

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**No. 2018-CA-235****CHARLES ARAUJO, *ET AL.*****APPELLANTS****v.****GOVERNOR PHIL BRYANT, *ET AL.*****APPELLEES**

On Appeal From The Chancery Court of Hinds County, Mississippi, First Judicial District

MOTION FOR LEAVE TO FILE BRIEF OF CLARKSDALE MUNICIPAL SCHOOL DISTRICT AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Clarksdale Municipal School District (“the District”), a public school district in the State of Mississippi, respectfully moves this Court, pursuant to Mississippi Rule of Appellate Procedure 29(a), for leave to submit an *amicus curiae* brief in support of Plaintiffs-Appellants.

“The practice of permitting *amicus curiae* participation to inform or advise the court is as old as the common law dating as far back as 1353.” *Taylor v. Roberts*, 475 So. 2d 150, 151 (Miss. 1985) (citation omitted). “The trend under modern practice regarding *amicus curiae* participation has been to liberally allow participation to help the court’s general understanding and insight central to the court’s decision and possible implications of its rulings.” *Id.*; *see also* Comment to Miss. R. App. Proc. 29 (“Briefs of an *amicus curiae* are allowed . . . consistent with the accepted view that such briefs, in appropriate cases, are of genuine assistance to the court and facilitate a more thorough understanding of the facts and law.”).

The bases for entertaining an *amicus curiae* brief are well known:

A motion for leave shall demonstrate that (1) amicus has an interest in some other case involving a similar question; or (2) counsel for a party is inadequate or the brief insufficient; or (3) there are matters of fact or law that may otherwise escape the court's attention; or (4) the amicus has substantial legitimate interests that will likely be affected by the outcome of the case and which interests will not be adequately protected by those already parties to the case.

Miss. R. App. Proc. 29(a). As set forth more fully below, leave should be granted under the third and fourth bases identified in Rule 29(a).

First, leave should be granted because there are matters of fact or law that may otherwise escape the Court's attention. This litigation is complex, and involves not only constitutional and statutory interpretation and application, but also the consideration of policy implications that could affect thousands of Mississippi's public school students. The District is a public school district in Clarksdale, Mississippi, and is therefore well-positioned to aid the Court in highlighting key areas for consideration and identifying real-world effects of the statutes at issue in this appeal. Among other matters, the District seeks to bring to the Court's attention data gathered from a Mississippi Public Records Act request, the results of which show how the Court's ruling might (or might not) affect Mississippi's student body. Furthermore, the District's brief would distinguish the funding mechanisms for several non-traditional school programs, which the Appellees incorrectly conflated with the challenged statute in Chancery Court. Finally, Defendants will have *de facto* amici – intervenors below – submitting briefs in support of their positions, so the Court would benefit from hearing the District's arguments from the opposite point of view.

Second, leave should also be granted because the District has substantial and legitimate interests that will likely be affected by the outcome of the case. The District has a substantial

legitimate interest of providing the best education possible for its students. Whether the District can devote the resources necessary to make this goal a reality hinges on the outcome of this case. In the 2017-2018 school year, the District had a total enrollment of 2,624 students. The District receives funding through, among other revenue streams, *ad valorem* tax revenue—the focus of this appeal. Indeed, in 2016-2017, 14.15% of the District’s revenue came from local sources, including *ad valorem* revenues. Clarksdale Collegiate, a new charter school, will be operating in Clarksdale, Mississippi for the 2018-2019 school year. The District presents this brief in the interest of ensuring that all *ad valorem* tax revenue remains with it, rather than being diverted to the new charter school.

Moreover, the District’s interests will not be adequately protected by those already party to the case. Plaintiffs are taxpayers who have children attending school in the Jackson Public School District. There is no party to this case that can address the issues with the same experience that the District, as a public school district in this state, can provide.

For the foregoing reasons, the District respectfully requests leave to submit an *amicus curiae* brief in support of Plaintiffs-Appellants.

A copy of the District’s proposed *amicus curiae* brief in support of Plaintiffs-Appellants is attached hereto as Exhibit A.

Dated this 15th day of August, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that, simultaneous with its filing, a true and correct copy of the foregoing Motion was served on all counsel of record via the Court's electronic filing system.

Respectfully submitted this 15th day of August 2018.

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Exhibit A

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 2018-CA-235

CHARLES ARAUJO, *ET AL.*

PLAINTIFFS-APPELLANTS

v.

