

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

**CHARLES ARAUJO, *ET AL.***

**PLAINTIFFS**

**V.**

**CAUSE NO. 25CH1:16-cv-001008**

**GOVERNOR PHIL BRYANT, *ET AL.***

**DEFENDANTS**

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**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' SUPERSEDING MOTION FOR SUMMARY JUDGMENT**

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**I. Introduction.**

Tens of thousands of Jackson taxpayers and 27,000 Jackson Public School District students have their constitutional rights violated every day by the Charter Schools Act's funding provision. By the end of the 2016-2017 school year, the total cost of this constitutional violation will reach nearly \$6 million.

Like any victim of unconstitutional behavior, the Plaintiffs are entitled to a permanent injunction.

**A. The Charter Schools Act Sends Public Money to Privately Run, Publicly Unaccountable Charter Schools Through Two Funding "Streams."**

Aside from being funding entirely by public taxpayer dollars, the Charter Schools Act (hereinafter "CSA") makes clear that charter schools have nothing in common with traditional public schools. Charter schools are exempt from all rules, regulations, and policies adopted by the State Board of Education and the Mississippi Department of Education (hereinafter "MDE").<sup>1</sup> Charter schools are not part of the school district

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<sup>1</sup> Miss. Code Ann. § 37-28-45(5) ("A charter school is not subject to any rule, regulation, policy or procedure adopted by the State Board of Education or the State Department of Education unless otherwise required by the authorizer or in the charter contract.").

within whose boundaries they are located.<sup>2</sup> Charter schools have no elected or appointed school board.<sup>3</sup> Charter school administrators are exempt from state administrator licensure requirements,<sup>4</sup> and charter schools are immune from minimum salary requirements for teachers.<sup>5</sup> Charter schools also may exempt up to 25 percent of their teachers from state licensure requirements at the time their initial charter application is approved;<sup>6</sup> in contrast, only 5 percent of teachers in traditional public schools are exempt from state licensure requirements.<sup>7</sup>

The CSA funnels public money to these privately run charter schools in two ways. First, a “state stream” requires MDE to send monthly payments to charter schools.<sup>8</sup> Second, a “local stream” requires local school districts to send a share of their *ad valorem* tax revenue directly to charter schools.<sup>9</sup> Once charter schools receive these

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<sup>2</sup> Miss. Code Ann. § 37-28-45(3) (“Although a charter school is geographically located within the boundaries of a particular school district and enrolls students who reside within the school district, the charter school may not be considered a school within that district under the purview of the school district’s school board. The rules, regulations, policies and procedures established by the school board for the noncharter public schools that are in the school district in which the charter school is geographically located do not apply to the charter school unless otherwise required under the charter contract or any contract entered into between the charter school governing board and the local school board.”).

<sup>3</sup> Miss. Code Ann. § 37-28-5(h) (governing board is “independent”).

<sup>4</sup> Miss. Code Ann. § 37-28-47(1)(a).

<sup>5</sup> Miss. Code Ann. § 37-28-47(2).

<sup>6</sup> Miss. Code Ann. § 37-28-47(1)(a).

<sup>7</sup> Miss. Code Ann. § 37-3-2(6)(e).

<sup>8</sup> Miss. Code Ann. § 37-28-55(1)(a) (“The State Department of Education shall make payments to charter schools for each student in average daily attendance at the charter school equal to the state share of the adequate education program payments for each student in average daily attendance at the school district in which the charter school is located. In calculating the local contribution for purposes of determining the state share of the adequate education program payments, the department shall deduct the pro rata local contribution of the school district in which the student resides, to be determined as provided in Section 37-151-7(2)(a).”).

