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 IN OPPOSITION TO MIDTOWN CHARTER SCHOOL'S MOTION FOR SUMMARY JUDGMENT

It would be difficult to imagine anyone with a stronger, more direct interest in the support of public schools than schoolchildren and their taxpayer parents. Recognizing this, when parents sought to intervene as Defendants in this case, not one of the Defendants opposed intervention or suggested that the parents did not have standing. This Court allowed those parents to intervene. The Plaintiffs are parents who live in Jackson, pay state and local taxes, and send their children to the Jackson Public School District. They should be treated no differently.

The Mississippi Supreme Court repeatedly has allowed taxpayers like the Plaintiffs to challenge illegal appropriations, including for school funding.[1] The Plaintiffs easily satisfy Mississippi's liberal standing requirements. Accordingly, Midtown Charter's motion for summary judgment[2] must be denied.

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[1] *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598, 600 (Miss. 2012).
[2] Motion for Summary Judgment and Combined Memorandum Brief of Intervenors Midtown Partners, Inc. and Midtown Public Charter School [Docket No. 50] (hereinafter "Midtown Charter Brief").

I. Midtown Charter Incorrectly Relies on Federal Courts' Standing Requirements. Mississippi's Standing Requirements Only Require a "Colorable Interest" or an "Adverse Effect." In This Case, the Plaintiffs Have Both.

"Mississippi's standing requirements are quite liberal."[3] Unlike the United States Constitution, the Mississippi Constitution does not require that courts limit themselves to reviewing actual cases and controversies. For that reason, Mississippi courts have been "more permissive in granting standing to parties who seek review of governmental actions."[4] Standing exists as long as a plaintiff "assert[s] a colorable interest in the subject matter of the litigation or experience[s] an adverse effect from the conduct of the defendant."[5]

Here, the Plaintiffs satisfy both tests. First, the Plaintiffs are taxpayers, and the Mississippi Constitution guarantees them that state school funds and *ad valorem* tax revenue cannot be redistributed to schools outside the Constitution's system of "free schools."[6] Likewise, the Plaintiffs' children (on whose behalves the Plaintiffs proceed) have a constitutionally protected property interest in Mississippi's public schools,[7] and an interest in ensuring that their schools receive all the financial support to which those schools are legally entitled. These "colorable interests" give the Plaintiffs standing.

Second, the CSA creates an "adverse effect" on the Plaintiffs' children. The Mississippi Constitution guarantees schoolchildren a minimally adequate education,[8] and the U.S. Constitution recognizes their property interest in public education.[9] For that reason, the CSA affects the Plaintiffs' children in a fundamentally different way

[3] *Hall v. City of Ridgeland*, 37 So. 3d 25, 33 (Miss. 2010) (quoting *Burgess v. City of Gulfport*, 814 So. 2d 149, 152-53 (Miss. 2002)).
[4] *Id.*
[5] *Id.*
[6] Miss. Const. art. VIII, § 206; Miss. Const. art. VIII, § 208.
[7] *Goss v. Lopez*, 419 U.S. 565 (1975).
[8] *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985).
[9] *Goss v. Lopez*, 419 U.S. 565 (1975).

than it affects the general public. These children suffer an adverse effect that is actionable, and their parents (proceeding as their children's next friends) have standing to prevent further injury.

A. As Taxpayers, the Parents Have a "Colorable Interest" in School Funding.

The existence of a "colorable interest" turns on "whether the particular plaintiff had a right to judicial enforcement of a legal duty of the defendant or whether a party plaintiff can show in himself a *present, existent* actionable title or interest, and demonstrate that this right was complete at the time of the institution of the action."[10] The Mississippi Supreme Court repeatedly has found that taxpayers have standing to challenge expenditures not authorized by law, especially in the context of funding public schools. Further, the U.S. Supreme Court has recognized that children have a constitutionally protected property interest in the public education offered by their state.[11]

Pascagoula School District v. Tucker[12] is instructive. In that case, plaintiffs challenged the constitutionality of a statute requiring a school district to share its *ad valorem* tax revenue with other school districts. The Court explained that the case "affect[ed] the rights of all taxpayers in Jackson County and [was] of grave importance to every school district in the county."[13] Standing was so obvious that the Court did not even bother to debate it.

