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

CHARLES ARAUJO, ET AL.	**PLAINTIFFS**
VS.	**CAUSE NO.: 25CH1:16-CV-001008**
GOVERNOR PHIL BRYANT, ET AL.	**DEFENDANTS**
VS.	
GLADYS OVERTON, ET AL.	**DEFENDANT-INTERVENORS**

STATE DEFENDANTS AND DEFENDANT-INTERVENORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COME NOW Defendants Mississippi Department of Education and Governor Phil Bryant ("State Defendants"), Defendant-Intervenors, Mississippi Charter Schools Association ("Association"), Gladys Overton, Andrew Overton, Ella Mae James, and Tiffany Minor ("Parent-Intervenors") (collectively, "Defendant-Intervenors"),[1] by and through their counsel of record, and submit to the Court these proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. In 2013, the Legislature enacted the Mississippi Charter Schools Act ("Act" or "MCSA"). The Act was an overhaul of the existing charter school law and was designed to facilitate the growth of public charter schools in Mississippi as an alternative means "[t]o improve student learning by creating high-quality schools." MISS. CODE ANN. §37-28-3.

2. Mississippi is one of 43 states to enact a public charter school law. Nationwide, there are more than 6,800 charter schools with more than three million children attending them.

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[1] In a separate submission, Defendant-Intervenor Midtown Partners, Inc. and Midtown Public Charter School ("Midtown") address the issue of Plaintiffs' standing. To avoid duplication, State Defendants and Defendant-Intervenors in this submission adopt and incorporate by reference the submission of Midtown.

3. Under the Act, Mississippi's public charter schools are free public schools that share many characteristics with traditional public schools:

- Public charter schools do not charge tuition and are publicly funded by the same sources that fund traditional public schools. *See* MISS. CODE ANN. §§ 37-28-3, 37-28-43(4), and 37-28-55

- Public charter schools have open enrollment, meaning that they may not restrict admission on the basis of ethnicity, national origin, religion, gender, income level, disabling condition, proficiency in the English language, or academic or athletic ability; and must be open to any child residing in the district or in a "C," "D," or "F" district. *See* MISS. CODE ANN. § 37-28-23

- Public charter schools are non-sectarian. *See* MISS. CODE ANN. §§ 37-28-39, 37-28-3, and 37-28-43

- Public charter schools cannot be private schools and cannot be for-profit.

- Public charter schools are subject to policies set by the State Board of Education for standards, assessments, graduation, and accountability letter grades like traditional public schools. *See* MISS. CODE ANN. §§ 37-28-15(4)(i), 37-28-45(2), 37-28-45(6)(x), and 37-28-29(2).

- Public charter schools are subject to the Mississippi Open Records Act and the Mississippi Open Meetings Act.

4. Public charter schools are under the oversight of the Mississippi Charter School Authorizer Board, a state agency with the power to authorize charter schools in Mississippi. As established by the Legislature: "All charter schools in the state established under this chapter are public schools and are part of the state's public education system." MISS. CODE ANN. § 37-15-45(2).

5. Each year, the Authorizer Board may approve up to 15 charter schools. It may approve charter schools in schools districts rated "D" or "F" without local school board approval, but must receive local school board approval to approve schools in districts rated "A," "B," or "C." *See* MISS. CODE ANN. § 37-28-7.

6. Once approved by the Authorizer Board, public charter schools are established and operate under the terms of a charter agreement in accordance with MISS. CODE ANN. § 37-28-1, *et. seq*. As noted above, many of the same statutes and standards governing traditional public schools apply to public charter schools, but public charter schools are independent from traditional public schools, governed by members of independent non-profit boards of directors. *See* MISS. CODE ANN. § 37-28-39.

