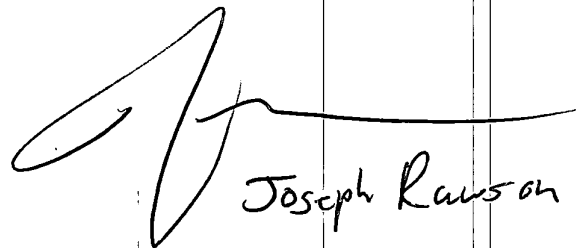
Honorable L. Breland Hilburn  
Senior Status Judge  
Post Office Box 2114  
Jackson, MS 39225-2114

Robert D. Gholson  
Katherine B. Sumrall  
Post Office Box 1289  
Laurel, MS 39441-1289

Charles Lawrence  
1105 Edwards Steet  
Hattiesburg, MS 39401

Shawn O'Hara  
Post Office Box 15275  
Hattiesburg, MS 29404

Elisha Jackson  
Post Office Box 1542  
Hattiesburg, MS 39403



Joseph Rawson

**In the Circuit Court of Forrest County, Mississippi**

**Carter Carroll and  
Kim Bradley**

**Plaintiffs**

**vs.**

**CI14-0212**

**Johnny L. Dupree, in his official capacity as  
Mayor of the City of Hattiesburg, and  
Joseph Rawson**

**Defendants**

**Motion to Dismiss**

I, Joseph Rawson, come now and file this, my Motion to Dismiss unto the Court as follows, to wit:

**Introduction**

1. I, Joseph Rawson, am a resident and also a qualified elector of the City of Hattiesburg, residing in Ward 4. I am also a businessman and taxpayer; doing business in, and paying taxes to the City of Hattiesburg.

2. I, Joseph Rawson, move this Court to Dismiss this Cause of Action for want of jurisdiction, and also to Vacate all Orders seeking to compel the performance of the Defendant. The grounds upon which this motion for relief is based will be shown unto the Court are as follows:

**Standing of the Plaintiffs**

3. The two Plaintiffs in this action cannot represent the majority interest of the municipality without meeting quorum requirements in their standing. A person may stand in legislative capacity before a court seeking relief for protecting a privilege incidental to their office, or a power that can be exercised individually, without the quorum requirements, but the action currently before the court

**Exhibit A**

requires a quorum to exercise the legislative interest being claimed.<sup>1</sup>

4. In order to exercise the specific legislative power the Plaintiffs have an interest in, there must be a quorum present in a public meeting. In the City of Hattiesburg, composed of five wards,<sup>2</sup> there must be at least three members, this being the smallest simple majority, present to hold a meeting and take legislative action. It is not possible for the Plaintiffs to have standing to seek a performance of duty from the executive branch of the municipality that is required to be performed before the Plaintiffs can subsequently exercise their legislative power, since the exercise of that particular legislative power requires a quorum to be present.

5. The two Plaintiffs present before the Court, represented by and through their attorney, do not represent a simple majority, or greater, of the City of Hattiesburg and should not be able to convince a court that they have interest in a power, that in their capacity, they cannot possibly ever exercise.

#### **A Short Examination of Filling Vacancies in Office by Appointment and Confirmation**

6. General law provides that "if any person [...] appointed to any [...] municipal office shall fail to qualify as required by law on or before the day of the commencement of his term of office, or [...] hold over after his regular term of office expires, [...] a vacancy in such office shall occur thereby and it shall be filled in the manner prescribed by law."<sup>3</sup> For department directors, the terms of those offices are coincident to the term of the mayor;<sup>4</sup> however, for other offices, the terms are able to be

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1 In the Complaint of the Plaintiffs, paragraph 17, the Plaintiffs establish interest in confirming appointments, which can only be performed in a meeting of the Council, where a quorum of the Council needs to be present to hold the meeting. Also, section § 21-8-23, Miss. Code Ann. 1972 provides that "at any and all meetings of the council, a majority of the members thereof shall constitute a quorum and the affirmative vote of a majority of the quorum at any meeting shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever unless otherwise provided in this chapter."

