

**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

**PLAINTIFFS' RESPONSE TO
JACKSON PUBLIC SCHOOL DISTRICT'S MOTION TO DISMISS**

The Jackson Public School District ("JPS") makes no effort to defend the CSA's constitutionality.¹ JPS also does not dispute that it has made payments to charter schools, or that but for the CSA, these payments would have benefitted JPS students. In fact, JPS admits that it has paid charter schools more than \$1.6 million since 2015.² Nevertheless, JPS argues that it should be dismissed from this case.

For three reasons, JPS's motion must be denied. First, JPS invokes an inapplicable legal standard. Second, JPS clearly is a necessary party. Third, the Plaintiffs have alleged a claim against JPS.

I. JPS is Invoking a Mechanism for Joinder, Not for Dismissal.

JPS argues that it is not a "necessary party,"³ but its argument misunderstands the concept of "necessary parties." Whether a party is a "necessary party" is governed by Rule 19 of the Mississippi Rules of Civil Procedure. Rule 19 provides for the joinder of

¹ Memorandum in Support of Defendant Jackson Public School District's Motion to Dismiss [Docket No. 44] (hereinafter "JPS Brief") at 2 ("While the District will be affected by the outcome of this case, the District takes no position on whether the CSA is or is not a violation of the Mississippi Constitution.").

² JPS Brief at 1 (acknowledging payments of \$317,487.06 and \$618,512.97 to ReImagine Charter and \$278,129.16 and \$440,251.59 to Midtown Charter) (omitting amount of payment to Smilow Charter).

³ JPS Brief at 2.

necessary parties not originally included in a lawsuit.⁴ In other words, Rule 19 is not a basis for *dismissing* parties; rather, it is a mechanism for *bringing in* new parties.

In this case, JPS was named in the complaint when the lawsuit was filed, so Rule 19 is irrelevant.

II. JPS is a Necessary Party.

Even if Rule 19 were relevant, JPS's motion should still be denied because its absence would prevent Plaintiffs from obtaining relief.

Rule 19 of the Mississippi Rules of Civil Procedure explains that a necessary party is any party "in [whose] absence complete relief cannot be accorded among those already parties."⁵ JPS clearly meets this standard: by its own admission, it is making payments to charter schools. A full and complete injunction of Section 37-28-55 is impossible without JPS's involvement in this case.⁶ Therefore, Plaintiffs would be substantially prejudiced if JPS is dismissed from this case.

JPS argues that it should not be a party to this lawsuit because it is simply "compl[ying] with its legal obligations under the CSA."⁷ But JPS's good faith is irrelevant. The only relevant question is whether JPS is violating the Mississippi Constitution.

The Mississippi Supreme Court's decision in *Pascagoula School District v. Tucker*⁸ is illustrative. In *Tucker*, the plaintiffs sued to enjoin a statute that required certain school districts to share their *ad valorem* tax revenue with other school districts.

⁴ *Evans v. Clemons*, 872 So. 2d 23, 27 (Miss. Ct. App. 2003) ("The purpose of Rule 19 is to protect the interests of the absent parties so as to ensure a disposition that is fair and one that is complete.").

⁵ Miss. R. Civ. P. 19(a)(1).

⁶ See 50 C.J.S. Judgments § 1117 ("In general, a valid and final judgment is binding *on all parties of record* in the action or proceeding in which the judgment is rendered;" however, a judgment "will have no effect on the rights of necessary unjoined parties.") (citing *Hertz Corp. v. Piccolo*, 453 So. 2d 12 (Fla. 1984)).

⁷ JPS Brief at 2.

⁸ *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598 (Miss. 2012).

The lawsuit named four defendants: a county tax collector, a county tax assessor, a board of supervisors, and the State.⁹

When the Court struck down the statute, it enjoined enforcement as to all the defendants. It made no suggestion that the local defendants were entitled to avoid judgment simply because they did not enact the statute or because they were “just following the law.” The only fact that the Court considered was whether Defendants’ actions under the statute violated the Constitution, regardless of whether such actions were done in good faith.

Additionally, JPS is obligated to offer some authority in support of its request for dismissal.¹⁰ JPS has failed to meet that requirement. JPS offers no authority suggesting it is entitled to dismissal simply because it followed, rather than enacted, this unconstitutional statute.

III. The Plaintiffs Have Made Allegations Against JPS.

JPS claims that “this matter can be resolved without the District being a named party” and that “[n]o party has made any allegations against the District.” Those arguments are patently incorrect. The Plaintiffs unambiguously allege that JPS has paid \$1.6 million to charter schools, and JPS acknowledges these payments.¹¹ And without JPS’s participation in this case, this Court’s Final Judgment will not bind JPS.

The only issue in this case is whether the CSA’s requirements for payments to charter schools violate the Mississippi Constitution. Just two entities have made such payments; JPS is one of them. The Plaintiffs cannot stop these unconstitutional

⁹ *Id.* at 601.

¹⁰ *Walker v. State*, 913 So. 2d 198, 222 (Miss. 2005) (“A review of Walker’s brief reveals that he has not cited any relevant authority to support his argument. Therefore, Walker is procedurally barred, and we are not required to review this issue.”).

¹¹ JPS Brief at 2.

payments without enjoining the two entities making such payments. As a result, JPS must remain a party in this case.

IV. Conclusion.

The Plaintiffs are only required to allege that JPS's actions are unconstitutional. The Plaintiffs have done so. Without JPS's participation in this case, a full and complete injunction of Section 37-28-55 will be impossible. Therefore, JPS's motion to dismiss must be denied.

RESPECTFULLY SUBMITTED this Twenty-Seventh day of February 2017.

/s/ Will Bardwell
Will Bardwell
Counsel for the Plaintiffs

OF COUNSEL:

William B. Bardwell (Miss. Bar No. 102910)
Jody E. Owens, II (Miss. Bar No. 102333)
Lydia Wright (Miss. Bar No. 105186)
Southern Poverty Law Center
111 E. Capitol Street, Suite 280
Jackson, Mississippi 39201
Phone: (601) 948-8882
Facsimile: (601) 948-8885
E-mail: will.bardwell@splcenter.org
E-mail: jody.owens@splcenter.org
E-mail: lydia.wright@splcenter.org

CERTIFICATE OF SERVICE

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

SO CERTIFIED this Twenty-Seventh day of February 2017.

/s/ Will Bardwell
Will Bardwell
Counsel for the Plaintiffs