April 24, 2025

TO THE MISSISSIPPI HOUSE OF REPRESENTATIVES:

GOVERNOR'S VETO MESSAGE FOR HOUSE BILL 569

I am returning House Bill 569: "AN ACT TO AMEND SECTION 41-7-191, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN PROVISIONS RELATING TO A HOSPITAL THAT HAS A CERTIFICATE OF NEED FOR A FORTY-BED PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY IN DESOTO COUNTY; TO PROVIDE THAT THERE SHALL BE NO PROHIBITION OR RESTRICTIONS ON PARTICIPATION IN THE MEDICAID PROGRAM FOR SUCH FACILITY THAT WOULD NOT OTHERWISE APPLY TO ANY OTHER SUCH FACILITY; TO REQUIRE THE ISSUANCE OF A CERTIFICATE OF NEED FOR ADDITIONAL BEDS IN A COMMUNITY LIVING PROGRAM FOR DEVELOPMENTALLY DISABLED ADULTS LOCATED IN MADISON COUNTY; TO REVISE THE CONDITIONS FOR A CERTIFICATE OF NEED ISSUED FOR A LONG-TERM CARE HOSPITAL IN HARRISON COUNTY TO ALLOW THE HOSPITAL TO PARTICIPATE IN THE MEDICAID PROGRAM AS A CROSSOVER PROVIDER; TO PROVIDE THAT THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER NEED NOT OBTAIN A CERTIFICATE OF NEED FOR ANY HOSPITAL BEDS, SERVICES, HEALTH CARE FACILITIES, OR MEDICAL EQUIPMENT WHICH HAVE BEEN APPROVED AND CONTINUOUSLY OPERATED UNDER A CERTIFICATE OF NEED EXEMPTION FOR A TEACHING HOSPITAL, OR WHICH ARE APPROVED BEFORE JULY 1, 2025, SO LONG AS THEY DO NOT UNDERGO A PHYSICAL RELOCATION; TO PROVIDE THAT AFTER JULY 1, 2025, THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER SHALL HAVE AN ACADEMIC EXEMPTION FROM THE CERTIFICATE OF NEED REQUIREMENTS ONLY WITHIN A CERTAIN AREA OF JACKSON, MISSISSIPPI; TO CLARIFY THAT IN ORDER FOR THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER TO QUALIFY FOR SUCH AN ACADEMIC EXEMPTION, THE STATE HEALTH OFFICER MUST DETERMINE THAT THE PROPOSED EQUIPMENT OR FACILITY FULFILLS A SUBSTANTIAL AND MEANINGFUL ACADEMIC FUNCTION; TO DIRECT THE STATE DEPARTMENT OF HEALTH TO ISSUE A CERTIFICATE OF NEED TO ANY PSYCHIATRIC HOSPITAL LOCATED IN JACKSON, MISSISSIPPI, THAT WAS PROVIDING ADULT PSYCHIATRIC SERVICES AS OF JANUARY 1, 2025, UNDER CERTIFICATE OF NEED AUTHORITY THAT WAS TRANSFERRED TO IT WITHIN THE PAST FIVE YEARS UNDER A CHANGE OF OWNERSHIP, AND TO PROVIDE THAT THE NEW CERTIFICATE OF NEED SHALL AUTHORIZE THE CONTINUATION OF SUCH ADULT PSYCHIATRIC SERVICES, PROVIDED THAT THE HOSPITAL RELINQUISHES ITS EXISTING AUTHORITY TO OPERATE UNDER THE CERTIFICATE OF NEED AUTHORITY TRANSFERRED TO THE HOSPITAL AS OF THE EFFECTIVE DATE OF THE NEW CERTIFICATE OF NEED; TO DIRECT THE STATE DEPARTMENT OF HEALTH TO CONDUCT A STUDY AND REPORT BY DECEMBER 1, 2025, ON THE FEASIBILITY OF EXEMPTING SMALL HOSPITALS FROM THE REQUIREMENT FOR A CERTIFICATE OF NEED FOR THE PLACEMENT OF DIALYSIS UNITS TO REDUCE THE NUMBER OF TRANSFERS FOR PATIENTS REQUIRING DIALYSIS, THE FEASIBILITY OF EXEMPTING SMALL HOSPITALS FROM THE REQUIREMENT FOR A CERTIFICATE OF NEED TO OPERATE GERIATRIC PSYCHIATRIC UNITS, AND THE FEASIBILITY OF A NEW REQUIREMENT THAT ACUTE ADULT PSYCHIATRIC UNITS TREAT A CERTAIN PERCENTAGE OF UNINSURED PATIENTS OR PAY A PERIODIC FEE IN LIEU THEREOF; TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972, TO INCREASE THE MINIMUM DOLLAR AMOUNTS OF CAPITAL EXPENDITURES AND MAJOR MEDICAL EQUIPMENT THAT REQUIRE THE ISSUANCE OF A CERTIFICATE OF NEED; AND FOR RELATED PURPOSES."