2 Complaint of Plaintiffs, 8

3 § 25-1-7 Miss. Code Ann. 1972

4 § 21-8-23 Miss. Code Ann. 1972. It should be noted that when a vacancy exists in the office of mayor, vacancies must exist in each office of department director. Moreover, the council is prohibited from modifying the term of a department director, even when establishing the office by ordinance.

established by the council,<sup>5</sup> consistent with statutes, or are otherwise, by default, four years.<sup>6</sup>

7. However, it is with special regard to department heads, clearly and unambiguously expressed in § 21-8-23, Miss. Code Ann. 1972, that the manner by which vacancies are filled can be more thoroughly and easily explored.<sup>7</sup> As well as requiring that each department have a director, subsection 2 very clearly describes the requirements that a department director must have. No department director may be eligible to hold office until a vacancy exists in that office.<sup>8</sup> The primary qualification for office of department director is implied by the existence of an ordinance establishing the department, provided for by subsection 1. Otherwise, the qualifications expressed in the statute require both that he be "appointed by the mayor", then<sup>9</sup> "confirmed by an affirmative vote of a majority of the council present and voting at any such meeting."<sup>10</sup> Upon these premises, it can be clearly seen that in order to hold office, a department director must be confirmed by the council of a municipality, even if the director be appointed by the mayor.

8. When the Mayor enters the discharge of his office, by virtue of the term of office of department directors being coincident to the Mayor's term, vacancies then occur in those offices.<sup>11</sup> Pursuant to § 25-1-7 Miss. Code Ann. 1972, the Mayor must then perform his duty in filling the vacancy that occurs, by appointing a person to the vacant office. The Mayor does not have the exclusive power to fill the vacancy, since one of the qualifications for office is the confirmation of the

5 The Attorney General's Opinions cited in the case infer the term of the department heads from the relevant statute, yet term periods are not specified in most other statutes providing that the governing authorities appoint officers, except for the municipal attorney, who must be appointed annually. This allows the council to appoint municipal court officers annually, biennially, or coincident to the term of the elective offices, however, the council is prevented from changing the term of any department director.

6 § 25-1-1 Miss. Code Ann. 1972. Interestingly, this statute provides holdover authority when no term is specified in another law, however if another law specifies the term, this statute cannot provide holdover authority, and it must come from elsewhere.

7 The clarity of this statute doesn't require the construction of the intent of the Legislature, compared to the other more implicit appointment statutes that exist, making it easier to show the Court where the error occurs in the Court's order to compel performance of duty.

8 The legislative act establishing the office creates the initial vacancy to be filled.

9 Taking special note that these two necessary qualifications are consecutive, rather than concurrent and independent.

10 Here, the phrase "any such meeting" seems to strongly imply that there is no requirement to bring all department director appointments before the council in a single meeting, similar to how municipal court officers are to be appointed "at the time provided for the appointment of other officers." § 21-23-3 Miss. Code Ann. 1972

11 The term of office expired with the vacancy of the previous mayoral term.

Council.<sup>12</sup> Since the Mayor has no exclusive power to fill the vacancy, his appointment of a person to office cannot remove the vacancy that exists, and no new vacancy is established.

9. Constitutionally, the Legislature must provide the manner by which all vacancies for all offices are filled,<sup>13</sup> which, regarding department directors, is very clearly and unambiguously expressed in both § 25-1-7 and § 21-8-23 Miss. Code Ann. 1972. Concisely, the manner provided by law to fill the vacancy is for the Mayor to appoint a duly qualified person,<sup>14</sup> and for the Council to confirm the appointment. There exists no other manner, method, or mode to fill the vacancy.

10. When the Mayor appoints a department director to fill a vacancy, he performs his duty in the manner prescribed by law, and exhausts the method by which the vacancy is to be filled. When the Council, by inaction, lack of affirmative action, or even complete neglect and silence,<sup>15</sup> fails to confirm an appointment, the appointee fails to qualify for the office, invoking the requirements of § 25-1-7 Miss. Code Ann. 1972, concerning the failure to qualify before the commencement of the term, where the statute clearly states that when this happens, "a vacancy in such office shall occur thereby." Yet, this must be the same vacancy that existed before the failure to qualify, or it would be distinguishable from the previous vacancy.

11. However, the only methods we have to distinguish one vacancy from another is to look at who held office between the vacancies, or if the office was abolished, then created again later. As far as the vacancy being filled is concerned, it is evident that the hole still exists, but the manner by which vacancies are filled has definitely been performed, because a vacancy was

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12 Again, see § 21-8-23

13 Section 103 of the Mississippi Constitution requires this from the Legislature, although during an emergency, the Governor may make temporary appointments.

