IN THE SUPREME COURT OF MISSISSIPPI

STATE OF MISSISSIPPI RONNIE MUSGROVE, in his official capacity as GOVERNOR, and MIKE MOORE, in his official capacity as ATTORNEY GENERAL	**DEFENDANTS-APPELLANTS**
VERUS	**NO. 2000-IA-01477**
QUITMAN COUNTY, MISSISSIPPI	**PLAINTIFF-APPELLEE**

APPEAL FROM THE CIRCUIT COURT FOR QUITMAN COUNTY

BRIEF OF *AMICUS CURIAE*, THE MISSISSIPPI ASSOCIATION OF SUPERVISORS, IN SUPPORT OF APPELLEE, QUITMAN COUNTY MISSISSIPPI

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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 judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Samuel W. Keyes, Jr., Brian W. Sanderson, and members of the law firm of Butler, Snow, O'Mara, Stevens & Cannada, PLLC, Post Office Box 22567, Jackson, MS 39225-2567, attorneys for The Mississippi Association of Supervisors;

2. The Mississippi Association of Supervisors, Mr. Jack Gregory, Executive Director, 793 North President Street, Jackson, MS 39201;

INTRODUCTION

The Mississippi Association of Supervisors, Inc. ("MAS") submits this *amicus curiae* brief in support of Appellee, Quitman County, Mississippi's ("Quitman County") position. MAS is a statewide organization comprised of supervisors elected from all 82 Mississippi counties and maintains an active interest in county governments and the citizens which they govern. In working to foster better government for all Mississippi counties, MAS serves as a liaison between the counties and the State government, particularly the Mississippi Legislature. It is through this role that MAS has a keen appreciation for the issues posed to the Legislature and this Court in ensuring that adequate, effective assistance of counsel as required by the United States and Mississippi constitutions is received by every indigent defendant in criminal proceedings.

MAS is sensitive to the serious financial constraints facing our State and appreciates the efforts made by the State's legislative and executive branches to limit financial burdens placed upon county governments. MAS is aware that a solution to such a difficult issue is not arrived at easily but only after careful consideration of the parties' interests, the historical and current facts, and, most importantly, the constitutional requirements with which the State is charged. In submitting this brief, MAS hopes to advance the decision-making process in which this Court is engaged. All 82 county members of MAS will be directly impacted by this Court's ruling and, therefore, MAS seeks to ensure that this Court is aware of all relevant facts and law.

ARGUMENT

A. Counties have standing to sue the State when alleging constitutional violations.

A county's board of supervisors is authorized to bring suit regarding matters which affect the county's interests, and the board of supervisors is the proper entity to decide whether the

county's interests are affected. Harrison County v. City of Gulfport, 557 So. 2d 780, 785 (Miss. 1990). The judiciary may not intervene in a county's decision to protect its interests unless "the assertion is seen as a sham." Harrison County, 557 So. 2d at 785. Quitman County clearly has standing to bring this suit on behalf of its citizens as "the interest of the county is derived from the interest of the citizens of the county . . . . The board of supervisors is the governmental authority closest to those people and is surely charged to protect their welfare." Id. at 783. The State argues that Quitman County has no standing to assert constitutional challenges on behalf of defendants in criminal suits, but does not contend that the County is without authority to initiate legal action on behalf of its taxpayers.[1] Such a position would be without legal support.

A county is specifically authorized by statutes to bring suit in its name "where there is a public right . . . to be vindicated" and even if "only a part of the county or . . . its inhabitants are concerned . . . ." Miss. Code Ann. §11-45-19 (1972); see also, Miss. Code Ann. § 11-45-17 (authorizing counties to sue and be sued). Under Mississippi's standing rules, parties may sue or intervene when either (1) "they assert a colorable interest in the subject matter of the litigation," (2) "experience an adverse effect from the conduct of the defendant," or "otherwise authorized by law." Harrison County, 557 So. 2d at 782.