7. Independence provides public charter schools with more autonomy over decisions, including personnel, scheduling and instruction. *See* MISS. CODE ANN. § 37-28-3(e), (f). The Legislature determined that public charter schools would:

> (a) [I]mprove student learning by creating high-quality schools with high standards for student performance;
>
> (b) [C]lose achievement gaps between high-performing and low-performing groups of public school students;
>
> (c) [I]ncrease high-quality educational opportunities within the public education system for all students, especially those with a likelihood of academic failure;
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> (d) [C]reate new professional opportunities for teachers, school administrators and other school personnel which allow them to have a direct voice in the operation of their schools;
>
> (e) [E]ncourage the use of different, high-quality models of teaching, governing, scheduling and other aspects of schooling which meet a variety of student needs;
>
> (f) [A]llow public schools freedom and flexibility in exchange for exceptional levels of results driven accountability;
>
> (g) [P]rovide students, parents, community members and local entities with expanded opportunities for involvement in the public education system.

MISS. CODE ANN. § 37-28-3.

8. Under the Act, public charter schools are not exclusive: they are subject to non-discrimination rules that apply to traditional public schools and are required to enroll a student

body that reflects the population of the local school district in which it is located. *See* MISS. CODE ANN. §§ 37-28-45, 37-28-43, 37-28-39, 37-28-37, 37-28-23. The underserved student composition of a charter school shall be at least 80 percent of the local school district's underserved student population. MISS. CODE ANN. § 37-28-23

9. Today there are three operating public charter schools in Mississippi: Reimagine Prep, Smilow Prep, and Midtown Public Charter School.

10. Mississippi's public charter schools are publicly funded by federal, state and local dollars. *See* MISS. CODE ANN. § 37-28-55.

11. Federal funds are provided in proportion to the number of children served by public charter schools in special categories recognized by federal law, such as low-income students (as defined in Title I, etc.), or students with disabilities (as defined in IDEA).

12. State funds to public charter schools are based on a per-pupil determination for each child that elects to attend a public charter school. *See* MISS. CODE ANN. §37-28-55(1). Under the Act, as with other statutory provisions addressing state funding after the transfer of a student for any reason from one district to another, the State continues to provide the same amount of funding to the traditional public schools for any students transferring to public charter schools for a full year *after* the child transfers. *See* MISS. CODE ANN. § 37-151-7.

13. Local *ad valorem* tax funds provided to public charter schools are distributed based on the students who live within a particular school district that elect to attend a public charter school. *See* MISS. CODE ANN. § 37-28-55(2). Local *ad valorem* taxes are levied for the purpose of educating students who live in the district. Under § 37-28-55(2), the local *ad valorem* taxes for education follow the student to the public school at which the student is educated.

14. For both the state and local funds, the amount provided to the public charter school is directly tied to the number of students who actually attend the public charter school.

15. This is a civil action originally filed on July 11, 2016 by Plaintiffs Charles Araujo, Evelyn S. Garner Araujo, Cassandra Overton-Welchin, John Sewell, Kimberly Sewell, Lutaya Stewart and Arthur Brown (collectively referred to herein as the "Plaintiffs"). *See* Dkt. # 1. Plaintiffs filed suit against Governor Phil Bryant and the Mississippi Department of Education (collectively, "State Defendants"), and the Jackson Public School District. A First Amended Complaint was filed on July 29, 2016. *See* Dkt. # 11.

16. Plaintiffs have challenged the funding components of Miss. Code Ann. § 37-28-55(1) and (2), alleging these provisions violate Sections 208 and 206 respectively of the Mississippi Constitution.

17. Gladys Overton, Andrew Overton, Ella Mae James and Tiffany Minor ("Parent-Intervenors") moved to intervene in this matter on August 10, 2016. *See* Dkt. # 12.

18. Both the Mississippi Charter Schools Association ("Association") and Midtown Partners, Inc. and Midtown Public Charter School ("Midtown") moved to intervene on September 1, 2016. *See* Dkt. # 25 and 26.

19. On October 4, 2016, this Court granted the motions to intervene.

20. Plaintiffs, State Defendants, and Defendant-Intervenors have filed cross-motions for summary judgment. A hearing on these motions was held on April 4, 2017.

21. The Court has reviewed all of the arguments presented at argument and in the briefs and is now ready to rule:

CONCLUSIONS OF LAW

I. Plaintiffs do not overcome the strong presumption that the Mississippi Legislature acted within its constitutional authority in enacting the MCSA.