14 Here, "duly qualified" means meeting all qualifications for office, excepting confirmation by the Council, as well as a possible bonding requirement (the vacancy is filled without bond, but discharge of office doesn't occur without meeting bond requirements, if applicable).

15 For department directors, this is at "any such meeting" where the Mayor has placed the appointment on the Agenda. For municipal court officers, this is at "the time provided for the appointment of other officers," which must be confirmed in a meeting of the Council. The "failure to qualify" requirement, enabling the provisions of § 25-1-7 Miss. Code Ann. 1972, will happen even if the Council decides to table the appointment for a later date, yet there is no requirement for another appointment, however the Mayor may still make another appointment, since the vacancy has not been filled, and get the Council to choose which candidate to confirm.



never created, and could not be created since it already existed. Without a new vacancy occurring, it cannot be convincingly said that the manner to fill a vacancy has not been performed, only that the performance was not successful in actually filling the vacancy. Since there is an "occurring vacancy", the Mayor cannot be prohibited from making another appointment, yet since the mode of filling vacancies has been performed, there is no other statutory requirement for the Mayor to make another appointment.

### **The Political Question Doctrine**

12. I, sincerely with regard to the proper administration of justice, and without regard to the foregoing argument concerning the standing of the Plaintiffs, feel that for administration of justice in controversy that may appear before the Court again that for all arguments hereinafter in this pleading, there be a presumption that the number of Council members joined as plaintiffs be equal to the quorum requirements required to perform the legislative power they claim they are unable exercise without a Writ of Mandamus. It is with the most sincere regard to the administration of justice, and the Separation of Powers Doctrine that has primacy in our Constitution, that I petition the Court to hear and determine the issue hereinafter, without regard to the determination of the foregoing argument regarding standing.

13. This is an action before a court of law.<sup>16</sup> The purpose of mandamus is to compel a person in office to perform a specific duty that has not been performed, yet is required to be performed.<sup>17</sup>

This Court said, in an order titled ORDER GRANTING PLAINTIFFS' MOTION FOR MODIFICATION OF ORDER, issued on the 3<sup>rd</sup> of February, 2015, the following:

*Should any person who may be submitted by the Mayor to the City Council fail to be confirmed by the Council, then the Mayor shall forthwith submit another name of*

<sup>16</sup> Mississippi Constitution Section 156 provides the circuit courts jurisdiction over anything not prescribed by law to another court, while Section 159 holds that the chancery courts have jurisdiction over matters in equity, which covers most matters where the Supreme Court lacks original jurisdiction. However, in this pleading, the claim concerning the want of jurisdiction applies to the judicial power of the State of Mississippi, regardless of whether the dispute is in law or equity, by virtue of the Separation of Powers Doctrine.

<sup>17</sup> Writ of mandamus lies only to require performance of official duty which officer has refused to discharge. Anderson v. Robins, 161 Miss. 604, 137 So 476

*a duly qualified person for that position.*

14. Without clear and unambiguous requirement to perform this duty subsequent to a lack of confirmation by the council, within the same term,<sup>18</sup> the Court cannot review the act of the Mayor and order a thing not clearly expressed and provided for by law. With regard to the foregoing claim, the Supreme Court has stated, “it is not within the province of this Court to add to the law as the Legislature has written it.”<sup>19</sup>

15. The Supreme Court of the State of Mississippi has looked into a similar matter, where the Attorney General, in his official capacity, called upon a circuit court to review whether the Governor of the State of Mississippi violated the law, when the execution of law was facially correct, and the petitioner was another officer without claiming interest in a personal or private right. The central issue in the case was brought by interlocutory appeal to the Supreme Court. The opinion of that appeal, titled *In re Hooker*<sup>20</sup>, is where the Supreme Court of Mississippi adopted a doctrine to further clarify the separation of powers and ability of the judicial power to review the inner procedural matters of another branch of government. This doctrine is appropriately titled *The Political Question Doctrine*.

