

**IN THE SUPREME COURT OF MISSISSIPPI**

**CHARLES AND EVELYN ARAUJO, *ET AL.***

**APPELLANTS**

**V.**

**CAUSE NO. 2018-CA-00235**

**PHIL BRYANT, *ET AL.***

**APPELLEES**

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**BRIEF OF EDUCATION LAW CENTER  
AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS**

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## **INTEREST OF AMICUS CURIAE**

Education Law Center (“ELC”) is a nonprofit organization that advocates on behalf of public school children for equal and adequate educational opportunity under state and federal laws through policy initiatives, research and legal action.

In states across the nation, ELC advances children’s opportunities to learn and succeed in school, assisting advocates and attorneys working to promote such opportunities. ELC provides research and analyses related to education cost and fair school funding, high quality preschool, and other proven education programs; assists parent and community organizations, school districts, and state policymakers in gaining the expertise needed to improve outcomes for disadvantaged children; and supports litigation and other efforts to bridge resource gaps, especially in the nation’s high-need and high-poverty public schools. Based on ELC’s extensive experience litigating constitutional challenges to inadequate funding in New Jersey and advocating for equal educational opportunity across the country, ELC has participated as *amicus curiae* or as counsel in state education rights and opportunity cases in California, Colorado, Connecticut,<sup>55</sup> (b) compels

public school districts to transfer  
er schools when students attend  
te” or “Statute”) violates the plain  
n, which mandates that a school



## **ARGUMENT**

### **I. The Diversion of District *Ad Valorem* Tax Revenue to Charter Schools Mandated by the Local Tax Transfer Statute is**



Miss. Code Ann. § 37-28-55(2) (emphasis added). For each student who enrolls in a charter school geographically located in the district, the local district must “pay directly” – or transfer – the full per-pupil amount of its *ad valorem* tax revenue from its budget to that charter school. *Id.*

The Legislature enacted the Mississippi Charter Schools Act of 2013, Miss. Code Ann. § 37-28-1 *et seq.*, to provide for the establishment, governance and financing of charter schools, including the Local Tax Transfer Statute at issue in this appeal. Under the Act, charter schools are authorized to operate and are governed as distinct school districts wholly separate and apart from the public school districts in which they are located:

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 [ad valorem] tax is to maintain the levying school district's schools." *Tucker*, 91 So. 3d at 605. The diversion of locally raised tax revenue compelled by the Statute is not only unconstitutional. It also has a direct, deleterious effect on the availability of education resources essential for the district to educate the students attending *its* schools.

**A. JPS Lacks Sufficient Funding and Resources to Provide All Students with Adequate Educ**



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by the State, Miss. Code Ann. § 37-151-7(2)(a), to ensure their schools have the resources necessary to educate students. Indeed, the district tax rate to support the maintenance revenue in JPS's 2017-18 budget is projected at 65.91 mills, with an additional 18.68 mills for debt service on facilities improvement bonds, for a total of 84.59 mills. *JPS 2017-2018 Proposed Budget, supra*, slide 6. *Ad valorem* tax revenue comprises over 35% of the JPS maintenance revenue. *Id.*

*Selection Round, Mississippi Today, July 9, 2018,*  
[https://mississippitoday.org/2018/07/09/charter-school-board-oks-five-groups-for-](https://mississippitoday.org/2018/07/09/charter-school-board-oks-five-groups-for-final-selection-round/)

[final-selection-round/](https://mississippitoday.org/2018/07/09/charter-school-board-oks-five-groups-for-final-selection-round/). It is clear, therefore, that the amount of *ad valorem* tax revenue JPS and other districts must transfer to charter schools from their budgets is likely to continue increasing under the unconstitutional Local Tax Transfer Statute.