In Harrison County v. City of Gulfport, Harrison County opposed the judicial confirmation of separate annexations by the cities of Gulfport and Biloxi, and the cities

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[1] The State cites federal cases in support of its proposition but this Court has noted that federal standing requirements are more stringent than their state counterparts due in part to the "case or controversy" provision of Art. III, § 2 of the United States Constitution. Harrison County, 557 So. 2d at 782 n.1. The Mississippi Constitution has no "case or controversy"clause. Id.

challenged the county's standing to assert such opposition.[2] 557 So. 2d at 781. On hearing the interlocutory appeal, this Court found that the county would "experience a legally cognizable effect" from the annexations and that the standing requisites were "easily satisfied." Id. at 783. Furthermore, this Court found that the board of supervisors were authorized by law to file suit in the county's name. Id. at 785. Section 11-45-17, Miss. Code Ann. provides general authority of a county to sue and be sued and expressly provides that suits by the county must be brought by the authority of the board of supervisors. Id. Implicit to § 11-45-17 and expressly authorized by Miss. Code Ann. § 19-3-47(1)(b) is the county's power to hire legal counsel in its representation. Id. The county's authority to sue is supplemented by Miss. Code Ann. § 11-45-19: "Suit may be brought, in the name of the county, where only a part of the county or of its inhabitants are concerned, and where there is a public right of such part to be vindicated." Id. This Court found no surprise in such legislative pronouncements as the "supervisors of each county in this state are charged generally to promote the peace, happiness, and economic and social welfare of the people they serve." Id. (emphasis added).

There can be no disagreement that the State's failure to provide effective assistance of counsel to indigent criminal defendants has created an adverse effect on counties. In fact, this Court previously has commented on the inordinate economic burdens placed on counties. In Wilson v. State, this Court encouraged the Legislature "to review the system and provide funds for the representation of indigent defendants in capital cases from State funds rather than county

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[2] A resolution adopted by the Harrison County Board of Supervisors argued that the proposed annexations would be "'inimical to the best interests and general welfare of the people of Harrison County'" and that "Harrison County's tax base and its school system would suffer irreparable damage due to loss of taxpayers and students, etc." Harrison County, 557 So. 2d at 783.

funds." 574 So. 2d 1338, 1341 (1990). Again, in Mease v. State, a majority of the Court joined Justice Prather's separate opinion which concluded that "the Legislature [should] address the problem of indigent representation on a statewide basis, rather that thrust the burden on financially-strapped counties." 583 So. 2d 1283, 1285 (1991). The unfunded mandate from the legislature has taxed a burden upon the counties which they are neither financially capable of carrying nor legally required to undertake. The resulting adverse effects give the counties standing to bring the current lawsuit.

The county also enjoys special standing deference when the State's constitutional violations affects the county's rights and the interests of its citizens. This Court's opinion in State v. Mississippi Ass'n of Supervisors, Inc., illustrates that a county has standing to sue on behalf of its citizens when the State's constitutional violations adversely impacts the county. 699 So. 2d 1221 (Miss. 1997). In Mississippi Ass'n of Supervisors, a bill was enacted which allowed haulers of dirt and agricultural and forestry products to apply to the Mississippi Transportation Commission for harvest permits and travel on non-federal highways within the state at a maximum weight of 84,000 pounds. Mississippi Ass'n of Supervisors, 699 So. 2d at 1222. MAS, Hinds County and Washington County sought a declaratory action against the State contending that the bill violated Art. 6, § 170 of the Mississippi Constitution.[3] The Hinds County Circuit Court granted plaintiffs' motion for summary judgment and found that the bill "inappropriately transferred power from the Board of Supervisors to the Mississippi Transportation Commission." Id.

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[3] Article 6, § 170, Miss. Const. provides in pertinent part: "The board of supervisors shall have full jurisdiction over roads, ferries, and bridges, to be exercised in accordance with such regulations as the legislature may prescribe . . . ."

