

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

CHARLES ARAUJO, et al.)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. G-2016-1008
)	
GOVERNOR PHIL BRYANT, et al.)	<u>ORAL ARGUMENT REQUESTED</u>
)	
Defendants.)	
)	

PLAINTIFFS' MEMORANDUM OF AUTHORITY

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.

Section 208 of the Mississippi Constitution forbids the Legislature from appropriating money to any school that is not operating as a “free school.” Under Mississippi law, 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.

Two charter schools, Reimagine Prep (“Reimagine Charter”) and Midtown Public Charter School (“Midtown Charter”), operated in Mississippi pursuant to the CSA during the 2015-2016 school year. Both charter 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.

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

¹ According to the most recent data available from MDE, the average salary of a classroom teacher in JPS is

guidance counselors for 6,870 students, or vocational education programming for 6,672 students.³

A third charter school has opened within JPS's geographic boundaries. Accordingly, during the 2016-2017 school year, 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.

As a direct result of the unconstitutional CSA funding provisions, approximately 28,000⁴ students enrolled in JPS7sdPS7sdP

student in average daily attendance at the school district in which the charter school is located.”
Miss. Code § 37-28-55(1)(a).

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

Regardless of whether the local school district -D-.0003 Tc-.0009 Te -D- (11/16/2005) TE-1111911

contract.”). A charter school is not part of the school district or local education agency in which it is located. Miss. Code § 37-28-45(3). In fact, each charter school in Mississippi is its own local education agency. Miss. Code § 37-28-39.

Instead, the Charter Authorizer Board has exclusive jurisdiction over all charter schools in the state. Miss. Code § 37-28-9(1)(a)(iv). Established by the CSA, the Authorizer Board must “review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee charter schools, and decide whether to renew, not renew, or revoke charter contracts.” Miss. Code § 37-28-5(c). Although charter schools only serve elementary and secondary school students, the Authorizer Board is located at the administrative offices of the Institution of Higher Learning, not within MDE. *See* Miss. Code § 37-28-7(10). The Authorizer Board is comprised of seven appointed members: three appointed by the Governor, three by the Lieutenant Governor, and one by the State Superintendent of Education. Miss. Code § 37-28-7(3). The Authorizer Board keeps three percent of the annual state and local per-pupil funds received by each charter school that it authorizes. Miss. Code § 37-28-11(1).

In contrast, traditional public schools are controlled by the local school board where the traditional public school is located, Miss. Code § 37-7-301, and are subject to regulation by the State Board of Education and the State Department of Education. Miss. Code § 37-3-5.

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.

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).

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).

C. 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.

Reimagine Charter, located at 309 West McDowell Road in Jackson, Mississippi, enrolled 121 students during the 2015-2016 school year. Rec. Doc. 13-35350 TD-.0003 Tc-.080 Tw[(m0165-016.school tears. Rec. Doc)]

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. Ex. 1; Ex. 2; Ex. 3.

	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.

JPS stands to lose even more funding to charter schools during the 2016-2017 school year. Rec. Doc. 13 at ¶ 52. Both Reimagine Charter and Midtown Charter anticipate substantial growth in enrollment. Ex. 4; Ex. 5; *see also* Re8ccs

3. In Fiscal Year 2016, the Mississippi Department of Education remitted public taxpayer funds to Reimagine Charter and Midtown Charter. Ex. 2; Ex. 3.
4. Reimagine Charter and Midtown Charter will continue operating within JPS's geographic boundaries during the 2016-2017 school year. Ex. 4; Ex. 5.
5. A third charter school, Smilow Prep Charter School ("Smilow Charter"), began operation within JPS's geographic boundaries during the 2016-2017 school year. Ex. 6; Rec. Doc. 13 at ¶ 52; Rec. Doc. 14 at ¶ 52.
6. All three charter schools are overseen by the Charter Authorizer Board. *See* Miss. Code § 37-28-9(1)(a)(iv).
7. Plaintiffs are residents of Jackson, Mississippi. Ex. 7 at ¶ 1; Ex. 8 at ¶ 1; Ex. 9 at ¶ 1; Ex. 10 at ¶ 1; Ex. 11 at ¶ 1; Ex. 12 at ¶ 1; Ex. 13 at ¶ 1.
8. Plaintiffs pay local ad valorem taxes and state taxes. Ex. 7 at ¶ 6, Ex. 7(a); Ex. 8 at ¶ 4, Ex. 8(a); Ex. 9 at ¶ 6, Ex. 9(a); Ex. 10 at ¶ 5, Ex. 10(a); Ex. 11 at ¶ 5, Ex. 11(a); Ex. 12 at ¶ 5, Ex. 12(a); Ex. 13 at ¶ 5, Ex. 13(a).
9. Plaintiffs are parents of children enrolled in JPS schools. Ex. 7 at ¶ 7; Ex. 8 at ¶ 5; Ex. 9 at ¶ 6; Ex. 10 at ¶ 6; Ex. 11 at ¶ 6; Ex. 12 at ¶ 5; Ex. 13 at ¶ 6.

