

**IN THE SUPREME COURT OF MISSISSIPPI**

**CHARLES AND EVELYN ARAUJO,  
CASSANDRA OVERTON-WELCHLIN,  
JOHN AND KIMBERLY SEWELL,  
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**

**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**

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**BRIEF OF THE APPELLANTS**

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**APPELLEES**

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**CERTIFICATE OF INTERESTED PERSONS**

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The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

**Plaintiffs/Appellants**

1. Charles and Evelyn Araujo
2. John and Kim Sewell
3. Lutaya Stewart
4. Cassandra Overton-Welchlin
5. Arthur Brown

**Defendants/Appellees**

6. Governor Phil Bryant
7. Mississippi Department of Education
8. Jackson Public School District

**Intervenors/Appellees**

9. Midtown Partners, Inc.
10. Midtown Public Charter School
11. Mississippi Charter School Association
12. Gladys and Andrew Overton
13. Ella Mae James
14. Tiffany Minor

**Attorneys**

15. Jody E. Owens, II
16. Christine Bischoff
17. Will Bardwell
18. Krissy Nobile
19. Harold Pizzetta
20. Joanne Nelson Shepherd



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## STATEMENT OF THE ISSUE

Section 206 of the Mississippi Constitution allows a school district to levy an *ad valorem* tax, and it “clearly states that the purpose of the tax is to maintain the levying school district’s schools.” *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598, 605 (Miss. 2012). A charter school operates as its own school district. Miss. Code Ann. § 37-28-39. Yet Section 37-28-55(2) of the Mississippi Code requires a school district to transfer *ad valorem* revenue from its budget to charter schools that are not part of the tax-levying school district.

This case is not about whether charter schools are good or bad. This case is also not about whether the Legislature has the authority to allow charter schools in Mississippi. The Legislature indisputably has that authority.

This appeal presents a single constitutional question — the same question that the Supreme Court addressed in *Tucker*: “[w]hen Section 206 of the Mississippi Constitution says the purpose of the local school district tax is to maintain ‘its schools,’ can the Legislature force a district to divide its maintenance tax levy with other districts?” *Tucker*, 91 So. 3d at 602.



State, and one from the school district within whose geographic boundaries the charter school is located. The State provides most of a charter school's funding through the Mississippi Adequate Education Program. A smaller portion of a charter school's funding comes from the school district where the charter school is located. When a student enrolls in a charter school, the school district where the student resides sends a

## **II. Procedural History.**

Opinion Granting Summary Judgment). It entered Final Judgment that same day. R. at 1116, R.E. at 90

## ARGUMENT

### I. The Parents Have Standing to Bring This Lawsuit.

#### A. The Government Waived Any Challenge to the Parents' Standing By Failing to Appeal the Chancery Court's Ruling.

In Chancery Court, Midtown Charter (one of the Intervenors) challenged the Parents' standing to bring this case. R. at 700; R.E. at 41 (Midtown Charter's Motion for Summary Judgment). The Chancery Court rejected this challenge when it found that it "ha[d] personal and subject matter jurisdiction over this case and the parties." R. at 1117; R.E. at 91 (Final Judgment at 2). Neither Midtown Charter nor any other Appellee filed a cross-appeal on this issue or any other issue. Therefore, the Government has waived the argument that the Parents lack standing.

"Timely filing of a notice of appeal is jurisdictional." *Busby v. Anderson*, 978 So. 2d 637, 638-39 (Miss. 2008). Only by noticing an appeal can a party "vest[ ] this Court with jurisdiction to hear the appeal." *Tandy Electronics, Inc. v. Fletcher*, 554 So. 2d 308, 310 (Miss. 1989). If the Government wanted to appeal the Chancery Court's ruling that the Parents have standing, then it should have cross-appealed. Its9(r),A>c2(s 0.00o TJ -o3 Tc 0.



But the agency had not filed an appeal from the trial court's ruling. Therefore, the Supreme Court held that the standing argument "is not before the Court, [and] we decline to address this issue on the merits." *Id.*

The Government's failure to cross-appeal the issue of standing requires the same outcome in this case. The issue has been waived.

**B. Mississippi Law Allows Taxpayers to Challenge Illegal Government Spending.**

Even if the Government had not waived this argument, the Parents have standing to challenge the Local Tax Transfer Statute's constitutionality.