<sup>9</sup> Miss. Code Ann. § 37-28-55(2) (“For students attending a charter school located in the school district in which the student resides, the school district in which a charter school is located shall pay directly to the charter school an amount for each student enrolled in the charter school equal to the ad valorem tax receipts and in-lieu payments received per pupil for the support of the local school district in which the student resides.”); Miss. Code Ann. § 37-28-55(3) (“For students attending a charter school located in a school district in which the student does not reside, the State Department of Education shall pay to the charter school in which the student is enrolled an amount as follows: the pro rata ad valorem receipts and in-lieu payments per pupil for the support of the local school district in which the student resides . . . . The State Department of Education shall reduce the school district’s January transfer of Mississippi Adequate

state and local funds, they have no accountability to the public as to how the money is spent. By design, charter schools are not overseen by the state superintendent of education or by any local school district superintendent. They are privately governed and privately administered – but publicly funded.

This case’s only question is whether the Mississippi Constitution prohibits charter schools from receiving state and *ad valorem* taxpayer funds.

**B. Charter Schools Do Not Answer to the State Superintendent of Education, to the State Board of Education, or to Any Local District Superintendent.**

Charter schools are exempt from state and local education officials’ oversight. Unlike traditional public schools, which answer to the State Board of Education, the state superintendent, and a local district superintendent, the CSA provides exclusive jurisdiction over charter schools to the Charter School Authorizer Board.<sup>10</sup> The Authorizer Board “review[s] applications, decide[s] whether to approve or reject applications, enter[s] into charter contracts with applicants, oversee[s] charter schools, and decide[s] whether to renew, not renew, or revoke charter contracts.”<sup>11</sup>

The Authorizer Board is comprised of seven appointed members: three appointed by the governor, three by the lieutenant governor, and one by the state superintendent of education.<sup>12</sup> For every charter school that the Authorizer Board allows, it receives a 3 percent “cut” of the state and local funds diverted from traditional public schools to

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Education Program funds by the amount owed to the charter school and shall redirect that amount to the charter school.”).

<sup>10</sup> Miss. Code Ann. § 37-28-7(1).

<sup>11</sup> Miss. Code Ann. § 37-28-5(c).

<sup>12</sup> Miss. Code Ann. § 37-28-7(3).

charter schools.<sup>13</sup> The more charter schools that the Authorizer Board opens, the more money it brings in.

**C. By the End of the Current School Year, Privately Run Charter Schools Will Have Taken Nearly \$6 Million Away From Public Schoolchildren in Mississippi.**

When this case began in July 2016, two charter schools already had taken roughly \$1.8 million away from the 27,000 schoolchildren in the Jackson Public School District (hereinafter “JPS”).

Since that time, charter schools’ costs have snowballed. This school year, three charter schools are operating within JPS’s geographic boundaries. Their cost to JPS schoolchildren and taxpayers – for the 2016-2017 school year alone – is already nearly \$2.9 million. By the end of this school year, their cost is expected to approach \$4 million for this school year alone.

This \$4 million cost, combined with the \$1.8 million cost for the 2015-2016 school year, equals a two-year cost of nearly \$6 million.

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<sup>13</sup> Miss. Code Ann. § 37-28-11(1).

<b>Payments to Date</b>	<b>ReImagine Charter</b>	<b>Midtown Charter</b>	<b>Smilow Charter</b>
State funds (2015-2016)	\$643,027.00 <sup>14</sup>	\$618,189.00 <sup>15</sup>	n/a
Local funds (2015-2016)	\$317,487.06 <sup>16</sup>	\$278,129.16 <sup>17</sup>	n/a
State funds (2016-2017, through Jan. 2017)	\$639,508.10 <sup>18</sup>	\$467,514.52 <sup>19</sup>	\$402,124.48 <sup>20</sup>
Local funds (2016-2017)	\$618,512.97 <sup>21</sup>	\$440,251.59 <sup>22</sup>	\$329,513.46 <sup>23</sup>
<b>TOTAL for 2015-2016</b>	\$960,514.06	\$896,318.16	n/a
<b>TOTAL for 2016-2017 (through Jan. 2017)</b>	\$1,258,021.07	\$907,766.11	\$731,637.94
<b>TOTAL TO DATE</b>	<b>\$2,218,535.13</b>	<b>\$1,804,084.27</b>	<b>\$731,637.94</b>

For the rest of the 2016-2017 school year, the three privately run charter schools will continue to receive monthly payments from MDE. So far this school year, those monthly payments have averaged roughly \$91,300 to ReImagine Charter, \$66,800 to Midtown Charter, and \$57,400 to Smilow Charter. By the end of June 2017, when the 2016-2017 school year ends, the three charter schools will have taken nearly \$1.1 million more from MDE, for a school-year total of roughly \$4 million.

