

NO. 2016-M-1072

**IN THE SUPREME COURT FOR THE
STATE OF MISSISSIPPI**

RICKY W. WARD

PETITIONER

v.

DOROTHY WINSTON COLOM

RESPONDENTS

**ON PETITION FOR *WRIT OF PROHIBITION* FROM THE
FOURTEENTH CHANCERY COURT DISTRICT**

**PROPOSED AMICUS CURIAE BRIEF OF
THE NATIONAL RIFLE ASSOCIATION OF AMERICA**

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INTRODUCTION

On April 26th, this Court ordered the parties to address the following questions:

- (1) What is the authority of judges to exercise control over security issues beyond the four walls of the courtroom itself?
- (2) Whether the judiciary has the inherent authority to exercise control of security extending beyond the four walls of a courtroom.
- (3) Whether Mississippi Code Section 97-37-7(2) prohibits judges from controlling courthouse security. Specifically, what is the definition of “courtrooms during a judicial proceeding,” and does that definition either allow or prohibit judges from exercising control of security beyond the four walls of a specific courtroom while court is in session.
- (4) If Mississippi Code Section 97-37-7(2) does prohibit judges from exercising control over courthouse security, whether it violates the separation of powers doctrine.

The court also ordered any amicus curie to file briefs within 14 days of the Service of the responsive briefs. The National Rifle Association of America (“NRA”) submits this proposed amicus curiae brief, which addresses these questions, in accordance with that order.

INTEREST OF AMICUS

The NRA is America’s foremost and oldest defender of Second Amendment rights. It was founded in 1871, with the primary goal of promoting and encouraging rifle shooting on a scientific basis. Today the NRA has approximately five million members, many of whom live in Mississippi, and its programs reach millions more. It represents the interests of its members through litigation, and has done so as an amicus curiae in this Court. *See* NRA amicus briefs in *Swindol v. Aurora Flight Sciences Corporation*, No. 2015-FC-01317-SCT, and *State v. Smith*, No. 2013-M-01220-SCT. Once again, the NRA is representing its members’ interest before this Court.

ARGUMENT

(1) What is the authority of judges to exercise control over security issues beyond the four walls of the courtroom itself?

The NRA understands this question to be an inquiry about the current state of Mississippi statutory law, not regarding the inherent authority of the judiciary, because of the second question that the Court asked. The NRA feels that the Attorney General's brief adequately addresses this question. See Attorney General Br. at 3-6. Therefore, the NRA will not repeat those arguments here. The NRA only notes that its discussion of *Lewis v. Hinds Cty. Circuit Court*, 158 So. 3d 1117 (Miss. 2015) below is also applicable to this question.

(2) Whether the judiciary has the inherent authority to exercise control of security extending beyond the four walls of a courtroom.

To answer this question, it is first necessary to determine where the judiciary's inherent powers come from. According to Eighteenth century American historian Gordon Wood: "In the colonial period judges had been regarded essentially as appendages or extensions of royal authority embodied in the governors.... '[T]he judicial power [was] only a branch of the executive.'" Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 54-55 (1997) (citation omitted). As an extension of the crown, judges had a substantial amount of inherent authority. But a war for independence and the adoption of the Constitution brought with them a new, independent judiciary and "the separation of law from politics." *Id.* at 56.

Today, the judiciary's inherent authorities come—either explicitly or implicitly—from two places: (1) the constitutional provisions that created the court's existence, or (2) the powers reserved to the court via the separation of powers doctrine. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 14 P.3d 1275, 1279 (Nev. 2000) (citing Felix F. Stumpf, *Inherent Powers of the*

Courts: Sword and Shield of the Judiciary 6 (The National Judicial College 1994); *See also Pruett v. State*, 574 So. 2d 1342, 1355 (Miss. 1990) (noting the Court’s “inherent authority mandated by our Constitution.”); *Newell v. State*, 308 So. 2d 71, 76 (Miss. 1975) (discussing the Court’s inherent powers emanating from the separation of powers doctrine).

