

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

**CHARLES ARAUJO, ET AL**

**PLAINTIFFS**

**V.**

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

**GOV. PHIL BRYANT, ET AL**

**DEFENDANTS**

**MISSISSIPPI CHARTER SCHOOLS  
ASSOCIATION**

**DEFENDANT-INTERVENOR**

**DEFENDANT-INTERVENOR MISSISSIPPI CHARTER  
SCHOOLS ASSOCIATION'S  
MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR  
SUMMARY JUDGMENT**

**INTRODUCTION**

This case is about the statutory funding mechanisms for public charter schools in Mississippi. The Southern Poverty Law Center (“SPLC”)<sup>1</sup> asserts that the local and state funding components of Mississippi’s Charter Schools Act of 2013 (“Miss. Code Ann. §37-28-1, *et. seq.*) violate the Mississippi Constitution. In attempting to strike down funding for public charter schools, the SPLC misreads and misapplies the wrong version of the Mississippi Constitution, and then sweepingly applies a 2012 opinion from the Mississippi Supreme Court to suggest one district’s local funding cannot follow a resident student from one district to another (even if the student is being educated in the sister district). The SPLC’s arguments are contrary to long-established precedent under Mississippi law that the local tax money follows the student.

Not only is the SPLC’s argument a misreading of the Constitution and case law, but to agree with the SPLC’s approach would result in the collapse of many of Mississippi’s diverse public education opportunities outside of traditional public schools. The SPLC’s efforts to

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<sup>1</sup> Plaintiffs in this lawsuit are Charles Araujo, Evelyn S. Garner Araujo, Cassandra Overton-Welchin, John Sewell, Kimberly Sewell, Lutaya Stewart and Arthur Brown (collectively referred to herein as the “Southern Poverty Law Center” or “SPLC,” as the SPLC is the organization representing all of the individuals and spearheading the litigation).

dismantle public charter schools and, by extension, other alternative education opportunities, should be rejected.

Mississippi is one of 43 states<sup>2</sup> to enact public charter school laws. Like many states, the Mississippi Constitution encourages flexibility in educating the State's children. No single approach is required, nor would a one-size-fits-all approach be desired. For decades, the State has offered education outside of what are now traditional public schools, whether through public agricultural schools,<sup>3</sup> alternative school consortia,<sup>4</sup> the Mississippi Math and Science School,<sup>5</sup> transfers<sup>6</sup> of students from one district to the next, and, when dire measures are necessary, through conservatorships<sup>7</sup> by the State itself. All of these are means of improving public education. All are constitutional. Public charter schools are another step in improving public education in Mississippi.

This Court should deny the SPLC's Motion For Summary Judgment and grant judgment in favor of the Defendants and Defendant-Intervenors as a matter of law.<sup>8</sup>

### **BACKGROUND AND UNCONTESTED FACTS**

In 2013, the Legislature enacted the Mississippi Charter Schools Act ("Act"), a comprehensive overhaul of the existing charter school law. The Act created the independent Mississippi Charter School Authorizer Board, a public board with the power to authorize charter

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<sup>2</sup> See <http://www.publiccharters.org/get-the-facts/public-charter-schools/faqs/> (last visited Feb. 12, 2017) ("There are more than 6,800 charter schools across 43 states and the District of Columbia educating nearly 3 million children").

<sup>3</sup> Miss. Code Ann. § 37-27-61.

<sup>4</sup> Miss. Code Ann. § 37-13-92.

<sup>5</sup> Miss. Code Ann. § 37-139-3, *et. seq.*

<sup>6</sup> Miss. Code Ann. § 37-15-31.

<sup>7</sup> Miss. Code Ann. § 37-17-13.

<sup>8</sup> Defendant-Intervenor Mississippi Charter Schools Association joins, and adopts fully by reference, the arguments presented by Defendant Mississippi Department of Education and Governor Dewey Phillip "Phil" Bryant, the Defendant-Parent-Intervenors (Gladys Overton, Andrew Overston, Sr., Ella Mae James, and Tiffany Minor), and Defendant-Intervenor Midtown Partners, Inc. and Midtown Public Charter School, as additional reasons the SPLC's *Motion* should be denied and the Association's *Motion for Summary Judgment* granted. Each of the arguments presented in these briefs is expressly adopted and asserted herein.

schools in Mississippi. Each year, the Authorizer Board may approve up to 15 charter schools,<sup>9</sup> and may approve charter schools in schools districts rated “D” or “F” without local school board approval.

