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

CHARLES ARAUJO, et al.

Plaintiffs,

v.

GOVERNOR PHIL BRYANT, et al.

Defendants.

CIVIL CAUSE NO. 25CH1:16-CV-1008

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Before the Court are the following motions:

1. Governor Bryant and the Mississippi Department of Education's ("MDE") Combined Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment, Dkt. No. 45;
2. Defendant-Intervenor Mississippi Charter Schools Association's Cross-Motion for Summary Judgment, Dkt. No. 46;
3. Motion for Summary Judgment and Combined Memorandum Brief of Intervenors Midtown Partners, Inc. and Midtown Public Charter School, Dkt. No. 50;
4. Plaintiffs' Superseding Motion for Summary Judgment, Dkt. No. 51; and
5. Defendant-Intervenors Gladys Overton, et al. Cross Motion for Summary Judgment and Motion in Opposition to Plaintiffs' Motion for Summary Judgment, Dkt. No. 53.

This case presents a single question of pure law: whether the funding mechanism of the Charter Schools Act of 2013 ("CSA") violates the Mississippi Constitution. The parties are in agreement that no issues of material fact are presented and that the matter is ripe for a ruling on the merits. Having considered the motions, the memoranda in support and in opposition, the statements made at oral argument on April 4, 2017, and the applicable law, the Court finds that there is no genuine issue of material fact and that the Plaintiffs are entitled to judgment as a matter of law. For the reasons that follow, the Court will **GRANT** the Plaintiffs' Superseding Motion for Summary Judgment and will **DENY** the Defendants' dispositive motions.

I. INTRODUCTION

In Mississippi, the requirements for public schools receiving public taxpayer funds are embodied in two key provisions of our state Constitution: Section 206 and Section 208. Section 206 allows a school district to levy an *ad valorem* tax, and "mandate[s] that a school district's taxes be used to maintain 'its schools.'" *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598, 599 (Miss. 2012). And under Section 208, a school can receive state school funds only if it falls under the supervision of both the state superintendent of education and a local district superintendent. *State Teachers' College v. Morris*, 144 So. 374, 376 (1932) (citing *Otken v. Lamkin*, 56 Miss. 758 (1879)). The CSA funds charter schools that lack this constitutionally required state and local oversight. In fact, charter schools were designed to avoid such oversight by the local district superintendent, the local school board, the State Board of Education, and the State Superintendent. Providing local *ad valorem* tax revenue and state school funds to charter schools that are exempted from that local and state oversight violates both Section 206 and Section 208. Therefore, the CSA's funding provision, Section 37-28-55 of the Mississippi Code, is unconstitutional.

II. FINDINGS OF FACT[1]

The CSA was passed by the Mississippi Legislature and signed into law by Governor Bryant in 2013. Codified at Miss. Code § 37-28-1, *et seq.*, the CSA provides for the establishment of charter schools statewide. Specifically, 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. *See* Miss. Code Ann. § 37-28-55.

Reimagine Charter is located at 309 West McDowell Road in Jackson, Mississippi. In compliance with the CSA, the Jackson Public School District ("JPS") surrendered $317,487.06 in *ad valorem* tax revenue to Reimagine Charter during the 2015-2016 school year and $618,512.97 in *ad valorem* tax revenue during the 2016-2017 school year. Ex. 3 to Plaintiffs' Superseding Motion for Summary Judgment; Ex. 7 to Plaintiffs' Superseding Motion for Summary Judgment. In compliance with the CSA, MDE surrendered $643,027.00 in state funds to Reimagine Charter for Fiscal Year 2016 and at least $639,508.10 in state funds for Fiscal Year 2017. Ex. 1 to Plaintiffs' Superseding Motion for Summary Judgment; Ex. 4 to Plaintiffs' Superseding Motion for Summary Judgment. Accordingly, MDE and JPS remitted at least $2,218,535.13 to Reimagine Charter over the past two school years. But for the CSA, those funds would have been spent on students attending JPS.

Midtown Charter is located at 301 Adelle Street in Jackson, Mississippi. In compliance with the CSA, JPS surrendered $278,129.16 in *ad valorem* tax revenue to Midtown Charter during the 2015-2016 school year and $440,251.59 in *ad valorem* tax revenue during the 2016-

[1] The proposed findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law. To the extent any of the following findings of fact are determined to be conclusions of law, they are adopted, and shall be construed and deemed, conclusions of law. To the extent any of the following conclusions of law are determined to be findings of fact, they are adopted, and shall be construed and deemed, as findings of fact.