GOVERNOR PHIL BRYANT, *ET AL.*

DEFENDANTS-APPELLEES

On Appeal From The Chancery Court of Hinds County, Mississippi, First Judicial District

**BRIEF OF CLARKSDALE MUNICIPAL SCHOOL DISTRICT AS *AMICUS CURIAE* IN
SUPPORT OF PLAINTIFFS-APPELLANTS**

Dated: August 15, 2018

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Miss. Code Ann. § 37-27-37

Miss. Code Ann. § 37-27-617

Miss. Code Ann. § 37-28-1, *et seq.*1

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Miss. Code Ann. § 37-139-136

Miss. Code Ann. § 37-140-35

Miss. Code Ann. § 37-140-135, 6

Miss. Code Ann. § 37-151-78

Other Authorities

Miss. Const., § 206 *passim*

Bracey Harris, *Mississippi School for Math and Science Cuts Enrollment, Cites Funding*, CLARION LEDGER (June 2, 2016), *available at* <https://www.clarionledger.com/story/news/2016/06/01/school-math-and-science-cuts-enrollment-citing-funding/85191634/>6

Education Funding in Mississippi: How Are We Actually Doing?, THE CENTER FOR EDUCATION INNOVATION, <http://www.mscei.com/blog/education-funding-in-mississippi-how-are-we-actually-doing> (last visited Aug. 14, 2018).....2

MISSISSIPPI DEPARTMENT OF EDUCATION, Enrollment Data, *available at* <https://mdereports.mdek12.org/>1

FY 2017 Annual Report: Analysis of Funding for Mississippi Charter Schools and the Charter School Authorizer Board, JOINT LEGISLATE COMMITTEE ON PERFORMANCE EVALUATION AND EXPENDITURE REVIEW (Dec. 18, 2017)3

Arielle Dreher, *MAEP Formula Explained*, JACKSON FREE PRESS (Oct. 21, 2015, 1:51 PM)8

Mississippi Public Education Funding, MISSISSIPPI TODAY (Apr. 16, 2018), <https://mississippitoday.org/2018/04/16/analysis-shows-state-spends-33000-than-national-average-on-each-public-school-student/>.....2

MSA Foundation, MISSISSIPPI SCHOOL OF THE ARTS, <https://www.msabrookhaven.org/support/msa-foundation/> (last viewed Aug. 2, 2018)6

Covington, Mar. 12, 2010, Miss. A.G. Op. # 2010-00098, 2010 WL 1556675, at *1 (Miss. A.G. Mar. 12, 2010).....8

School Funding, CENTER ON BUDGET AND POLICY PRIORITIES (Nov. 29, 2017), <https://www.cbpp.org/research/state-budget-and-tax/a-punishing-decade-for-school-funding>2, 3

INTEREST OF *AMICUS CURIAE*

Clarksdale Municipal School District (hereinafter, “the District”) is a public school district in Clarksdale, Mississippi. In the 2017-2018 school year, the District had a total enrollment of 2,624 students.¹ The District receives funding through, among other revenue streams, *ad valorem* tax revenue that is the focus of this appeal. In 2016-2017, 14.15% of the District’s revenue came from local sources, including *ad valorem* revenues. Clarksdale Collegiate, a new charter school, will be operating in Clarksdale for the 2018-2019 school year. The District presents this brief in the interest of ensuring that all *ad valorem* tax revenue remains with the local school district in which it was collected (*i.e.*, the District itself), rather than being diverted to charter schools like Clarksdale Collegiate.

INTRODUCTION

Mississippi public schools are severely underfunded. Mississippi ranks among the lowest in the country in per-pupil spending, and public schools in the state are desperate for additional resources. A critical funding stream for Mississippi public schools is *ad valorem* taxes—property taxes collected by public school districts for the maintenance of schools within the district.

The Mississippi Charter Schools Act of 2013 (“CSA,” Miss. Code Ann. § 37-28-1, *et seq.*), provides for funding of charter schools in two ways: *ad valorem* tax funds from local school districts and per-pupil funds from the Mississippi Department of Education. *See* Miss. Code Ann. § 37-28-55(1)(a). Significant quantities of *ad valorem* revenues are being diverted to charter schools from traditional public schools in Mississippi.

¹ *See* MISSISSIPPI DEPARTMENT OF EDUCATION, Enrollment Data, available at <https://mdereports.mdek12.org/>.