House Bill 569 seeks to make a number of revisions to Mississippi's Certificate of Need ("CON") laws, including increasing the caps on certain expenditures without the need to seek a CON, narrowing the CON exemptions for the University of Mississippi Medical Center, and tasking the Department of Health with studying and providing a report on further revisions that could be made to the CON laws, including whether certain healthcare practices should be exempt from such laws. I have been a champion of CON reform, and I commend the Mississippi Legislature for proposing these much needed and long overdue revisions. However, due to an eleventh-hour amendment to the bill on the floor of the Mississippi Senate (*see* Senate Substitute No. 1 for Amendment No. 1 to Committee Amendment No.1), which by the admission of the Chairman intervenes in an ongoing judicial matter with the "hope to . . . moot the lawsuit" (*see* Senate Floor Debate, March 12, 2025 at 5:16:14-5:16:24), I am compelled to veto the bill.

Article 1, Section 1 of the Mississippi Constitution of 1890 ("Mississippi Constitution") enshrines the principles of separation of powers between the three co-equal branches of State government: "The powers of the government of the State of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another." Further, Article I, Section 2 of the Mississippi Constitution expressly prohibits members of one co-equal branch of State government from exercising the powers entrusted to another co-equal branch of State government: "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. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments."

In interpreting these two sections of the Mississippi Constitution, the Mississippi Supreme Court recognized: (1) "By articulating the doctrine of separation of powers in our constitution, the framers avoided the vagueness of the implicit doctrine of the Constitution of the United States"; and (2) "We conclude, as we must, from this history and language that the drafters of the 1890 Constitution intended to strengthen the constitutional mandate for separation of powers in this state [as compared to the prior Constitutions of 1817, 1832, and 1869]." *Alexander v. State*, 441 So.2d 1329, 1335-36 (1983). Thus, while the express doctrine of separation of powers enumerated in the Mississippi Constitution is more robust than the implied doctrine in the United States Constitution, the articulation of the doctrine by James Madison in Federalist 48 is instructive:

> *It is agreed on all sides, that the powers properly belonging to one of the departments of government ought not be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it.*

Article 6, Section 144 of the Mississippi Constitution provides: "The judicial powers of the State shall be vested in a Supreme Court and such other courts as are provided for in this Constitution." Further, Mississippi Courts, citing United States Supreme Court precedent have defined "judicial power" as "the legal right, ability and authority, to hear and decide a justiciable issue or controversy; such power is ordinarily vested in a court of justice." Recognizing that the judicial power to adjudicate a justiciable issue or controversy is vested in a court of law and not the legislative branch, the United States Supreme Court, in a unanimous decision held: "Consistent with this limitation, respondents rightly acknowledged at oral argument that Congress could not enact a statute directing that, in 'Smith v. Jones,' 'Smith wins.' Such a statute would create no new substantive law, it would instead direct the court how pre-existing law applies to particular circumstances." *Bank of Markazi v. Peterson*, 578 U.S. 212, n. 17 (2016). In reaching its decision, the Court cited its prior decision in *United States v. Klein*, in which the Court invalidated an act of Congress because it "infringed the judicial power, not because it left too little for courts to do, but because it attempted to direct the result without altering the legal standards governing the effect [of an executive act]—standards Congress was powerless to prescribe."

