



*Philip Gunn*

SPEAKER

*Mississippi House of Representatives*

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May 4, 2020

Via email and regular mail

Governor Tate Reeves  
P. O. Box 139  
Jackson, MS 39205

Dear Governor,

I regret that I find myself having to write this letter. I have tried to discuss our disagreement on this issue in private and reach some resolution with you. As you know, you and I have had at least two phone conversations about this issue and one face-to-face conversation in an attempt to resolve this.

However, you have now taken our discussion into the public forum. Since the passage of Senate Bill 2772, you have made statements that are completely incorrect and/or misleading, and you have attacked my House members and the legislative process. I cannot stand aside and allow my members to be attacked nor can I allow statements that are incorrect to go uncorrected. I cannot allow the constitutional obligation of the legislature to appropriate money to be ignored.

Let us be clear from the outset – we recognize that our state is in a time of great crisis. We do not ignore this or diminish this. We hear from our constituents everyday as to the difficulties they are enduring. We hurt along side them. Every moment we are searching for ways to help them. There is no escaping the fact that we are in a health and economic crisis. But you have created the false impression that we are in a funding crisis. We are not.

Now I would like to address the incorrect or misleading statements you have made.

1. You claim you must control the Coronavirus Relief Fund (CRF) monies in order to respond quickly to a crisis. You claim that only you can do this, not the legislature.

That is not correct. We convened the legislature on Friday on *less than* 24 hours notice. We handled our business in *less than* (4) hours. We stand ready to reconvene on a moment's notice

should *any* crisis arise. All you have to do is notify us the moment you become aware of *any* crisis, and we will reconvene immediately to address it.

Clearly, it is not correct to say that you are the only one who can address a crisis and that you must, therefore, remain in control of the CRF. Such an approach removes the voice of the people from how their taxpayer dollars are spent.

2. Last Tuesday the Department of Finance and Administration (DFA) put out a Request for Quote (RFQ) seeking a third party contractor to administer the \$1.25 billion in Coronavirus Relief Funds. This is the money that is now in dispute. Attached to the RFQ as Exhibit “A” is a “personal service contract” to be entered into between the Office of Governor Tate Reeves and the contractor that will administer those funds. **That contract makes clear that those funds must be appropriated by the Legislature.**

The contract, written on a form revised Mar. 22, 2018, makes clear in paragraph 6 entitled “Availability of Funds” that the legislature must appropriate those funds, whether they be state or federal funds. **Note that both receipt and appropriation of the funds are required and that either failure of the federal government to provide the funds or of the legislature to appropriate them voids the contract. Note also that legislative appropriation is required for both state and federal funds. If federal funds could have been spent by the Governor without legislative appropriation, this contract would not have been conditioned on legislative appropriation.**

This is the pertinent contract language:

“Availability of Funds: It is expressly understood and agreed that the obligation of the OFFICE OF THE GOVERNOR to proceed under this Agreement is **conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds.** If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, **either** through the failure of the federal government to provide funds **or of the State of Mississippi to appropriate funds** or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the OFFICE OF THE GOVERNOR, the OFFICE OF THE GOVERNOR shall have the right upon ten (10) working days written notice to the CONTRACTOR, to terminate this Agreement without damage, penalty, cost or expenses to the OFFICE OF THE GOVERNOR of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.” (emphasis added).

**This is your own contract. The Governor’s Office would not have written the contract this way if legislative appropriation were not required.**

This shows your public statements to the effect that Mississippi law gives you authority to spend this money without legislative appropriation are **false** and **your own contract shows it.**

3. Furthermore, we are not aware that you have attempted or requested to spend any of the CRF to address any funding crisis since it was deposited into the State’s treasury two weeks ago. Nor have we heard you give an example of any funding crisis that might arise during this pandemic. Therefore, to claim that you must keep control of the CRF so that you can quickly address a crisis that arises is simply not accurate in this case.

The executive branch agencies have had the funds they need to address the coronavirus response to date. Legislative leadership has been in contact with the relevant agencies on an almost daily basis. We have made clear to them that if they saw they were running short of funds to handle the coronavirus response and its economic consequences, to let us know and we would promptly appropriate the necessary funds. At no time has such a request been made to us.

This can only lead to the conclusion that there is no funding crisis that would require you to act more quickly than the legislature can act. We have a health crisis and an economic crisis. We do not have a funding crisis. Therefore, to claim that you must keep control of the CRF so that you can quickly address a funding crisis that arises is simply not accurate here.

If a genuine funding crisis exists, we will call the legislature back into session. Until such time as you can identify a real funding crisis which the legislature could not address by being called back into session and which would necessitate only you having control over the CRF, then we call on you to cease making statements that some funding crisis exists that only you can address.

4. You claim that the State law of Mississippi gives you the power to spend this money. We have read the statutes to which you refer, and they do not say that. We have asked to receive some written explanation from your attorneys in attempt to work this out, but we have not received anything.