Plaintiffs are Mississippi state taxpayers and parents of children in the Jackson Public School District. They filed suit in 2016, seeking to invalidate as unconstitutional the *ad valorem* funding provision of the CSA under Section 206 of the Mississippi Constitution, which requires that *ad valorem* revenue be collected by a district to maintain “its schools.” The District submits this brief in support of Plaintiffs’ appeal of the Hinds County Chancery Court’s grant of summary judgment in favor of Defendants.

ARGUMENT

I. ADDITIONAL FUNDING FOR MISSISSIPPI’S PUBLIC SCHOOLS IS A DESPERATE PUBLIC NEED

The issues presented by Plaintiffs’ appeal are of vital importance to Mississippi’s students. Public schools in Mississippi are severely underfunded. A recent study found that a high school senior in Mississippi received approximately \$33,000 less in state funding than the national average of \$137,467 over the course of his or her public school education.² This makes Mississippi the lowest in the region in per-pupil spending.³ Nationally, Mississippi’s per-pupil spending ranks in the bottom five.⁴

Funding for Mississippi’s public schools has particularly suffered in the decade since the 2008 recession. A study by the Center on Budget and Policy Priorities shows that funding for Mississippi schools remained 12.4% below pre-recession levels as of 2015.⁵ As of 2018, funding is still at 11.1% below pre-recession levels, making Mississippi seventh worst in the

² See Kayleigh Skinner, *Analysis Highlights Shortfall in Mississippi Public Education Funding*, MISSISSIPPI TODAY (Apr. 16, 2018), <https://mississippitoday.org/2018/04/16/analysis-shows-state-spends-33000-than-national-average-on-each-public-school-student/>.

³ *Id.*

⁴ *Education Funding in Mississippi: How Are We Actually Doing?*, THE CENTER FOR EDUCATION INNOVATION, <http://www.mscei.com/blog/education-funding-in-mississippi-how-are-we-actually-doing> (last visited Aug. 14, 2018) (citing *Education Spending Per Student by State*, GOVERNING, <http://www.governing.com/gov-data/education-data/state-education-spending-per-pupil-data.html> (last updated June 1, 2018)). The Governing article reports on and summarizes data from the 2016 Annual Survey of School System Finances by the U.S. Census Bureau, which is available at <https://www.census.gov/programs-surveys/school-finances.html>.

⁵ Michael Leachman, *A Punishing Decade for School Funding*, CENTER ON BUDGET AND POLICY PRIORITIES (Nov. 29, 2017), <https://www.cbpp.org/research/state-budget-and-tax/a-punishing-decade-for-school-funding>.

nation on this metric.⁶ But in fiscal year 2017, \$1,419,348 in *ad valorem* tax revenue was diverted to charter schools from traditional public schools.⁷ In other words, while Mississippi's students are in desperate need for additional funding for public schools, a significant amount of *ad valorem* revenue is being diverted to charter schools.

II. REVERSAL HERE WOULD NOT RENDER FUNDING MECHANISMS FOR OTHER NON-TRADITIONAL SCHOOL PROGRAMS UNCONSTITUTIONAL

Section 206 of the Mississippi Constitution unambiguously states that a school district may only “levy an additional tax, as prescribed by general law, to maintain its schools” (emphasis added). In *Pascagoula School District v. Tucker*, this Court held that the plain language of Section 206 prohibits a school district's *ad valorem* taxes from being diverted to maintain another district.⁸ As noted above, from the many options available to the Mississippi Legislature for funding charter schools, the CSA includes only two funding mechanisms. One allows for funding of charter schools by the Mississippi Department of Education. That provision is not the subject of this appeal. The other mandates that *ad valorem* tax revenue be diverted from the public schools in a district to charter schools. Plaintiffs argue, and the District agrees, that this latter mechanism is unconstitutional under Section 206 and *Tucker*.

The conclusion that the CSA's *ad valorem* funding provision is unconstitutional is the only outcome faithful to the plain meaning of Section 206 and the holding in *Tucker*. In *Tucker*, this Court held that “Section 206 clearly states that the purpose of the tax is to maintain the levying school district's schools.”⁹ Charter schools are, by statute, not part of the school district in which they are located, and thus are not a part of the school district that levies *ad valorem*

⁶ *Id.*

⁷ *FY 2017 Annual Report: Analysis of Funding for Mississippi Charter Schools and the Charter School Authorizer Board*, JOINT LEGISLATE COMMITTEE ON PERFORMANCE EVALUATION AND EXPENDITURE REVIEW (Dec. 18, 2017), at 28, available at <http://www.peer.ms.gov/Reports/reports/rpt615.pdf> (last visited Aug. 14, 2018).