Combined with the funds taken by ReImagine Charter and Midtown Charter during the 2015-2016 school year, the total two-year cost of the CSA will approach \$6 million.

<sup>14</sup> Exhibit 1 to Superseding Motion for Summary Judgment.

<sup>15</sup> Exhibit 2 to Superseding Motion for Summary Judgment.

<sup>16</sup> Exhibit 3 to Superseding Motion for Summary Judgment.

<sup>17</sup> Exhibit 3 to Superseding Motion for Summary Judgment.

<sup>18</sup> Exhibit 4 to Superseding Motion for Summary Judgment.

<sup>19</sup> Exhibit 5 to Superseding Motion for Summary Judgment.

<sup>20</sup> Exhibit 6 to Superseding Motion for Summary Judgment.

<sup>21</sup> Exhibit 7 to Superseding Motion for Summary Judgment.

<sup>22</sup> Exhibit 7 to Superseding Motion for Summary Judgment.

<sup>23</sup> Exhibit 7 to Superseding Motion for Summary Judgment.

<b>Payments</b>	<b>ReImagine Charter</b>	<b>Midtown Charter</b>	<b>Smilow Charter</b>
Total to date	\$2,218,535.13	\$1,804,084.27	\$731,637.94
Approximate amount due over rest of 2016-2017 school year	\$456,500.00	\$334,000.00	\$287,000.00
<b>TWO-YEAR TOTAL</b>	<b>\$2,675,035.13</b>	<b>\$2,138,084.27</b>	<b>\$1,018,637.94</b>

These diverted funds are devastating to JPS's schoolchildren. For example, in the 2016-2017 school year alone, the amount diverted from JPS to the three charter schools could have paid the salaries of 65 classroom teachers<sup>24</sup> – enough teachers to staff Davis IB Elementary School, an A-rated school,<sup>25</sup> and Bailey APAC Middle School, an A-rated school<sup>26</sup> combined, and with money to spare.

#### **D. Procedural History.**

The Plaintiffs in this action are *ad valorem* taxpayers in the City of Jackson; they are state taxpayers; and they are parents of children enrolled in JPS.<sup>27</sup> On July 11, 2016, the Plaintiffs filed this lawsuit, seeking a permanent injunction against compliance with Section 37-28-55 by Gov. Phil Bryant, MDE, and JPS.

<sup>24</sup> According to the Mississippi Department of Education's most recently available data, the average salary for a JPS classroom teacher is \$44,454. See 2015-2016 Superintendent's Annual Report, Mississippi Department of Education, <http://www.mdek12.org/MBE/R2017> (follow the "Classroom Teacher Count and Average Salary" link) (last viewed Feb. 10, 2017).

<sup>25</sup> Davis IB Elementary School's faculty directory names 14 staff members whose titles include "teacher." Faculty/Staff Directory, Davis IB Elementary School, <http://www.jackson.k12.ms.us/domain/309> (last viewed Feb. 13, 2017).

<sup>26</sup> Bailey APAC Middle School's faculty directory names 29 staff members whose titles include "teacher." Faculty/Staff Directory, Bailey APAC Middle School, <http://www.jackson.k12.ms.us/domain/1137> (last viewed Feb. 13, 2017).

