

**IN THE SUPREME COURT OF MISSISSIPPI****DEEP SOUTH TODAY d/b/a MISSISSIPPI TODAY, et al.****PETITIONERS****v.****CASE NO. 2024-M-00659-SCT****PHIL BRYANT & DEBORAH BRYANT****RESPONDENTS**

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On Appeal from the Circuit Court of Madison County, Mississippi  
Cause No. 45CI1:23-cv-238-JM  
The Honorable M. Bradley Mills

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**ANSWER IN OPPOSITION TO PETITION FOR INTERLOCUTORY APPEAL  
AND MOTION FOR STAY**

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

**DEEP SOUTH TODAY d/b/a MISSISSIPPI TODAY *et al.***

**PETITIONERS**

**vs.**

**No. 2024-M-00659-SCT**

**PHIL BRYANT *et al.***

**RESPONDENTS**

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**CERTIFICATE OF INTERESTED PERSONS**

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Pursuant to Miss. R. App. P. 28(a)(1), the undersigned counsel of record certifies that the following listed persons are interested in the outcome of this case. These representations are made so that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

1. Deep South Today d/b/a Mississippi Today, Defendant-Petitioner
2. Mary Margaret White, Defendant-Petitioner
3. Adam M. Ganuchau, Defendant
4. Anna L. Wolfe, Defendant
5. John Doe, Defendant
6. The Honorable Phil Bryant, Plaintiff-Respondent
7. Deborah Bryant, Plaintiff-Respondent
8. Henry Laird, Counsel for Defendants-Petitioners and Defendants
9. Theodore J. Boutrous, Jr., Counsel for Defendants-Petitioners and Defendants (*pro hac vice pending*)
10. Katherine Moran Meeks, Counsel for Defendants-Petitioners and Defendants (*pro hac vice pending*)
11. Sarah Dudding, Counsel for Defendants-Petitioners and Defendants (*pro hac vice pending*)
12. William M. Quin II, Counsel for Plaintiff-Respondents

13. W. Thomas McCraney III, Counsel for Plaintiff-Respondents

14. The Honorable M. Bradley Mills, Circuit Court of Madison County, Mississippi, Circuit

Court Judge

**SO CERTIFIED**, this 14<sup>th</sup> day of June, 2024.

*/s/ William M. Quin II* \_\_\_\_\_

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**Attorney for Plaintiffs-Respondents, the  
Honorable Phil Bryant, 64<sup>th</sup> Governor of the  
State of Mississippi, and Deborah Bryant, former  
First Lady of the State of Mississippi**

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**ANSWER IN OPPOSITION TO PETITION FOR INTERLOCUTORY APPEAL AND  
MOTION FOR STAY**

**NOW INTO COURT**, by and through undersigned counsel and pursuant to Miss. R. App. P. 5(b), comes Plaintiffs-Respondents Phil and Deborah Bryant and answer the petition for interlocutory appeal and motion for stay filed by Defendants-Petitioners Deep South Today d/b/a Mississippi Today (“Mississippi Today”) and Mary Margaret White as follows:

**INTRODUCTION**

Under the leadership of chief executive officer Mary Margaret White, editor-in-chief Adam Ganucheau, and reporter Anna Wolfe, Mississippi Today has embarked on a long-term campaign to tarnish the reputation of former Governor Phil Bryant. This campaign, which has seen Mississippi Today amass significant financial resources and secure prestigious accolades, can only be described as a concerted effort to manipulate Mississippi’s political landscape.

Bryant filed suit against Mississippi Today and White on July 26, 2023, alleging defamation and false light invasion of privacy claims. He served written discovery requests on the defendants along with the complaint. The defendants stonewalled, refusing to answer interrogatories and requests for production that addressed matters relevant to the issues raised by Bryant’s claims. Bryant moved to compel, and the circuit court issued an order requiring the defendants to produce responsive and purportedly privileged items to the court for in-camera review. Instead of seeking reconsideration of this order, the defendants opted to defy it. They withheld the overwhelming majority of information, documents, communications, and other tangible things sought by Bryant and filed their petition for interlocutory appeal.

The defendants-petitioners have repeatedly shown a lack of respect for this State’s judicial system. They are not champions of the First Amendment but rather tortfeasors who have chosen to defy the circuit court's authority and disregard this Court's well-established precedents. In light



of their actions, this Court should deny the petition and allow the circuit court to continue following the law and facts wherever they lead.