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[10] *Hotboxxx, LLC v. City of Gulfport*, 154 So. 3d 21, 27 (Miss. 2015) (emphasis in original).
[11] *Goss v. Lopez*, 419 U.S. 565 (1975).
[12] *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598 (Miss. 2012).
[13] *Id.* at 604.

Similarly, in *Prichard v. Cleveland*,[14] a group of physicians challenged a hospital's efforts to lease its nurses' quarters as private office space. The physicians brought the suit in their individual capacities and in their capacities as taxpayers.[15] The Mississippi Supreme Court held that "[t]he complainants, as taxpayers, had standing to bring this suit . . . ."[16]

The Mississippi Supreme Court's recent decision in *Hotboxxx, LLC v. City of Gulfport*[17] stands in contrast. In *City of Gulfport*, an adult entertainment retailer signed a lease for commercial office space. The lease provided that if the retailer could not obtain the licenses necessary to run the establishment, then the lease would be void.[18] The retailer applied for a license to operate the business, but because the application was incomplete, the City did not approve it.[19] Meanwhile, the City adopted zoning regulations that effectively prohibited the retailer from operating his adult business in his leased office space.[20]

The retailer filed suit to challenge the zoning regulations' constitutionality, but the Mississippi Supreme Court concluded that he lacked standing. The Court based its decision on the fact that the retailer's failure to secure a license had voided the lease.[21] Without a valid lease, the retailer lacked any interest in the property affected by the

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[14] *Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975).
[15] *Id.* at 730 ("They further stated that they brought this suit 'in their own behalf and in behalf of all other taxpayers similarly situated who are invited to join this action.'"). *See also Canton Farm Equipment, Inc. v. Richardson*, 501 So. 2d 1098, 1108-09 (Miss. 1987) (departing from requirement that taxpayer suits invite public to join suits against local authorities that make expenditures unauthorized by law) ("No doubt this prerequisite was fashioned in a former time to deter frivolous lawsuits. Today we have other, more realistic procedural vehicles available for that purpose.") (internal citations omitted).
[16] *Prichard*, 314 So. 2d at 732.
[17] *Id.*
[18] *Id.* at 27-28.
[19] *Id.* at 22-23.
[20] *Id.* at 23.
[21] *Id.* at 28.

zoning regulations; and without an interest in the property, the retailer had no colorable interest at stake.[22]

The case at bar is in line with *Prichard* and *Tucker*, not *City of Gulfport*. In this case, the Plaintiffs are taxpayers, whose state taxes and local *ad valorem* taxes have been unconstitutionally siphoned away by charter schools. Additionally, the Plaintiffs are next friends of schoolchildren with a constitutional right to a minimally adequate education and a direct interest in the funding of their schools. Thus, the Plaintiffs – both as taxpayers and parents of schoolchildren – have a colorable interest in this case's subject matter. They suffer an adverse effect when their school district unconstitutionally subsidizes charter schools. Therefore, standing exists.

Midtown Charter repeatedly argues that the Plaintiffs' claims have no colorable interest in JPS's funding, and that their case rests on nothing more than "a speculative fear."[23] This is patently incorrect. What once might have been fear is now a stark reality: since August 2015, the CSA has taken more than $4 million from JPS. By the end of the current school year, the damage will be nearly $6 million.[24] The Plaintiffs and their children, on whose behalves they proceed, have a colorable interest in addressing this unconstitutional deprivation of their school's funding.

[22] *Id.* ("In the instant case, Hotboxxx's lease was pendent on obtaining the appropriate licenses. The chancery court held the application for the privilege license to be invalid, and we upheld that finding. Thus, the lease is void, and Hotboxxx has no interest in the land, and therefore, under Mississippi case law, no standing.").

[23] Midtown Charter Brief at 17. *See also* Midtown Charter Brief at 14 (arguing that Plaintiffs' injury is merely "philosophical").

[24] Memorandum in Support of Plaintiffs' Superseding Motion for Summary Judgment [Docket No. 52] at 5.

1. Taxpayers Have a Colorable Interest in Preventing Appropriations Not Authorized By Law.

Taxpayers have a colorable interest in ensuring that government appropriations comply with the law. Therefore, the Mississippi Supreme Court has a long history of allowing taxpayers to challenge illegal appropriations.