1. In examining Plaintiffs' state constitutional challenge to the MCSA, the Court is not tasked with resolving policy disputes, or deciding whether charter schools, in general, are "good" or "bad."

2. The wisdom of the Mississippi Legislature in adopting the MCSA is not an object for debate in this litigation, as "it is not for the courts to question the wisdom of any constitutional declaration of public policy by the legislative body." *Chevron U.S.A., Inc. v. State*, 578 So.2d 644, 647 (Miss. 1991) (quoting *Durham v. Durham*, 85 So.2d 807, 809 (1956)); *Frazier v. State By and Through Pittman*, 504 So. 2d 675, 708-709 (Miss. 1987) ("the propriety, wisdom and expediency of a statutory enactment is a question for the legislature, not this Court"). This case thus turns only on whether the local and state funding components of the MCSA conflict with the Mississippi Constitution.

3. To challenge the authority of the Mississippi Legislature, Plaintiffs must overcome the strong presumption that the Legislature acted within its constitutional authority in adopting the charter school legislation. Plaintiffs must demonstrate that the MCSA is in direct conflict with the "clear language of the constitution." *PHE, Inc. v. State*, 877 So. 2d 1244, 1247 (Miss. 2004).

4. The Mississippi Supreme Court long has recognized these principles. Indeed, one of the best articulations comes from the 1953 decision of *Pathfinder Coach Division of Superior Coach Corp. v. Cottrell*, 216 Miss. 358, 62 So. 2d 383, 385 (Miss. 1953). There, the Court reasoned as follows:

> In determining whether an act of the Legislature violates the Constitution, the courts are without the right to substitute their judgment for that of the Legislature as to the wisdom and policy of the act and must enforce it, unless it appears

> beyond all reasonable doubt to violate the Constitution. Nor are the courts at liberty to declare an Act (of the legislature) void, because in their opinion it is opposed to a spirit supposed to pervade the Constitution, but not expressed in words.

Id. (internal quotations omitted).

5. In this case, Plaintiffs have failed to carry their burden of proving that the funding provisions of the MCSA are unconstitutional beyond all reasonable doubt.

II. The local funding component of the MCSA comports with Article 8, Section 206 of the Mississippi Constitution.

6. The first constitutional challenge advanced by Plaintiffs is to Miss. Code Ann. § 37-28-55(2), the provision for local-level funding for public charter schools. Plaintiffs maintain that the statute violates Article 8, Section 206 of the Mississippi Constitution because the statute provides for local money to follow a student who elects to attend a public charter school. Plaintiffs' interpretation of Section 206 is incorrect.

7. Section 206 includes this sentence: "Any county or separate school district may levy an additional tax, as prescribed by general law, to maintain its schools." *See* MISS. CONST. art. 8, § 206.[2]

8. According to Plaintiffs, Section 206 requires that public schools be under the "control" and "supervision" of the local school district to receive local funding. Under such a reading of Section 206, local funds for a traditional public school district always must stay within

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[2] Section 206, in full, reads as follows:

> 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. The state common-school fund shall be distributed among the several counties and separate school districts in proportion to the number of educable children in each, to be determined by data collected through the office of the State Superintendent of Education in the manner to be prescribed by law.

MISS. CONST. art. 8, § 206.

that district alone. That is, Plaintiffs suggest that one district's local funding cannot ever follow a student from one district to another—even if the student is being educated in the sister district.

9. For such an interpretation of Section 206, Plaintiffs turn to the Mississippi Supreme Court's decision in *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598, 604 (Miss. 2012). But Plaintiffs fundamentally misread the *Tucker* decision and stretch too far the Court's analysis of Section 206.

10. To be sure, the primary concern in *Tucker* was the fact that the statute had the effect of excluding approximately $46.8 million from the Pascagoula tax base. *See id.* The statute at issue in *Tucker* diverted *ad valorem* tax revenues from the Pascagoula School District to other school districts *not responsible for educating any of the taxed district's students*.