A review of the Mississippi Constitution does not reveal any authority to exercise control of security beyond the four walls of the courtroom. *See* Miss. Const. art. 6 §§ 144-177.

The analysis must therefore turn to the separation of powers doctrine. Article 1 Section 1 of the Mississippi Constitution creates the legislative, executive, and judicial branch of government. Article 6, Section 144 declares that, “The judicial power of the State shall be vested in a Supreme Court and such other courts as are provided for in this Constitution.” Article 1, Section 2 mandates that, “No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others.” Thus, the answer to the Court’s question depends on whether the power to secure the courthouse belongs to another branch of government, a question that the Court answered two years ago.

In *Lewis v. Hinds Cty. Circuit Court*, this Court resolved a separation of powers dispute between the Hinds County Sheriff and the Hinds County Circuit Court that arose from a court order.¹ 158 So. 3d 1117, 1119 (Miss. 2015). The order prescribed several requirements that the sheriff, sheriff’s deputies, and bailiffs must abide by in carrying out their duties. *Id.* at 1125-26. Sections one, two, and four of the order are critical to the question presented by the Court.

Section two of the order defined appropriate attire for bailiffs. *Id.* at 1125. This Court found that “courts have inherent power over their courtrooms, including the authority to define the attire

¹ There were actually two court orders, one issued in 1996 and one issued in 2012. But the 2012 order “stated that the 1996 order is binding” and that the sheriff violated the 1996 order. *Id.* at 1119-20. The NRA will refer to the orders as one.

of bailiffs and others in attendance.” *Id.* The Court ultimately found “section[] two ... to be in compliance with statutory law and within the province of the court to order.” *Id.* at 1126. Thus, it is clear that judges have inherent authority to regulate conduct within the four walls of their courtrooms.

But the Court’s analysis of sections one and four—which will be addressed together, because there is substantial overlap of the analysis—shows that the judiciary’s inherent authority ends at the four walls of the courtroom. Section one of the order stated the hours that bailiffs must work. *Id.* at 1125. Section four stated that “the sheriff must establish a discipline for the security and maintenance of the court *that must be approved by the court....*” *Id.* (emphasis added). In other words, the circuit court’s order put the judiciary in charge of courthouse security—beyond the four walls of the courtroom.

In determining whether sections one and four violated the separation of powers doctrine, this Court first noted that under the Mississippi Constitution, “[t]he sheriff is a member of the executive branch of government,” and is “the executive officer of the circuit and chancery court of his county.” *Id.* at 1124 (citing multiple authorities). Likewise, “bailiffs are deputy sheriffs” under Miss. Code Ann. § 19-25-19, which makes them members of the executive branch. *Id.* at 1125-26. Furthermore, under Miss. Code Ann. § 19-25-69, “the Legislature has given the sheriff the duties of protecting the courthouse.” *Id.* at 1123. Miss. Code Ann. § 19-25-35 “states that the sheriff must attend all sessions of court.” *Id.* at 1126. Accordingly, the Court found “sections one and four to be void in full because they completely contradict statutory law.” *Id.*

The Court’s conclusion in *Lewis* definitively requires that the answer to question II — “Whether the judiciary has the inherent authority to exercise control of security extending beyond the four walls of a courtroom”—be a firm **no**. If the judiciary had inherent authority to oversee

security beyond the four walls of the courtroom, then the Court would have been forced to uphold sections one and four of the order, as it did with section two, because “[n]o ... government[] official[] can exercise power beyond their constitutional authority.” *Id.* at 125-26 (quoting *Barbour v. State ex rel. Hood*, 974 So. 2d 232, 239 (Miss. 2008)). By striking sections one and four, this Court affirmed that the judiciary’s authority to control security ends at the four walls of the courtroom and that any effort by the judiciary to assume or control the responsibilities of the executive branch was void. The judiciary has no inherent authority to exercise control of security beyond the four walls of its courtroom.