2017 school year. Ex. 3 to Plaintiffs' Superseding Motion for Summary Judgment; Ex. 7 to Plaintiffs' Superseding Motion for Summary Judgment. In compliance with the CSA, MDE surrendered $618,189.00 in state funds to Midtown Charter for Fiscal Year 2016 and at least $467,514.52 during Fiscal Year 2017. Ex. 2 to Plaintiffs' Superseding Motion for Summary Judgment; Ex. 5 to Plaintiffs' Superseding Motion for Summary Judgment. Accordingly, MDE and JPS remitted at least $1,804,084.27 to Midtown Charter over the past two school years. But for the CSA, those funds would have been spent on students attending JPS.

A third charter school, Smilow Prep ("Smilow Charter"), is located at 787 East Northside Drive in Jackson, Mississippi. Smilow Charter opened within JPS's boundaries for the 2016-2017 school year. In compliance with the CSA, JPS remitted $329,513.46 in *ad valorem* tax revenue to Smilow Charter during the 2016-2017 school year. Ex. 7 to Plaintiffs' Superseding Motion for Summary Judgment. In compliance with the CSA, MDE has surrendered at least $402,124.48 in state school funds during Fiscal Year 2017. Ex. 6 to Plaintiffs' Superseding Motion for Summary Judgment. Accordingly, MDE and JPS remitted at least $731,637.94 to Smilow Charter over the past school year. But for the CSA, those funds would have been spent on students attending JPS.

In only two years, the CSA has cost JPS in excess of $4.75 million, but this problem does not affect JPS alone. If the CSA remains in effect, the expansion of charter schools will continue to deplete public funds from traditional public school districts across the state, and will do so without any oversight from a local district superintendent, a local school board, the State Board of Education, or the State Superintendent.

III. CONCLUSIONS OF LAW

A. Plaintiffs Have Standing to Bring This Case.

The first question before this Court is whether the Plaintiffs have standing to challenge the State's appropriation of funds to charter schools. Midtown Charter, one of the intervenor-defendants, contends that the Plaintiffs lack standing because they "have not identified any distinct and concrete injury resulting from the Mississippi Legislature's creation and funding of public charter schools." Dkt. No. 50 at 1. The Plaintiffs contend that the Mississippi Supreme Court has repeatedly allowed taxpayers to challenge illegal appropriations, including for school funding.

"It is well settled that 'Mississippi's standing requirements are quite liberal'" compared to the standing requirements set out in Article III of the United States Constitution. *State v. Quitman Cnty.*, 807 So.2d 401, 405 (Miss. 2001) (quoting *Dunn v. Miss. State Dep't of Health*, 708 So.2d 67, 70 (Miss. 1998)). Furthermore, the Mississippi Supreme Court "has been more permissive in granting standing to parties who seek review of governmental actions." *Id.* at 405. To have standing to sue, a party must "assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise authorized by law." *Fordice v. Bryan*, 651 So.2d 998, 1003 (Miss. 1995). Here, the Plaintiffs have a "colorable interest" in the subject matter of the litigation *and* they have experienced an "adverse effect" from the conduct of the Defendants.

1. Plaintiffs have a "colorable interest" in school funding.

An interest is deemed 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)). "[A]n individual's legal interest or entitlement to assert a

claim against a defendant must be 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 *State v. Quitman Cnty.*, 807 So.2d 401, 405 (Miss. 2001)).

The Mississippi Supreme Court has held that taxpayers have standing to challenge expenditures not authorized by law. *See, e.g., Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975) (holding that "[t]he complainants, as taxpayers, had standing to bring this suit . . . ."); *Richardson v. Canton Farm Equipment, Inc.*, 608 So. 2d 1240, 1244 (Miss. 1992) (holding that plaintiff "as both an aggrieved bidder and a taxpayer had standing to bring the action" in a case against the board of supervisors for illegal spending decision,"). *See also Quitman Cnty.*, 807 So. 2d at 405 (holding that county had standing, on behalf of its taxpayers, to attack a legislative act that adversely affected the local budget).