<sup>27</sup> Exhibit 8 to Superseding Motion for Summary Judgment (Affidavit of Charles Araujo); Exhibit 9 to Superseding Motion for Summary Judgment (Affidavit of Evelyn S. Garner Araujo); Exhibit 10 to Superseding Motion for Summary Judgment (Affidavit of Lutaya Stewart); Exhibit 11 to Superseding Motion for Summary Judgment (Affidavit of Arthur Brown); Exhibit 12 (Affidavit of John Sewell); Exhibit 13 to Superseding Motion for Summary Judgment (Affidavit of Kimberly Sewell); Exhibit 14 to Superseding Motion for Summary Judgment (Affidavit of Cassandra Welchlin).

On October 4, 2016, this Court allowed three groups to intervene, and discovery began (during which only one of the intervenors, the Mississippi Charter Schools Association, propounded a single set of discovery requests on JPS). Discovery closed on December 28, 2016. The Plaintiffs' claims are now ripe for adjudication.

**E. Statement of Uncontested Material Facts.**

1. Two charter schools, ReImagine Charter and Midtown Charter, operated within JPS's geographic boundaries during the 2015-2016 school year.<sup>28</sup>
2. For the 2015-2016 school year, ReImagine Charter earned a "D" accountability rating from MDE, and Midtown Charter earned an "F" accountability rating from MDE.
3. A third charter school, Smilow Charter, began operation within JPS's geographic boundaries during the 2016-2017 school year. Reimagine Charter and Midtown Charter also continue to operate within the JPS's boundaries during the 2016-2017 school year.
4. During the 2015-2016 and 2016-2017 school years, the JPS paid a share of its *ad valorem* tax revenue to ReImagine Charter and Midtown Charter. The JPS also paid a portion of its *ad valorem* tax revenue to Smilow Charter during the 2016-2017 school year.
5. Beginning in July 2015 and continuing to the present, MDE has remitted monthly payments of public funds to ReImagine Charter and Midtown Charter. Beginning in July 2016 and continuing to the present, the MDE has remitted monthly payments of public funds to Smilow Charter.

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<sup>28</sup> Compare First Amended Complaint [Docket No. 10] at ¶4 with Defendant Jackson Public School District's Answer and Affirmative Defenses [Docket No. 13] at ¶4 and State Defendants' Answer and Defenses to Plaintiffs' First Amended Complaint [Docket No. 14] at ¶4.

6. All three charter schools are overseen by the Charter School Authorizer Board.<sup>29</sup>

7. Plaintiffs are residents of Jackson, Mississippi.
8. Plaintiffs pay local *ad valorem* taxes and state taxes.
9. Plaintiffs are parents of children enrolled in JPS.

**F. Standard of Review.**

On a motion for summary judgment, the movant bears the burden of proving that no genuine issue of material fact exists, and that she is entitled to judgment as a matter of law.<sup>30</sup>

This case is a facial constitutional challenge. In a facial constitutional challenge, there are no issues of material fact, because such a case inherently alleges “that no set of circumstances exists under which the Act would be valid.”<sup>31</sup> Therefore, in this case, the parties’ motions for summary judgment present questions of law that are ripe for the Court to decide.<sup>32</sup>

A party challenging the constitutionality of a statute must prove beyond a reasonable doubt that the law is in “palpable conflict with some plain provision of the constitution.”<sup>33</sup> However, “no citation of authority is needed for the universally accepted principle that if there be a clash between the edicts of the constitution and the legislative enactment, the latter must yield.”<sup>34</sup>

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<sup>29</sup> Miss. Code Ann. § 37-28-9(1)(a)(iv).

<sup>30</sup> Miss. R. Civ. P. 56(c).

<sup>31</sup> *United States v. Salerno*, 481 U.S. 739, 745 (1987).

<sup>32</sup> *Crook v. City of Madison*, 168 So. 3d 930, 934-35 (Miss. 2015) (applying *de novo* standard of review to facial-constitutional challenge against a municipal ordinance).

<sup>33</sup> *Oxford Asset Partners, LLC v. City of Oxford*, 970 So. 2d 116, 120 (Miss. 2007).