Considering the matter on appeal, this Court concluded that "the legislature may regulate the boards of supervisors in their exercise of their discretion, so long as it does not remove that discretion in any way." Id. at 1224. Legislation removing such discretion would go against both the constitution and common sense. Id. Affirming the trial court's decision, this Court held that the bill under review left the county with no discretion other than to "repair the road once it has been damaged by weights exceeding its design capacity." Id.

As it should be in the present case, the standing of the counties was clear to the State in Mississippi Ass'n of Supervisors and not challenged. The holding supports Quitman County's authority to sue the State for the financial onus passed to the county via the State's constitutional violations. Just as the counties in Mississippi Ass'n of Supervisors would have been charged with the expense of repairing its roads for the Legislature's constitutional violations, the counties in the case *sub judice* are being taxed with the heavy costs of indigent defense for the Legislature's more serious violations of failing to provide constitutionally required effective assistance of counsel. In Mississippi Ass'n of Supervisors, this Court explained that if the county's discretion "is removed in any way, then the legislature could logically continue to remove the powers of the county one at a time until any remaining jurisdiction would be only nominal." Mississippi Ass'n of Supervisors, 699 So. 2d at 1224. Similar reasoning is applicable here in that if the State can pass the cost of indigent defense with which it is constitutionally charged, then it may continue to pass less important funding responsibilities to the counties until the their treasuries are virtually depleted.

In its Brief before this Court, the State argues that Art. 3, § 26, Miss. Const. provides rights exclusively to criminal defendants and not counties, and, therefore, Quitman County has

no standing to bring suit. Even if Art. 3, § 26 is not a source of rights for the counties, however, it is a source responsibility. Specifically, it is a source of responsibility incumbent upon the State which the State has deferred to the counties. Certainly, a county has standing to seek redress if it cannot afford to uphold duties thrust upon it by the State. The business world provides an example of how a person may have standing to sue where it cannot afford to supply the protections guaranteed for the benefit of another. For example, where a contractor is building a public housing project which must meet certain governmental specifications and then passes those obligations on to a subcontractor who cannot meet them for the agreed price, certainly the subcontractor may sue the contractor. The specifications are for the benefit of the tenants, not the contractor or subcontractor. Nonetheless, the contractor would maintain standing to sue for the illegal transfer of obligations incumbent upon the contractor. Similarly, a county burdened with the State's duty to provide effective assistance of counsel may seek redress where it cannot sustain such a burden.

The boards of supervisors of the various counties are constitutionally created and should not be forced to take on obligations properly charged to the State. A county is a separate governmental entity charged with the protection and welfare of its citizens. It is not a mere local puppet subject exclusively to legislative delegation, particularly with regard to those duties constitutionally charged to the State. Without access to the courts, Quitman County would have no forum in which to seek redress of the Legislature's unfunded mandate. The economic and social interests of the citizens of Quitman County have been adversely impacted and their supervisors therefore have standing to seek judicial relief.

B. Mississippi counties cannot sustain the terrible financial burden of effective assistance of counsel to indigent defendants

It is beyond dispute that indigent defendants in criminal actions are guaranteed the fundamental right to effective assistance of counsel under both the United States and Mississippi constitutions. 6th Amend., U.S. Const; Art. 3, § 26, Miss. Const.;[4] Triplett v. State, 666 So. 2d 1356, 1358 (Miss. 1995) (concluding that Mississippi Constitution encompasses all rights to counsel as provided in federal constitution). Furthermore, case law is unequivocal that the obligation to provide effective assistance of counsel in criminal proceedings under the Sixth Amendment is incumbent upon the State by the Fourteenth Amendment.[5] Gideon v. Wainwright, 372 U.S. 335, 341-42 (1963); Triplett, 666 So. 2d at 1357. The question posed to this Court in the case *sub judice*, however, is whether the State may delegate its constitutional duty to financially strapped counties.