11. As a result, the non-taxed districts in *Tucker* had the benefit of receiving local tax dollars without the burden of providing an education to any of the taxed district's students. In other words, the statute caused the taxed district to lose money without easing any of the burden of the education of students within the district. This is what drove the analysis in *Tucker*: there was no local benefit to the local students from the local taxes levied.[3] That is not the case with public charter schools.

12. Unlike the legislative mandate in *Tucker* that unilaterally divested the taxed district of its funds, taxpayer parents choose to send their school-aged children to a public charter school. And when they do so, the money simply follows the local student.

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[3] During oral argument, Plaintiffs discussed the recent decision in *Pascagoula-Gautier Sch. Dist. v. Bd. of Supervisors of Jackson Cty.*, 212 So. 3d 742, 743 (Miss. 2016), *reh'g denied* (Mar. 23, 2017). While that case cited *Tucker* in the facts and procedural history section of the analysis, it did not (and did not need to) address the substance of Section 206. Instead, the *Pascagoula-Gautier School District* case turned only on issues of standing, the grant of a jury trial by the trial court, and joinder of a party. *See id.*

13. Because of this, the local funding component of the MCSA works hand in hand with Section 206 of the Mississippi Constitution.[4] Indeed, no one disputes that the entire purpose of a local school tax levy is to benefit local children. School taxes are levied for public school students, not for bricks and mortar within a confined district. For school tax levies to be used for public school students is all the MCSA requires.

14. On its face, the local-funding component of the MCSA is constitutional. Mississippi law has long allowed for local money to follow the local student in a number of statutes addressed in the briefing and at argument:

15. **Student Transfers**. A key example of the money following the child is Miss. Code Ann. § 37-15-31, which provides for the transfer of students from one district to another. *E.g.*, MISS. CODE ANN. § 37-15-31; *see also* MISS. CODE ANN. § 37-15-29; MISS. CODE ANN. § 37-151-93(2); MISS. CODE ANN. § 37-151-93(1).[5]

16. Since at least the 1950s, students have been allowed to transfer from one district to the next and, in doing so, the local ad valorem levy has followed the students to the new district. For example, for transfers to municipal school districts, the district "shall remit" the

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[4] In addition, the Mississippi Legislature is empowered to enact the MCSA under the power conferred by Section 201 of the Mississippi Constitution, which provides:

> The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools ***upon such conditions and limitations as the Legislature may prescribe.***

MISS. CONST. art. 8, § 201 (emphasis supplied).

[5] *See also* MISS. CODE ANN. § 37-15-29 ("No child shall be required to be transported in excess of thirty (30) miles on a school bus from his or her home to school, or in excess of thirty (30) miles from school to his or her home, if there is another school in an adjacent school district located on a shorter school bus transportation route by the nearest traveled road."); MISS. CODE ANN. § 37-151-93(2) ("Local maintenance funds shall be paid by the home school district to the transferee school district for students granted transfers under the provisions of Sections 37-15-29(3) and 37-15-31(3)[.]"); *see also* MISS. CODE ANN. § 37-151-93(1) ("Legally transferred students going from one school district to another shall be counted for adequate education program allotments by the school district wherein the pupils attend school, but shall be counted for transportation allotment purposes in the school district which furnishes or provides the transportation. The school boards of the school districts which approve the transfer of a student under the provisions of Section 37-15-31 shall enter into an agreement and contract for the payment or nonpayment of any portion of their local maintenance funds which they deem fair and equitable in support of any transferred student.").

local *ad valorem* tax funding on a *pro rata* basis outside of its district to the district that actually educates the students:

> Before September 1 of each year, the board of trustees of the municipal separate school district shall certify to the State Department of Education the number of students in the added territory of the municipal separate school district who are transferred to the adjacent school district under this subsection. … ***The levying authority shall remit to the school board of the adjacent school district, from the proceeds of the ad valorem taxes collected for the support of the municipal separate school district from the added territory of the municipal separate school district, an amount equal to the percentage of the total number of students in the added territory who are transferred to the adjacent school district***.

MISS. CODE ANN. § 37-15-31(5)(b) (emphasis supplied); *see also, e.g.,* MISS. CODE ANN. § 37-15-29; MISS. CODE ANN. § 37-151-93(2); MISS. CODE ANN. § 37-151-93(1). Thus, just as with the charter school legislation, the local *ad valorem* levy properly follows the students to the new district in these transfer situations.

