

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

Charles Araujo, Evelyn S Garner Araujo,)	
Cassandra Overton-Welchlin, John Sewell,)	
Kimberly Sewell, Lutaya Stewart, and Arthur)	
Brown, all on behalf of themselves as taxpayers)	
and as next friends of their minor children,)	
)	
Plaintiffs,)	
)	Civil Action No. G. 2016-1008
v.)	
)	
Governor Phil Bryant, the Mississippi)	
Department of Education, and the Jackson Public)	
School District,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

1. This is a state constitutional challenge to the funding provisions of the Mississippi Charter Schools Act of 2013 (“CSA”), Miss. Code § 37-28-1, *et seq.* The CSA diverts public money to charter schools through two funding streams: ad valorem tax funds from local school districts and per-pupil funds from the Mississippi Department of Education (“MDE”). Both funding streams are unconstitutional and must be struck down.

2. Section 206 of the Mississippi Constitution provides that a school district’s ad valorem taxes may only be used for the district to maintain its own schools. Under the CSA, public school districts must share ad valorem tax revenue with charter schools that they do not control or supervise. Requiring a school district to distribute ad valorem tax revenue to a school outside its control is unconstitutional. Therefore, the local funding stream of the CSA is unconstitutional.

3. Section 208 of the Mississippi Constitution forbids the Legislature from appropriating money to any school that is not operating as a “free school.” A “free school” is not merely a school that charges no tuition; it must also be regulated by the State Superintendent of Education and the local school district superintendent. Charter schools – which are *not* under the control of the State Board of Education, the State Superintendent of Education, the Mississippi Department of Education, the local school district superintendent, or the local school district – are not “free schools.” Accordingly, the state funding provision of the CSA is unconstitutional.

4. Currently, two charter schools, Reimagine Prep (“Reimagine Charter”) and Midtown Public Charter School (“Midtown Charter”), are operating in Mississippi pursuant to the CSA. Both of these schools are located within the boundaries of the Jackson Public School District (“JPS”). During the 2015-2016 school year, both charter schools received (1) per-pupil funding from MDE and (2) ad valorem tax revenue from JPS. Reimagine Charter and Midtown Charter are not under the control of the State Board of Education, MDE, or JPS.

5. As a result of the funding provisions of the CSA, JPS schoolchildren lost more than \$1.85 million in state per-pupil funding and ad valorem tax revenue in the 2015-2016 school year alone. JPS could have spent \$1.85 million on 42 teacher salaries,¹ 18 new school buses,² guidance counselors for 6,870 students, or vocational education programming for 6,672 students.³

¹ According to the most recent data available from MDE, the average salary of a classroom teacher in JPS is \$43,744. See *Superintendent’s Annual Report*, MISSISSIPPI DEPARTMENT OF EDUCATION, <http://www.mde.k12.ms.us/MBE/R2016> (follow “Classroom Teacher Count and Average Salary” hyperlink) (last visited July 11, 2016).

² See Sarah Fowler, *JPS in financial crisis, superintendent says*, THE CLARION-LEDGER (May 3, 2016, 5:23 PM), <http://www.clarionledger.com/story/news/2016/05/02/state-budget-cuts-causing-financial-crisis-jps/83825748/>.

³ See Cedrick Gray & Sharolyn Miller, *Jackson Public Schools 2016-2017 Proposed Budget*, JACKSON PUBLIC SCHOOLS, http://www.jackson.k12.ms.us/cms/lib011/MS01910533/Centricity/Domain/4/2016-17_proposed_budget.pdf (last visited July 10, 2016).

6. During the 2016-2017 school year, a third charter school will open within JPS's geographic boundaries. All three charter schools will receive state funds from MDE and local *ad valorem* tax revenue from JPS. Between these three charter schools, JPS stands to lose more than \$4 million during the 2016-2017 school year.

7. The CSA heralds a financial cataclysm for public school districts across the state. In the spring of 2016, charter school companies submitted Letters of Intent to open a total of fourteen new charter schools throughout Mississippi. Eleven of these proposed charter schools would be within JPS's boundaries, and the other three proposed charter schools would be within Sunflower County, Tunica County, and Newton County.

8. Although not all proposed charter schools subsequently submitted applications for approval, the future is clear: as a direct result of the unconstitutional CSA funding provisions, traditional public schools will have fewer teachers, books, and educational resources. These schools will no longer be able to provide Mississippi schoolchildren the education that they are constitutionally entitled to receive.

JURISDICTION AND VENUE

9. The injunctions sought in this case are requests in equity. Therefore, subject-matter jurisdiction over this suit lies with the Chancery Court. Miss. Const. art. VI, § 159(a).

10. Venue is proper because a suit against the State must be brought in the county where the seat of government is located. Miss. Code § 11-45-1.