"Mississippi's standing requirements are quite liber3d [(G)1 Tc 0. 3ueuo3d [(ln0 9 >>BTc -(

physicians challenged a hospital's use of public money to convert hospital facilities into private office space. The Court held that "[t]he complainants, as taxpayers, had standing to bring this suit." *Id.* at 732. Similarly, in *Richardson v. Canton Farm Equip., Inc.*, 608 So. 2d 1240 (Miss. 1992), a bidder sued a county board of supervisors for rejecting his bid. The Court explained that the plaintiff, "as both an aggrieved bidder and a taxpayer[,] had standing to bring the action." *Id.* at 1244. In *State v. Quitman County*, 807 So. 2d 401 (Miss. 2001), a county had standing to challenge the State's funding method for indigent defense on behalf of its taxpayers. *Id.* at 405. And in *Pascagoula School District v. Tucker*, 91 So. 3d 598 (Miss. 2012), the Court explained that a Section

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spent to maintain JPS's schools. Additionally, as taxpayers, the Parents suffer an adverse effect from this illegal government spending.

**1. Both the Parents and Their Children Have a Colorable Interest in This Challenge.**

An interest is "colorable" if it "appear[s] to be true, valid, or right." *Schmidt v. Catholic Diocese of Biloxi*, 18 So. 3d 814, 827 n.13 (Miss. 2009) (quoting Black's Law Dictionary 212 (abr. 7th ed. 2000)). In other words, a colorable interest is one "grounded in some legal right recognized by law, whether by statute or by common law." *City of Picayune v. S. Reg'l Corp.*, 916 So. 2d 510, 525 (Miss. 2005) (quoting *Quitman Cty.*, 807 So. 2d at 405).

As taxpayers, the Parents have a colorable interest in the Local Tax Transfer Statute's illegal government spending, just as taxpayers had standing to challenge illegal government spending in *Prichard*, *Canton Farm Equipment*, and *Quitman County*. See *supra* at § I(B). Additionally, *Tucker* recognized that a Section 206 challenge to a statute's constitutionality "affects the rights of all taxpayers in [that] [c]ounty." *Tucker*, 91 So. 3d at 604.

This principle is consistent with the Supreme Court's broad view that taxpayers have standing to bring public-interest lawsuits. *Van Slyke v. Bd. of Trustees of State Institutions of Higher Learning*, 613 So. 2d 872, 875 (Miss. 1993) (Mississippi courts are "more permissive in granting standing to parties who seek review of governmental actions"). For example, in *Fordice v. Bryan*, 651 So. 2d 998 (Miss. 1995), three legislators sought a declaration that the governor's partial vetoes of bond bills was unconstitutional. In response, the governor challenged the legislators' standing. *Id.* at 1003. The Court held that the legality of the spending decisions was "of considerable

constitutional importance to the executive and legislative branches of government, *as well as to all citizens and taxpayers of Mississippi.*” *Id.* (emphasis added). Accordingly, the Court held that the plaintiffs, “as legislators *and taxpayers*, had standing to bring suit since they asserted a colorable interest in the litigation.” *Id.* (emphasis added).

Similarly, in *Chance v. Mississippi State Textbook Rating & Purchasing Board*, 200 So. 706 (Miss. 1941), a group of taxpayers challenged the constitutionality of loaning state-owned textbooks to private schools. The Court ultimately ruled against the taxpayers, but only after holding that they were entitled to have the challenge heard on its merits. *Id.* at 709.

In this case, the Parents are *ad valorem* taxpayers challenging the illegal transfer of *ad valorem* revenue. This challenge is undoubtedly a matter of public interest.

Section 206 explains that the purpose of the *ad valorem* taxes paid by the Parents is for the tax-

*Clinton Mun. Sep. Sch. Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985).

The illegal transfer of *ad valorem* funds implicates both of those rights. The schoolchildren have a colorable interest in ending this unconstitutional diversion.

For these reasons, the Parents and their children (on whose behalves they filed this lawsuit) have a colorable interest in this litigation. Therefore, they have standing to challenge this statute.

