

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

**CHARLES ARAUJO, *ET AL.***

**PLAINTIFFS**

**V.**

**CAUSE NO. 25CH1:16-cv-001008**

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

**DEFENDANTS**

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within whose boundaries they are located.<sup>2</sup> Charter schools have no elected or appointed school board.<sup>3</sup> Charter school administrators are exempt from state administrator licensure requirements,<sup>4</sup> and charter schools are immune from minimum salary requirements for teachers.<sup>5</sup> Charter schools also may exempt up to 25 percent of their teachers from state licensure requirements at the time their initial charter application is approved;<sup>6</sup> in contrast, only 5 percent of teachers in traditional public schools are exempt from state licensure requirements.<sup>7</sup>

The CSA funnels public money to these privately run charter schools in two ways. First, a “state stream” requires MDE to send monthly payments to charter schools.<sup>8</sup> Second, a “local stream” requires local school districts to send a share of their *ad valorem* tax revenue directly to charter schools.<sup>9</sup> Once charter schools receive these

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state and local funds, they have no accountability to the public as to how the money is spent. By design, charter schools are not overseen by the state superintendent of education or by any local school district superintendent. They are privately governed and privately administered – but publicly funded.

This case's only question is whether the Mississippi Constitution prohibits charter schools from receiving state and *ad valorem* taxpayer funds.

**B. Charter Schools Do Not Answer**

charter schools.<sup>13</sup> The more charter schools that the Authorizer Board opens, the more money it brings in.

**C. By the End of the Current School Year, Privately Run Charter Schools Will Have Taken Nearly \$6 Million Away From Public Schoolchildren in Mississippi.**

When this case began in July 2016, two charter schools already had taken roughly \$1.8 million away from the 27,000 schoolchildren in the Jackson Public School District (hereinafter “JPS”).

Since that time, charter schools’ costs have snowballed. This school year, three charter schools are operating within JPS’s geographic boundaries. Their cost to JPS schoolchildren and taxpayers – for the 2016-2017 school year alone – is already nearly \$2.9 million. By the end of this school year, their cost is expected to approach \$4 million for this school year alone.

This \$4 million cost, combined with the \$1.8 million cost for the 2015-2016 school year, equals a two-year cost of nearly \$6 million.

<b>Payments to Date</b>	<b>ReImagine Charter</b>	<b>Midtown Charter</b>	<b>Smilow Charter</b>
State funds (2015-2016)	\$643,027.00 <sup>14</sup>	\$618,189.00 <sup>15</sup>	n/a
Local funds (2015-2016)	\$317,487.06 <sup>16</sup>	\$278,129.16 <sup>17</sup>	n/a
State funds (2016-2017, through Jan. 2017)	\$639,508.10 <sup>18</sup>	\$467,514.52 <sup>19</sup>	\$402,124.48 <sup>20</sup>
Local funds (2016-2017)	\$618,512.97		

<b>Payments</b>	<b>ReImagine Charter</b>	<b>Midtown Charter</b>	<b>Smilow Charter</b>
Total to date	\$2,218,535.13	\$1,804,084.27	\$731,637.94
Approximate amount due over rest of 2016-2017 school year	\$456,500.00	\$334,000.00	\$287,000.00
<b>TWO-YEAR TOTAL</b>	<b>\$2,675,035.13</b>	<b>\$2,138,084.27</b>	<b>\$1,018,637.94</b>

**On October 4, 2016, this Court allowed**

6. All three charter schools are overseen by the Charter School Authorizer Board.<sup>29</sup>

7. Plaintiffs are residents of Jackson, Mississippi.

8. Plaintiffs pay local *ad valorem* taxes and state taxes.

9. Plaintiffs are parents of children enrolled in JPS.

**F. Standard of Review.**

On a motion for summary judgment, the movant bears the burden of proving that no genuine issue of material fact exists, and that she is entitled to judgment as a matter of law.<sup>30</sup>

This case is a facial constitutional challenge. In a facial constitutional challenge, there are no issues of material fact, because such a case inherently alleges “that no set of circumstances exists under which the Act would be valid.”<sup>31</sup> Therefore, in this case, the parties’ motions for summary judgment present questions of law that are ripe for the Court to decide.<sup>32</sup>

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.”<sup>33</sup> However, “no citation of authority is needed for the universally accepted principle that if there be a clash between the edicts of the constitution and the legislative enactment, the latter must yield.”<sup>34</sup>

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**A. The “Local Stream” Violates Section 206 of the Mississippi Constitution.**

Article VIII, Section 206 of the Mississippi Constitution provides:

There shall be a state common-school fund, to be taken from the General Fund in the State Treasury, which shall be used for the maintenance and support of the common schools. Any county or separate school district may levy an additional tax, as prescribed by general law, to maintain *its schools*.<sup>39</sup>

By its plain language, Section 206 allows a public school district to levy *ad valorem* taxes, or property taxes, for just one purpose: the maintenance of its own schools.