For example, in *Prichard v. Cleveland*,[25] a hospital prepared to lease its nurses' quarters as private office space. A group of physicians filed suit to challenge the decision, and the Court held that "[t]he complainants, as taxpayers, had standing to bring this suit . . . ."[26]

Likewise, in *Canton Farm Equipment v. Richardson*,[27] a heavy equipment vendor bid on a county's offer to buy two backhoes. Although the vendor submitted the low bid, the county rejected it.[28] When the vendor sued the county alleging an illegal appropriation, the circuit court held that the vendor was "a mere taxpayer" and dismissed the suit for lack of standing.[29] The Mississippi Supreme Court reversed that decision and concluded that the vendor, "as both an aggrieved bidder and a taxpayer[,] had standing to bring the action."[30]

2. Taxpayers Have Standing to Attack the Constitutionality of Laws that Affect School Funding.

More specifically, the Mississippi Supreme Court has permitted taxpayers to challenge the constitutionality of school funding mechanisms.

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[25] *Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975).
[26] *Prichard*, 314 So. 2d at 732.
[27] *Canton Farm Equipment*, 501 So. 2d 1098.
[28] *Id.* at 1100.
[29] *Id.* at 1105.
[30] *Richardson v. Canton Farm Equipment, Inc.*, 608 So. 2d 1240, 1244 (Miss. 1992) (citing *Canton Farm Equipment*, 501 So. 2d 1098).

For example, in *Pascagoula School District v. Tucker*[31] (the facts of which are nearly identical to the case at bar), plaintiffs challenged the constitutionality of a statute requiring a school district to share its *ad valorem* revenue with other school districts. One of the plaintiffs was "an individual taxpayer within the district."[32] The issue of standing was not raised by the Court or the parties, and at no point did the Court suggest that standing was absent. To the contrary, the Court explained that the case "affect[ed] the rights of all taxpayers in Jackson County and is of grave importance to every school district in the county."[33]

The parents in this case are identically situated to the taxpayer plaintiffs in *Tucker*. Both cases involve taxpayer challenges to laws affecting *ad valorem* revenue that "affect the rights of all taxpayers in [the] county." Standing existed in *Tucker*, and it exists here.

Likewise, in *Chance v. Mississippi State Textbook Rating and Purchasing Board*,[34] a group of citizens sued in an effort to end the practice of loaning state-owned textbooks to students at private schools. The plaintiffs sued in their capacities as "resident citizens, property owners and taxpayers of the state of Mississippi."[35] The Court ruled against the plaintiffs, but not before acknowledging that they had standing to pursue the case.[36]

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[31] *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598 (Miss. 2012).
[32] *Id.* at 601.
[33] *Id.* at 604.
[34] *Chance v. Miss. State Textbook Rating & Purchasing Bd.*, 190 Miss. 453, 200 So. 706 (1941).
[35] *Id.* at 708.
[36] *Id.* at 709 ("That complainants have met the requirements of a taxpayers' suit is clear.").

3. The Mississippi Supreme Court Repeatedly Has Found That Taxpayers Have Standing to Bring Public-Interest Cases.

Confirming the constitutionality of government action is at the heart of the judiciary's responsibilities.[37] Allowing taxpayers to challenge the constitutionality of school funding legislation is consistent with Mississippi's broader practice of allowing citizens to bring public interest lawsuits. The Mississippi Supreme Court has found that legislators have standing "as electors and taxpayers" to challenge the rejection of a ballot initiative[38] and to challenge the lieutenant governor's authority to deprive them of committee appointments.[39]

The Mississippi Supreme Court's decision in *Fordice v. Bryan*[40] is illustrative. In *Fordice*, three legislators sued to have the governor's partial vetoes of a series of bond bills declared unconstitutional. In response, the governor challenged the legislators' standing.[41] The Supreme Court explained that the legality of the appropriations decisions was "of considerable constitutional importance to the executive and legislative branches of government, *as well as to all citizens and taxpayers of Mississippi*."[42] For that reason, the Court concluded that the plaintiffs, "as legislators *and taxpayers*, had standing to bring suit since they asserted a colorable interest in the litigation."[43]