Furthermore, the Mississippi Supreme Court has specifically permitted taxpayers to challenge the appropriation of school funds. *See Pascagoula Sch. Dist. v. Tucker*, 91 So.3d 598 (Miss. 2012) (explaining that a Section 206 challenge "affect[ed] the rights of all taxpayers in Jackson County and [was] of grave importance to every school district in the county"); *Chance v. Miss. State Textbook Rating & Purchasing Bd.*, 190 Miss. 453, 200 So. 706 (1941) (finding that a group of citizens had taxpayer standing to raise a Section 208 challenge against the State for loaning state-owned textbooks to private school students).

Scholars have recognized the Mississippi Supreme Court's position that taxpayers have standing to attack illegal government spending. In the *Encyclopedia of Mississippi Law*, former Mississippi Supreme Court Justice James L. Robertson explains that under state law, "[a] taxpayer may challenge a legislative appropriation to an object not authorized by law." 3 MS Prac. Encyclopedia MS Law § 19:211 (2d ed.). This observation corresponds with a 2012 law

review article, which found Mississippi among the 37 states that allow taxpayer standing to attack illegal government spending. Joshua G. Urquhart, *Disfavored Constitution, Passive Virtues? Linking State Constitutional Fiscal Limitations and Permissive Taxpayer Standing Doctrines*, 81 Fordham L. Rev. 1263, 1313 (Dec. 2012) (Appendix).

The Mississippi Supreme Court has also long held that taxpayers have standing to bring public interest lawsuits. The Court's decision in *Fordice v. Bryan*, 651 So.2d 998 (Miss. 1995), illustrates this principle. In that case, three legislators sought a judgment declaring the governor's partial veto of bond bills to be unconstitutional. In response, the governor challenged the legislators' standing. *Id.* at 1003. The Supreme Court explained that the legality of appropriations 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 concluded that the plaintiffs, "as legislators *and taxpayers*, had standing to bring suit since they asserted a colorable interest in the litigation." *Id.* (emphasis added).

In the instant case, the Plaintiffs are *ad valorem* taxpayers challenging the appropriation of state school funds and *ad valorem* tax revenue to schools outside the control of the local school board, the local superintendent, and the Mississippi Constitution's system of "free schools." The constitutionality of the CSA's funding mechanism is clearly a matter of public interest. As in *Tucker* and *Fordice*, this issue is of considerable constitutional importance to all citizens and taxpayers of Mississippi. Accordingly, the Plaintiffs have standing to bring this lawsuit because they have asserted a colorable interest in the litigation.

2. Plaintiffs have experienced 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) ("Thus, while standing in federal court requires an 'injury in fact,' standing in Mississippi is more liberal and requires a 'colorable interest in the subject matter.'"). 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.

Here, the Plaintiffs are *ad valorem* taxpayers. Accordingly, they experience an adverse effect from the CSA's funding provisions that is different from that experienced by the general public – that is, individuals who do not pay *ad valorem* taxes. *See Tucker*, 91 So. 3d at 604 ("this case affects the rights of all taxpayers in Jackson County").

In addition, the Plaintiffs' children have a constitutionally protected property interest in their education, and an interest in ensuring that their schools receive all the financial support they are legally entitled to receive. *Goss v. Lopez*, 419 U.S. 565 (1975). *See also Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985) ("[T]he right to a minimally adequate public education created and entailed by the laws of this state is one we can only label fundamental. As such this right, to the extent our law vests it in the young citizens of this state, enjoys the full substantive and procedural protections of the due process clause of the Constitution of the State of Mississippi, whatever construction may be given the Constitution of

the United States."). The Plaintiffs' children have experienced an "adverse effect" that is different from the effect on the general public.

The Plaintiffs satisfy both possible avenues of establishing standing. They have a colorable interest in this litigation's subject matter, and they suffer an adverse effect from the Defendants' behavior. The Court finds that the Plaintiffs have standing and are entitled to be heard on the merits of their case.

B. Mississippi Code § 37-28-55 Violates Section 206 of the Mississippi Constitution.

Under Section 37-28-55 of the Mississippi Code, 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).

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*.

Miss. Const. art. VIII, § 206 (emphasis added). By its plain language, Section 206 allows a public school district to levy *ad valorem* taxes (i.e., property taxes) for only one purpose: "to maintain *its* schools" (emphasis added). In other words, Section 206 forbids the Legislature from requiring a school district to share its *ad valorem* revenue with schools outside the district's control.