### **RESTATEMENT OF THE ISSUES PRESENTED**

**Issue No. 1:** Is Rule 5 review of the circuit court’s order holding the discovery motions in abeyance appropriate?

**Issue No. 2:** Is the petition premature because the circuit court has not yet conducted an in-camera review and ruled whether any particular item may be discovered?

### **STATEMENT WHY THE PETITION MUST BE DENIED**

Interlocutory review of the Order on Pending Motions [MEC Doc. #207] should be denied for two reasons. First, petitioners seek “review” of dispositions not yet made, as the court order only held the motions in abeyance. Since trial court decisions holding motions in abeyance are premature and not ripe for interlocutory appeal, *see State v. Europa Cruise Line, Ltd.*, 528 So. 2d 839, 840-41 (Miss. 1988), the appeal must be denied.

Second, the circuit court ordered the defendants to undertake a single action: produce to the court for in-camera inspection all materials responsive to Bryant’s discovery requests that the defendants contend are privileged. Trial courts must follow this exact procedure when privilege claims are asserted. *See, e.g., Haynes v. Anderson*, 597 So. 2d 615, 619 (Miss. 1992); *Hewes v. Langston*, 853 So. 2d 1237, 1249-50 (Miss. 2003); *Mississippi United Methodist Conference v. Brown*, 911 So. 2d 478, 481-82 (Miss. 2005); *Mississippi Baptist Health Systems, Inc. v. Johnson*, 360 So. 3d 949, 954 (Miss. 2023). For this reason, interlocutory review before the trial court has completed its in-camera review and privilege determination is premature. *Haynes*, 597 So. 2d at 620.

## STATEMENT OF RELEVANT FACTS AND PROCEEDINGS

### **I. The Order on Pending Motions**

Governor Bryant commenced this action against Mississippi Today and White on July 26, 2023 [MEC Doc. #1]. He served each defendant with written discovery requests on that same date [MEC Doc. #9]. Bryant sought to obtain information, documents, and communications supporting the elements of his defamation and false light claims, including actual malice. A leading treatise on defamation law details a range of evidence supporting actual malice findings as follows:

[T]he decisions generally hold that almost any evidence of common law malice may be *relevant and admissible* evidence on the constitutional actual malice issue – anger; hostility; retaliation or threats to “get” plaintiff; political partisanship; participation in a scheme to injure plaintiff; personal ill will; coercive purposes or blackmailing attempts; motive to suppress information or intimidate an opponent critical of defendant; economic motivation; sensationalism or “muckraking;” publication with full cognizance of the harm to the plaintiff or heedless of the consequences; prior attempts at deliberate falsification or omissions; prior attempts to harm plaintiff; a preconceived plan to discredit plaintiff; a preconceived view or slant. In the words of the Restatement (Second) of Torts such factors “assist in the drawing of an inference that the publisher knew his statement was false or acted in reckless disregard of its falsity.” ***Another thoughtful recent opinion, citing the probative value of motivation, concluded; “[a] newspaper cannot publish an accusation that it knows has no evidence behind it as a fact to fit its desired storyline and then cloak it all in the First Amendment.”***

Defamation: A Lawyer’s Guide § 7:3, *Common Law Malice and Constitutional “Actual Malice”* (Oct. 2023 Update) (citing numerous cases) (emphasis added).

The defendants responded and objected to Bryant’s interrogatories and requests for production on September 21, 2023 [MEC Docs. #33, 217-1–217-4]. The document production consists of publicly available articles written by Mississippi Today staffers, a journalism industry code of ethics available on Mississippi Today’s website, an unedited transcript of Mississippi Today reporter Anna Wolfe’s radio interview with former U.S. Representative Ronnie Shows (an edited version is on Mississippi Today’s website), notes White made before accusing Bryant of embezzling \$77 million of welfare funds during a journalism industry panel discussion, and an

employee handbook. These materials do not remotely support White's claim that Bryant misused and squandered \$77 million of welfare funds; they do not support Ganuchau's claim that Bryant steered \$77 million of welfare funds to his family and friends; and they do not support White's pronouncement that Mississippi Today had reported Bryant's embezzlement of \$77 million of welfare funds [MEC Doc. #194 at 102-03, 114-117, 123-125]. It was apparent to Bryant that the defendants' stonewalling was calculated to prevent him from discovering evidence of actual malice. Accordingly, Bryant filed motions to compel [MEC Docs. #34-35, 61-64]. The defendants moved for a protective order [MEC Doc. #66].

