

6. During the 2016-2017 school year, a third charter school will open within JPS's geographic boundaries. All 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.

7. The CSA heralds a financial cataclysm for public school districts across the state. In the spring of 2016, charter school companies submitted Letters of Intent to open a total of fourteen new charter schools throughout Mississippi. Eleven of these proposed charter schools would be within JPS's boundaries, and the other three proposed charter schools would be within Sunflower County, Tunica County, and Newton County.

8. Although not all proposed charter schools subsequently submitted applications for approval, the future is clear: as a direct result of the unconstitutional CSA funding provisions, traditional public schools will have fewer teachers, books, and educational resources. These schools will no longer be able to provide Mississippi schoolchildren the education that they are constitutionally entitled to receive.

JURISDICTION AND VENUE

9. The injunctions sought in this case are requests in equity. Therefore, subject-matter jurisdiction over this suit lies with the Chancery Court. Miss. Const. art. VI, § 159(a).

10. Venue is proper because a suit against the State must be brought in the county where the seat of government is located. Miss. Code § 11-45-1.

PARTIES

11. Charles Araujo and Evelyn S Garner Araujo are Plaintiffs in this lawsuit. They own a home at 4519 Brook Drive in Jackson, Mississippi. They are both state taxpayers and ad valorem taxpayers. They have two children who are students in the Jackson Public School

District. Mr. Araujo and Mrs. Garner Araujo bring this suit as taxpayers and next friends of their minor children. C. Araujo Affidavit (see Ex. 1); E. Garner Araujo Affidavit (see Ex. 2).

12. Cassandra Overton-Welchlin is a Plaintiff in this lawsuit. Mrs. Overton-Welchlin and her husband own a home at 157 Glenmary Street in Jackson, Mississippi. She is both a state taxpayer and a valorem taxpayer. They have two children who are students in the Jackson Public School District. Mrs. Overton-Welchlin brings this suit as taxpayer and next friend of her minor children. C. Overton-Welchlin Affidavit (see Ex. 3).

13. John and Kimberly Sewell are Plaintiffs in this lawsuit. They own a home at 3825 Hawthorn Drive in Jackson, Mississippi. They are both state taxpayers and valorem taxpayers. They have three children who are students in the Jackson Public School District. The Sewells bring this suit as taxpayers and next friends of their minor children. J. Sewell Affidavit (see Ex. 4); K. Sewell Affidavit (see Ex. 5).

14. Lutaya Stewart is a Plaintiff in this lawsuit. She owns a home at 359 Park Lane in Jackson, Mississippi. She is both a state taxpayer and a valorem taxpayer. Ms. Stewart has a

Mississippi. Governor Bryant may be served with process upon the Honorable Jim Hood, Attorney General of the State of Mississippi, at 550 High Street, Suite 1200, Jackson, Mississippi 39201. Miss. Code § 11-45-3; Miss. R. Civ. P. 4(d)(5).

17. The Mississippi Department of Education (“MDE”) is a Defendant in this lawsuit. MDE is responsible for the administration, management, and control of public schools in Mississippi. Miss. Code § 37-3-5. The CSA requires MDE to divert public taxpayer funds from public school districts to charter schools. Miss. Code § 37-28-55(1)(a). MDE may be served with process upon the Honorable Jim Hood, Attorney General of the State of Mississippi, at 550 High Street, Suite 1200, Jackson, Mississippi 39201. Miss. Code § 11-45-3; Miss. R. Civ. P. 4(d)(5).

18. The Jackson Public School District (“JPS”) is a Defendant in this lawsuit. The only two charter schools currently operating in Mississippi are located within JPS’s geographic boundaries. The CSA requires JPS to divert a portion of ad valorem tax revenue to the charter schools operating within its boundaries. Miss. Code § 37-28-55(2). JPS may be served with process upon Dr. Cedrick Gray, JPS Superintendent, at 662 South Pine Street, Jackson, Mississippi 39201. Miss. R. Civ. P. 4(d)(8).

FACTS

I. The CSA diverts public taxpayer funds to charter schools.

19. The foregoing allegations are incorporated by reference herein.

20. The CSA was passed by the Mississippi legislature and signed into law by Governor Bryant in 2013. Codified at Miss. Code § 37-28-4, et seq, the CSA provides for the establishment of charter schools statewide.

21. The CSA provides taxpayer funding to charter schools through two funding streams: per-pupil state funds from MDE and ad valorem tax funds from the local school district where the student attending the charter school resides.

22. With respect to the state funding stream, the CSA provides, “[t]he State Department of Education shall make payments to charter schools for each student in average daily attendance at the charter school equal to the state share of the adequate education program payments for each student in average daily attendance at the school district in which the charter school is located.” Miss. Code § 37-28-55(1)(a).

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

24. 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).

25. 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).

26. Regardless of whether the local school district or the State Department of Education allocates the ad valorem tax revenue to the charter school, the result is the same: the public school district loses a portion of its ad valorem tax revenue to charter schools.