16. While the Hooker Court never expressly adopted The Political Question Doctrine by title in the Opinion of the Court, the Supreme Court very recently upheld the Hooker decision in *Ghane v. Mid-South Inst. Of Self Defense*, 137 So. 3<sup>Rd</sup> 212 (2014), where they cited the Supreme Court of the United States expressing the doctrine in manner that bears relevance in the matter before this Court, and shall be recited hereinafter, as follows:

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18 The Attorney General's Opinions cited in the case infer the term of the department heads from the relevant statute, yet term periods are not specified in most other statutes providing that the governing authorities appoint officers, except for the municipal attorney, who must be appointed annually. This allows the council to appoint municipal court officers annually, biennially, or coincident to the term of the elective offices, but the council is preventing from changing the term of the department directors.

19 *First Nat'l Bank of Memphis v. State Tax Comm'n*, 49 So. 2d 410, 412 (1950) (quoting *City of Hazlehurst v. Mayes*, 51 So. 890, 891 (1910))

20 *In re Hooker*, 87 So. 3d 401 (Miss. 2012)

*"The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch."* Japan Whaling Ass'n v. American Cetacean Soc., 478 US 221, 230, 106 S. Ct 2860, 92 L. Ed. 2<sup>Nd</sup> 166 (1986)

17. "Policy choices" and "value determinations" are the forbidden fruits that this Court is being moved to taste and judge. When the Court clearly orders that even if an appointee "fail[s] to be confirmed by the Council,"<sup>21</sup> then another appointee must be forthwith submitted the Council by the Mayor, the Court has clearly taken a bite of this most dangerous fruit. This is especially dangerous because the Court is not in a position to administer to the City of Hattiesburg, and can only look upon the matter on its face, without further interpretation, or review.<sup>22</sup>

18. A mayor performs his appointment duty by naming a person to office and seeking confirmation from the council. Here in the City of Hattiesburg, the Mayor performs his duty by drafting a resolution appointing a person to office, placing said resolution on the Agenda to be acted upon in Council Chambers at that subsequent meeting of Council.<sup>23</sup>

19. Regarding the provisions of § 21-8-23 Miss. Code Ann. 1972, the Mayor's duty is implied by statute, and not explicitly expressed. The statutes concerning appointment in Chapter 8 of Title 21, Miss. Code Ann. 1972 explicitly and expressly describe appointment and confirmation. By virtue of the Mayor exercising the executive power of the city,<sup>24</sup> coupled with his duty to be "active and vigilant in enforcing all laws and ordinances for the government of the municipality,"<sup>25</sup> assures us that our Legislature has not been silent concerning the duty of the Mayor to appoint many officers in the municipality.

20. With regard to officers where the power to appoint is vested in the "governing authorities"<sup>26</sup>

21 Order Granting Plaintiffs' Motion for Modification of Order, 3

22 In re Hooker, 87 So. 3d 401 (Miss. 2012) This is one of the Supreme Court's most important Opinions where necessity of the judiciary to refrain from interfering in purely political matters is emphatically expressed.

23 The Mayor needs no Council meeting to perform his duty, and the ceremony of "appointing to office" is usually recognized upon the confirmation of the Council in chambers during the meeting.

24 § 21-8-5, Miss. Code Ann. 1972

25 § 21-15-9, Miss. Code Ann. 1972

26 Here, and hereinafter, the term "governing authorities" corresponds to the statutes where this term is either

of a municipality, our courts have determined that, with regard to a municipality under a mayor council form of government, there is an implicit presumption that appointment power is vested in the mayor, with "advice and consent" of the council being necessary to confirm the appointment.<sup>27</sup> For the purpose of examining the applicability of a Writ of Mandamus compelling the mayor to appoint people to these particular offices where appointment power is vested in the "governing authorities" of a municipality, it is very important to partition these officers between mandatory and permissive. For some offices, the "governing authorities" must appoint a person, while they are given permissive authority to establish offices and appoint persons to those offices.

21. The foregoing distinction is crucial to make when examining the Mayor's duty to appoint certain officers. When the Court is ordering the Mayor to appoint any qualified person to an office, care should be taken to determine that such office has actually been established by the Council. Without clear and convincing evidence that the Mayor is required by an act of municipal law to make an appointment to a permissive office, the Court may erroneously order the Mayor to appoint a person to an office that has not been established, violating city policy.<sup>28</sup>

22. While the foregoing issues regarding the variety of offices, provided for by a variety of statutes, each for the specific reasons inferred by the Legislature, should be enough to make a Court at least very cautious when all Parties to the Action hold office, as this makes the possibility of bringing the Court into the middle of a political battle far greater than compared to the usual controversies brought before the Court. However, in what shall follow hereinafter, it will be shown to the Court where it is abundantly clear this Court has already made determinations in a matter of a purely political nature.