**2. The Local Tax Transfer Statute is Causing the Parents and Their Children to Experience An “Adverse Effect” That is Different From the Effect on the General Public.**

“[F]or a plaintiff to establish standing on grounds of experiencing an adverse effect from the conduct of the defendant/appellee, the adverse effect experienced must be different from the adverse effect experienced by the general public.” *Hall v. City of Ridgeland*, 37 So. 3d 25, 33-34 (Miss. 2010) (citing *Burgess v. City of Gulfport*, 814 So. 2d 149, 153 (Miss. 2002)). Mississippi courts do not require plaintiffs to show a specific “injury in fact.” *Hotboxxx, LLC v. City of Gulfport*, 154 So. 3d 21, 27 (Miss. 2015). Instead, any adverse effect will suffice, so long as it is “different from the adverse effect experienced by the general public.” *Hall*, 37 So. 3d at 34.

In this case, the Parents are *ad valorem* taxpayers. The Local Tax Transfer Statute affects them differently than it affects the general public (that is, individuals who live within the geographic boundaries of JPS but do not pay *ad valorem* taxes, or taxpayers in other school districts that do not have charter schools). See *Tucker*, 91 So. 3d at 604 (Section 206 challenge “affects the rights of all taxpayers in Jackson County”). Therefore, they have standing to attack the illegal government spending that the Local Tax Transfer Statute requires. See, e.g., *Prichard*, 314 So. 2d at 732.

In Mississippi, taxpayers have standing to challenge illegal government spending if they have either a colorable interest in the litigation or have suffered an adverse effect that is different than the effect on the general public. In this case,

both. A group of plaintiffs (including a student and a local taxpayer, as in this case) challenged the statute's constitutionality under Section 206. *Id.* at 600-01.

The Supreme Court “look[ed] no further than the plain language of Section 206” to hold that a school district’s *ad valorem* revenue cannot be diverted to schools that are not part of the tax-levying school district. *Id.* at 604. Since Section 206 “clearly state[d]” this requirement, no further analysis was required: the statute requiring the transfer of *ad valorem* revenue to schools outside the levying district’s control was held unconstitutional. *Id.* at 605.

In finding that the statute violated the use restriction in Section 206, the Court held that “[t]he Legislature has no authority to mandate how the [district’s *ad valorem*] funds are *distributed . . .*” *Id.* at 605 (emphasis in original). The Court further held the Legislature cannot require a school district to share its *ad valorem* revenue with schools that are not part of that

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*restriction.* The Legislature has no authority to mandate how the funds are distributed, as Section 206 clearly states that the purpose of the tax is to maintain the levying school district's schools.

*Id.* at 604-05 (emphasis added).

In 2016, the Court reaffirmed that holding in *Pascagoula-Gautier School District v. Board of Supervisors of Jackson County*, 212 So. 3d 742 (Miss. 2016). In *PGSD v. Board of Supervisors*, the Court unanimously held that *Tucker* interpreted Section 206 to “mandate[ ] that all of the school district ad valorem funds from the [refinery] property go to” the tax-levying district. *Id.* at 744. The Supreme Court re-emphasized that, under Section 206, “a school district may levy a tax to maintain its schools, not its schools and several others.” *Id.*

The Local Tax Transfer Statute plainly violates Section 206's use restriction. Charter schools are not part of the school district in which they are geographically 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 purview of the school district's school board.*” Miss. Code § 37-28-45(3) (emphasis added). Tax-levying school districts have no relationship with or authority over charter schools located within their geographic boundaries. *Id.*

State law further requires that each charter school operate as its own, separate school district or “local education agency.” Miss. Code § 37-28-39; *see also* Miss. Code § 37-135-



In this case, though, despite the clear legal separation between local school districts and charter schools, the Chancery Court did not consider the plain language of Section 206 to address the central issue in this case: whether, by law, charter schools are part of the school district levying the *ad valorem*



The argument that a school district's tax revenue should not be used by schools

examples “where Mississippi law allows for local money to follow the local student”). The Local Tax Transfer Statute, the Court reasoned, should be treated no differently.