<sup>34</sup> *State v. Bd. of Levee Comm’rs for Yazoo-Mississippi Delta*, 932 So. 2d 12, 26 (Miss. 2006) (citation and internal quotation marks omitted).



## II. Controlling Law.

Both of the CSA's funding streams – the “state stream” and the “local stream” – are unconstitutional.

Section 206 of the Mississippi Constitution provides that a school district's *ad valorem* tax revenue can only be used “to maintain its schools.” The Mississippi Supreme Court has held that Section 206 prohibits the Legislature from requiring a school district to share its *ad valorem* revenue with schools outside the district.<sup>35</sup> The CSA plainly violates Section 206 by requiring school districts to give their *ad valorem* revenue to charter schools that are undisputedly not within their control.

Similarly, Section 208 of the Mississippi Constitution forbids providing state school money “to any school that at the time of receiving such appropriation is not conducted as a free school.” The Mississippi Supreme Court has explained that a school is within the Constitution's system of “free schools” only if it falls under the dual oversight of the state superintendent and a local district superintendent.<sup>36</sup> The CSA intentionally places charter schools outside the oversight of both: charter schools are exempt from regulation by the State Board of Education and MDE,<sup>37</sup> and they are not within the control of a local school district superintendent.<sup>38</sup> Therefore, charter schools are not part of the Constitution's system of “free schools,” and they cannot receive state school funds.

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<sup>35</sup> *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598 (Miss. 2012).

<sup>36</sup> *Otken v. Lamkin*, 56 Miss. 758, 764 (1879) (holding that a “free school” is “under the general supervision of the State superintendent and the local supervision of the county superintendent”); *State Teachers' College v. Morris*, 144 So. 374, 376 (Miss. 1932) (citing *Otken*, 56 Miss. 758).

<sup>37</sup> Miss. Code Ann. § 37-28-45(5).

<sup>38</sup> Miss. Code Ann. § 37-28-45(3).

**A. The “Local Stream” Violates Section 206 of the Mississippi Constitution.**

Article VIII, Section 206 of the Mississippi Constitution provides:

There shall be a state common-school fund, to be taken from the General Fund in the State Treasury, which shall be used for the maintenance and support of the common schools. Any county or separate school district may levy an additional tax, as prescribed by general law, to maintain *its schools*.<sup>39</sup>

By its plain language, Section 206 allows a public school district to levy *ad valorem* taxes, or property taxes, for just one purpose: the maintenance of its own schools.

The Mississippi Supreme Court underscored this limitation in its *Pascagoula School District v. Tucker*<sup>40</sup> decision in 2012. In that case, a statute required that a school district’s *ad valorem* tax revenue on natural gas terminals and crude oil refineries be distributed to all school districts in the county. The Pascagoula School District’s (hereinafter “PSD”) *ad valorem* tax base included both a crude oil refinery and a natural gas terminal. Concerned that it would lose a portion of its *ad valorem* tax revenue to the three other school districts located in Jackson County, PSD challenged the statute’s constitutionality.

On appeal, the Mississippi Supreme Court held that the Legislature cannot require a school district to share its *ad valorem* tax revenue with schools outside the district’s control. The Court explained:

The plain language of Section 206 grants the PSD the authority to levy an *ad valorem* tax and mandates that the revenue collected be used to maintain only its schools. Conversely, no such authority is given for the PSD to levy an *ad valorem* tax to maintain schools outside its district.<sup>41</sup>

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<sup>39</sup> Miss. Const. art. VIII, § 206 (emphasis added).

<sup>40</sup> *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598 (Miss. 2012).

<sup>41</sup> *Id.* at 604.

In so holding, the Court rejected the defendants' argument that the statute was a legitimate exercise of the Legislature's broad plenary power to regulate school finance.