This interpretation of Section 206 was explained by the Mississippi Supreme Court in *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598 (Miss. 2012). In that case, a statute mandated that

ad valorem tax revenue collected by a school district on liquefied natural gas terminals and crude oil refineries be distributed to all school districts in the county where the terminals and refineries were located. The Pascagoula School District ("PSD"), located in Jackson County, had an *ad valorem* tax base that included both a crude oil refinery and a liquefied natural gas terminal. Concerned that it would lose a portion of its *ad valorem* tax revenue to the three other school districts located in Jackson County, the PSD challenged the statute's constitutionality.

On appeal, the Mississippi Supreme Court held that the Legislature cannot require a school district to share its *ad valorem* tax revenue with schools outside its control. The Court explained:

> The plain language of Section 206 grants the PSD the authority to levy an ad valorem tax and mandates that the revenue collected be used to maintain only its schools. Conversely, no such authority is given for the PSD to levy an ad valorem tax to maintain schools outside its district.

Id. at 604.

In so holding, the Court rejected the defendants' argument that the statute was a legitimate exercise of the Legislature's broad plenary power to regulate school finance. Instead, the Court stated:

> The Legislature's plenary power does not include the power to enact a statute that – on its face – directly conflicts with a provision of our Constitution. Section 206 specifically limits the use of the tax revenue from a school district's tax levy to the maintenance of "its schools," and the Legislature's plenary taxation power does not authorize it to ignore this 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). The Court explained that upholding the law as a legitimate exercise of legislative power would render the phrase "to maintain *its schools*" in Section 206 "a complete nullity." *Id.* at 605 (emphasis added). While the Legislature's plenary authority

includes establishing the *method* by which a district may levy *ad valorem* taxes; it does not extend to mandating how those funds are *distributed*. *Id.* at 605.

Recently, the Supreme Court reaffirmed this interpretation of Section 206 when it explained that *Tucker* "mandated that all of the school district ad valorem funds from the [refinery and natural gas terminal] go to the Pascagoula School District." *Pascagoula-Gautier Sch. Dist. v. Bd. of Supervisors of Jackson Cnty.*, 212 So. 3d 742, ¶2 (Miss. 2016). *See also id.* (agreeing that "the constitution provides that a school district may levy a tax to maintain its schools, not its schools and several others").

In Mississippi, a charter school is not part of the school district in which it is geographically located. *See* Miss. Code § 37-28-45(3) ("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."). Instead, each charter school operates as its own local education agency, which is simply another name for a school district. *See* Miss. Code § 37-28-39; *see also* Miss. Code § 37-135-31 (defining "local education agency" as "a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through 12th Grade public educational institutions"). Likewise, a charter school is not subject to the oversight of the local school board or the local superintendent. Miss. Code Ann. § 37-28-45(3) ("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.").

Section 206 clearly forbids a school district from distributing *ad valorem* revenue to schools outside its control. By design, charter schools are not part of the local school district and are not overseen by the local school board or the local superintendent. Section 37-28-55 of the Mississippi Code violates this constitutional mandate; therefore, it is unconstitutional.

C. Mississippi Code § 37-28-55(1)(a) Violates Section 208 of the Mississippi Constitution.

The CSA provides that "[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).

Article VIII, Section 208 of the Mississippi Constitution provides:

> 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*.

Miss. Const. art. VIII, § 208 (emphasis added). Pursuant to the plain language of Section 208, state education funds may only be allocated to a school that is "conducted as a free school."

1. A "free school" is not merely a school that charges no tuition; it must also be under the supervision of the state superintendent and local superintendent.

For nearly 140 years, the Mississippi Supreme Court has held that a "free school" is not merely a school that charges no tuition. The Court defined "free school" in *Otken v. Lamkin,* 56 Miss. 758, 764 (1879), and struck down a state law appropriating public funds to private high schools. Finding that private schools are ineligible to receive public funding, the *Otken* Court established the following definition of "free public schools":

> No portion of the school fund can be diverted to the support of schools which, in their organization and conduct, contravene the general scheme prescribed. That is to say, the fund must be applied to such schools only as come within the uniform system devised, and *under the general supervision of the State superintendent and the local supervision of the county superintendent*, are free from all sectarian religious control, and ever open to all children within the ages of five and twenty-one years . . .