The sound policy reasons for preventing the legislative branch from "legislating" the rights of private parties with a dispute pending before the judiciary were articulated by Alexander Hamilton in Federalist 78 and recently restated by Chief Justice Roberts: "The Framers. . .knew that if Congress exercised the judicial power, it would be impossible 'to guard the Constitution and the rights of individuals from. . . serious oppression.' When a party goes to court, [h]e expects to have his case decided by judges whose independence from political pressure was ensured by the safeguards of Article III life tenure and salary protection. [In this instance,] [i]t was instead decided by Congress, in favor of the litigant it preferred, under a law adopted just for the occasion. But it is our responsibility under the Constitution to decide cases and controversies according to law. It is our responsibility to, as the judicial oath provides, 'administer justice without respect to persons.' And it is our responsibility to 'firm[ly]' and 'inflexibl[y]' resist any effort by the Legislative branch to seize the judicial power for itself."

With this Constitutional framework in mind, I turn to House Bill 569. Lines 1301 through 1310 seek to amend Miss. Code § 41-7-191 to **require** the Department of Health to **issue** a CON to "any psychiatric hospital located in Jackson, Mississippi, that was providing adult psychiatric services as of January 1, 2025, under certificate of need authority that was transferred to it within the past five (5) years under a change of ownership. The new certificate of need shall authorize the continuation of these services, provided that the hospital relinquishes its existing authority to operate under the certificate of need authority transferred to the hospital as of the effective date of the new certificate of need." This mandatory directive to issue a CON for a specific psychiatric facility circumvents the objective statutory requirements that must be met before any person may operate such a facility in Jackson, Mississippi, necessarily creating a market imbalance. It is axiomatic that if a regulatory scheme is to achieve its desired result, regulations must be equally applied to all market participants without favoritism or prejudice. Simply stated, the proposed amendment smacks of both imprudent legislative favoritism towards the entity that will receive the CON, as well as bald prejudice to the other market participants. In either case, awarding a CON by legislative fiat is bad public policy.

Moreover, a year prior to the passage of House Bill 569, a civil action was commenced in the Hinds County Chancery Court seeking to adjudicate the legality of the transfer of the very CON that is the subject of the last-minute Senate floor amendment. By order dated February 12, 2025, the Hinds County Chancery Court held that it had jurisdiction over this dispute between private parties and denied the defendants' Motion to Dismiss. Defendants subsequently sought interlocutory appellate review of this ruling by the Mississippi Supreme Court, a request that remains pending. Thus, it is beyond dispute that issue has been joined by the parties before the Hinds County Chancery Court regarding the legality of the transfer of the subject CON, and this question has been placed in the hands of the judicial branch.

The legislative branch's thinly-veiled attempt to remove this dispute from the judiciary and fully and finally resolve it through a legislative act is a clear violation of the principles of separation of powers enshrined in Article 1, Section 1 of the Mississippi Constitution. The power to resolve a specific justiciable controversy lies exclusively with the judicial branch. Make no mistake, the subject amendment is not an attempt by the legislative branch to amend a legal standard and retroactively apply it to a dispute pending before the judiciary, nor is it an attempt by the legislative branch to change a law of general application to moot prospective injunctive relief. Moreover, it is not a law of general application that will apply to one or a very small number of specific subjects. Rather, the subject amendment is an attempt by the legislative branch to prescribe the rules for a single private controversy presently pending before the judicial branch. Such a legislative act plainly is prohibited by the Mississippi Constitution. There are good reasons why the symbol of the judicial branch is a blindfolded lady holding the scales of justice. And it, not the

legislative branch, should determine the winner of the pending controversy in accordance with existing Mississippi law. Otherwise, the “serious oppression” of the rights of the politically disfavored forewarned by Alexander Hamilton will become commonplace and all but guaranteed.

In short, while I commend the Mississippi Legislature’s attempt to achieve much needed and long overdue CON reform, the addition of an eleventh-hour floor amendment that violates the doctrine of separation of powers and is bad public policy requires me to veto House Bill 569 at this time. If the Mississippi Legislature will remove the floor amendment to House Bill 569 and return it to my desk, I stand ready to sign such a bill into law.

Respectfully submitted,

TATE REEVES
GOVERNOR