On May 16, 2024, the circuit court executed its Order on Pending Motions [MEC Doc. #207]. In summary, the order consists of five parts: (1) the discovery motions are held in abeyance; (2) the Mississippi appellate courts have not recognized a First Amendment reporter's privilege; (3) the information, documents, communications, and other tangible things sought by Bryant are relevant to the issues raised by the parties' claims and defenses; (4) Bryant has shown a compelling interest in obtaining the materials he seeks; and (5) Mississippi Today and White must identify the responsive and purportedly privileged materials in a privilege log and produce them to the court for an in-camera inspection by June 6, 2024. *Id.* at 2-3.

Two weeks later, Mississippi Today and White moved the circuit court to stay the order, arguing they would soon file a petition for an interlocutory appeal [MEC Doc. #208 at 1]. Mississippi Today and White did not move the circuit court to reconsider its order under Miss. R. Civ. P. 59 and did not seek expedited consideration of their motion to stay.

The Bryants responded to the motion to stay on June 6, 2024, arguing the in-camera inspection ordered by the court follows well-established precedent; Mississippi Today and White would not suffer irreparable injury if the court enforced its order; staying the order would prejudice

the Bryants by further delaying this action; and in-camera review is consistent with the public interest [MEC Doc. # 210 at 5-18]. The motion to stay remains pending.

## II. The Privilege Log

Mississippi Today and White submitted a privilege log to the court and the Bryants on June 6, 2024 [MEC Docs. #211, 217-6]. In the log, Mississippi Today and White contend, “[t]here are no confidential sources which Defendants interviewed and upon which Defendants relied in the three publications about which Plaintiff complains.” They then list five groups of text messages between former Governor Bryant and others produced for in-camera inspection. They also outline the interrogatories and requests for production to which they object based on the reporter’s privilege [MEC Doc. #217-6 at 1-2].

For purposes of the petition, this Court should observe two things about the privilege log. First, it does not individually identify each text message and attachment the defendants contend are privileged. Second, and more troubling, the log does not identify all of the documents, communications, and other tangible things sought by Bryant that the defendants contend are privileged in defiance of the circuit court’s order. A simple review of a few document requests served on Mississippi Today and White illustrates this point:

**Request No. 7 (to Mississippi Today and White):** Please produce all documents, communications, and other tangible things within your possession, custody, or control relevant to this suit’s claims and defenses. If you claim that any document, communication, or thing is privileged, please produce a privilege log that identifies the document, communication, or thing; that describes the content of the document, communication, or thing; that identifies the author and recipients of the document, communication, or thing; and that identifies the date the document, communication, or thing was created.

Mississippi Today and White possess more relevant materials than the five groups of text messages produced for in-camera inspection. Their failure to produce these items for in-camera review and to specify each item in a privilege log violates the circuit court’s order.

**Request No. 11 (to Mississippi Today):** Please produce all documents and communications that support or substantiate all your defenses to this action, including the investigative file materials gathered and maintained by Anna Wolfe and other Mississippi Today staff.

Mississippi Today staff gathered and maintained more than five groups of text messages. Mississippi Today's failure to produce all requested materials for in-camera review and to specify each document and communication in a privilege log violates the circuit court's order.

**Request No. 13 (to Mississippi Today):** Please produce all communications your employees have had about the plaintiff within the past two (2) years, including emails and text messages between Anna Wolfe and sources who were a part of her investigation.

**Request No. 13 (to White):** Please produce all communications you have had about the plaintiff within the past two years.

Mississippi Today and White failed to produce any such communications and did not specify them in a privilege log, which violates the circuit court's order.

**Request No. 14 (to Mississippi Today):** Please produce all documents and communications any of your employees have authored that relate to the plaintiff in any way.

Mississippi Today failed to produce any requested documents and communications and did not specify them in a privilege log, which violates the circuit court's order.

**Request No. 17 (to Mississippi Today):** Please produce all documents and communications that discuss, record, or relate to discussions had between anyone affiliated with Mississippi Today, including Wolfe, and the "legal experts" that Adam Ganuchau referenced in the March 7, 2023, article by The Journalist's Resource.

Mississippi Today failed to produce any requested documents and communications and did not specify them in a privilege log, which violates this court's Order on Pending Motions.

