

March 3, 2023

The Honorable Tate Reeves  
Governor of Mississippi  
Office of the Governor  
550 High Street  
Sillers Building, 19<sup>th</sup> floor  
Jackson, MS 39201

Dear Governor Reeves:

Americans for Prosperity is a non-profit organization focused on educating the grassroots on bottom up solutions to our nation's biggest challenges and advocating for these policies before policymakers at the State and federal level. The R Street Institute is a non-partisan non-profit organization that supports free markets and limited, effective government.

We write to express our strong opposition to SB 2341 which was recently sent to your desk. SB 2341 codifies an anticompetitive policy that – consistent with economic theory and rigorous analytical study – will pad utility profits at the expense of higher utility bills for Mississippi's residential and industrial consumers, including large and small operations in Mississippi's agricultural sector. Moreover, based on a decision from last year by the United States Court of Appeals for the Fifth Circuit, the bill may be a dead letter that creates needless regulatory uncertainty and protracted litigation for the State.

SB 2341 expands the monopoly controlled by electrical utilities from its current scope – the sale of electricity – to include a monopoly over the construction and maintenance of the physical infrastructure carrying electricity from generation sources to end users. Building new transmission is big business and a growing share of utility bills nationwide. The passage of the Inflation Reduction Act will accelerate this trend given the greater transmission needs of renewable energy. Utilities have seized this opportunity to capture monopoly profits in this growth space by pushing so-called Right of First Refusal (ROFR) laws in half a dozen states – an agenda which our organizations and consumer groups are opposing in each case.

The facts pointing to consumer harm are clear. The Department of Justice's Antitrust Division, the Federal Trade Commission, and rigorous independent analysis agree ROFR laws harm electricity consumers by raising transmission costs – by 20-30 percent according to conservative estimates. SB 2341 would make Right of First Refusal the law in Mississippi, ensuring that already stretched consumers are further burdened by the higher energy costs associated with monopoly behavior. In short, it would advance no legitimate government interest while prioritizing the narrowest of incumbent corporate interests over those of the State's residential ratepayers and business competitiveness.

SB 2341 would also create significant litigation risk in an unsettled and evolving legal landscape. In August, a panel of the Fifth Circuit court of appeals instructed a federal district

court to reconsider the constitutionality of Texas’s 2019 ROFR law.<sup>1</sup> While the Court of Appeals did not rule on the constitutional issue, the panel’s opinion arguably tipped its hand as to how it viewed the matter:

“Imagine if Texas—a state that prides itself on promoting free enterprise—passed a law saying that only those with existing oil well in the state could drill new wells. It would be hard to believe. It would also raise significant questions under the dormant Commerce Clause.”<sup>2</sup>

If anything, a similar law in the context of interstate transmission networks could be even more vulnerable than this hypothetical. To be sure, it remains to be seen how the district court will rule on the constitutional merits of Texas ROFR or whether the Fifth Circuit will have an opportunity to issue precedent that would be controlling in any similar federal court litigation over SB 2341. But at this stage prudence is the obvious course.

Until the Texas litigation provides further clarity, any legislation to limit competition in building electric transmission in Mississippi should be set aside. Now is not the time to pad incumbent monopoly profits at the expense of struggling residential consumers, send negative signals to industrial and agricultural consumers seeking the competitive advantage of affordable energy, or stick taxpayers with the bill for defending legally vulnerable policies that serve narrow corporate interests over the urgent need to bring down energy costs for all. Mississippians cannot afford this false step in the fight against high energy bills.

For these legal and policy reasons, we urge you to exercise your veto of SB 2341.

Sincerely,

Starla Brown  
Director  
Americans for Prosperity – Mississippi

Marc Marie  
Policy Fellow for Regulations  
Americans for Prosperity

Josiah Neeley  
Resident Senior Fellow for Energy  
R Street Institute

---

<sup>1</sup> See Tex. Util. Code § 37.-56(e)

<sup>2</sup> <https://statepowerproject.files.wordpress.com/2022/08/nextera-decision.pdf>