The Chancery Court’s conclusion about *Tucker’s* inapplicability is wrong; the Local Tax Transfer Statute violates Section 206 in exactly the same way that the statute in *Tucker* did. Furthermore, unlike the statute at issue in this case, none of the Chancery Court’s examples actually results in school districts sending *ad valorem* revenue to schools that are not part of the school district. For example:

- **Student transfers:** Students may transfer from one school district to another under various circumstances, but no transfer results in the home district sending *ad valorem* revenue to the transferee district. See Miss. Code Ann. §§ 37-15-29, 37-15-31(1)-(4) (no provisions for home district to compensate transferee district with *ad valorem* revenue).<sup>4</sup>

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<sup>4</sup> One of the types of transfers created by Section 37-15-31 deserves clarification. Section 37-15-31(5)(a) provides

- **Agricultural high schools:** Agricultural high schools do not receive school district *ad valorem* funds. Instead, they are supported by county funds. Miss. Code Ann. § 37-27-3 (requiring county board of supervisors to levy property tax “for the support and maintenance” of agricultural high school located in said county); Miss. Code Ann. § 37-27-61 (cost of student attending agricultural high school outside her county of residence is paid from home county’s “county school funds”); *See Tucker*, 91 So. 3d at 606 (when authority to tax comes from statute rather than the Constitution, “the Legislature had the authority . . . to direct where the funds would be spent”).
- **Alternative schools:** Alternative schools do not necessarily receive school district *ad valorem* funds. These schools may be paid for with any funds “made available to the school district for such purpose.” Miss. Code Ann. § 37-13-92(6) (“The expense of establishing, maintaining and operating such alternative school program may be paid from funds contributed or otherwise made available to the school district for such purpose or from local district maintenance funds.”).<sup>5</sup> Because Section 37-13-92(6) is capable of application without violating Section 206, it is not facially unconstitutional.

Of course, the legality of these programs has not been challenged. The Government raised them in Chancery Court to distract the Court by implying that its decision would have a far-reaching impact. But the Government is wrong. *Tucker* has been the law for six years. In those six years, transfer students, agricultural high schools,

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<sup>5</sup> A district maintenance fund is the fund into which a district’s Mississippi Adequate Education Program proceeds and its *ad valorem* tax proceeds are deposited. *See* Miss. Code Ann. § 37-61-3.



local property tax revenue. Rebecca Sibia, “Meet EdBuild,” EdBuild (June 24, 2015), <https://edbuild.org/content/meet-edbuild> (last viewed Aug. 7, 2018).<sup>6</sup>

Reaffirming *Tucker* and applying Section 206 in this case will not end charter schools in Mississippi. It will simply require the LegislaTJ 0 UJ27m10 Tc 0 Tw 0 0 Td ]TJt8e6(s)-1

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**CERTIFICATE OF SERVICE**

I, Will Bardwell, hereby certify that, simultaneous with its filing, a true and correct copy of the foregoing Brief of the Appellants was served on all counsel of record via the Court's electronic filing system. Additionally, I have served a true and correct copy via United States Postal Service mail, postage prepaid, upon the Honorable J. Dewayne Thomas, Hinds County Chancery Court, P.O. Box 686, Jackson, Mississippi 39205-0686.

SO CERTIFIED this Eighth day of August 2018.

/s/ Will Bardwell  
William B. Bardwell  
Counsel for the Parents

## **Exhibit A**



January 5, 2018

Sharolyn Miller, CFO  
Jackson Public School District  
662 South President Street  
Jackson, MS 39225

Dear Ms. Miller,

Pursuant to MS Code 37-28-55, Jackson Public Schools (JPS) shall pay an amount of local support to any charter school serving students who reside in your district. The amount is determined on a per pupil basis, using the FY17 receipts from ad valorem and in-lieu collections (excluding amounts for debt) and the district's FY17 Average Daily Membership (ADM) for months one through nine. The pro rata amount is dispersed to the charter school for the number of students enrolled at the end of month one of the current school year. The calculation is shown below:

JPS Ad Valorem and In-Lieu Receipts for FY17	\$73,003,476.46 (as reported in FETS)
JPS ADM for months 1-9 of FY17	26,240.00 (as reported in MSIS)



## **Exhibit B**



May 17, 2019

Will Brantley  
Southern Poverty Law Center  
111 Front Street, Suite 200  
Jackson

Via e-mail

Dear Mr. Brantley:

The Mississippi Department of Education (MDE) has responded to the Mississippi Public Access Request Code of 1972, 107-1-107, regarding the following request:

"I request that the Mississippi Department of Education provide me with a copy of the records maintained by the Mississippi Department of Education for the years 2015-2018 regarding the individual and teachers' names who were identified as being in violation of the state's request."

The MDE has not been able to locate the records requested. The MDE does not have the records.

Sincerely,

Donna Hales, Director  
Bureau of Public Reporting

Enclosure