**Request No. 14 (to White):** Please produce all documents and communications you have authored that relate to the plaintiff in any way.

White failed to produce any requested documents and communications and did not specify them in a privilege log, violating this court's Order on Pending Motions.

### **III. The Motion for a Suppression Order**

Mississippi Today and White filed their petition for interlocutory appeal and moved this Court to stay the circuit court order on June 6, 2024. That same day, Mississippi Today published a hyperbolic three-page editorial by Ganuchau. The editorial attacks the circuit court order, positions Mississippi Today as a First Amendment warrior, misrepresents the Bryants' claims and discovery rights, and attempts to impermissibly influence this Court and potential jurors [MEC Doc. #214-2]. The Bryants moved the circuit court on June 10, 2024, to enter a suppression order preventing Ganuchau and his co-defendants from undertaking similar actions in the future [MEC Doc. #214]. The motion for a suppression order remains pending.

### **IV. The Motion to Hold Mississippi Today and White in Contempt of Court**

On June 11, 2024, the Bryants moved the circuit court to hold Mississippi Today and White in contempt of court for their refusal to comply with the circuit court order [MEC Doc. #217]. Following a detailed analysis of *Fresenius Medical Care Holdings, Inc. v. Hood*, 269 So. 3d 36 (Miss. 2018), the Bryants requested that the court hold the defendants in contempt and exercise its authority under Miss. R. Civ. P. 37(b)(2)(A) and its inherent power by sanctioning petitioners for violating the in-camera production order [MEC Doc. #217 at 13]. That motion remains pending.

Three days later, the New York Times published an overheated guest essay by Ganuchau criticizing Bryant's motion and further attempting to influence the circuit court, this Court, and potential jurors. The Court should carefully consider the following passages:

... Last month, the state court judge presiding over the case – an appointee of Mr. Bryant's successor, Gov. Tate Reeves – ordered us to turn over confidential source documents regarding our reporting on Mr. Bryant. We asked the Mississippi Supreme Court to hear our emergency appeal, arguing the order was unconstitutional. We also asked the court to stay the order while the justices consider our plea to recognize a reporter's privilege, which serves as a basis of protection and privacy for journalists and the sources who share important information with the press. (I published an editor's note about all this in early June.)

***But our appeal***, while strongly rooted in clear case-law precedent of 40 U.S. states, ***is politically perilous: The nine-member Mississippi Supreme Court is made up of four Bryant appointees and at least two others who received Mr. Bryant's public endorsement for election back in 2012.***

The stakes are incredibly high: The court could guarantee these critical free-press rights for the first time in our state's history, or it could establish a dangerous precedent for Mississippi journalists and the public at large by tossing aside an essential First Amendment protection.

... We have no direct reason to believe that the state judge or our state Supreme Court justices will disregard their oaths of office and not "administer justice without respect to persons." ***But this is Mississippi – a state where a majority of the high court is politically aligned with a former governor who once publicly called our journalists "Liberals at an online Democratic propaganda machine."*** Frankly, it's impossible not to worry about how the politics of Mississippi's system of government could affect the outcomes of this case.

If we were to be held in contempt of court, individual defendants could face jail time; our nonprofit news organization could face hefty fines; or the judge could issue a default judgment against us in favor of the plaintiff, who has asked the court for more than \$1 million in damages. Any of those scenarios could threaten our staffers' freedom and our newsroom's long-term sustainability.

... It is not difficult to see how the lawsuit against us could become part of a broader effort to dismantle press freedoms for journalists across the nation. If journalist freedoms are stripped from us in Mississippi or elsewhere, the corruption and wrongdoing from our government leaders could go more easily unseen. ***Every citizen – not just the journalists – would be harmed.***

While we hope our case doesn't go this far, we could be on the front end of yet another instance that proves you don't have to live in Mississippi to be profoundly affected by our government's and our courts' stances on constitutional rights.

In sum, Ganuchau criticized the circuit court's handling of an ongoing matter, questioned this Court's integrity, and emphasized the threat this case poses to the everyday citizens who may one day serve on a jury in this case. The essay is little more than an attempt to undermine this State's judicial system.