PARTIES

11. Charles Araujo and Evelyn S Garner Araujo are Plaintiffs in this lawsuit. They own a home at 4519 Brook Drive in Jackson, Mississippi. They are both state taxpayers and *ad valorem* taxpayers. They have two children who are students in the Jackson Public School

District. Mr. Araujo and Mrs. Garner Araujo bring this suit as taxpayers and next friends of their minor children. C. Araujo Affidavit (*see* Ex. 1); E. Garner Araujo Affidavit (*see* Ex. 2).

12. Cassandra Overton-Welchlin is a Plaintiff in this lawsuit. Mrs. Overton-Welchlin and her husband own a home at 157 Glenmary Street in Jackson, Mississippi. She is both a state taxpayer and an *ad valorem* taxpayer. They have two children who are students in the Jackson Public School District. Mrs. Overton-Welchlin brings this suit as a taxpayer and next friend of her minor children. C. Overton-Welchlin Affidavit (*see* Ex. 3).

13. John and Kimberly Sewell are Plaintiffs in this lawsuit. They own a home at 3825 Hawthorn Drive in Jackson, Mississippi. They are both state taxpayers and *ad valorem* taxpayers. They have three children who are students in the Jackson Public School District. The Sewells bring this suit as taxpayers and next friends of their minor children. J. Sewell Affidavit (*see* Ex. 4); K. Sewell Affidavit (*see* Ex. 5).

14. Lutaya Stewart is a Plaintiff in this lawsuit. She owns a home at 359 Park Lane in Jackson, Mississippi. She is both a state taxpayer and an *ad valorem* taxpayer. Ms. Stewart has a foster daughter who is a student in the Jackson Public School District. Ms. Stewart brings this suit as a taxpayer and next friend of her minor foster child. L. Stewart Affidavit (*see* Ex. 6).

15. Arthur Brown is a Plaintiff in this lawsuit. Mr. Brown and his wife own a home at 1455 Springdale Drive in Jackson, Mississippi. He is both a state taxpayer and an *ad valorem* taxpayer. They have three children who are students in the Jackson Public School District. Mr. Brown brings this suit as a taxpayer and next friend of his minor children. A. Brown Affidavit (*see* Ex. 7).

16. Governor Phil Bryant is a Defendant in this lawsuit. Governor Bryant is the Chief Executive of the State of Mississippi and is responsible for upholding the laws of the State of

Mississippi. Governor Bryant may be served with process upon the Honorable Jim Hood, Attorney General of the State of Mississippi, at 550 High Street, Suite 1200, Jackson, Mississippi 39201. Miss. Code § 11-45-3; Miss. R. Civ. P. 4(d)(5).

17. The Mississippi Department of Education (“MDE”) is a Defendant in this lawsuit. MDE is responsible for the administration, management, and control of public schools in Mississippi. Miss. Code § 37-3-5. The CSA requires MDE to divert public taxpayer funds from public school districts to charter schools. Miss. Code § 37-28-55(1)(a). MDE may be served with process upon the Honorable Jim Hood, Attorney General of the State of Mississippi, at 550 High Street, Suite 1200, Jackson, Mississippi 39201. Miss. Code § 11-45-3; Miss. R. Civ. P. 4(d)(5).

18. The Jackson Public School District (“JPS”) is a Defendant in this lawsuit. The only two charter schools currently operating in Mississippi are located within JPS’s geographic boundaries. The CSA requires JPS to divert a portion of its ad valorem tax revenue to the charter schools operating within its boundaries. Miss. Code § 37-28-55(2). JPS may be served with process upon Dr. Cedrick Gray, JPS Superintendent, at 662 South President Street, Jackson, Mississippi 39201. Miss. R. Civ. P. 4(d)(8).

FACTS

I. The CSA diverts public taxpayer funds to charter schools.

19. The foregoing allegations are incorporated by reference herein.

20. The CSA was passed by the Mississippi Legislature and signed into law by Governor Bryant in 2013. Codified at Miss. Code § 37-28-1, *et seq.*, the CSA provides for the establishment of charter schools statewide.

21. The CSA provides taxpayer funding to charter schools through two funding streams: per-pupil state funds from MDE and ad valorem tax funds from the local school district where the student attending the charter school resides.

22. With respect to the state funding stream, the CSA provides, “[t]he 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.” Miss. Code § 37-28-55(1)(a).

23. As for the local funding stream, the CSA provides two methods for allocating ad valorem tax revenue depending on where the student resides.

24. For a student enrolled in a charter school located within the geographic boundaries of the school district where he resides, “[t]he 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 § 37-28-55(2).

25. For a student who attends a charter school located outside the geographic boundaries of the school district where he resides, the CSA provides that “the State Department of Education shall pay to the charter school in which the student is enrolled . . . 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.” Miss. Code § 37-28-55(3).