⁸ 91 So. 3d 598, 604 (Miss. 2012).

⁹ *Id.* at 605.

taxes.¹⁰ Because charter schools are by definition not a part of any school district levying *ad valorem* taxes, and because Section 206 instructs that *ad valorem* taxes may *only* be used to maintain the levying school district's *own* schools, Section 206 forbids the transfer of *ad valorem* revenue to charter schools. Therefore, the section of the CSA that requires the transfer of district *ad valorem* revenue to charter schools violates Section 206 and is unconstitutional.

The District expects that Defendants will argue, as they did below,¹¹ that Plaintiffs' reading of Section 206 and *Tucker*, if accepted by this Court, would have the effect of invalidating the funding mechanisms for some other non-traditional educational programs within Mississippi. These programs include: (i) the Mississippi School for Mathematics and Science, (ii) the Mississippi School of the Arts, (iii) Agricultural Schools, (iv) Alternative School Programs, and (v) Transfer Programs.¹² Defendants' theory seems to be that because these programs rely in some part on other funding, and Section 206 mandates that school district *ad valorem* revenues cannot be diverted to charter school programs outside the district, the above programs would also fail to pass constitutional muster if Plaintiffs are correct in their reading of Section 206.

But Defendants' argument is a strawman for one simple reason: unlike the CSA, which mandates that *ad valorem* revenues be diverted outside of the levying school district and on to charter schools, none of the funding provisions for the above programs requires the use of district *ad valorem* revenues. Therefore, none are invalidated pursuant to the proper reading of Section 206.

¹⁰ 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.").

¹¹ See e.g., R. 797-801 (Def.-Intervenors Gladys Overton, et al. Cross Mot. for Summ. J. and Mot. in Opp. to Pls.' Mot. for Summ. J. at 11-15).

¹² Defendants also argued below that conservatorships and the Mississippi Recovery School District would be unconstitutional under Plaintiffs' theory. However, those arguments addressed issues arising solely under Section 208 of the Mississippi Constitution not raised by this appeal. The District therefore does not address these issues.

In any event, just like the CSA, the statutes governing many of these non-traditional school programs include alternative sources of financing—*i.e.*, revenue streams aside from district *ad valorem* tax revenues. Even if Defendants are correct that Plaintiffs’ position threatens *ad valorem* funding for these other programs, this case would have no effect on the other non-*ad valorem* funding sources that can, by law, be directed to support each of these programs in a constitutional manner regardless of the outcome of this appeal.

A. Mississippi School for Mathematics and Science and Mississippi School of the Arts

A holding that the *ad valorem* funding provision of the CSA is unconstitutional will not jeopardize funding for two specialty schools that currently receive State funding: the Mississippi School for Mathematics and Science and the Mississippi School of the Arts.

The Mississippi School for Mathematics and Science (“MSMS”) is a “residential school for eleventh and twelfth grade high school students” established in 1999 to “educate the gifted and talented students of the state.”¹³ The MSMS receives funding from the state and is governed by the State Board of Education.¹⁴ Similarly, the Mississippi School of the Arts (“MSA”) is a “residential school for eleventh and twelfth grade high school students” that “provide[s] a more challenging educational experience for artistically talented and gifted students.”¹⁵ To that end, the MSA’s curriculum includes “humanities, creative writing, literature, theater, music, dance and visual arts.”¹⁶ The MSA also receives its funding from the State.¹⁷

¹³ Miss. Code Ann. § 37-139-1, et seq.

¹⁴ Miss. Code Ann. §§ 37-139-3(2); 37-139-13.

¹⁵ Miss. Code Ann. § 37-140-3.

¹⁶ *Id.*

¹⁷ Miss. Code Ann. § 37-140-13 (“All expenditures for the school shall be paid by the State Treasurer.”).

The reason that neither MSMS nor MSA offends Section 206 is that neither school receives any school district's *ad valorem* taxes.¹⁸ Unlike charter schools, which draw revenue from district *ad valorem* taxes, the MSMS and MSA rely on funding from the State¹⁹ and, in part, on private contributions.²⁰ Because neither the MSA nor the MSMS is funded by *ad valorem* taxes, funding for neither school would be affected by a finding that the *ad valorem* funding provision of the CSA is unconstitutional under Section 206. Defendants' anticipated argument that these schools would be shuttered without *ad valorem* funds is completely counterfactual.