## STANDARD OF REVIEW

The standard of review for a trial court’s discovery order “is abuse of discretion.” *Mississippi Baptist Health Systems, Inc. v. Johnson*, 330 So. 3d 949, 952 (Miss. 2023) (quoting *Powell v. McLain*, 105 So. 3d 308, 312 (Miss. 2012), which quoted *Brown*, 911 So. 2d at 481). Generally, however, “this Court has declared that it ‘is not about to become involved in the wholesale granting of interlocutory appeals of civil discovery disputes.[’] ... A limited exception has been carved out for ‘substantial questions of privilege ... where correction of any error on appeal from a final judgment would be futile.’” *Id.* (quoting *Haynes*, 597 So. 2d at 617, which quoted *In re Knapp*, 536 So. 2d 1330, 1333 (Miss. 1988)).

Here, Mississippi Today and White must establish that allowing the circuit court to complete an in-camera item-by-item review of all responsive and purportedly privileged materials would cause them “irreparable injury due to the Humpty Dumpty syndrome.” *Haynes*, 597 So. 2d at 620. They cannot meet this burden.

## ARGUMENT

### **I. The petition should be denied because the circuit court held the discovery motions in abeyance.**

In *Europa Cruise Line*, Europa Cruise Line owned a “coastal cruise vessel equipped and outfitted with various types of gambling devices, bars and saloons, and recreational facilities for the use and enjoyment of persons who pa[id] for accommodations on, and patronize[d], the ship.” *Europa Cruise Line*, 528 So. 2d at 840. The vessel’s standard practice was “to travel from its berth in Biloxi ... without activating the gambling equipment, saloons and operations, which would be in violation of the laws of the State of Mississippi.” *Id.* The crew commenced operations upon arrival in “an area in the Mississippi Sound three (3) miles south of the Mississippi shoreline and three miles north of Ship Island.” *Id.*



Europa filed a civil action in Harrison County Circuit Court against the State of Mississippi, the State Tax Commission, and the Harrison County Sheriff, seeking a restraining order to prevent enforcement of state penal laws on the vessel's offshore operations. *Id.* at 839. The circuit court granted the restraining order and subsequently awarded Europa a preliminary injunction that "prohibited prosecution by state officials." The State moved the court to dissolve the preliminary injunction and, in the alternative, requested an interlocutory appeal. The court "entered an order holding the motion to dissolve in abeyance and certifying an interlocutory appeal." *Id.* This Court denied the petition for interlocutory appeal, explaining:

... [T]he vice of the order and certification is the fact that it is no final order, *e.g.*, the motion to dissolve the preliminary injunction was not denied or granted, but was simply held in abeyance, obviously for an advisory opinion. In the status of the record, the facts being undisputed, the lower court should have heard the motion to dissolve the preliminary injunction along with the question of the permanent injunction. Whether the circuit judge ruled for or against the temporary and permanent injunctions, there would have been a final order and either side could appeal directly to this Court. That procedure would have been the most expeditious way of resolving the law question and disposing of the case... Since the interlocutory appeal must be denied, and the case remanded to the lower court, with the complete record before it and the question well briefed, the lower court should move expeditiously toward a final determination of the cause.

*Id.* at 840-41. Petitioners similarly seek an impermissible advisory opinion from this Court. Before any review is appropriate, the circuit court must determine whether the defendants have waived their privilege claims, and if not, conduct the item-by-item in-camera inspection and issue detailed reasons why privilege is properly or improperly asserted for each document. Only after these events could a petition for interlocutory appeal *possibly* be appropriate. Regardless, an interlocutory review of the order holding the discovery motions in abeyance is premature and should be rejected.

**II. The petition should be denied because the circuit court has not yet conducted an in-camera review and ruled whether any particular document may be discovered.**

This Court adopted the procedure for managing privilege claims in *Haynes*. In that case, Grace Haynes and Rita Anderson were involved in an automobile accident. Anderson filed suit against Haynes in Hinds County Circuit Court. State Farm Mutual Automobile Insurance Company insured Haynes. A month and a half after filing suit, Anderson served a subpoena on a State Farm adjuster to appear for a deposition and produce State Farm's investigative file of the automobile accident. Haynes moved the court to quash the subpoena and protect the file from disclosure under the work product doctrine. The circuit court denied the motion. *Haynes*, 597 So. 2d at 617. Haynes filed a petition for interlocutory appeal.