26. Regardless of whether the local school district or the State Department of Education allocates the ad valorem tax revenue to the charter school, the result is the same: the public school district loses a portion of its ad valorem tax revenue to charter schools.

II. The Mississippi Constitution places limits on the allocation of public taxpayer funds to schools.

A. Section 206 of the Mississippi Constitution prohibits the Legislature from redistributing a school district's ad valorem tax revenue.

27. Section 206 of the Mississippi Constitution provides, “[a]ny county or separate school district may levy an additional tax, as prescribed by general law, to maintain its schools.” Miss. Const. art. VIII, § 206 (emphasis added). Section 206 allows a public school district to raise ad valorem taxes, or property taxes, for the maintenance and operation of its own schools.

28. In 2012, the Mississippi Supreme Court held: “[T]he plain language of the current version of Section 206 . . . clearly states that a school district may tax to fund ‘its schools,’ leaving no room for an interpretation allowing the Legislature to mandate that the funds be distributed elsewhere.” *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d. 598, 607 (Miss. 2012).

29. Under Section 206, a school district's ad valorem taxes may only be used to fund schools that are part of that school system.

30. A charter school is not part of the school district where it is geographically located. *See* Miss. Code § 37-28-45(3); Miss. Code § 37-28-39(6).

31. Therefore, under Section 206 a school district's ad valorem tax revenue may not be distributed to charter schools.

B. Section 208 of the Mississippi Constitution prohibits the Legislature from allocating public funds for schools that are not supervised by both the State superintendent and the local school district superintendent.

32. Section 208 of the Mississippi Constitution forbids the Mississippi Legislature from appropriating public funds to “any school that at the time of receiving such appropriation is not conducted as a free school.” Miss. Const. art. VIII, § 208.

33. The Mississippi Supreme Court defined “free school” to mean a school that is “under the general supervision of the State superintendent and the local supervision of the county superintendent.” *Otken v. Lamkin*, 56 Miss. 758, 764 (1879) (emphasis added).

34. The Mississippi Supreme Court reaffirmed this definition years later, explaining that “[i]n 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.” *State Teachers’ College v. Morris*, 144 So. 374, 376 (1932) (citing *Lamkin*, 56 Miss. 758 (1879) (internal quotation marks omitted)).

35. A charter school is not under the general supervision of the State Superintendent of Education and the local superintendent of education. *See* Miss. Code Ann. § 37-28-45(5); Miss. Code § 37-28-45(3).

36. Therefore, under Section 208, public funds may not be allocated to charter schools.

III. Charter schools are not subject to the same oversight and rules that govern traditional public schools.

37. Charter schools are funded by public taxpayer dollars, but they are not subject to the same oversight and rules that govern traditional public schools.

38. Local school boards have no oversight over charter schools located within the geographic boundaries of their school districts. Miss. Code § 37-28-45(3). In contrast, traditional public schools are controlled by the local school board where the traditional public school is located. Miss. Code § 37-7-301.

39. Charter schools are not subject to regulation by the State Board of Education or the State Department of Education. Miss. Code § 37-28-45(5). In contrast, traditional public

schools are subject to regulation by the State Board of Education and the State Department of Education. Miss. Code § 37-3-5.

40. Charter school administrators are exempt from state administrator licensure requirements. Miss. Code § 37-28-47(1)(a). In contrast, administrators of traditional public schools must follow the state administrator licensure requirements. Miss. Code § 37-9-7.

41. As many as 25 percent of teachers in a charter school may be exempt from state teacher licensure requirements at the time the initial charter application is approved. Miss. Code § 37-28-47(1)(a). In contrast, 95 percent of traditional public school teachers must meet state teacher licensure requirements. Miss. Code § 37-3-2(6)(e).

42. Charter school teachers are exempt from state minimum salary requirements. Miss. Code § 37-28-47(2). In contrast, traditional public schools must pay their teachers in accordance with a state salary scale that establishes salary minimums based on years of experience and licensure type. Miss. Code § 37-19-7(1).

IV. As a result of the unconstitutional funding provisions in the CSA, JPS lost more than \$1.85 million to charter schools during Fiscal Year 2016.

43. Reimagine Charter, located at 309 West McDowell Road in Jackson, Mississippi, enrolled 121 students during the 2015-2016 school year.

44. In compliance with the CSA, JPS surrendered \$317,487.06 in ad valorem tax revenue to Reimagine Charter during the 2015-2016 school year. Reimagine Charter Financial Records (*see* Ex. 8).

45. In compliance with the CSA, MDE surrendered \$643,027.00 in state funds to Reimagine Charter for Fiscal Year 2016. *See id.*

46. Accordingly, MDE and JPS remitted a total of \$960,514.06 to Reimagine Charter in the 2015-2016 school year. But for the CSA, those funds would have been spent on JPS schoolchildren.