The Court should also take note of the practical consequences of extending the “courtroom” beyond the four walls and into the remainder of the courthouse. It is not uncommon, in fact it is probably more common than not, for a courthouse to host numerous other government functions and offices. These services range from the storage of real property deeds and tax information (chancery clerks and tax assessors), to ad valorem taxation on homes and vehicles (tax assessors), to solid waste and utility offices, to obtaining a passport (chancery clerks). Frequently governmental entities such as boards of aldermen and supervisors, planning commissions, and completely unrelated groups such as Rotary and Civitan use facilities within the courthouse. By extending the term “courtroom” to “courthouse” the judiciary is exercising security authority over functions that have absolutely no connection to the functions of the courts.

(3) Whether Mississippi Code Section 97-37-7(2) Prohibits Judges from Controlling Courthouse Security. Specifically, what is the Definition of “Courtrooms during a Judicial Proceeding,” and does that Definition Either Allow or Prohibit Judges from Exercising Control over Security beyond the Four Walls of a Specific Courtroom While Court is in Session?

The Brief of the Mississippi Attorney General thoroughly answered this question. *See* Attorney General Br. at 12-15. As the Attorney General explained, “courtrooms during a judicial proceeding” is not defined in statute, but “this Court frequently looks to dictionaries to ascertain the meaning of a word in its common or popular sense.” Attorney General Br. at 13 (citing *Lawson v. Honeywell Int’l, Inc.*, 75 So. 3d 1024, 1028 (Miss. 2011)).

The definitions provided by the Attorney General make clear that the accepted meaning of “courthouse” refers to a building, while the accepted meaning of a “courtroom” refers to a room. Attorney General Br. at 14.

Rather than focus on the applicable definition of “courtrooms during a judicial proceeding” using accepted means of statutory interpretation, the Brief of the Fourteenth Chancery Court District makes several arguments alleging the danger of allowing firearms in the hallways and other areas outside of courtrooms within the courthouse. Judges’ Br. at 12. These arguments do not address the legal question asked by this Court and would be more appropriately made to the Mississippi Legislature if the Judges wish to seek a change in the law.² Furthermore, the judiciary has already exercised jurisdiction over **courtroom** security. *Cf.* Uniform Chancery Court Rule 1.01 (“In the interest of security, all persons entering the courtroom may be searched for weapons.”)

² This is only one example of the Judges seeking to justify the order on policy grounds. The repeated justification for the order in the Judges’ brief is that allowing enhanced licensees to carry concealed firearms in the courthouse would, in the Judges’ assessment, create a public safety issue at the courthouse. This line of argument is an impermissible attempt by the Judges to substitute their wisdom as to a policy matter over that of the Legislature, and it therefore must be rejected. “The courts are without the right to substitute their judgment for that of the Legislature as to the wisdom and policy of the act and must enforce it, unless it appears *beyond all reasonable doubt* to violate the Constitution.” *Tunica Cty. v. Town of Tunica*, No. 2015-CA-01183-SCT, 2017 WL 2001158, at *3 (Miss. May 11, 2017) (quoting *Pathfinder Coach Div. of Superior Coach Corp. v. Cottrell*, 216 Miss. 358, 62 So.2d 383, 385 (1953)).

and Uniform Chancery Court Rule 3.08 (“No person other than law enforcement officers shall take or carry firearms or other weapons into the courtroom. When law enforcement officers take the stand as litigants or witnesses, such officers shall remove their firearms and place same in the possession of the bailiff until the witness or litigant has left the witness stand.”)

The Judges further argue that “[t]he courtroom and the courthouse are one entity, incapable of division, and if Judges have the authority to protect our courtrooms, then [they] also have the inherent right to protect those corridors leading to them.” Judges’ Br. at 13. This argument ignores established precedent of this Court that judges lack inherent authority over security decisions outside the four walls of the courtroom, *see supra* pp. 2-5, and would violate one of the canons of statutory construction by effectively reading the word “courthouse” out of Miss. Code Ann. § 97-37-7(2). It should not be lost on this Court that the Legislature intentionally used the terms “courthouse” and “courtrooms” to make a distinction between the two. While the chancellors would use the terms interchangeably the Legislature did not.