Instead, the Court stated:

The Legislature's plenary power does not include the power to enact a statute that – on its face – directly conflicts with a provision of our Constitution. Section 206 specifically limits the use of the tax revenue from a school district's tax levy to the maintenance of "its schools," and the Legislature's plenary taxation power does not authorize it to ignore this restriction. The Legislature has no authority to mandate how the funds are distributed, as Section 206 clearly states that the purpose of the tax is to maintain the levying school district's schools.<sup>42</sup>

The Court reasoned that upholding the law would render the phrase "to maintain *its schools*" in Section 206 "a complete nullity."<sup>43</sup> The Legislature's plenary authority allows it to establish the *method* by which a district may levy *ad valorem* taxes, it does not extend to mandating how those funds are *distributed*.<sup>44</sup> The Supreme Court was clear: Section 206 only allows a school district's *ad valorem* revenue to be used by that district's schools.

In Mississippi, a charter school is not part of the school district where it is geographically located.<sup>45</sup> Instead, the CSA requires that each charter school operate as its own local education agency, which is another name for a local school district.<sup>46</sup> Regardless of whether charter schools receive *ad valorem* tax revenue directly from JPS or if JPS' *ad valorem* funds are distributed by MDE, the resulting constitutional violation is the same.

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<sup>42</sup> *Id.* at 604-05.

<sup>43</sup> *Id.* at 605.

<sup>44</sup> *Id.*

<sup>45</sup> Miss. Code § 37-28-45(3) ("Although a charter school is geographically located within the boundaries of a particular school district and enrolls students who reside within the school district, the charter school may not be considered a school within that district under the purview of the school district's school board.").

<sup>46</sup> Miss. Code § 37-28-39; *see also* Miss. Code § 37-135-31 (defining "local education agency" as "a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through 12th Grade public educational institutions").

The Supreme Court's *Tucker* decision is clear: Section 206 forbids the use of a school district's *ad valorem* revenue by any schools except those under its control. The CSA's "local stream" violates Section 206. It is unconstitutional, and it must be struck down.

**B. The CSA's "State Stream" Violates Section 208 of the Mississippi Constitution.**

Article VIII, Section 208 of the Mississippi Constitution provides:

No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is *not conducted as a free school*.<sup>47</sup>

Section 208 plainly provides that state school funds may only be allocated to a school that is "conducted as a free school."

**1. A "free school" must be subject to the dual oversight of the state superintendent and a local district superintendent.**

A "free school" is not merely a school that charges no tuition. The Mississippi Supreme Court defined "free school" in *Otken v. Lamkin*,<sup>48</sup> when it struck down a statute appropriating public funds to private high schools. Finding that private schools are ineligible to receive public funding, the *Otken* Court established the following definition of "free public schools":

No portion of the school fund can be diverted to the support of schools which, in their organization and conduct, contravene the general scheme prescribed. That is to say, the fund must be applied to such schools only as come within the uniform system devised, and *under the general supervision of the State superintendent and the local supervision of the county superintendent*, are free from all sectarian religious control, and ever open to all children within the ages of five and twenty-one years . . . .<sup>49</sup>

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<sup>47</sup> Miss. Const. art. VIII, § 208 (emphasis added).

<sup>48</sup> *Otken v. Lamkin*, 56 Miss. 758 (1879).

<sup>49</sup> *Id.* at 764 (emphasis added).

The Mississippi Supreme Court reaffirmed *Otken* in *State Teachers' College v. Morris*,<sup>50</sup> where it determined that a demonstration and practice school at the State Teachers College was not a “free school” because it was regulated by the “administrative authority of the major state institutions of learning” rather than the State Board of Education. The Court reasoned that:

These teachers' demonstration and practice schools are not within the control of the common school authorities, but the power to establish them and regulate the affairs thereof is conferred on the administrative authorities of the major state institutions of learning. In order for a school to be within the system of free public schools required by section 201 of the Constitution, the establishment and control thereof must be vested in the public officials charged with the duty of establishing and supervising that system of schools.<sup>51</sup>

Accordingly, by definition, a “free school” must be within the dual oversight of the public officials who oversee “the system of free public schools” – that is, by the state superintendent of education and by a local district superintendent. Any school without such dual supervision is not a “free school.”

