

IN THE SUPREME COURT OF MISSISSIPPI

**CHARLES AND EVELYN ARAUJO,
CASSANDRA OVERTON-WELCHLIN,
LUTAYA STEWART,
AND ARTHUR BROWN, ALL ON BEHALF
OF THEMSELVES AS TAXPAYERS AND AS
NEXT FRIENDS OF THEIR MINOR CHILDREN**

APPELLANTS**V.****CAUSE NO. 2018-CA-00235-SCT**

**GOVERNOR PHIL BRYANT,
THE MISSISSIPPI DEPARTMENT OF EDUCATION,
THE JACKSON PUBLIC SCHOOL DISTRICT,
THE MISSISSIPPI CHARTER SCHOOLS ASSOCIATION,
MIDTOWN PARTNERS, INC.,
MIDTOWN PUBLIC CHARTER SCHOOL,
GLADYS AND ANDREW OVERTON,
ELLA MAE JAMES, AND TIFFANY MINOR**

APPELLEES

REPLY BRIEF OF THE APPELLANTS

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SUMMARY OF THE REPLY

Only one party in this case asks the Court to apply Section 206 of the Mississippi Constitution as it is written: the Parents. Every other party urges the Court to ignore Section 206's plain language and to read into it words that simply are not there.

This Court cannot do that. When the words of the Constitution are clear, they must be applied. As the Court has explained, "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). The Local Tax Transfer Statute requires school districts to do exactly what Section 206 forbids.

Whether charter schools are good or bad policy is irrelevant to this case. All that matters is that Section 206 forbids funding charter schools in the way the Local Tax Transfer Statute requires. This Court's inquiry ends there.

Section 37-28-55(2) of the Mississippi Code is unconstitutional.

ARGUMENT

I. The Parents Have Standing Because They are Taxpayers Whose Taxes are Being Used for Illegal Government Spending.

A. The Government Waived Its Attack Against the Parents' Standing.

The Government acknowledges both that the Chancery Court found the Parents have standing, and that it did not appeal that ruling. Brief of Appellees Governor Phil Bryant, *et al.* ("Government's Brief") at 3 n.4; Government's Brief at 14. Nevertheless, it insists that it did not waive its standing argument. For two reasons, the Government is wrong.

decide it). In other words, jurisdiction concerns the powers of a court, while standing concerns the powers of litigants. See *Chubb Lloyds Ins. Co. v. Miller Cty. Circuit Court*, 361 S.W.3d 809, 815 (Ark. 2010) (“Under Arkansas law, standing is not a component of subject-matter jurisdiction[.]”). Otherwise, in *Hill Brothers*, the standing issue would not have been waived.

an object not authorized by law.”) (citing *Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975)). However, the Government’s brief did not address or attempt to distinguish any of those cases or secondary sources. Moreover, the Government appears to concede that state law allows taxpayer standing to attack illegal government spending. Government’s Brief at 16 n.19 (acknowledging that “[t]axpayers may sue a government agency *to challenge an unlawful purchase or expenditure of public funds*”) (emphases added).¹

Rather than confront the Parents’ authority, the wf0.08/>BDC4(e)-54(n)6mnentwf0.ff(e)8(r)5

2. The Parents Have Colorable Interests and Suffer Adverse Effects As a Result of the Local Transfer Tax Statute.

The Parents' principal brief described at length their injuries caused by the Local Tax Transfer Statute, both as taxpayers and as next friends of their children. Parents' Brief at 8-12. Specifically, the Parents argued:

- that as school district *ad valorem* taxpayers, they have colorable interests in the legal expenditure of that tax's revenue, *see Tucker*, 91 So. 3d at 604 (“[T]his case affects the rights of all taxpayers in Jackson County”);
- that their schoolchildren (on whose behalves they filed suit) have colorable interests in ending their school district's illegal transfer of *ad valorem* revenue;
- that the Local Tax Transfer Statute affects the schoolchildren's constitutionally protected property interests in Mississippi's public schools and their state-law fundamental right to a minimally adequate public education, *see Goss v. Lopez*, 419 U.S. 565 (1975), and *Clinton Mun. Sep. Sch. Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985); and
- that the Local Tax Transfer Statute causes the Parents an adverse effect because it affects *ad valorem* taxpayers differently than it affects the general (non-taxpaying) public, *see Tucker*, 91 So. 3d at 604.

The Government addresses none of those injuries. Instead, it invented a new injury for the Parents: a purported philosophical objection to charter schools.

This is a red herring. The Parents have never claimed to have philosophical objections to charter schools, much less based their standing claim on such objections. The Government's failure to confront the Parents' real injuries demonstrates that this attack against standing is not a serious argument. This Court should proceed to the merits of the case.

3. Standing is Not a Contest. The Parents Have Colorable Interests and Suffer Adverse Effects. It is Irrelevant That Other Parties Might Have “More Colorable” Interests.

Finally, the Government argues that even if the Parents satisfy Mississippi's (a)(1)-(3)(e) standing requirements, this argument is irrelevant.

the Jackson Public School District (“JPS”) would have standing in this lawsuit, and that others might as well. Government’s Brief at 20.