IV. LEGAL AUTHORITY

A. Standard of Review on a Motion for Summary Judgment

Summary judgment is required under Miss. R. Civ. P. 56 where the evidence in the record shows that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *See* Miss. R. Civ. P. 56(c); *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358, 362 (Miss. 1983). After viewing all the evidence "in the light most favorable to the party against whom the motion has been made," summary judgment must be granted when "the

moving party is entitled to judgment as a matter of law.” *Pitts v. Watkins*, 905 So. 2d 553, 555 (Miss. 2005) (quoting *Aetna Cas. & Sur. Co. v. Berry*, 669 So. 2d 56, 70 (Miss. 1996)). Statutory interpretation is a matter of law which the Mississippi Supreme Court reviews *de novo*. *Wallace v. Town of Raleigh*, 815 So. 2d 1203, 1206 (Miss. 2002). Summary judgment is appropriate where, as here, the only issue before the Court is a pure question of law. *See Cooper v. Gen. Motors Corp.*, 702 So. 2d 428, 442 (Miss. 1997).

B. Burden of Proof

Under Mississippi law, a party challenging the constitutionality of a statute must prove beyond a reasonable doubt that the law is in “palpable conflict with some plain provision of the constitution.” *Oxford Asset Partners, LLC v. c*

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V. **DISCUSSION**

A. **Mississippi Code § 37-28-55 Violates Section 206 of the Mississippi Constitution.**

Article 8, Section 206 of the Mississippi Constitution provides:

There shall be a state common-school fund, to be taken from the General Fund in

Id.

major state institutions of learning,” not by the State Board of Education. The Court reasoned that:

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

144 So. 374 at 376 (citing *Lamkin*, 56 Miss. at 758) (internal quotation marks omitted). Accordingly, by definition, a “free public school” must be supervised by the public officials charged with establishing and supervising “that system of schools,” meaning the public officials who oversee “the system of free public schools.”

The Mississippi Supreme Court has clearly established that a “free school” is not merely a school that charges no tuition. Rather, a “free school” is a school that is (1) non-sectarian, (2) open to all, (3) “under the general supervision of the State superintendent,” *and* (4) “under . . . the local supervision of the county superintendent.” *Lamkin*, 56 Miss. at 764. A school must satisfy all four criteria in order to receive public funding.

2. Charter schools are not “free schools” because they are not regulated by the State superintendent of education and the local superintendent of education.

Mississippi’s charter schools are not “free schools” because they cannot satisfy the third or fourth requirements of the *Lamkin* test. Namely, charter schools are not under the supervision of the State superintendent of education and the local superintendent of education. Charter schools are not “under the general supervision of the State superintendent” because the CSA explicitly exempts charter schools from “any rule, regulation, policy or procedure adopted by the State Board of Education or the State Department of Education.” Miss. Code § 37-28-45(5).

Charter schools are not “under . . . the local supervision of the county superintendent” because they are also expressly exempted from any local school district oversight. Miss. Code § 37-28-45(3). In fact, as stated above, each charter school serves as its own local education agency. Miss. Code § 37-28-39. Because charter schools are not under the general supervision of the State superintendent of education and the local superintendent of education, they are not “free schools” within the meaning of Section 208. They are therefore ineligible to receive public funds.

A similar issue was recently decided by the Washington Supreme Court. The Washington Constitution limits public funding to “the support of the common schools.” Wash. Const. art. IX, § 2. Similar to Mississippi’s “free schools,” Washington’s “common schools” are those that are “common to all children of proper age and capacity, free, and subject to and under the control of the qualified voters of the school district.” *League of Women Voters of Washington v. State*, 355 P.3d 1131, 1137 (Wash. 2015). Washington’s charter schools, however, were “governed by a charter school board” and were “exempt from all school district policies” and nearly “all . . . state statutes and rules applicable to school districts.” *Id.* at 1136. Since they are not under the control of the local school district, the Court concluded that charter schools are not common schools and cannot receive public funding. *Id.* at 1141.

This case demands the same outcome. Based on the clear language of the CSA, charter schools are not “free schools” because they are exempt from regulation by local school districts, the State Board of Education and the State Department of Education. As a result, charter schools are not eligible to receive state education funds.

VI. CONCLUSION

Plaintiffs ultimately seek to permanently enjoin Defendants Governor Bryant, MDE, and JPS from enforcing or implementing Miss. Code § 37-28-55. However, Plaintiffs will refrain from seeking this remedy pending the likely appeal of this Court's Order on the instant motion.

For the reasons set forth herein, this case presents no genuine issue of material fact. Plaintiffs are entitled to judgment as a matter of law that Miss. Code § 37-28-55 violates Section 206 and Section 208 of the Mississippi Constitution. Plaintiffs respectfully request that the Court enter an Order granting its Motion for Summary Judgment and for such other and further relief as the Court deems proper.

RESPECTFULLY SUBMITTED this 22nd day of August, 2016.

/s/ Lydia Wright
Lydia Wright, MS Bar # 105186
William B. Bardwell, MS

CERTIFICATE OF SERVICE

I, Lydia Wright, 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 22nd day of August, 2016.

/s/ Lydia Wright
Lydia Wright, MS Bar # 105186