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[37] "The interpretation of the constitution becomes the duty of the judicial department when the meaning of that supreme document is put in issue." *Fordice v. Bryan*, 651 So. 2d 998, 1003 (Miss. 1995) (quoting *Alexander v. State ex rel. Allain*, 441 So. 2d 1329, 1333 (Miss. 1983)).
[38] *State ex rel. Moore v. Molpus*, 578 So. 2d 624, 632 (Miss. 1991) ("Secretary Molpus' refusal of Reps. Vecchio's and Diaz's petition inflicts upon them a legally cognizable adverse effect.").
[39] *Dye v. State ex rel. Hale*, 507 So. 2d 332, 338 (Miss. 1987) ("The ongoing actions of Lt. Gov. Dye certainly have an adverse impact upon Sens. Hale and Taylor sufficient to confer upon them standing to sue.").
[40] *Fordice*, 651 So. 2d 998.
[41] *Id.* at 1003.
[42] *Id.* (emphasis added).
[43] *Id.* (emphasis added).

4. The Plaintiffs Were Not Required to Wait on Someone Else to File This Challenge.

Midtown Charter argues that taxpayers cannot challenge governmental action unless someone else has declined to file the challenge.[44] It is not at all clear that this archaic requirement still exists.[45] For example, in *Pascagoula School District v. Tucker*, a case that was nearly identical to this case, the Court struck down an unconstitutional statute without any indication that the individual plaintiffs – who included a local taxpayer[46] – ever demanded that anyone else challenge the law. Likewise, in *Fordice v. Bryan*, the Supreme Court made no indication that the plaintiffs ever demanded that anyone else bring their suit, but they still had taxpayer standing.[47]

Even if Midtown Charter is correct that taxpayer standing exists only where "no party who meets traditional standing requirements will ever pursue the challenge,"[48] this case clearly complies. The CSA is now four years old, and excepting only the case at bar, no challenge to its constitutionality has ever been brought. Midtown Charter concedes that JPS would have standing to challenge the CSA's constitutionality,[49] but JPS wants no part of this case: not only has JPS never challenged the CSA, it refuses to address the issue[50] and urges the Court to dismiss it as a party.[51] The Attorney General is

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[44] Midtown Charter Brief at 15.
[45] *See* Standing to Sue – Retrenchment, 3 MS Prac. Encyclopedia MS Law § 19:213 (2d ed.) ("The Mississippi Supreme Court may recently have relaxed standing requisites 'that citizens may challenge governmental actions contrary to law where the action would otherwise escape challenge.'") (quoting *Fordice v. Thomas*, 649 So. 2d 835, 841 (Miss. 1995)).
[46] *Tucker*, 91 So. 3d at 601.
[47] *Fordice*, 651 So. 2d at 1003 (plaintiffs had taxpayer standing).
[48] Midtown Charter Brief at 15.
[49] Midtown Charter Brief at 15.
[50] Memorandum in Support of Defendant Jackson Public School District's Motion to Dismiss (hereinafter "JPS Brief") at 2 ("[T]he District takes no position on whether the CSA is or is not a violation of the Mississippi Constitution.").
[51] JPS Brief at 3 (requesting dismissal from case).

even less likely than JPS to mount a challenge, given that he strenuously defends this challenge.[52]

The writing is on the wall: no one else – not JPS, and not the Attorney General – will ever challenge the CSA's constitutionality. It is either these Plaintiffs or no one. The Plaintiffs easily satisfy Mississippi's requirements for taxpayer standing.

B. The Plaintiffs and Their Children Also Have Standing Because They Suffer an Adverse Effect That is Different Than the Effect on the General Public. The Parents' Injury is Different Than the General, Non-Taxpaying Public, and the Children's Constitutional Rights are Directly Implicated.

The Plaintiffs also have standing under Mississippi law because the CSA's redistribution of revenue rightly belonging to their children's school district is an "adverse effect."

Unlike federal courts, Mississippi courts do not require plaintiffs to show a specific "injury in fact."[53] Any adverse effect will suffice, so long as it is "different from the adverse effect experienced by the general public."[54]

In this case, the Plaintiffs' adverse effect is twofold. First, the Plaintiffs are *ad valorem* taxpayers, and the CSA therefore imposes on them an "adverse effect" that is far more direct than for other (non-taxpayer) members of the public. Second, the Plaintiffs proceed on behalf of their schoolchildren, who suffer an "adverse effect" by having resources diverted from their schools. This too is a more direct impact than upon the general (non-school-going) public. Both of these adverse effects imbue the Plaintiffs with standing.