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). Public charter schools in Mississippi share many of the same legal requirements as traditional public schools. They:

- do not charge tuition and are free to attend.<sup>10</sup>
- cannot be private schools, cannot be virtual schools, and cannot be for-profit.<sup>11</sup>
- are subject to policies set by the State Board of Education for standards, assessments, graduation, and accountability letter grades like traditional public schools.<sup>12</sup>
- are subject to the Mississippi Open Records Act and the Mississippi Open Meetings Act.<sup>13</sup>

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.<sup>14</sup> Importantly, the underserved student composition of a charter school shall be at least 80 percent of the local school district’s underserved student population.<sup>15</sup>

Charter schools improve the education opportunities for at-risk students. As one commentator has explained:

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<sup>9</sup> Miss. Code Ann. § 37-28-7.

<sup>10</sup> Miss. Code Ann. § 37-28-43.

<sup>11</sup> Miss. Code Ann. § 37-28-39.

<sup>12</sup> Miss. Code Ann. § 37-28-45.

<sup>13</sup> Miss. Code Ann. § 37-28-45.

<sup>14</sup> Miss. Code Ann. §§ 37-28-23, 37-28-45.

<sup>15</sup> Miss. Code Ann. § 37-28-23.

Charter schools provide an alternative form of education, and proponents champion charters as ‘one of America’s tickets to a higher-quality school system. A number of charter school facets contribute to their success, including longer school days, multi-aged classrooms, strict discipline policies, lower student/teacher ratios, summer programs, and more individualized student attention by teachers, tutors, and assistants. The charter school model enables parents and students to choose a school in their district, which promotes competition among schools, as traditional public schools are motivated to fill gaps in their own systems to compete for students. Traditional public schools turn to charter schools for examples of curriculum, staffing, and teacher retention. Because of these trends, charter schools have a positive ‘ripple effect’ on other schools by putting pressure on them to improve their own methods.

Katherine E. Lehnen, *Charting the Course: Charter School Exploration In Virginia*, 50 U. Rich. L. Rev. 839, 844-845 (2016) (internal quotations omitted) (noting, “Careful review...reveals that most legal challenges to charter schools are unproductive.”).

Public charter schools differ primarily in their establishment and governance. They are established and operate under the terms of a charter agreement in accordance with Miss. Code Ann. § 37-28-1, *et. seq.* While many of the same statutes and standards governing traditional public schools apply to public charter schools, public charter schools are independent from traditional public schools, governed by members of independent non-profit boards of directors.<sup>16</sup> The Legislature determined such independence is necessary to allow public charter schools to innovate with new teaching and learning models, to operate with greater autonomy and to perform with greater accountability, expressly stating the educational objectives in the statute:

- (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;
- (d) [C]reate new professional opportunities for teachers, school

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<sup>16</sup> Miss. Code Ann. § 37-28-39.

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; and

Miss. Code Ann. § 37-28-3. These Legislative findings track similar reasons that charter schools have flourished across the United States with more than 6,800 charter schools in 43 states and the District of Columbia.<sup>17</sup> Nearly 3 million children attend charter schools in the United States.<sup>18</sup>

Since 2013, three public charter schools have opened in Mississippi: Reimagine Prep,<sup>19</sup> Smilow Prep, and Midtown Public Charter School. Reimagine Prep and Smilow Prep are members of the Defendant-Intervenor Mississippi Charter Schools Association (“Association”), a nonprofit, nonpartisan organization of member public charter schools in Mississippi.

Public charter schools are publicly funded by federal, state and local dollars.<sup>20</sup> Federal funds provided to public charter schools are monitored by the Mississippi Department of Education.<sup>21</sup> State funds to public charter schools are based on a per-pupil determination for each child that elects to attend a public charter school.<sup>22</sup> Local ad valorem tax funds provided to public charter schools are distributed based on the students who live within a particular school

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<sup>17</sup> See <http://www.publiccharters.org/get-the-facts/public-charter-schools/faqs/> (last visited Feb. 12, 2017).

<sup>18</sup> *Id.*

<sup>19</sup> Reimagine Prep, located at 309 W. McDowell Road in Jackson, is operated by RePublic Schools, Inc., a 501(c)3 nonprofit organization. Smilow Prep, located at 787 E. Northside Drive in Jackson, is also operated by RePublic Schools.

<sup>20</sup> Miss. Code Ann. § 37-28-55.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

district that elect to attend a public charter school.<sup>23</sup> 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.

