

## SUPREME COURT OF MISSISSIPPI

# Mississippians Educating for Smart Justice, Inc. v. Mississippi Department of Corrections

98 So. 3d 459 (Miss. 2012) · Decided August 23, 2012

### SUMMARY

The Mississippi Supreme Court held that the Mississippi Department of Corrections' revised lethal-injection execution protocol was exempt from the Mississippi Administrative Procedures Law's notice-and-comment requirements. The court affirmed the denial of the petitioners' requests for declaratory relief, a writ of mandamus, and an injunction, concluding that the protocol was an internal regulation relating only to inmates.

### CASE DETAILS

|                       |                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Mississippi                                                                                                                                |
| WRITING FOR THE COURT | Pierce, Justice; Waller, C.J.; Carlson, P.J.; Dickinson, P.J.; Randolph, J.; Lamar, J.; Kitchens, J.; Chandler, J.; King, J.; Pierce, J.                    |
| JURISDICTION          | Mississippi                                                                                                                                                 |
| DECIDED               | August 23, 2012                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                    |
| PROCEDURAL POSTURE    | Appeal from the Hinds County Circuit Court's denial of a complaint seeking declaratory judgment, a writ of mandamus, and injunctive relief.                 |
| STANDARD OF REVIEW    | De novo review of questions of statutory interpretation.                                                                                                    |
| PRECEDENTIAL VALUE    | Published Mississippi Supreme Court opinion; precedential.                                                                                                  |
| PARTIES               | Mississippians Educating for Smart Justice, Inc., Mississippi CURE, Inc., Robert Simon, Rodney Gray, Benny Stevens v. Mississippi Department of Corrections |

### TOPICS

administrative procedure act   rulemaking   administrative law   statutory interpretation  
judicial review of agency action

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether MDOC's revised lethal-injection execution protocol constituted a rule subject to the Mississippi Administrative Procedures Law's notice-and-comment requirements.
2. Whether the MAPL exemption for regulations or statements directly related only to inmates applied to MDOC's execution protocol.

## HOLDINGS

1. MDOC's execution protocol was exempt from the Mississippi Administrative Procedures Law and therefore was not subject to MAPL notice-and-comment requirements.
2. The phrase 'directly related only to inmates' limits the direct subjects of the protocol and does not require that every person affected by or involved in implementing the protocol be an inmate.

## KEY QUOTATIONS

*“Accordingly, we find that the MDOC execution protocol is a “regulation or statement” related only to inmates of the MDOC and is therefore exempt from the provisions of the MAPL.” (98 So. 3d at 463)*

*“The protocol is an internal policy concerning lethal injections and the manner in which executions are carried out and is therefore not subject to the notice and comment requirements of the MAPL.” (98 So. 3d at 463)*

## FACTUAL BACKGROUND

Mississippi law prescribed lethal injection as the method of execution and authorized the Commissioner of Corrections to perform the duties and necessary acts associated with executions. After the sole United States manufacturer of sodium thiopental announced that it would stop producing the drug, MDOC revised its execution protocol on March 29, 2011, to permit pentobarbital if sufficient sodium thiopental was unavailable. The petitioners, including three death-row inmates and two organizations, challenged the revision as an improperly adopted administrative rule.

## PROCEDURAL HISTORY

The petitioners challenged the Mississippi Department of Corrections' revised lethal-injection execution protocol, arguing that it was an invalid rule because MDOC had adopted it without complying with the Mississippi Administrative Procedures Law's notice-and-comment requirements. The Hinds County Circuit Court denied relief, holding that the protocol was exempt from the MAPL because it was directly related to inmates. The Mississippi Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Jackson v. Danberg, 656 F.3d 157, 160 (3d Cir. 2011)
- Valle v. Singer, 655 F.3d 1223, 1229 n. 5 (11th Cir. 2011)
- Miss. Department of Transportation v. Allred, 928 So. 2d 152, 154, 156 (Miss. 2006)
- Green v. Cleary Water, Sewer & Fire District, 910 So. 2d 1022, 1027 (Miss. 2005)
- City of Natchez v. Sullivan, 612 So. 2d 1087, 1089 (Miss. 1992)
- Middleton v. Missouri Department of Corrections, 278 S.W.3d 193, 195-96 (Mo. 2009)

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