# STATE OF MISSISSIPPI

## *Office of the Governor*

April 19, 2024

TO THE MISSISSIPPI HOUSE OF REPRESENTATIVES:

GOVERNOR'S VETO MESSAGE FOR HOUSE BILL 922

I am returning House Bill 922: "AN ACT TO PROVIDE THAT THE OFFICE OF ELECTION COMMISSIONER SHALL BE A NONPARTISAN OFFICE; TO PROVIDE THAT THE NAMES OF CANDIDATES FOR THE OFFICE OF ELECTION COMMISSIONER SHALL BE LISTED AS NONPARTISAN ON A BALLOT; TO AMEND SECTION 23-15-213, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; TO REVISE THE STAGGERED TERMS OF ELECTION COMMISSIONERS IN DISTRICTS TWO AND FOUR; TO PROVIDE THAT THOSE ELECTION COMMISSIONERS FROM DISTRICTS TWO AND FOUR ELECTED IN THE 2027 ELECTION SHALL BE ELECTED FOR A THREE-YEAR TERM; TO PROVIDE THAT THOSE ELECTION COMMISSIONERS FROM DISTRICTS TWO AND FOUR ELECTED IN THE 2030 ELECTION SHALL SERVE A FOUR-YEAR TERM AND EVERY FOUR YEARS THEREAFTER; TO AMEND SECTIONS 23-15-367 AND 23-15-511, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES."

House Bill 922 seeks to make the office of election commissioner nonpartisan and to bar political parties from either endorsing candidates for election commissioner or to make financial contributions to their campaigns:

> The office of election commissioner is a nonpartisan office and a candidate for election to the office is prohibited from campaigning or qualifying for the office based on party affiliation. To ensure that campaigns for the nonpartisan office of election commissioner remain nonpartisan and without any connection to a political party, political parties and any committee or political committee affiliated with a political party shall not engage in fundraising on behalf of a candidate or officeholder of the nonpartisan office of election commissioner, and a political party or any committee or political committee affiliated with a political party shall not make any contribution to a candidate for the nonpartisan office of election commissioner or the political committee of a candidate for the nonpartisan office of election commissioner. A political party or any committee or political committee affiliated with a political party shall not publicly endorse a candidate for the nonpartisan office of election commissioner. A candidate or the political committee of a candidate for the nonpartisan office of election commissioner shall not accept a contribution from a political party or any committee or political committee affiliated with a political party.

This proposed language is virtually identical to the language contained in the Nonpartisan Judicial Election Act (Miss. Code Ann. § 23-15-974, *et seq.*) and codified at Miss. Code Ann. § 23-15-976. As the United States District Court held more than twenty years ago, such a prohibition as applied to political parties unquestionably limits the core political speech of political parties and fundamentally impairs their First and Fourteenth Amendment rights without any compelling governmental interest. Thus, such a ban plainly is unconstitutional.

In the words of United States Supreme Court Justice Antonin Scalia:

> Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views. The formation of national political parties was almost concurrent with the formation of the Republic itself. Consistent with this tradition, the [United States Supreme] Court has recognized that the First Amendment protects "the freedom to join together in furtherance of common political beliefs," which "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only."

*California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) (internal citations omitted).

In the landmark case of *EU v. San Francisco County Democratic Central Committee, et al.*, 489 U.S. 214, 222-229 (1989), the United States Supreme Court considered the constitutionality of "California's prohibition on primary endorsements by the official governing bodies of political parties." In holding that this prohibition burdens political speech while serving no compelling governmental interest and thus violates both the First and Fourteenth Amendments, the Court reasoned:

> California's ban on primary endorsements, however, prevents party governing bodies from stating whether a candidate adheres to the tenets of the party or whether party officials believe that the candidate is qualified for the position sought. This prohibition directly hampers the ability of a party to spread its message and hamstrings voters seeking to inform themselves about the candidates and the campaign issues. A "highly paternalistic approach" limiting what people may hear is generally suspect, but it is particularly egregious where the State censors the political speech a political party shares with its members.
>
> Barring political parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association. It is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments. Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, but also that a political party has a right to "'identify the people who constitute the association,'" and to select a "standard bearer who best represents the party's ideologies and preferences."

> Depriving a political party of the power to endorse suffocates this right. The endorsement ban prevents parties from promoting candidates "at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." Even though individual members of the state central committees and county central committees are free to issue endorsements, imposing limitations "on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association."

*Id.* at 223-225 (internal citations omitted).

Moreover, in *Republican Party of Minnesota, et al. v. White*, 536 U.S. 765 (2002), the Supreme Court held that preserving the impartiality of elected officials and preserving the appearance of impartiality are insufficient state interests to infringe on free speech rights. Justice Scalia, citing Justice Marshall, reasoned: "If the State chooses to tap the energy and the legitimizing power of the democratic process, it must accord the participants in that process. . .the First Amendment rights that attach to their roles." *Id.* at 788.

Five years after the *EU* decision, Mississippi adopted the Nonpartisan Judicial Election Act that like the instant proposed legislation sought to make judicial elections nonpartisan and bar political parties from among other things endorsing judicial candidates and contributing to their campaigns:

> A judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation. The Legislature finds that in order to ensure that campaigns for nonpartisan judicial office remain nonpartisan and without any connection to a political party, political parties and any committee or political committee affiliated with a political party shall not engage in fund-raising on behalf of a candidate or officeholder of a nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party make any contribution to a candidate for nonpartisan judicial office or the political committee of a candidate for nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party publicly endorse any candidate for nonpartisan judicial office. No candidate or candidate's political committee for nonpartisan judicial office shall accept a contribution from a political party or any committee or political committee affiliated with a political party.

Miss. Code Ann. § 23-15-976.

The Mississippi Republican Party filed suit to "declare that Mississippi's explicit statutory prohibition on political parties endorsing or contributing to the campaigns of judicial candidates violates the freedom of political speech guaranteed by the United States Constitution and the Mississippi Constitution of 1890." *Mississippi Republican Party v. Musgrove*, 3:02cv1578WS (S.D. Miss. 2002). The District Court held that while the state could make judicial elections

nonpartisan, there was no compelling interest to justify "directly suppress[ing] core political speech of a political party concerning the merits of judicial candidates by prohibiting the party from endorsing or financially supporting judicial candidates." *Id.* at Docket No. 7. Thus, the District Court permanently enjoined all but the first sentence of Miss. Code Ann. § 23-15-976. *Id.*

While I do not believe it was the intention of the members of the Mississippi Legislature who voted in favor of House Bill 922 to infringe upon the constitutional rights of political parties, I am compelled to veto House Bill 922 to protect such fundamental rights and avoid the litigation that it will inevitably generate.

Respectfully submitted,

TATE REEVES
GOVERNOR

4-19-2024

12:00 P.M.