**2. JPS Underfunding, Worsened by the Diversion of District *Ad Valorem* Revenue to Charter Schools, Results in a Lack of Essential Education Resources**

The diversion of significant funds from JPS schools has a material, adverse effect on the district's ability to adequately educate its students. JPS officials have repeatedly explained that the flow of *ad valorem* tax revenue from their budget to charter schools leaves them without sufficient resources to meet the basic needs of JPS pupils. See, e.g., Arielle Dreher, *JPS Shrinks as Charters Pull Students, Money*, Jackson Free Press, Mar. 15, 2017, <http://www.jacksonfreepress.com/news/2017/mar/15/jps-shrinks-charters-pull-students-money/> (reporting statements from JPS's Superintendent that numerous challenges the under-resourced district faces are exacerbated by charter schools drawing further funds away from district schools); Sierra Mannie, *Lawsuit: Charter School Law 'Heralds a Financial Cataclysm' in Mississippi*, Jackson Free Press, July 12, 2016, <http://www.jacksonfreepress.com/news/2016/jul/12/lawsuit-charter-school-law-heralds-financial-catac/> (JPS's Chief Financial Officer warned lawmakers at a public hearing that difficulties caused by the district's underfunding are compounded by the local funds flowing out to charter schools).

JPS, due to chronic State underfunding of the MAEP portion of its budget – exacerbated since 2015-16 by the diversion of district *ad valorem* revenue to charter schools – has called on its residents

repairs, maintenance and other urgent facilities needs. *See, e.g.,* Arielle Dreher, *JPS: \$65 Million Bond 'The Only Option' for District After State Funding Cuts*, Jackson Free Press, June 12, 2018, <http://www.jacksonfreepress.com/news/2018/jun/12/jps-65-million-bond-only-option-jps-after-state-fu/> (Jackson decided to hold bond referendum to fund

*Fiscal Impact of Charter School Expansion: Calculations in Six Pennsylvania School Districts 2* (Research for Action 2017), <https://8rri53pm0cs22jk3vvqna1ub-wpengine.netdna-ssl.com/wp-content/uploads/2017/09/RFA-Fiscal-Impact-of-Charter-Expansion-September-2017.pdf> (“*Pennsylvania Study*”) (footnote omitted).

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[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3082968](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082968) (“

[traditional public school] students due to charter schools.” *Id.* The study also “[a]lternatively quantif[ied] the externality as the fiscal cost to the district for each student enrolled in charter schools, . . . an average impact of around \$3,600 per charter school pupil in Durham.” *Id.* at 2-3. It found “smaller, though sizable” net fiscal impacts for the non-urban districts, and for two of them “the fiscal costs per charter school pupil are comparable with or exceed the estimated magnitude of the externality in Durham.” *Id.* at 3. Comparing North Carolina to New York, the study found the net fiscal impact estimated for Durham, although smaller in magnitude, was “equivalent, if not larger, than Albany and Buffalo’s in terms of the share of educational spending per pupil.” *Id.* at 16.

The *Pennsylvania Study*, a rigorous 2017 study of charter expansion in Pennsylvania districts, employed a model for calculating the fiscal impact of charter schools on districts that was vetted by school finance experts. *Pennsylvania Study* at 11. It found “a significant, negative fiscal impact of charter expansion in each of the six Pennsylvania school districts included in this study in both the short- and long-term.” *Id.* at 5. The result was “true for districts of all sizes, and d[id] not vary significantly by the rate of charter expansion.” *Id.*

Additionally, a recent study of the Newark, New Jersey, public school district examined the effects of “underfunding of the state’s school aid formula and the rapid expansion of the charter sector,” finding that these factors have caused “[e]ssential resources in district schools [to be] eroded.” er(t(s)-1(ey)]Gi)1(c)2-3(al)-wt(s)-h 1 Tf 0 Tc 0 Tw 2.63 C

to educate students . . . and to address year to year increases in fixed costs,” in order to “balance the school budget, [Newark Public Schools] has had no alternative but to substantially cut teachers, support staff and special education and other programs, shrinking the resources necessary for all students to achieve” state standards. *Id.*

Because “the money that follows the students who leave traditional public schools to charters requires that a district reduce its variable spending per pupil . . . [s]uch reductions represent a reduction in the educational services provided to students who remain in the district’s public schools.”

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