**2. Charter schools are not “free schools” because they are not regulated by the state superintendent of education and a local district superintendent.**

Mississippi's charter schools are not “free schools” because they fail two requirements of the *Otken* test. Specifically, charter schools are not under the dual supervision of the state superintendent of education and a local district superintendent.

Charter schools are not “under the general supervision of the State superintendent” because the CSA explicitly exempts charter schools from “any rule, regulation, policy or procedure adopted by the State Board of Education or the State

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<sup>50</sup> *State Teachers' College v. Morris*, 144 So. 374 (1932).

<sup>51</sup> *Id.* at 376 (citing *Otken*, 56 Miss. at 758) (internal quotation marks omitted).

Department of Education.”<sup>52</sup> Charter schools are also not “under . . . the local supervision of the county superintendent” because the CSA expressly exempts them from any local school district oversight.<sup>53</sup> Indeed, under the CSA, each charter school serves as its own local education agency.<sup>54</sup> Because charter schools are not under the dual supervision of the state superintendent of education and a local superintendent of education, they are not “free schools” within the meaning of Section 208. They are therefore ineligible to receive state school funds.

The Washington Supreme Court recently relied on similar analysis to strike down that state’s Charter School Act.<sup>55</sup> In Washington, the state constitution limits public funding to “the support of the common schools.”<sup>56</sup> Similar to Mississippi’s “free schools,” Washington’s common schools are those that are “common to all children of proper age and capacity, free, and subject to and under the control of the qualified voters of the school district.”<sup>57</sup> Washington’s charter schools, however, were “governed by a charter school board” and were “exempt from all school district policies” and nearly “all . . . state statutes and rules applicable to school districts.”<sup>58</sup> Since they are not under the control of the local school district, the Court concluded that Washington’s charter schools were not common schools and could not receive public funding.<sup>59</sup>

Mississippi’s Charter Schools Act creates the same constitutional conflict. The CSA clearly provides that charter schools are not “free schools” because they are exempt

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<sup>52</sup> Miss. Code § 37-28-45(5).

<sup>53</sup> Miss. Code § 37-28-45(3).

<sup>54</sup> Miss. Code § 37-28-39.

<sup>55</sup> *League of Women Voters of Washington v. State*, 355 P.3d 1131 (Wash. 2015).

<sup>56</sup> Wash. Const. art. IX, § 2.

<sup>57</sup> *Id.* at 1137.

<sup>58</sup> *Id.* at 1136.

<sup>59</sup> *Id.* at 1141.

from regulation by local school districts, the State Board of Education, and MDE. As a result, charter schools are not eligible to receive state school funds.

**III. Conclusion.**

“It is well settled that the Constitution of Mississippi is the supreme law of our state. It is the highest known law. No act prohibited by it can be given effectuality and validity. It is superior to all legislation, to the legislature, to the judiciary, . . . and to equity itself.”<sup>60</sup>

The only issue in this case is whether the “local stream” and “state stream” of the CSA violate the Mississippi Constitution. They do. Therefore, Section 37-28-55 of the Mississippi Code must be permanently enjoined.

RESPECTFULLY SUBMITTED this Thirteenth day of February 2017.

/s/ Will Bardwell  
Will Bardwell  
Counsel for the Plaintiffs

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<sup>60</sup> *Chevron USA, Inc. v. State*, 578 So. 2d 644, 648 (Miss. 1991).

**CERTIFICATE OF SERVICE**

I, Will Bardwell, hereby certify that, simultaneously with its filing, a copy of the foregoing Memorandum was served on all counsel of record via the Court's MEC electronic filing system.

SO CERTIFIED this Thirteenth day of February 2017.

/s/ Will Bardwell  
Will Bardwell  
Counsel for the Plaintiffs