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[52] *See* State Defendants' Answer and Defenses to Plaintiffs' First Amended Complaint [Docket No. 14] (denying that the CSA is unconstitutional).
[53] *Hotboxxx, LLC v. City of Gulfport*, 154 So. 3d 21, 27 (Miss. 2015) ("Thus, while standing in federal court requires an 'injury in fact,' standing in Mississippi is more liberal and requires a 'colorable interest in the subject matter.'").
[54] *Hall v. City of Ridgeland*, 37 So. 3d 25, 34 (Miss. 2010).

1. A Plaintiff Suffers an "Adverse Effect" When an Action Affects Her Differently Than It Affects the General Public.

When it comes to understanding the concept of an "adverse effect," *Hall v. City of Ridgeland*[55] is illustrative. In *Hall*, the City of Ridgeland agreed to allow a 13-story building in a zone that typically limited buildings to four stories in height.[56] Additionally, the City agreed to relax the zone's standard 30-foot "front-yard setback" requirement to 15 feet, thereby allowing the building to be closer to the street than it otherwise would.[57]

A group of citizens challenged the variances "Individually and as Landowners, Residents, Taxpayers, and Interested Citizens of the City of Ridgeland, Mississippi . . . ."[58] The building's developers attacked the citizens' standing.[59]

Ultimately, the Mississippi Supreme Court concluded that the citizens had standing to challenge the height variance but not the "front-yard setback" variance.

The Court agreed with the citizens that, as owners of nearby real property, they suffered an "adverse effect" that was different from the general public.[60] There was no specific, quantifiable injury; for example, none of the citizens had been forced to sell her home at a reduced value or had suffered an unexpectedly low appraisal. Nevertheless, the height variance's effect on the citizens was different than its effect on the general public. This gave the citizens standing to attack the height variance.

However, with regard to the "front-yard setback" variance, the Court reached the opposite conclusion. The Court explained that the citizens would not be able to see the

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[55] *Id.*
[56] *Id.* at 28-29.
[57] *Id.* at 31.
[58] *Id.*
[59] *Id.*
[60] *Id.* at 34 (citizens alleged "aesthetic impediment to the[ir] . . . views from their home," nighttime light pollution, and increased traffic).

abbreviated frontage from their homes,[61] and therefore, any effect on the citizens would not be "in a manner different or to a different degree than it will affect the general public."[62] Therefore, the citizens had no standing to proceed on this claim.

In this case, the Plaintiffs are affected by the CSA in the same way the height variance affected the *City of Ridgeland* homeowners. Like the homeowners and the height variance, the Plaintiffs' property interests are adversely affected by the CSA. But in this case, the adverse effect is even more compelling than in *City of Ridgeland* because the injury in this case is quantifiable. During the 2016-2017 school year, charter schools are expected to divert roughly $4 million in public money from the Jackson Public School District.[63] This shortchanging of local schools adversely affects the Plaintiffs in a way that non-local, non-taxpaying residents simply would not feel. This gives the Plaintiffs standing.

2. The CSA Adversely Affects Schoolchildren Differently Than the General Public Because Schoolchildren, Unlike the General Public, Have a Constitutional Right to a Minimally Adequate Education.

Additionally, the Plaintiffs' children suffer an adverse effect because the CSA implicates their constitutional rights to a public education. Therefore, the Plaintiffs have standing in their capacities as their children's next friends.

The U.S. Supreme Court has recognized that children have a constitutionally protected property interest in the public education offered by their state.[64] Furthermore, under Mississippi law, children have a constitutional right to a minimally adequate

[61] *Id.* at 35 (describing the front-yard setback variance as "a minor variance, and it regards a part of the subject property bordering another property owned by an entity affiliated with the Developers").
[62] *Id.*
[63] Memorandum in Support of Plaintiffs' Superseding Motion for Summary Judgment at 5.
[64] *Goss v. Lopez*, 419 U.S. 565 (1975).

public education.[65] Section 206 and Section 208 of the Mississippi Constitution bolster these rights by guaranteeing that public money properly belonging to public schools cannot be redistributed. But by siphoning money from the traditional public schools charged with providing this constitutionally guaranteed education, the CSA adversely affects schoolchildren differently than it affects the general public.