The Mississippi Supreme Court underscored this limitation in its *Pascagoula School District v. Tucker*<sup>40</sup> decision in 2012. In that case, a statute required that a school district’s *ad valorem* tax revenue on natural gas terminals and crude oil refineries be distributed to all school districts in the county. The Pascagoula School District’s





The Mississippi Supreme Court reaffirmed *Otken* in *State Teachers' College v. Morris*,<sup>50</sup> where it determined that a demonstration and practice school at the State Teachers College was not a “free school” because it was regulated by the “administrative authority of the major state institutions of learning” rather than 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.<sup>51</sup>

Accordingly, by definition, a “free school” must be within the dual oversight of the public officials who oversee “the system of free public schools” – that is, by the state superintendent of education and by a local district superintendent. Any school without such dual supervision is not a “free school.”

**2. Charter schools are not “free schools” because they are not regulated by the state superintendent of education and a local district superintendent.**

Mississippi's charter schools are not “free schools” because they fail two requirements of the *Otken* test. Specifically, charter schools are not under the dual supervision of the state superintendent of education and a local district superintendent.

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

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<sup>50</sup> *State Teachers' College v. Morris*, 144 So. 374 (1932).

<sup>51</sup> *Id.* at 376 (citing *Otken*, 56 Miss. at 758) (internal quotation marks omitted).

Department of Education.”<sup>52</sup> Charter schools are also not “under . . . the local supervision of the county superintendent” because the CSA expressly exempts them from any local school district oversight.<sup>53</sup> Indeed, under the CSA, each charter school serves as its own local education agency.<sup>54</sup> Because charter schools are not under the dual supervision of the state superintendent of education and a local superintendent of education, they are not “free schools” within the meaning of Section 208. They are therefore ineligible to receive state school funds.

The Washington Supreme Court recently relied on similar analysis to strike down that state’s Charter School Act.<sup>55</sup> In Washington, the state constitution limits public funding to “the support of the common schools.”<sup>56</sup> 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.”<sup>57</sup> 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.”<sup>58</sup> Since they are not under the control of the local school district, the Court concluded that Washington’s charter schools were not common schools and could not receive public funding.<sup>59</sup>

Mississippi’s Charter Schools Act creates the same constitutional conflict. The CSA clearly provides that charter schools are not “free schools” because they are exempt

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<sup>52</sup> Miss. Code § 37-28-45(5).

<sup>53</sup> Miss. Code § 37-28-45(3).

<sup>54</sup> Miss. Code § 37-28-39.

<sup>55</sup> *League of Women Voters of Washington v. State*, 355 P.3d 1131 (Wash. 2015).

<sup>56</sup> Wash. Const. art. IX, § 2.

<sup>57</sup> *Id.* at 1137.

<sup>58</sup> *Id.* at 1136.

<sup>59</sup> *Id.* at 1141.

from regulation by local school districts, the State Board of Education, and MDE. As a result, charter schools are not eligible to receive state school funds.

**III. Conclusion.**

“It is well settled that the Constitution of Mississippi is the supreme law of our state. It is the highest known law. No act prohibited by it can be given effectuality and validity. It is superior to all legislation, to the legislature, to the judiciary, . . . and to equity itself.”<sup>60</sup>

The only issue in this case is whether the “local stream” and “state stream” of the CSA violate the Mississippi Constitution. They do. Therefore, Section 37-28-55 of the Mississippi Code must be permanently enjoined.

RESPECTFULLY SUBMITTED this Thirteenth day of February 2017.

/s/ Will Bardwell  
Will Bardwell  
Counsel for the Plaintiffs

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<sup>60</sup> *Chevron USA, Inc. v. State*, 578 So. 2d 644, 648 (Miss. 1991).

**CERTIFICATE OF SERVICE**

I, Will Bardwell, hereby certify that, simultaneously with its filing, a copy of the foregoing Memorandum was served on all counsel of record via the Court's MEC electronic filing system.

SO CERTIFIED this Thirteenth day of February 2017.

/s/ Will Bardwell  
Will Bardwell  
Counsel for the Plaintiffs