The law of Mississippi is clear that the Legislature *cannot* give its authority to appropriate money to any other person, including the Governor. If your interpretation of the statutes is correct, then the statutes are unconstitutional.

So, either the statutes do not say what you claim they do or the statutes are unconstitutional. Either way, you do not have the authority to appropriate money.

5. Additionally, you claim that the Federal government intended for you to spend this money. However, there is no evidence that is true. The \$1.25 billion CRF were specifically given to “the State of Mississippi”; the state is the people, and the people’s voice is the legislature.

Historically, when the federal government intends for a Governor to spend money, they specifically say so. After Katrina and the 2008 financial crisis, federal legislation appropriated money explicitly and directly to “the governor.” There are separate sections of the CARES Act that provide monies outside the \$1.25 Billion dollars in dispute. In fact, a section entitled the “Governor’s Emergency Education Relief Fund” says specifically that the “Governor” can spend \$34 million for education related costs. This clearly shows that the Federal government thought about what money they want the Governor to spend and what money they do not want the Governor to spend. It cannot be argued that this was a simple oversight on their part. They thought about it. If that was their intent for governors to spend this money, they could have easily said so. The fact that they did not say so clearly shows it was not their intent for the Governor to have the authority to spend this money. Therefore, your statement that the federal government intended for you to spend the CRF has no basis.

6. You have stated that if the law doesn't give you the right to spend the money, then why did the legislature change the law? We did not change the law. We simply moved money from one account to another. Your statement is incorrect.

7. You claim that you were going to provide relief to various industries and small businesses this coming week and that you were going to use the CRF to help them. We welcome doing this. If you have solid recommendations, we will convene the legislature immediately and consider them. That is exactly why our system of government is set up the way it is – to bring checks and balances to bear so that no one person can spend the taxpayers' money without oversight. There is absolutely nothing wrong with the legislature having oversight over any idea for how you suggest the money should be spent. If the idea is good, it will be implemented immediately.

The transfer of these funds, however, does not stop you from proceeding with any plans that you may have nor does it prevent any industry or business from getting the relief they need. To claim that the ideas or programs that you had on the drawing board cannot now be implemented because the legislature transferred this money is simply not correct. All you need to do is work with us in the exercise of our constitutional responsibilities – you doing your job, we doing ours.

8. You have also alleged that people are not now going to get their unemployment benefits, because the legislature transferred the CRF. You have not provided any explanation as to how the transfer of the CRF will cause this to happen.

To the contrary, we have talked to MDES on almost a daily basis for the last five (5) weeks. We have routinely asked MDES if they need anything from us, including money. They have said no. MDES has not made any request of us for money, you have not made any request of us for money on behalf of MDES, and you have not attempted to spend the CRF money to help MDES. Finally, we voluntarily offered to provide more money to MDES if they need it. They said they don't need more money; all they need is time.

Lack of money is not the reason people are not receiving their unemployment benefits.

People have not received unemployment benefits because they cannot get someone to answer the phone. Some have not received unemployment benefits because their calls were dropped after being on hold for hours. Some have not even been able to file their claims because they could not get through MDES' dysfunctional claims system. Some have not received unemployment benefits because their claims got lost in the system.

Separate and apart from the \$1.25 Billion in CRF monies, the CARES Act provides federal funds to cover both the unemployment benefits and the state's administrative expenses for processing claims. The legislature has not interfered one iota with your ability to access those funds. We feel sure you are truly aware that MDES does not currently suffer from a lack of funds either for benefits or for administrative expenses. If you are not aware of that, you should be.

People are missing out on unemployment benefits, because the system is overwhelmed, not because of a lack of funds.

To claim that the transfer of the CRF from one account to another is in some way going to affect the receipt of unemployment benefits is simply not correct.

If you truly have ideas on how the CRF can be spent to expedite people receiving their benefits, then let us know. Again, all you have to do is tell us what you want to do, and if we agree, we will convene the legislature immediately and do it within our system of checks and balances.

In summary, your statement that people are not going to get unemployment benefits because the legislature transferred some money is completely incorrect and misleading. The transfer of the CRF has nothing to do with whether or not people will receive their unemployment benefits.

9. We have also received word that you have told supervisors and mayors they will not receive money quickly now that legislature has transferred this money. Again, this is not true. As discussed above, the legislature can convene on a moment's notice to address any issue they have. We have not been made aware of any example of a need they have that the legislature cannot immediately address with the CRF

10. You have also claimed that small businesses are going to have to close because the legislature transferred the CRF. That is simply not true. Small businesses are struggling because they have no customers due to the shelter-in-place order. We need to focus on doing what it takes to get the shelter-in-place order lifted.