The pertinent part of Section 97-37-7(2) provides:

A person licensed under Section 45-9-101 to carry a concealed pistol, who (a) has voluntarily completed an instructional course in the safe handling and use of firearms offered by an instructor certified by a nationally recognized organization that customarily offers firearms training, or by any other organization approved by the Department of Public Safety, (b) is a member or veteran of any active or reserve component branch of the United States of America Armed Forces having completed law enforcement or combat training with pistols or other handguns as recognized by such branch after submitting an affidavit attesting to have read, understand and agree to comply with all provisions of the enhanced carry law, or (c) is an honorably retired law enforcement officer or honorably retired member or veteran of any active or reserve component branch of the United States of America Armed Forces having completed law enforcement or combat training with pistols or other handguns, after submitting an affidavit attesting to have read, understand and agree to comply with all provisions of Mississippi enhanced carry law ***shall also be authorized to carry weapons in courthouses except in courtrooms during a judicial proceeding***, and any location listed in subsection (13) of Section 45-9-101, except any place of nuisance as defined in Section 95-3-1, any police, sheriff or

highway patrol station or any detention facility, prison or jail. For the purposes of this subsection (2), component branch of the United States Armed Forces includes the Army, Navy, Air Force, Coast Guard or Marine Corps, or the Army National Guard, the Army National Guard of the United States, the Air National Guard or the Air National Guard of the United States, as those terms are defined in Section 101, Title 10, United States Code, and any other reserve component of the United States Armed Forces enumerated in Section 10101, Title 10, United States Code. The department shall promulgate rules and regulations allowing concealed pistol permit holders to obtain an endorsement on their permit indicating that they have completed the aforementioned course and have the authority to carry in these locations. ***This section shall in no way interfere with the right of a trial judge to restrict the carrying of firearms in the courtroom.***

(Emphasis added).

This section provides exceptions to the locations where persons licensed under Section 45-9-101 are generally prohibited from carrying concealed pistols. So-called “enhanced licensees” (those persons licensed under Section 45-9-101 who also meet the requirements of Section 97-37-7(2)) are not subject to the same “prohibited places”: Enhanced licensees are specifically “authorized to carry weapons in courthouses except in courtrooms during a judicial proceeding” By distinguishing “courthouses” from “courtrooms” the Legislature clearly intended these words to carry different meanings.

The construction of this statute proposed by the Judges of the Fourteenth Chancery Court District would effectively read the allowance for enhanced licensees to carry in courthouses out of the statute by defining the term “courtroom” to encompass the entire courthouse. Such an interpretation would violate the principle that “this Court is obliged, whenever reasonable, to reach an interpretation which gives effect to all the statutory language.” *Gilmer v. State*, 955 So. 2d 829, 835 (Miss. 2007) (citing *Davis v. Miller*, 202 Miss. 880, 890, 32 So. 2d 871, 873 (Miss. 1947)).

The plain, unambiguous meaning of Miss. Code Ann. § 97-37-7(2) does not allow judges to regulate firearms outside the four walls of a particular courtroom while court is in session.

(4) *If Mississippi Code Section 97-37-7(2) does Prohibit Judges from Exercising Control over Courthouse Security, Whether it Violates Separation of Powers?*

The Constitution of the State of Mississippi provides a clear limitation on each branch of government exercising a power assigned to another branch: “No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others.” Miss. Const. art. 1, § 2. The Mississippi separation of powers doctrine requires courts to ask “[i]s the power being exercised by members of one branch *at the core* of the other's power?” *Moore v. Bd. of Sup'rs of Hinds Cty.*, 658 So. 2d 883, 887 (Miss. 1995) (citing *Alexander v. State By and Through Allain*, 441 So. 2d 1329, 1345 (Miss.1983).