But standing is not a contest. It is not a test of whether a plaintiff has a more direct connection to the case than anyone else. Rather, it is a simple inquiry into whether a plaintiff has a colorable interest in the litigation or experienced an adverse effect that is different than that experienced by the general public. *See Schmidt v. Catholic Diocese of Biloxi*, 18 So. 3d 814, 827 n. 13 (Miss. 2009); *Hall v. City of Ridgeland*, 37 So. 2d 25, 33-34 (Miss. 2010). The Parents more than satisfy both requirements.

Moreover, if the Parents are not allowed to attack the Local Tax Transfer Statute’s unconstitutionality, then no one will. The Legislature enacted the Local Tax Transfer Statute nearly six years ago. In that time, no one else has challenged it. The Government claims that JPS would have standing to challenge it,

what *Tucker* prohibited. Specifically, the Government argues that Section 206 allows a district to send its *ad valorem* revenue to non-district schools, so long as the funds “follow the student.” Government’s Brief at 11.

This argument is simply wrong, for at least three reasons. First, and most importantly, Section 206 simply does not say what the Government claims it says. Second, the Government’s “money-follows-the-student” theory rests on a fallacy. Third, Section 206’s Framers intended to require school districts to use *ad valorem* revenue only on schools they controlled.

A. The Local Tax Transfer Statute is Exactly Like the Statute in *Tucker*. It Requires a School District to Send *Ad Valorem* Tax Revenue to Non-District Schools.

Section 206 requires that a school district levying an *ad valorem* tax must use the tax’s revenue “to maintain *its* schools” (emphasis added). In *Pascagoula School District v. Tucker*, 91 So. 3d 598 (Miss. 2012), this Court held that Section 206’s plain language “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.” *Id.* at 607. That conclusion controls this case.

Tucker was clear: the Legislature may not require school districts to send their *ad valorem* revenue to non-district schools.² *Id.* at 604 (“The plain language of Section 206 grants the [school district] the authority to levy an *ad valorem* tax and mandates that the

² The Government describes *Tucker*’s outcome as (to use its word) “rare,” as if to suggest that diversions of school district *ad valorem* revenue do not always violate Section 206. Government’s Brief at 31 (“And this especially made sense in *Tucker* – when the Court was addressing a one-off statute targeting a single taxed district that took funds from that district and simply gave those funds to outside, non-taxed districts. Per this Court, *that* is the rare type of law that conflicts directly with Section 206, even with the Legislature’s plenary power under Section 201.”) (emphases in original). The Government is wrong. Section 206 makes no exceptions: it *never* allows a school district to send *ad valorem* tax revenue to non-district schools.

revenue collected be used to maintain only its schools. Conversely, no such authority is given for the [school district] to levy an ad valorem tax to maintain schools outside its district.”).

If the Government could win this case through a straightforward application of Section 206’s text, then it would argue for that approach. It has chosen a different strategy, for obvious reasons. To avoid *Tucker’s* holding, the Government simply declares “[t]his case is not *Tucker*.” Government’s Brief at 32.

But *Tucker* has not been this Court's only occasion to construe Section 206. In *Pascagoula-Gautier School District*, 212 So. 3d 742 (Miss. 2016), this Court again explained that under Section 206, "a school district may levy a tax to maintain its schools, not its schools and several others." *Pascagoula-Gautier Sch. Dist.*, 212 So. 3d at 744.

The word "its" is not a complicated word. "Its" is a possessive pronoun, demonstrating that something *belongs to* the noun being modified. See *Its*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/its> (last viewed Nov. 12, 2018) ("of or relating to it or itself especially as *possessor*, agent, or object of an agent") (emphasis added)

that non-

C. The Government's Misreading of History Defies *Tucker*.

states that the purpose of the tax is to maintain the levying school district's schools.

Id. (emphases in original). *See also id.* at 604 (“Article 8, Section 206 is *the* enabling authority for *a school district’s ad valorem taxation power* in this state”) (first emphasis in original; second emphasis added).

The Local Tax Transfer Statute goes well beyond prescribing a “method” for collecting school district *ad valorem* revenue – it requires a district to commit the funds to a purpose other than “to maintain its schools.” This requirement violates Section 206 just as much today as it did in *Tucker*. The

to maintain the levying school district's schools.”). Whether the Local Tax Transfer Statute directly eliminates that benefit or indirectly eliminates it, the result is the same: the benefit is eliminated.

It is hornbook law that indirect constitutional violations are just as forbidden as direct ones.

III. The Jackson Public School District is Complying with the Local Tax Transfer Statute By Sending *Ad Valorem* Revenue to Non-District Schools. It is a Necessary Party.

Separately from the other Government appellees, JPS filed a brief arguing that it was not a necessary party in Chancery Court and that it should have been dismissed.

For two reasons, this Court should not disturb the Chancery Court's ruling that JPS is a necessary party. First, JPS waived its right to appeal this decision. Second, JPS

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CONCLUSION19

CERTIFICATE OF SERVICE

I, Will Bardwell, hereby certify that, contemporaneous with its filing, a true and correct copy of the foregoing Reply Brief was served on all counsel of record via the Court's electronic filing system. I further certify that, on this day, a true and correct physical copy was served on the Hon. J. Dewayne Thomas, Hinds County Chancery Court, P.O. Box 686, Jackson, Mississippi 39205-0686.

SO CERTIFIED this Nineteenth day of December 2018.

/s/ Will Bardwell
William B. Bardwell