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expressed or implied. The legislative power of the municipality is the controlling authority in establishing and maintaining the implementation of those statutes, but cannot deny the mayor appointment power in the mayor council form of government. See *Jordan v. Smith*, 669 So. 2d 752 (Miss. 1996)

<sup>27</sup> *Jordan v. Smith*, 669 So. 2d 752 (Miss. 1996)

<sup>28</sup> This is especially important when a minority of legislators come before the Court, as the Court may inadvertently effectively provide legislative power to a minority of representatives, breaching the walls the people have worked hard to strengthen by giving the separation of powers provisions primacy in our laws. However, even when a quorum is present before the Court, care should still be taken to ensure that the subject of mandamus actually have a duty to perform, prior to giving an order compelling performance.

23. When the Court prospectively acknowledges that the Mayor may have fulfilled the performance of his duty in filling a vacancy in office, and the Court further orders that the Mayor appoint *yet another*<sup>29</sup> person to fill that vacancy, even though the duty in filling the vacancy has already been performed, the Court can only be perceived as effectively exercising legislative power on a local and private level, while using its judicial power to compel the execution of said effective private and local legislation that has been created by the judiciary.

24. Our Legislature, in their wisdom, prevented the Council from indirectly having undue influence on the appointment of persons to office by preventing them from instigating a "Denial of Appointment" attack, where they can, by denial, force the Mayor to keep submitting persons to office, impeding his ability to attend to other affairs of the City, while also undermining his ability to be seen by the public as capable of selecting acceptable candidates.

25. It should be, again, abundantly clear that the Council of the City of Hattiesburg has only one chance to qualify an officer to fill a vacancy in the City. The Council is able to mitigate this for some offices and exercise confirmation power more frequently in their elective terms by enacting legislation making the terms of those offices annual, or biennial, yet the terms of department directors must be coincident to the Mayor.

### **Conclusion**

26. It is for the foregoing reasons that a substantial part of the Orders of this Court are invalid on their face. The very few offices would otherwise been in question, and performance of duty necessary, have either been filled, or at minimum appointed by the Mayor, it would serve no practical purpose to refrain from Vacating those Orders, and Dismissing this Action. I seek and pray for this Court to Dismiss this Action and Vacate those Orders compelling the performance of duty by the Defendant.

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<sup>29</sup> The issue concerning whether the person has to actually be another person has already been addressed by the Defendant.

Respectfully submitted, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Sincerely,

Joseph Rawson

Joseph Rawson  
612 North Main Street  
Hattiesburg, MS 39401

STATE OF MISSISSIPPI

COUNTY OF FORREST

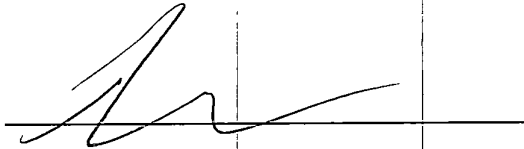
AFFIDAVIT OF JOSEPH RAWSON

Personally appeared before me, the undersigned authority, in and for the jurisdiction aforesaid, the within named, JOSEPH RAWSON, who having first been duly sworn by me, states under oath the following:

My name is Joseph Rawson. I am a resident of the City of Hattiesburg. I am also a qualified elector of the City of Hattiesburg in Ward 4. I have a Local Privilege Tax License which was recently renewed on the 6<sup>th</sup> of May, 2015.

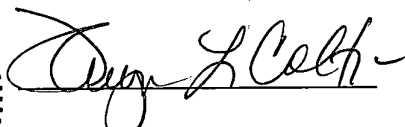
I entered the Courthouse of the Forrest County Circuit Court on the 4<sup>th</sup> of June, 2015, to observe the proceedings in the Civil Action in Cause No. CI14-0212. I observed a very substantial portion of the proceedings, only excluding myself briefly during testimony I felt confident could be skipped without affecting my evaluation of what was observed.

FURTHER, AFFIANT SAITH NOT.



JOSEPH RAWSON

SWORN TO AND SUBSCRIBED before me on this the 18<sup>th</sup> day of June, 2015.



NOTARY PUBLIC

My Commission Expires

02/14/2018

**Exhibit B**