This Court also applies the principle that “[e]very act, not clearly executive or clearly judicial, is legislative or administrative.” *Mabray v. Sch. Bd. of Carroll Cty.*, 162 Miss. 632, 137 So. 125, 106 (1931). As applied to the present case, Miss. Code Ann. § 97-37-7(2) does not intrude on a clearly judicial core power, so there is no violation of the separation of powers doctrine.

The judges of the Fourteenth Chancery Court District rely solely on *Hosford v. State*, 525 So. 2d 789 (Miss. 1988), to claim broad inherent authority to regulate matters beyond the four walls of the courtroom. *See* Judges’ Br. at 14-18. This reliance on *Hosford* as creating such broad inherent authority for the judiciary is misplaced and is in direct conflict with more recent precedent.

In *Hosford*, a noisy highway ran close to *courtroom* windows that were necessarily open due to high temperatures and lack of air conditioning in the courthouse. 525 So. 2d at 794-96. The noise led to at least 35 interruptions in a criminal trial, and jurors in the trial admitted that they at times had difficulty hearing witnesses. *Id.* These interruptions led this Court to provide the defendant with a new trial and provide additional guidance to the trial court as to its inherent authority to correct the noise situation in the new trial. *Id.* at 796-98.

Hosford is distinguishable from this case in several ways. First, the board of supervisors of the county had a clear statutory duty “to erect and keep in good repair ‘a good and convenient courthouse.’” *Id.* at 797. The board of supervisors was further required “when a courthouse is unfit for use, to provide and designate a suitable building in which courts may be held, to be paid for out of the county treasury.” *Id.* In its guidance to the trial court regarding the new trial, this Court relied on these statutory obligations to inform the trial court how it could rectify the noise issue with lawful court orders: “It follows, of course, that county boards of supervisors, which have imposed upon them the statutory duty of furnishing adequate *courtroom* facilities, are subject to appropriate court orders requiring them to do so when they adamantly fail or refuse to do so.” *Id.* at 798 (emphasis added).

The instructions by this Court in *Hosford* highlight the second and more important distinction between that case and the matter presently before the Court. The noisy interruptions at issue in *Hosford* directly affected matters within the courtroom and thus were squarely within the trial court’s inherent authority to correct since the interruptions hampered the court’s core function. To read *Hosford* as extending a trial court’s inherent authority outside of the four walls of the courtroom would put it in direct conflict with this Court’s more recent decision in *Lewis* and carry *Hosford* farther than appropriate to meeting the court’s core needs.

As discussed *supra* in more detail, in *Lewis*, this Court addressed a very similar separation of powers issue that directly addressed whether a trial court has authority over security matters outside the four walls of the courtroom. 158 So. 3d at 1124-26. As part of a number of orders, the trial court in *Lewis* issued an order that required the sheriff to submit “a discipline for the security and maintenance of the court” to the court for court approval. *Id.* at 1125. After noting that “courts have inherent power over their courtrooms,” this Court held the security plan portion of the court’s

order void in violation of statute. *Id.* at 1126. If trial courts had the broad inherent authority claimed by the judges of the Fourteenth Judicial District, then this Court would have upheld the order as a proper exercise of a trial court's inherent authority.

Because trial courts lack inherent authority over security matters outside of the four walls of the courtroom Miss. Code Ann. § 97-37-7(2) does not intrude on a clearly judicial core power in violation of the separation of powers provision of the Mississippi Constitution. The Legislature addressed this Court's precedents regarding inherent authority of trial courts by making clear that Section 97-37-7(2) "shall in no way interfere with the right of a trial judge to restrict the carrying of firearms in the courtroom."

CONCLUSION

For these reasons, this Court should issue the writ of prohibition and any other relief it deems appropriate.

Respectfully submitted,

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Respectfully submitted, this the 6th day of July 2017.



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