This adverse effect is not only quantifiable – it is seven figures. In their first year of operation, Jackson's two charter schools cost JPS a sum exceeding $1.8 million.[66] During the 2016-2017 school year, charter schools are expected to cost JPS roughly $4 million.[67] No group feels this injury more than JPS's schoolchildren. The unconstitutional siphoning of funds away from JPS schoolchildren is the CSA's most adverse effect of all. The impact on JPS schoolchildren is indisputable. For example, the amount diverted from JPS to charter schools this school year could have paid the salaries of 65 classroom teachers.[68] For the thousands of JPS students who would have benefitted from more teachers and a lower student-teacher ratio, the damage has been done; opportunities are bygone and continuing. These students, represented by their parents as next friends, undoubtedly have standing to challenge that injury.

II. Midtown Charter is Relying on the Wrong Law.

A. Midtown Charter Conflates the Standing Requirements for State Court and Federal Court.

Midtown Charter incorrectly conflates the state and federal requirements for standing. Under federal standing requirements, "the plaintiff must have suffered an

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[65] *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985) ("[T]he right to a minimally adequate public education created and entailed by the laws of this state is one we can only label fundamental. As such this right, to the extent our law vests it in the young citizens of this state, enjoys the full substantive and procedural protections of the due process clause of the Constitution of the State of Mississippi, whatever construction may be given the Constitution of the United States.").
[66] Memorandum in Support of Plaintiffs' Superseding Motion for Summary Judgment at 5.
[67] Memorandum in Support of Plaintiffs' Superseding Motion for Summary Judgment at 5.
[68] Memorandum in Support of Plaintiffs' Superseding Motion for Summary Judgment at 6.

'injury in fact' – an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) 'actual or imminent, not 'conjectural' or 'hypothetical.'"[69]

In state court, though, the standing threshold is much less demanding. In order to satisfy Mississippi's standing requirement, a plaintiff need only show a "colorable interest" in the litigation's subject matter or suffer an "adverse effect" that is different from the general public.

Although Midtown Charter pays lip service to Mississippi's flexible standing requirements, its Motion for Summary Judgment repeatedly applies the federal standard. The first page of Midtown Charter's brief argues, "the plaintiffs have not identified any *distinct and concrete injury* resulting from the Mississippi Legislature's creation and funding of public charter schools."[70] On page 5, Midtown Charter again contends, "[n]one of the plaintiffs, however, identify any *concrete injuries* or harms suffered by their children."[71] Again, on page 13, Midtown Charter claims, "the plaintiffs have not identified any *particularized or concrete injury* to themselves or their children."[72] And finally, on page 16, Midtown Charter reiterates its view that the Plaintiffs have not "articulate[d] a *concrete injury* arising from the [CSA]'s funding provisions."[73]

If this case were being heard in federal court, then Midtown Charter's position might deserve serious consideration. However, in Mississippi state court, the Plaintiffs easily satisfy both the "colorable interest" and "adverse effect" tests for standing.

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[69] *Lujan v. Defenders of Wildlife*, 604 U.S. 555, 560 (1992) (citations and quotations omitted).
[70] Motion for Summary Judgment and Combined Memorandum Brief of Intervenors Midtown Partners, Inc. and Midtown Public Charter School [Docket No. 50] (hereinafter "Midtown Charter Brief") at 1 (emphasis added).
[71] Midtown Charter Brief at 5 (emphasis added).
[72] Midtown Charter Brief at 13 (emphasis added).
[73] Midtown Charter Brief at 16 (emphasis added).

B. Midtown Charter's Legal Authority Supports the Plaintiffs' Standing.

Midtown Charter cites a handful of cases in which the Mississippi Supreme Court found no standing, but each of those cases is distinguishable under Mississippi's liberal standing requirements.

1. *Board of Trustees v. Ray*: No Standing for Students and Teachers Challenging Another School's Curriculum.