17. Plaintiffs concede that the legal transfer provisions in Mississippi statutory law are constitutional.[6] However, Plaintiffs attempt to draw untenable distinctions between legal transfer provisions and the charter school legislation.

18. First, in the briefing, Plaintiffs wrongly maintain that the legal transfer provisions differ from the MCSA because school districts may "agree" to the transfers. *See Pl. Resp. to the Association's MSJ at p. 7, Dkt. # 59*. To use the Plaintiffs' words, transfers are constitutional because they are "completely discretionary." This argument, though, is a non-starter.

19. No language in Section 206 provides for "discretion." On the contrary, Mississippi law prohibits school districts from taking action that violates the Constitution. *See* MISS. CODE ANN. §37-7-301.1 ("The school board of a school district may adopt any orders, resolutions or ordinances with respect to school district affairs, property and finances which are

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[6] *See* p. 62 of Transcript of Oral Argument (April 4, 2017) (plaintiffs' counsel acknowledges that funding for "transfers, conservatorships, the School for Math and Science, the School for the Arts" is "constitutional").

not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi") (emphasis supplied); *see also Waller v. Moore*, 604 So. 2d 265 (Miss. 1992) (school district could not enter into contract that violated Section 109 of Mississippi Constitution). *Cappaert v. Junker*, 413 So. 2d 378, 380 (Miss. 1982) (noting that "contracts should be invalidated on the ground that they violate public policy" when "the contract is *prohibited by the Constitution*, a statute, or condemned by some decision of the courts construing the subject matter") (emphasis supplied).[7] In short, school districts do not have discretion to unilaterally violate the Mississippi Constitution, as incorrectly proposed by Plaintiffs.

20. Second, during oral argument, Plaintiffs advanced a different argument for why transfer provisions are constitutional, but the charter school legislation purportedly is not. According to Plaintiffs:

> With regard to transfers, transfers are funded pursuant to the provisions of § 37-151-93(2) of The Mississippi Code, and that statute provides that transfers are to be funded through "local maintenance funds," not *ad valorem* tax revenue.

See p. 62 of Transcript of Oral Argument (April 4, 2017).

21. This argument, however, is self-defeating of the very interpretation of Section 206 that Plaintiffs ask this Court to adopt. Local maintenance funds and ad valorem tax revenue are one in the same. "Local district maintenance funds" *are* funds raised by *ad valorem* taxation as

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[7] In addition, under the so-called "30-mile rule," Mississippi law provides that "[n]o child shall be required to be transported in excess of thirty (30) miles on a school bus from his or her home to school, or in excess of thirty (30) miles from school to his or her home, if there is another school in an adjacent school district located on a shorter school bus transportation route by the nearest traveled road." *See* MISS. CODE ANN. § 37-15-29(3); MISS. CODE ANN. § 37-151-93.

In the 30-mile rule situation, Mississippi law requires local ad valorem money to follow the local transferred student. For example, Section 37-151-93(2) provides that "[l]ocal maintenance funds ***shall*** be paid by the home school district to the transferee school district for students granted transfers" pursuant to the 30-mile rule. MISS. CODE ANN. § 37-151-93(2) (emphasis supplied). Similarly, "[i]n the event the parent or legal guardian of such child and the school board are unable to agree on the school bus mileage required to transport the child from his or her home to school, an appeal shall lie to the State Board of Education, or its designee, whose decision shall be final." *See* MISS. CODE ANN. § 37-15-29(3).

permitted by Section 206 of the Mississippi Constitution. *See* MISS. CONST. art. 8, § 206; MISS. CODE ANN. § 37-57-1; MISS. CODE ANN. § 37-57-105.

22. The word "maintenance" from the "local maintenance funds" comes from the very text of Section 206—*i.e.*, "any county or separate school-district may levy an additional tax to ***maintain*** its schools."