In its analysis, the Supreme Court first addressed the standards applicable when considering whether to grant an interlocutory appeal. The Court explained:

Regarding the propriety of interlocutory appeal, we have what is arguably a question of law, or law application, within the meaning of Miss. Sup. Ct. R. 5. But, as a general rule, this Court has declared that it "is not about to become involved in the wholesale granting of interlocutory appeals of civil discovery disputes. Pre-trial discovery is governed by flexible rules well within the administrative capacity of our trial courts." *In re Knapp*, 536 So. 2d 1330, 1333 (Miss. 1988); *Mississippi State Bar v. Attorney L*, 511 So. 2d 119, 121 (Miss. 1987) ("Rarely will we entertain an interlocutory appeal regarding a discovery matter.")

A limited exception has been carved out for "substantial questions of privilege ... where correction of any error on appeal from a final judgment would be futile." *Knapp*, 536 So. 2d at 1333. "If the matter thought privileged is ordered disclosed and is, in fact, disclosed, our later reversal would be founded on the Humpty Dumpty syndrome." *Id.* In *Knapp*, this limited exception was applied to address a claim of the privilege against self-incrimination and an argument that disclosure of the content of grand jury proceedings was prohibited. One can easily see how Humpty Dumpty, once broken, could not be put back together again in *Knapp*. The same may be said in this case.

The trial court obviously viewed anything prepared prior to the complaint being filed as discoverable, either because it was not prepared in anticipation of litigation, or because there was no showing by Anderson of substantial need. At the other extreme, State Farm claims that everything gathered is privileged work product because litigation was anticipated from the time Haynes reported the accident. At a minimum, State Farm says

that contact from Anderson’s attorney, Harold Miller, started the “anticipation of litigation” clock.

Anderson waxes more generally about State Farm’s failure to raise specific objections to the disclosure of specific items. She suggests that State Farm may still object to the disclosure of specific items, and the trial court can view these matters individually and decide their discoverability on an item-by-item basis. Anderson says it is unfair for State Farm to simply declare that all materials in the file are privileged work product.

*Id.* at 617-18. After examining approaches followed by federal courts, this Court determined that “[i]n the end, a case-by-case approach is the only approach which seems to us to make any real sense.... In using this approach, our courts should consider ‘the nature of the documents, the nature of the litigation [and investigation], the relationship between the parties, and any other fact peculiar to the case.’” *Id.* at 619 (quoting *Pete Rinaldi’s Fast Foods v. Great American Ins.*, 123 F.R.D. 198, 201-02 (M.D. N.C. 1988); *Carver v. Allstate Ins. Co.*, 94 F.R.D. 131, 134 (S.D. Ga. 1982)).

Concluding its analysis, this Court denied the petition for interlocutory appeal and explained:

[S]ince we are not advised of the content of the file and know very little regarding the nature of State Farm’s investigation, it occurs to us that the trial court should deal with each matter in the file on an item-by-item basis. There are potential factual disputes lurking in and around the file of State Farm which we are not inclined to settle at this stage. *American Electric v. Singarayar*, 530 So. 2d 1319, 1322 (Miss. 1988).

Objections to the discovery of the contents of State Farm’s investigative file may be lodged with the trial court on an item-by-item basis. The trial court should carefully consider each objection and decide whether to allow discovery, consistent with what we say in this opinion.

*Id.* at 620. This Court has reaffirmed that trial courts must conduct in-camera item-by-item inspections of purportedly privileged items on numerous occasions over the past thirty years. *Hewes*, 853 So. 2d at 1250 (Miss. 2003) (“We reiterate that when objections to discovery of specific documents are made, the trial court should deal with each on an item-by-item basis, carefully considering each objection, deciding whether to allow discovery and stating the rule or exception which provides the basis for the decision.”); *Brown*, 911 So. 2d at 482 (“Only an in-

camera inspection and subsequent document-by-document analysis, accompanied by the corresponding rule or exception, will meet the requirements for such determinations.”); *Fresenius Med. Care Holdings*, 269 So. 3d at 71-72 (“Because the chancery court ordered the public relations documents to be produced as a whole without sufficiently analyzing each item and each claim of privilege, we reverse the chancery court’s order on the present issue and remand for further consideration and findings.”); *Johnson*, 360 So. 3d at 954 (quoting *Powell*, 105 So. 3d at 315) (“The circuit court has an obligation to conduct an *in-camera* review of every requested document withheld on the basis of privilege and to make detailed findings as to whether any documents requested are discoverable. This should be done on the record, stating the basis for each decision. We have clearly held that ‘blanket’ orders compelling production of documents are not sufficient.”).