- II. The Mississippi Constitution places limits on the allocation of public taxpayer funds to schools.
 - A. Section 206 of the Mississippi Constitution prohibits the Legislature from redistributing a school distri

33. The Mississippi Supreme Court defined “school” to mean a school that is “under the general supervision of the State superintendent and the local supervision of the county superintendent.” *Otken v. Lamkin*, 56 Miss. 758, 764 (1879) (emphasis added).

34. The Mississippi Supreme Court reaffirmed this definition years later, explaining that “[i]n 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.” *State*

schools are subject to regulation by the State Board of Education and the State Department of Education. Miss. Code § 37-3-5.

40. 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.

41. As many as 25 percent of teachers in a charter school may be exempt from state teacher licensure requirements at the time their 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).

42. 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).

IV. 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.

43. Reimagine Charter, located at 309 West Dowell Road in Jackson, Mississippi, enrolled 121 students during the 2015-2016 school year.

44. In compliance with the CSA, JPS surrendered \$317,487.06 in ad valorem tax revenue to Reimagine Charter during the 2015-2016 school year. Reimagine Charter Financial Records (see Ex. 8).

45. In compliance with the CSA, MDE surrendered \$643,027.00 in state funds to Reimagine Charter for Fiscal Year 2016. See id.

46. Accordingly, MDE and JPS remitted a total of \$960,514.06 to Reimagine Charter in the 2015-2016 school year. But for the CSA, those funds would have been spent on JPS schoolchildren.

47. Midtown Charter, located at 301 Adelle St in Jackson, Mississippi, enrolled 106 students during the 2015-2016 school year.

48. In compliance with the CSA, JPS surrendered \$278,129.16 in ad valorem tax revenue to Midtown Charter during the 2015-2016 school year. Midtown Charter Financial Records see

53. Based on the expected enrollment of the three charter schools, JPS will lose more than \$4 million to charter schools in the 2016-2017 school year.

v. Charter schools will drain funding from traditional public school districts statewide.

54. The expansion of charter schools heralds financial cataclysm for public school districts across the state.

55. Currently, four charter school applications are pending before the Authorizer Board. Each charter school would open within the geographic boundaries of JPS.

56. During the 2016 legislative session, the Mississippi Legislature passed Senate Bill 2161, which allows students in school districts rated “C,” “D,” or “F” by MDE to cross district lines – and take state per-pupil and local ad valorem funding with them – to attend charter schools. See Miss. Code § 37-28-23(1)(b).

57. This expansion of charter schools will deplete public funds from traditional public school districts across the state, and will do so without any oversight from the State Board of Education, MDE, or the local school district.

CLAIMS FOR RELIEF

CLAIM NO. 1: DECLARATORY AND INJUNCTIVE RELIEF FOR THE VIOLATION OF SECTION 206 OF THE MISSISSIPPI CONSTITUTION

58. All previous paragraphs are incorporated herein by reference as if fully restated.

59. Section 206 of the Mississippi Constitution provides that “[a]ny county or separate school district may levy additional tax, as prescribed by general law, to maintain its schools.”

60. Section 206 only allows ad valorem tax revenue to be used for the maintenance of the levying school district’s schools.

61. Remitting ad valorem tax revenue to charter schools pursuant to Section 37-28-55 of the Mississippi Code violates Section 206 of the Mississippi Constitution.

62. Therefore, the Defendants must be enjoined from enforcing or complying with Section 37-28-55 of the Mississippi Code.

CLAIM NO. 2: DECLARATORY AND INJUNCTIVE RELIEF FOR THE VIOLATION OF SECTION 208 OF THE MISSISSIPPI CONSTITUTION

63. All previous paragraphs are incorporated herein by reference as if fully restated.

64. Section 208 of the Mississippi Constitution provides as follows:

No religious or other sect or sects shall ever control any part of the school or other educational funds of this state nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriations is not conducted as a free school.

65. Charter schools, as provided for by the CSA, are not “free schools” within the meaning of Section 208.

66. Payments of public funds to charter schools pursuant to Section 37-28-55 of the Mississippi Code violate Section 208 of the Mississippi Constitution.

67. Therefore, the Defendants must be enjoined from enforcing or complying with Section 37-28-55 of the Mississippi Code.

PRAYER FOR RELIEF

68. Plaintiffs respectfully request that the Court:

69. Declare the funding provisions of the CSA unconstitutional under the Mississippi Constitution;

70. Enter an order permanently enjoining the Defendants from enforcing or complying with the funding provisions of the CSA; and

71. Award all other relief, including general relief, to which the Court deems the Plaintiffs to be entitled.

RESPECTFULLY SUBMITTED this Twenty-Ninth day of July 2016.

s/Will Bardwell

William B. Bardwell, MS Bar # 102910

Lydia Wright, MS Bar # 105186

Southern Poverty Law Center

111 E. Capitol Street, Suite 280

Jackson, MS 39201

Phone: 601-948-8882

Fax: 601-948-8885

will.bardwell@splcenter.org

lydia.wright@splcenter.org

CERTIFICATE OF SERVICE

I, William B. Bardwell, hereby certify that a true and correct copy of the foregoing document was filed electronically. Notice of 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 Twenty-Ninth day of July 2016.

s/Will Bardwell
William B. Bardwell, MS Bar # 102910