23. The fund created by the "may levy" language in Section 206 is the constitutional authorization for the ad valorem tax school maintenance fund. The Mississippi Legislature provided for that fund by enacting what became Miss. Code § 4014 (1892), and that is the "district maintenance fund" provision now known as Miss. Code Ann. § 37-57-1. *See, e.g.*, MISS. CODE ANN. § 37-57-1(1)(a); § 37-57-1(2) ("The tax so levied shall be collected by the tax collector at the same time and in the same manner as other *ad valorem taxes* are collected by him. The amount of taxes so collected as a result of such levy *shall be paid into the district maintenance fund* of the school district by the tax collector at the same time and in the same manner as reports and payments of other ad valorem taxes are made by said tax collector, except that the amount collected to defray costs of collection may be paid into the county general fund.") (emphasis supplied); *see also* MISS. CODE ANN. § 37-57-105.[8]

24. **Agricultural High Schools/Alternative School Programs**. Since at least 1930, the law has allowed local funding raised in one county school district to fund the education of students attending an agricultural school in another county, *see* Miss. Code Ann. § 37-27-61, just as local funding from traditional public schools is submitted to the public charter school on a per pupil basis for the children actually being educated by the public charter school.

[8] *See also* A.G. OP., JAMES E. PETTY, OP. NO. 99-0080, 1999 WL 269208, at *4 (Miss. A.G. Mar. 8, 1999).

25. The statute expressly provides for the use of county school funds to be used to pay for the education of the student *outside of the district* where there is an agricultural school, *i.e.*, Lamar County taxes could fund a Lamar County student attending Forrest Agricultural High School. *Id.* The local school levy follows the student, just as the Mississippi Legislature has authorized here with public charter schools.

26. Similarly, under Miss. Code Ann. § 37-13-92, school districts may jointly establish alternative school programs for students with disciplinary concerns. The alternative school may be established by two or more adjacent districts, with one district operating the site and other district(s) contributing funding for the students it sends into the alternative school program. *Id.*

27. The statute expressly provides that local taxes may be used to support an alternative school program operated in this manner: "The expense of establishing, maintaining and operating such alterative 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.***" *See* MISS. CODE ANN. §37-13-92(6) (emphasis supplied).

28. Plaintiffs concede ag schools and alternative schools are constitutionally funded, but cannot reconcile the fact that local district maintenance leave the district to fund ag schools and alternative schools.

29. What's more, Plaintiffs many times in their briefing urge inconsistent arguments concerning the purported requirements of Section 206 when discussing the funding for ag schools and alternative schools. For instance, on pages 2 and 5, respectively, of one of Plaintiffs' response briefs, Plaintiffs make the following two points:

> *Tucker* made clear that *ad valorem* revenue can only maintain the schools under the levying school district's control.
> . . . .
> *[A]d valorem* revenue must be used only by the school district that levied the tax.

See Pl. Resp. to the Association's MSJ at pp. 2, 5, Dkt. # 59.

30. Later in the same brief and other briefs, though, Plaintiffs backtrack on this very position. On page 6 of that same brief, for example, Plaintiffs maintain that alternative school funding is proper because:

> For out-of-district students attending alternative school…local district maintenance funds may be used to pay for the child's education [out of the district].

See id. at p. 6. Plaintiffs cannot have it both ways. Nor can they simply continue to change their arguments when faced with questions they cannot answer about the plain meaning of related statutory funding for public schools. To put it plainly, Plaintiffs' wavering, inconsistent positions on the requirements of Section 206 are irreconcilable and otherwise inapt.

31. **Conservatorships**. Conservatorships are another example of money following the child. In a conservatorship, there is no local control once the State takes over the district, although public funding (both local and state) continues. *See* MISS. CODE ANN. §§ 37–17–6, 37-17-13.[9] Plaintiffs do not contend otherwise—nor do they challenge the constitutionality of the conservatorship statutory scheme.