Mississippi counties are ill-prepared and financially unable to provide adequate funding for effective legal counsel to indigent defendants in criminal proceedings. County treasuries across Mississippi are limited and inadequate to pay for significant expenditutes which would be required to compensate lawyers for providing representation to indigent, criminal defendants.

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[4] "In all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both . . . ." Art. 3, § 26, Miss. Const.

[5] In Gideon, the United States Supreme Court held:

> [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to be an obvious truth. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

372 U.S. 335, 346 (1963).

Effective assistance of counsel is not necessarily limited to fees incurred by defense counsel but also expert witness assistance and investigation costs. Jackson v. State, 732 So. 2d 187, 188-189 (Miss. 1999). The payment of these expenses and fees would only be possible at the significant sacrifice of county resources devoted to other areas for which the county is responsible such as education, public safety, and public works. As this Court is aware, these traditional obligations of the county are currently under tremendous budgetary constraints without the added financial pressure of paying for the legal representation of indigent defendants. The unfunded mandate through which the State is attempting to transfer its constitutional duties would literally break the coffers of many Mississippi counties.

An even more devastating, but perhaps more realistic, result of the unfunded mandate would be that legal counsel provided by the county would not be effective. See Triplett, 666 So. 2d at 1357 (finding that Sixth Amendment right to counsel means "the right to effective assistance of counsel") (quoting McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970)). If the county is forced to provide legal representation in the face of existing financial trouble, it logically would seek the least expensive counsel while hoping that it is effective under Gideon and its progeny. Furthermore, the right to effective assistance of counsel is more vulnerable when the burden of providing it is passed to 82 separate county governments, instead of being funded and administered by the State. See, e.g., State Tax Comm'n v. Fondren, 387 So. 2d 712, 719-20 (Miss. 1980) (requiring State Tax Commission to equalize assessments of ad valorem taxes among counties where practically each county maintained differing standards of assessment). As there would be no uniformity in providing defense counsel to criminally accused indigents, the inherent constitutional tightrope created by the unfunded mandate virtually

ensures that their rights would be violated. The State's attempted delegation of its constitutional obligation would defeat the very purpose which it purports to obtain, ie., securing the right of effective assistance of counsel to every indigent defendant in criminal proceedings.

In addition to individual constitutional rights being violated, the overwhelming cost to the county would be compounded when the aggrieved defendant sued for the violations. Of course, if the county refused to provide any legal counsel to the indigent defendant, it would be sued and found liable. Most counties, however, would attempt to provide legal representation at the lowest price, while hoping that counsel is effective. This likely scenario, however, gives rise to even greater dire straights as indigent defendants would charge the county with failure to provide effective assistance of counsel. Consequently, counties would be burdened with the attendant expense of defending itself in lawsuits brought by aggrieved criminal defendants. At the end of the day, the State's failure to uphold its duties with which it is constitutionally charged would result in two miscarriages of justice: (1) the right of the criminally accused to effective assistance of counsel would be violated and (2) county funds used to provide for the well-being of its taxpayers would be depleted after the county attempted to provide effective counsel and then sued for failure to do so.

CONCLUSION

The State of Mississippi is required to provide effective assistance of counsel to indigent defendants in criminal proceedings and stands in better financial condition to execute its constitutional charge. Counties are not able to bear the financial burden nor to uniformly apply the State's constitutional obligation. Accordingly, the Mississippi Association of Supervisors, Inc. respectfully requests this Court to affirm the decision of the Circuit Court for Quitman

County, Mississippi.

RESPECTFULLY SUBMITTED, this the 13th day of April, 2001.

MISSISSIPPI ASSOCIATION OF SUPERVISORS, INC.

By: _____

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CERTIFICATE OF SERVICE

I, Samuel W. Keyes, Jr., one of the attorneys for the Mississippi Association of Supervisors, Inc., hereby certify that I have this day served via United States mail, postage prepaid, first class, a true and correct copy of the above and foregoing Brief of *Amicus Curiae*, the Mississippi Association of Supervisors, Inc., to the following:

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