In the case at bar, the circuit court order requires Mississippi Today and White to provide an itemized privilege log and produce the responsive materials they claim are privileged to the court for an in-camera item-by-item inspection. This approach follows the Supreme Court’s well-established precedent. Accordingly, the petition should be denied as premature and not ripe for review.

### **III. The motion to stay should be denied.**

The following four factors must be considered when deciding whether to grant a stay pending interlocutory appeal: (1) whether there exists a substantial likelihood that the movant will prevail on the merits; (2) whether the stay is necessary to prevent irreparable injury; (3) whether the threatened injury to the movant outweighs the harm the stay might do to the nonmovants; and (4) whether entry of a stay is consistent with the public interest. *Electronic Data Systems Corp. v. Mississippi Div. of Medicaid*, 853 So. 2d 1192, 1207 (Miss. 2003) (outlining the four factors); 11

Fed. Proc., L. Ed. § 31:15, *Four-Part Test for Obtaining Injunction Pending Appeal* (June 2024 Update) (outlining the four factors); Fed. Ct. App. Manual § 21:5, *How Do You Obtain a Stay Pending Appeal on Rulings Other Than a Judgment?* (May 2024 Update) (observing that the four-factor test applies when a party seeks a stay or an injunction pending appeal). None of these factors favor granting a stay to the petitioners.

**Factor No. 1:** For the reasons above, it is not substantially likely that this Court will grant an interlocutory appeal of the Order on Pending Motions. This factor weighs in favor of denying a stay.

**Factor No. 2:** The order does not compel the production of privileged materials to the Bryants; it compels the production of the materials to the circuit court. Accordingly, the order does not lead to “Humpty Dumpty syndrome.” *Haynes*, 597 So. 2d at 617-18. This factor weighs in favor of denying a stay.

**Factor No. 3:** Former Governor Bryant commenced this action and served the discovery requests at issue on July 26, 2023. The defendants refused to comply with the overwhelming majority of the requests, resulting in Bryant filing three separate motions to compel [MEC Docs. #34, 35, 61-64]. The court has vacated the scheduling order in this action [MEC Doc. #109]; the discovery motions are being held in abeyance pending the court’s in-camera review of the responsive materials the defendants claim are privileged [MEC Doc. #207]; and, the case is stayed pending the court’s in-camera review and decision [MEC Doc. #169]. The Bryants’ ability to prosecute their case has been obstructed for nearly a year by the petitioners’ refusal to meet their discovery obligations. Staying the Order on Pending Motions would further prejudice the Bryants’ right to prosecute their action without undue delay. This factor weighs in favor of denying a stay.

**Factor No. 4:** A stay would prevent the court from assessing whether particular items should be produced. This would be inconsistent with this Court’s precedent and the public interest. This factor weighs in favor of denying a stay.

**CONCLUSION**

The circuit court must be allowed to determine whether the defendants have waived their right to assert privilege over the documents, communications, and other tangible things sought by Bryant. Should the court determine they have not waived their right, it should conduct an item-by-item in-camera inspection and issue detailed reasons why privilege is properly or improperly asserted for each thing sought by former Governor Bryant. After these events, a petition for interlocutory appeal may or may not be appropriate. Regardless, this petition and motion are not well-founded and should be denied. The privilege issue presented by the petition is premature and unripe for appellate review.

**RESPECTFULLY SUBMITTED**, this 14<sup>th</sup> day of June, 2024.

*/s/ William M. Quin II*  
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**Attorney for Plaintiffs-Respondents, the  
Honorable Phil Bryant, 64<sup>th</sup> Governor of the  
State of Mississippi, and Deborah Bryant, former  
First Lady of the State of Mississippi**

**CERTIFICATE OF SERVICE**

I, William M. Quin II, certify that I have served a copy of the above and foregoing document to the following via filing with the MEC electronic filing system:

Henry Laird  
WISE CARTER CHILD & CARAWAY, P.A.  
2510 14<sup>th</sup> Street, Suite 1125  
Gulfport, Mississippi 39501

Further, I hereby certify that I have mailed a copy of the above and foregoing document to the Circuit Court of Madison County via the U.S. Postal Service at the following address:

Honorable M. Bradley Mills  
MADISON COUNTY CIRCUIT COURT  
28 West North Street  
Canton, Mississippi 39046

**SO CERTIFIED**, this 14<sup>th</sup> day of June, 2024.

*/s/ William M. Quin II*  
\_\_\_\_\_  
William M. Quin II