32. Quite the opposite, on page 18 of Plaintiffs' response brief, Plaintiffs maintain that conservatorships do not run afoul of Section 206 because they do not "eliminate local oversight over a district during a state of emergency; [they] merely replace[ ] the officials responsible for performing that oversight[.]" *See Pl. Resp. to the Association's MSJ at p. 18, Dkt. # 59.* That is, according to Plaintiffs, conservatorships are constitutional because local officials

[9] The Mississippi Achievement School District is similar in terms of the lack of local control and supervision. The purpose of the Mississippi Achievement School District is to "transform[ ] persistently failing public schools and districts throughout the state into quality educational institutions." *See* MISS. CODE ANN. § 37-17-17(1). The "Mississippi Achievement School District [is] governed by the State Board of Education." *See id.* at § 37-17-17 (2); *see also id.* at § 37-17-17 (5)(a) (discussing "[t]ransfer of the school's/district's governance from the local school district to the Mississippi Achievement School District").

are replaced by non-local officials, but the MCSA is unconstitutional because local officials are replaced by other non-local officials.

33. This argument is wholly circular, contradictory, and inconsistent. With both conservatorships and with charter schools, local funding continues without so-called "local oversight."[10] Consequently, constitutionalizing Plaintiffs' otherwise inapt reading of Section 206 could serve to hinder the State's ability to address and rectify failing school districts.

34. All in all, Plaintiffs' expansive reading of *Tucker* falls out of step with the basic premise of Section 206 and that the entire purpose of a local school tax levy is to benefit local children. Similarly, Plaintiffs' interpretation of Section 206 collides with many other provisions of Mississippi law—provisions which the Plaintiffs concede are constitutional.

35. Miss. Code Ann. §37-28-55(2) does exactly what other statutory school-funding provisions under Mississippi law provide: local taxes for education follow the local students.[11] Mississippi law has consistently and constitutionally allowed this approach, and Plaintiffs have not shown beyond all reasonable doubt otherwise.

36. Because of this, Plaintiffs' constitutional challenge to Miss. Code Ann. §37-28-55(2) fails.

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[10] The Plaintiffs, at one point, also maintain that the "temporary" nature of a conservatorship alleviates its alleged constitutional infirmity. *See Pl. Resp. to the Association's MSJ at pp. 17, 18, Dkt. # 59*. While it is curious to allege that it is permissible to violate the Mississippi Constitution as long as the violation is for some short(er) time period, the Plaintiffs' theory does not make much sense for purposes of a Section 206 local funding analysis.

[11] Because the funds paid under Miss. Code Ann. § 37-28-55(3) are State funds paid by the Mississippi Department of Education, Plaintiffs cannot urge a Section 206 local funds challenge to this funding provision at all.

III. The state funding provision of the MCSA does not violate Article 8, Section 208 of the Mississippi Constitution.

37. Article 8, Section 208 proscribes that state funds may not be appropriated to any school that is not "conducted as a free school." MISS. CONST. art. 8, § 208.[12] Plaintiffs maintain that the state funding provision of the MCSA[13] is unconstitutional under Section 208, arguing that public charter schools are not free schools.[14] Plaintiffs are wrong.

38. "When interpreting a constitutional provision, we must enforce its plain language." *Johnson v. Sysco Food Servs*., 86 So. 3d 242, 244 (Miss. 2012). Based on the plain language of Section 208, public charter schools are free schools because public charter schools cannot charge tuition. *See* MISS. CODE ANN. § 37-28-43(4).

39. The Mississippi Legislature has broad power conferred by Section 201 of the Mississippi Constitution to fund public education:

> The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.

MISS. CONST. art. 8, § 201.

40. No matter: in an effort to circumvent the broad power of Section 201, Plaintiffs argue that, pursuant to the Mississippi Supreme Court decisions in *Otken v. Lamkin,* 56 Miss. 758 (1879) and *State Teachers' College v. Morris*, 144 So. 374 (Miss. 1932), the term "free school" means more than "free." Plaintiffs argue that a free school actually is one under the

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[12] Section 208 of the Mississippi Constitution reads: "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 appropriation is not conducted as a free school."

[13] MISS. CODE ANN. § 37-28-55(1).