Until then, we stand ready to spend the CRF to help our small businesses. All you have to do is say the word, and we will be back in Jackson tomorrow doing that. If you have any plan to help small businesses, please share it with us, and we can convene on a moment's notice and put into law and fund any good ideas you have.

However, inasmuch as you have not attempted to spend any of the CRF for small businesses since the CRF was deposited into the State's Treasury even though you claimed you had a right to do so, we can only assume that you believe there is no situation regarding our small businesses that currently requires you to act more quickly than the legislature in spending this money.

As you have said, you don't care who spends the CRF. That is good. If you have solid recommendations, we will convene the legislature immediately and consider them. *However, to claim that the transfer of the CRF prevents the implementation of any ideas or programs you may have or prevents help for our small businesses is simply not true. The fact that the legislature controls this money does not in any way prevent you or the legislature from providing help to small businesses.*

11. We particularly take issue with your statement that, "people may die because we cannot get them what they need" because the legislature transferred the CRF from one account to another. There is no way that this should be the case. **The only way for this to happen is if you know of a need and you don't tell us.** We can call the legislature into session today if either you or the Department of Health (DOH) or MEMA or anyone else tells us of *any* financial need that will save lives. We will *immediately* put the CRF toward any expense that will save lives or put an end to this health and economic crisis or put money toward any idea you have a program to help people. We will spend not only the CRF but we will spend any other monies we have to do whatever it takes to save lives. You just say the word, and we will be there.

Furthermore, we would point out that we have been in regular communication with both the DOH and MEMA. We have asked if they need anything from us, and we are not aware of any

unmet financial need they have. Additionally, we have not received any request from them or your office to provide them with more money, including any CRF.

Therefore, inasmuch as we have not been notified by anyone of any existing financial need, we can only conclude that if someone dies, it will not be because of a lack of money or because the legislature controls the CRF. Therefore, your statement that people will die if the legislature controls the CRF is simply not true. We call on you to cease making such sensationalized comments just to inflame people into supporting your position on the issue.

12. You have claimed that you need money to address “emergencies that may arise” before the legislature returns on the May 18. First of all, the Legislature can meet on a moment’s notice to make adjustments if necessary, so just because our plan at this point is to not return until May 18, we can certainly return sooner if necessary.

Nevertheless, to eliminate your concern, we appropriated \$100 million for you to spend to meet *any* needs that arise over the next two weeks. We cannot imagine that you will come close to spending this amount in two weeks and that should be more than enough to take care of any needs that arise. But if you do, we can return before then to address any unforeseen needs.

Because of this, your statement that you have been prevented from taking care of needs until the legislature returns is not true.

## **Conclusion**

You should know that our vote Friday demonstrated a unique bipartisan unity to address all needs of the people of our state. Democrats and Republicans stood together to remove politics from the process. We are offended by the suggestion that this is just a political battle or a power grab. It is not politics to protect the peoples’ voice in their government. It is not politics to allow the legislative process through which the taxpayers voice is heard control the expenditure of the taxpayers’ money. And it is not politics to allow the voice of the citizens to be heard on how they wish to spend taxpayer money through the legislative process. Our founders did not give us government by one person. They gave us government of the people through their representatives.

During this time of pandemic, when people are already anxious and under stress, now is not the time as leaders to add fear into their lives. The statements we have heard from you seem to be designed to do just that. These statements are inaccurate, incorrect, and serve no purpose other than to scare people into agreeing with your position. This is not what leaders do.

We have already said this, but we want to say it again. All you have to do is tell us what you want to do, and if we agree, we will convene the legislature immediately and do it. That is exactly why our system of government is set up the way it is – to bring checks and balances to bear so that no one person can spend the taxpayers’ money without oversight. There is absolutely nothing wrong with the legislature having oversight over any idea for how you suggest the money should be spent. If the idea is good, it will be implemented immediately.

The transfer of the CRF, however, does not prevent or stop you from proceeding with any plans that you may have nor does it prevent any individual or business from getting the relief they

need. To claim that the ideas or programs that you had on the drawing board cannot now be implemented because the legislature transferred this money is simply not correct.

In your comments Friday you portrayed legislators as thieves and killers. You said we “stole the money” and people would die. Such cheap theatrics and false personal insults were beneath the dignity of your office. They were out of character for you personally.

We request that you stop attempting to sensationalize this situation and work with the legislature to solve the issues before us. This is the spirit in which our government has worked since 1817 and it shouldn't stop today. We invite you to put aside an all out media war with the legislative branch and to work with us to provide the checks and balances that the spending of \$1.25B should require.

The Legislature is ready to convene anytime and address any genuine crisis. You have our phone numbers. You know where we are. We are ready to go.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip Gunn". The signature is fluid and cursive, with the first name "Philip" and last name "Gunn" clearly distinguishable.

Philip Gunn  
Speaker of the House

cc: Members of the House of Representatives