47. Midtown Charter, located at 301 Adelle Street in Jackson, Mississippi, enrolled 106 students during the 2015-2016 school year.

48. In compliance with the CSA, JPS surrendered \$278,129.16 in ad valorem tax revenue to Midtown Charter during the 2015-2016 school year. Midtown Charter Financial Records (*see* Ex. 9).

49. In compliance with the CSA, MDE surrendered \$618,189.00 in state funds to Midtown Charter for Fiscal Year 2016. *See id.*

50. Accordingly, MDE and JPS remitted a total of \$896,318.16 to Midtown Charter in the 2015-2016 school year. But for the CSA, those funds would have been spent on JPS schoolchildren.

51. As a result of the funding provisions of the CSA, JPS lost more than \$1.85 million to Reimagine Charter and Midtown Charter during the 2015-2016 school year.

	State per-pupil funds surrendered by MDE	Ad valorem tax funds surrendered by JPS	Total
Reimagine Charter	\$643,027.00	\$317,487.06	\$960,514.06
Midtown Charter	\$618,189.00	\$278,129.16	\$896,318.16
		Total	\$1,856,832.22

Table 1: Public funding received by charter schools during the 2015-2016 school year.

52. JPS stands to lose even more funding to charter schools during the 2016-2017 school year. A new charter school, Smilow Prep (“Smilow Prep Charter”), will open within JPS’s boundaries, with an anticipated enrollment of 119 students. Additionally, both Reimagine Charter and Midtown Charter anticipate substantial growth in enrollment.

53. Based on the expected enrollment of these three charter schools, JPS will lose more than \$4 million to charter schools in the 2016-2017 school year.

v. Charter schools will drain funding from traditional public school districts statewide.

54. The expansion of charter schools heralds a financial cataclysm for public school districts across the state.

55. Currently, four charter school applications are pending before the Authorizer Board. Each charter school would open within the geographic boundaries of JPS.

56. During the 2016 legislative session, the Mississippi Legislature passed Senate Bill 2161, which allows students in school districts rated “C,” “D,” or “F” by MDE to cross district lines – and take state per-pupil and local ad valorem funding with them – to attend charter schools. *See* Miss. Code § 37-28-23(1)(b).

57. This expansion of charter schools will deplete public funds from traditional public school districts across the state, and will do so without any oversight from the State Board of Education, MDE, or the local school district.

CLAIMS FOR RELIEF

CLAIM NO. 1: DECLARATORY AND INJUNCTIVE RELIEF FOR THE VIOLATION OF SECTION 206 OF THE MISSISSIPPI CONSTITUTION

58. All previous paragraphs are incorporated herein by reference as if fully restated.

59. Section 206 of the Mississippi Constitution provides that “[a]ny county or separate school district may levy an additional tax, as prescribed by general law, to maintain its schools.”

60. Section 206 only allows ad valorem tax revenue to be used for the maintenance of the levying school district’s schools.

61. Remitting ad valorem tax revenue to charter schools pursuant to Section 37-28-55 of the Mississippi Code violates Section 206 of the Mississippi Constitution.

62. Therefore, the Defendants must be enjoined from enforcing or complying with Section 37-28-55 of the Mississippi Code.

CLAIM NO. 2: DECLARATORY AND INJUNCTIVE RELIEF FOR THE VIOLATION OF SECTION 208 OF THE MISSISSIPPI CONSTITUTION

63. All previous paragraphs are incorporated herein by reference as if fully restated.

64. Section 208 of the Mississippi Constitution provides as follows:

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.

65. Charter schools, as provided for by the CSA, are not “free schools” within the meaning of Section 208.

66. Payments of public funds to charter schools pursuant to Section 37-28-55 of the Mississippi Code violate Section 208 of the Mississippi Constitution.

67. Therefore, the Defendants must be enjoined from enforcing or complying with Section 37-28-55 of the Mississippi Code.

PRAYER FOR RELIEF

68. Plaintiffs respectfully request that the Court:

69. Declare the funding provisions of the CSA unconstitutional under the Mississippi Constitution;

70. Enter an order permanently enjoining the Defendants from enforcing or complying with the funding provisions of the CSA; and

71. Award all other relief, including general relief, to which the Court deems the Plaintiffs to be entitled.

RESPECTFULLY SUBMITTED this Twenty-Ninth day of July 2016.

s/Will Bardwell

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CERTIFICATE OF SERVICE

I, William B. Bardwell, hereby certify that a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by electronic mail to all parties by the Court's electronic filing system. Parties may access this filing through the Court's MEC/ECF System.

SO CERTIFIED, this Twenty-Ninth day of July 2016.

s/Will Bardwell
William B. Bardwell, MS Bar # 102910