Id. at 764 (emphasis added).

More than a half-century later, the Mississippi Supreme Court reaffirmed *Otken* in *State Teachers' College v. Morris*, 144 So. 374, 376 (1932), in which the Court determined that a demonstration school run by a state teacher's college was not a "free school" because it was regulated by the "administrative authority of the major state institutions of learning," not by 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*.

144 So. 374 at 376 (citing *Otken*, 56 Miss. at 758) (internal quotation marks omitted) (emphasis added). Accordingly, by definition, a "free public school" must be supervised by the public officials charged with establishing and supervising "that system of schools," meaning the state superintendent and a local district superintendent.

The Mississippi Supreme Court has clearly established that a "free school" is not merely a school that charges no tuition. In order to receive state school funds, the school must also come under the dual oversight of the state superintendent and a local district superintendent. The CSA fails this age-old requirement.

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, by design, they are exempt from oversight by local school districts, local superintendents, the State Board of Education, the State Superintendent, and the State Department of Education ("MDE").

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 Department of Education." Miss. Code § 37-28-45(5). Additionally, charter schools are not "under . . . the local supervision of the county superintendent" because they are expressly exempted from any local school district oversight. Miss. Code § 37-28-45(3). In fact, each charter school serves as its own local education agency. Miss. Code § 37-28-39. Because charter schools are not under the general supervision of the state superintendent of education and the local superintendent of education, they are not "free schools" within the meaning of Section 208. As a result, charter schools are not eligible to receive state school funds.

The Defendants argue that applying *Otken*'s dual-oversight requirement would preclude municipal school districts from receiving state school funds. This argument misapprehends Section 208's historical context: both municipal school districts and superintendents of municipal school districts have existed since the late nineteenth century.

When the Framers of the 1890 Constitution incorporated *Otken*'s dual-oversight requirement, they were familiar with municipal separate school districts. Delegates at the 1890 Constitutional Convention spoke favorably of separate school districts. S*ee Journal of the Constitutional Convention of 1890* at 133. The state superintendent's biennial reports refer to separate school districts as early as 1885. Biennial Report of the State Superintendent of Public

Education to the Legislature of Mississippi for the Years 1884-85, HathiTrust, https://babel.hathitrust.org/cgi/pt?id=njp.32101050882016;view=1up;seq=5 (last viewed May 19, 2017). If this system contravened the dual-oversight system that the Framers had in mind, then they would have said so. At the very least, they would not have spoken approvingly of municipal separate school districts in one breath and readopted the dual-oversight requirement in the next if that requirement resulted in prohibiting municipal districts.

Neither *Otken* or *Morris*, nor any Mississippi Supreme Court decision, has ever suggested that municipal school districts contravene the dual-oversight requirement. Instead, municipal school districts face the same dual-oversight requirement that county school districts face: they must be overseen by both the state superintendent and a local district superintendent.

Defendants also point to several specialty schools to bolster their argument that charter schools need not be subjected to both local and state oversight. This is a red herring. This case is solely about the constitutionality of the funding structure of the CSA. The question of whether specialty schools meet the dual-oversight requirement of "free schools" is not properly before the Court. As a result, the Court need not consider the constitutionality of the funding structures of any schools other than charter schools. As the Court has already explained, both the CSA's local and state funding streams are unconstitutional.

CONCLUSION

This case presents a single question of pure law: whether the funding mechanism of the CSA violates the Mississippi Constitution. For the foregoing reasons, this question must be answered in the affirmative. Because there is no genuine issue of material fact in this case, the Plaintiffs are entitled to summary judgment. The Court **GRANTS** the Plaintiffs' Superseding Motion for Summary Judgment and **DENIES** the defendants' dispositive motions. Section 37-

28-55 of the Mississippi Code is facially unconstitutional. A Final Judgment permanently enjoining the Defendants from enforcing Section 37-28-55 will be entered. All motions remaining on the docket, if any, are denied as moot.

SO ORDERED, this the ____ day of _____, 2017.

_____
Chancery Court Judge

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY:

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CERTIFICATE OF SERVICE

I, Lydia Wright, hereby certify that true and correct copies of the foregoing Proposed Findings of Fact and Conclusions of Law were served on all counsel of record via the Court's electronic filing system.

This the 19th day of May, 2017.

/s/ *Lydia Wright*
Lydia Wright