Midtown Charter relies heavily on the Mississippi Supreme Court's decision in *Board of Trustees of IHL v. Ray*,[74] but that case is easily distinguishable from the matter at hand. *Ray* did not concern school funding, K-12 education, *ad valorem* taxes, or even the school that the plaintiffs attended. It involved students and teachers dissatisfied with goings-on at an entirely different school.

The dispute in *Ray* involved a university's expansion.[75] A group of plaintiffs – including SBCJC, junior college students, junior college faculty, and Gulf Coast taxpayers – filed suit to enjoin the university's expansion.[76]

The Mississippi Supreme Court ultimately concluded that the junior college students, junior college faculty, and Gulf Coast taxpayers lacked standing because they had no colorable interest.[77] This is hardly surprising: the junior college students and teachers were not challenging their own school's curriculum, but rather the curriculum at a completely different school. In the case at bar, though, the Plaintiffs' schoolchildren are suing to redress injuries that they are sustaining at their own schools.

The *Ray* Court's finding that the Gulf Coast taxpayers lacked standing fits with precedent. The Mississippi Supreme Court routinely grants taxpayers standing to

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[74] *Bd. of Trustees of State Institutions of Higher Learning v. Ray*, 809 So. 2d 627 (Miss. 2002).
[75] *Id.* at 630.
[76] *Id.* at 631.
[77] *Id.* at 629-30.

challenge illegal appropriations,[78] but appropriations were not at issue in *Ray*. The issue in *Ray* was whether taxpayers had standing to challenge a university's academic curriculum. The absence of standing in *Ray* accords with the multitude of cases in which the Supreme Court has permitted taxpayers to attack unauthorized appropriations, as the Plaintiffs are doing here.

2. *Burgess v. City of Gulfport*: No Standing for Residents Who Lacked A Property Interest And Were Not Affected Differently Than The General Public.

Similarly, *Burgess v. City of Gulfport*[79] merely reinforces the Plaintiffs' standing. In *Burgess*, a group of residents challenged the City of Gulfport's decision to allow removal of a tree. But the residents did not own the property in question, and they did not own land around the property in question.[80] Instead, they argued that their residences in the City of Gulfport granted them standing. The Mississippi Supreme Court disagreed and concluded that the residents had neither a colorable interest nor an adverse effect.[81] As the Court explained, the effect of the tree's removal on the residents was no different than on any other member of the public.[82]

In the case at bar, though, the Plaintiffs not only have an interest in the tree, *they are the tree*. In *Burgess*, the Plaintiffs had no property right or property interest in the tree. Further, the tree's removal did not diminish their property values, and it did not compromise any of their legal rights. In contrast, here the Plaintiffs have standing because they are experiencing an adverse effect – different than that experienced by the

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[78] *Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975); *Canton Farm Equipment, Inc. v. Richardson*, 501 So. 2d 1098, 1108-09 (Miss. 1987); *Fordice v. Bryan*, 651 So. 2d 998 (Miss. 1995); *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598 (Miss. 2012).
[79] *Burgess v. City of Gulfport*, 814 So. 2d 149 (Miss. 2002) (cited by Midtown Charter Brief at 11).
[80] *Id.* at 153.
[81] *Id.*
[82] *Id.*

public generally – as a result of the CSA. Specifically, Plaintiffs' children attend the schools whose financial support is being siphoned away by the CSA. This diversion of public taxpayer funds deprives schoolchildren of the full financial support their schools otherwise would enjoy. This is a direct, palpable, and adverse effect.

If the Plaintiffs were merely concerned citizens from some far-flung corner of the state, then *Burgess* would command dismissal. Instead, the Plaintiffs are taxpayers of the school district, and their children attend the schools whose funding is attacked. There is no segment of the public more directly and adversely affected by the CSA than the Plaintiffs. The contrast between this case and *Burgess* could not be starker.

III. Conclusion.

The Plaintiffs are taxpayers of the City of Jackson and parents whose children attend JPS schools. It would be difficult to imagine parties with a more direct, colorable interest in the subject matter of this case. It would be equally difficult to find a group upon whom the CSA leaves a more adverse effect. As taxpayers, parents, and schoolchildren, the Plaintiffs have standing in this case. Therefore, Midtown Charter's motion for summary judgment must be denied.

RESPECTFULLY SUBMITTED this Twenty-Seventh day of February 2017.

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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