B. Agricultural Schools

A finding in favor of Plaintiffs also would not affect funding for agricultural schools because the statute governing agricultural schools does not require the diversion of *ad valorem* taxes from the levying district to agricultural schools. The funding provision for agricultural schools comprises one short paragraph:

The county superintendent of education of a county which does not alone or in conjunction with another county maintain an agricultural high school or an agricultural high school-junior college, may provide, with the approval of the county board of education and the board of supervisors, for the attendance of pupils residing in the county of which he is superintendent of education, at an agricultural high school or an agricultural high school-junior college located in a county adjoining thereto, and pay by certificate drawn by him on the county school funds for the instruction of such pupils. However, the amount so paid shall not be greater than

¹⁸ See Miss. Code Ann. § 37-139-13 (state treasury is the source of funding for “[a]ll expenditures” for MSMS); Miss. Code Ann. § 37-140-13 (state treasury is the source of funding for “[a]ll expenditures” for MSA); see also Bracey Harris, *Mississippi School for Math and Science Cuts Enrollment, Cites Funding*, CLARION LEDGER (June 2, 2016), available at <https://www.clarionledger.com/story/news/2016/06/01/school-math-and-science-cuts-enrollment-citing-funding/85191634/> (“MSMS, the Mississippi School of the Arts and schools for the blind and deaf, . . . do not have an ad valorem tax base to draw funds from . . . Instead, they rely on allocations from the Mississippi Department of Education.”).

¹⁹ “MSMS is essentially a one-school district, but because it enrolls students from around the state, it cannot levy a millage tax to cover costs. The state must take care of the school’s every financial need.” See R. 797.

²⁰ See The MSA Foundation, MISSISSIPPI SCHOOL OF THE ARTS, <https://www.msabrookhaven.org/support/msa-foundation/> (last viewed Aug. 2, 2018).

the pro rata share of such pupils, in the actual cost of incidentals and tuition, of such agricultural high school or agricultural high school-junior college. Counties co-operating under provisions of this section shall be represented on the boards of trustees by the county superintendent of education.

Miss. Code. Ann. § 37-27-61 (emphasis added).

As the statute plainly reads, agricultural schools are not funded by district *ad valorem* revenues, but instead by a completely separate funding pool: “county school funds.” *Id.*; *see also* Miss. Code. Ann. § 37-27-3 (requiring county board of supervisors to levy property tax “for the support and maintenance” of agricultural high school located in the county). Thus, a finding that the *ad valorem* provision of the CSA is unconstitutional would not render the funding provision for agricultural schools similarly unconstitutional, and the outcome here will have no effect on the other “county school funds” available to agricultural schools.

C. Alternative School Programs

Plaintiffs’ success here also would not render unconstitutional the funding mechanism for alternative school programs operated dually by two districts. Funding for dual-operated alternative school programs does not require the diversion of *ad valorem* revenue from the levying district to alternative school programs outside the levying district’s control. Instead, the funding provision for dual-operated alternative school programs comprises a single, unambiguous sentence:

The expense of establishing, maintaining and operating such alternative school program may be paid from funds contributed or otherwise made available to the school district for such purpose or from local district maintenance funds.

Miss. Code. Ann. § 37-13-92(6) (emphasis added).

This statute provides that a district is free to choose how it funds alternative schools: expenses “may be paid from” either “funds contributed or otherwise made available to the school

district for such purpose or from local district maintenance funds” (emphasis added). The funding for alternative school programs are therefore not limited to *ad valorem* tax revenues.²¹ Thus, even if *ad valorem* taxes could no longer be used to support alternative school programs following this appeal, there would be no effect on the other tax revenues used by these programs, as they are not subject to Section 206 of the Mississippi Constitution.

D. Transfer Students

The constitutionality of the funding provision for Mississippi transfer students will similarly be unaffected by this Court’s decision here. Miss. Code. Ann. § 37-15-31 provides for five different types of student transfers. Four such transfers—codified in subsections (1)-(4)—do not provide for the levying district to compensate the transferee district with *ad valorem* revenue in any way.²² As such, any student transfers under subsections (1)-(4) will not be affected by this Court’s ruling.