[14] *See* Amended Complaint, Dkt. # 11 at 7.

supervision of the State Superintendent of Education and a "***county*** superintendent of education" (emphasis supplied).[15]

41. This strained analysis based on case law interpreting a prior version and different provision of the Mississippi Constitution is unavailing. "Free" means "free," and public charter schools are indisputably free based on the plain reading of the Constitution. State funding for public charter schools thus easily passes constitutional muster.

42. Indeed, the *Otken* and *Morris* decisions relied upon by Plaintiffs are inapposite to the present case—neither even considering the current language in the Constitution. The Mississippi Supreme Court in *Otken* considered whether the state could provide funds to privately developed schools, and, in doing so, held that diverting funds outside of the uniform system would violate the then-existing Article 8 of the 1868 Constitution. However, since the *Otken* decision, the Mississippi Constitution has been amended several times, with the uniformity provision having been deleted[16] and Legislature having been given authority under Section 201 in establishing and maintaining public schools "upon such conditions and limitations as the Legislature may prescribe."[17]

43. Furthermore, Plaintiffs' manufactured four-part test[18] – which exists nowhere in the Constitution, statutes, or case law – also immediately fails because of the alleged fourth prong requiring local supervision by the "county" superintendent. The Court may take judicial notice that there are dozens of municipal school districts in Mississippi without a "county superintendent" overseeing them, including the Jackson Public School District. All of these

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15 Plaintiffs' Response in Opp. to MJI Motion for Summary Jmnt, Dkt. # 60 at 9.

16 *Compare* Miss. Const. Art. VIII, §1 (1868) *with* Miss. Const. Article VIII, §201 (1890).

17 *Id.*

18 "(1) non-sectarian, (2) open to all, (3) 'under the general supervision of the State superintendent," and (4) "under. . . the local supervision of the county superintendent." *See* Plaintiffs' Memorandum of Authorities in Support of Motion for Summary Judgment, Dkt. # 17 at 13.

districts receive state funding, which the Plaintiffs agree is constitutionally permissible. There is no difference with state funding to public charter schools.

44. There are also many statewide specialty schools such as the Mississippi School for Math and Science[19] and the Mississippi School for the Arts,[20] specialty local schools such as Agricultural High Schools[21] and Alternative Schools,[22] and school entities formed to help failing schools, such as the Mississippi Achievement School District[23] and Conservatorships[24] – none of which are under the supervision, authority, or control of a local county superintendent.

45. The Court also finds Plaintiffs' reliance on *Morris* misplaced, as *Morris* also relied on the now non-existent uniformity language, which was still in Section 201 of the Constitution in 1932.[25] In addition, *Morris* otherwise does not support the position advanced by the Plaintiffs.

46. In conclusion, the Court holds that the term "free school" in Section 208 of the Mississippi Constitution means what it says—a school that does not require an impermissible financial obligation from its patrons. Since public charter schools are prohibited from charging tuition, such schools are free schools under Section 208. Therefore, Section 37-28-55 does not violate Section 208.

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19 MISS. CODE ANN. § 37-139-1 *et al.*

20 MISS. CODE ANN. § 37-140-1 *et al.*

21 MISS. CODE ANN. § 37-37-1 *et al.*

22 MISS. CODE ANN. § 37-13-92.

23 MISS. CODE ANN. § 37-17-17.

24 MISS. CODE ANN. §§ 37-17-13, 37-17-6.

25 Additional sections of Article 8 of the Mississippi Constitution also have evolved. The "general supervision" clause of the state superintendent has been eliminated from Section 202, and nothing in the current version of Section 203 requires the State Board of Education to have control over all public schools. In addition, Section 204 changed in 1890 (post-*Otken*) to allow the Legislature to "abolish" the office of county superintendent.

WHEREFORE, PREMISES CONSIDERED, for all of the reasons set forth above, the Court denies Plaintiffs' Motion for Summary Judgment and grants the Cross-Motions for Summary Judgment filed by the State Defendants and Defendant-Intervenors.

THIS, the 19th day of May, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, KRISSY C. NOBILE, hereby certify that I electronically filed the above and foregoing with the Clerk of the Court using the MEC system which sent notification of such filing to the all counsel of record.

This the 19th day of May, 2017.

/s/ Krissy C. Nobile
KRISSY C. NOBILE