The fifth type of transfer implicates “added territory” transfer students.²³ Pursuant to the provision governing funding for added territory transfer students:

If the board of trustees of a municipal separate school district with added territory does not have a member who is a resident of the added territory outside the corporate limits, upon the petition in writing of any parent or legal guardian of a school-age child who is a resident of the added territory outside the corporate limits, the board of trustees of the municipal separate school district and the school board of the school district adjacent to the added territory shall consent to the transfer of the child from the municipal separate school district to the adjacent school district. The

²¹ For example, the Mississippi Adequate Education Program (“MAEP”), established by statute in 1997, mandates a certain percentage of state MAEP funds to be used to support alternative school programs. *See* Miss. Code. Ann. § 37-151-7 (allocating MAEP funds to alternative school programs); *see also* Arielle Dreher, *MAEP Formula Explained*, JACKSON FREE PRESS (Oct. 21, 2015, 1:51 PM), <http://www.jacksonfreepress.com/news/2015/oct/21/maep-formula-explained/> (describing how MAEP funds are allocated).

²² *See, e.g.*, Covington, Mar. 12, 2010, Miss. A.G. Op. # 2010-00098, 2010 WL 1556675, at *1 (Miss. A.G. Mar. 12, 2010) (“We find no authority for ad valorem taxes collected by a school district in which a student resides to be diverted to a school district where such student is attending pursuant to Section 37-15-29(3).”).

²³ Miss. Code. Ann. § 37-15-31(5).

agreement must be spread upon the minutes of the board of trustees of the municipal separate school district and the school board of the adjacent school district. The agreement must provide for the transportation of the student. In the absence of such a provision, the parent or legal guardian shall be responsible for transporting the student to the adjacent school district. Any school district that accepts a student under this subsection may not assess any tuition fees against the transferring student.

Miss. Code. Ann. § 37-15-31(5)(a) (emphasis added).

As Defendants readily admitted below,²⁴ students may only transfer from one district to another under § 37-15-31(5)(a) if the respective districts agree to the transfer. Accordingly, the transfer statute is entirely discretionary and thus avoids any constitutional ramifications stemming from this Court’s decision regarding the constitutionality of the mandatory *ad valorem* funding provision of the CSA.

Regardless, even if the Court finds that the funding provision for added territory transfers is rendered unconstitutional by the proper reading of Section 206, any changes to the statute will have zero real-world effect on Mississippi’s students because students rarely, if ever, take advantage of this transfer provision. Indeed, the Mississippi Department of Education has identified no students who have transferred pursuant to § 37-15-31(5) at any point during the last five years.²⁵

CONCLUSION

This appeal comes at a time when public school districts in Mississippi are in desperate need of all available *ad valorem* tax revenue. For all of the foregoing reasons, this Court should give no weight to Defendants’ expected argument that invalidating the *ad valorem* funding provision of the CSA will also render the funding provisions of various other non-traditional

²⁴ See R. 800-01 (Def.-Intervenors Gladys Overton, et al. Cross Mot. for Summ. J. and Mot. in Opp. to Pls.’ Mot. for Summ. J. at 14-15) (explaining that, pursuant to § 37-15-31(5)(a), students may transfer to an adjacent school district only “if the respective districts agree to the transfer”).

²⁵ See Exhibit 1, Mississippi Department of Education’s Response to the District’s request pursuant to the Mississippi Public Records Act.

Mississippi school programs unconstitutional. Unlike the CSA, those programs do not require the diversion of *ad valorem* tax revenue to programs or schools outside of the levying district, and therefore are not facially unconstitutional under Section 206. And even if *ad valorem* funding for these programs would be rendered unconstitutional by a reversal in this appeal, the schools are also funded by other non-*ad valorem* sources that would be unaffected. Therefore, any ruling on the CSA in this dispute would not effectively end any of these other programs, and the Court should disregard any arguments to the contrary.

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Exhibit 1



MISSISSIPPI
DEPARTMENT OF
EDUCATION

Ensuring a bright future for every child

Office of Educational Accountability
Bureau of Public Reporting
Donna Hales, Director

August 13, 2018

Scott Bailer
Goodwin Procter LLP
The New York Times Building
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Via E-Mail: sbailer@goodwinlaw.com

Dear Mr. Bailer:

The Mississippi Department of Education (MDE) is in receipt of your request pursuant to the Mississippi Public Records Act of 1983, Section 25-61-1, et seq., of the Mississippi Code of 1972, as amended. A copy of your request is attached for your convenience. You requested a copy of the following:

I request copies of any documents showing the total number of students statewide to have transferred under this statute in the last five years.

The MDE has not been provided certified information regarding students who have transferred under Miss. Code Ann. § 37-15-31(5)(b). Therefore, we do not have any documents responsive to your request. The MDE does have information regarding general transfers. If you would like the agency to provide you with this information, please contact me at your convenience.

Sincerely,

Donna Hales, Director
Bureau of Public Reporting

Enclosure

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