Contrary to the representations of SPLC and the Jackson Public School District (“JPS”), JPS was losing students long before the establishment of public charter schools in 2015-2016. Nevertheless, despite declines in enrollment, JPS has received increases in state and local funding each year. For example, JPS has stated the following revenues and enrollments for each school year:

Year	Enrollment	Local Ad Valorem Tax Funds	State Funds	Total State and Local Funds
2012-2013	31,357	\$70,798,206.19	\$122,193,951	\$192,992,157.19
2013-2014	31,040	\$71,401,184.41	\$123,795,493	\$195,196,677.41
2014-2015	30,588	\$74,047,134.15	\$126,000,351	\$200,047,485.15
2015-2016	29,381	\$73,408,558.31	\$131,179,795	\$204,588,353.31

Because total funding has increased as enrollment has decreased, the amount of funding per pupil in JPS has also increased, contradicting SPLC’s assertion that charter schools make JPS less able to provide an adequate education to each child.

Year	Enrollment	Total Funds	Funding Per Pupil
2012-2013	31,357	\$192,992,157.19	\$6,157.68
2013-2014	31,040	\$195,196,677.41	\$6,288.55
2014-2015	30,588	\$200,047,485.15	\$6,540.06
2015-2016	29,381	\$204,588,353.31	\$6,963.29

See Responses to the Association’s Discovery Requests, attached as Exhibit “B” to the *Motion for Summary Judgment*. Moreover, the state continues to fund traditional public schools for students transferring to public charter schools for a full year after the child transfers.<sup>24</sup> Thus, the allegation in ¶ 5 of the First Amended Complaint that JPS “lost” \$1.85 million for the 2015-2016

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

school year because of charter schools is simply false because the state funded JPS based on its 2014-2015 student population when the charter schools had not yet opened.

In the Mississippi Charter School Authorizer Board's first annual report, school performance data<sup>25</sup> establishes that students at Reimagine Prep either met or exceeded expectations for learning growth in both math and language arts. Performance data further established that students at Reimagine Prep outperformed similar groups of students within the Jackson Public School District in learning growth for math and language arts proficiency.<sup>26</sup> Improvements made in the first year of Mississippi's public charter schools is consistent with national studies that show children in charter schools do better in school than their traditional peers.<sup>27</sup>

### **STANDARD OF REVIEW**

Under Rule 56 of the Mississippi Rules of Civil Procedure, summary judgment is appropriate where "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law . . . ." *Moore ex rel. Moore v. Mem'l Hosp. of Gulfport*, 825 So. 2d 658, 663 (Miss. 2002). Here, all parties have filed competing motions for summary judgment and agree that there are no genuine issues of material fact in dispute since the questions presented are legal in nature. *See Pursue Energy Corp. v. Miss. State Tax Comm'n*, 968 So. 2d 368, 377 (Miss. 2007) (quoting *Dockins v. Allred*, 849 So.2d 151, 155 (Miss.2003)). To be clear, while both sides dispute the effects of charter schools, that is not material to whether charter schools are constitutional. A dispute as to any non-material fact does not avert summary judgment. *New*

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<sup>25</sup> Mississippi Charter School Authorizer Board 2016 Charter School Annual Report, attached as Exhibit "A" to the Motion For Summary Judgment. At the time of this filing, performance data for Smilow was not yet available.

<sup>26</sup> *Id.*

<sup>27</sup> See <http://www.publiccharters.org/get-the-facts/public-charter-schools/faqs/> (last visited February 12, 2017) ("Sixteen academic studies have been published on charter school performance since 2010, four national studies and 12 regional studies from throughout the country. Fifteen of the 16 found that students in charter schools do better in school than their traditional school peers. One study found mixed results.").

*Orleans Great N. R. Co. v. Hathorn*, 503 So. 2d 1201, 1203 (Miss. 1987) (citing *Vickers*, So. 2d at 1061).

In this case, the funding provisions of §37-28-55 are constitutional as a matter of law. The Association respectfully requests that the Court grant its cross-motion in support of summary judgment finding the provisions constitutional, and deny the SPLC's motion for summary judgment.

### **LAW & ARGUMENT**

The SPLC's challenge is limited to whether the funding provisions of Miss. Code Ann. §37-28-55 are constitutional. When a party challenges the constitutionality of a statute, the court must review the statute with "(1) a strong presumption of constitutionality, (2) the challenging party's burden [is] to prove the statute is unconstitutional beyond a reasonable doubt, and (3) all doubts are resolved in favor of a statute's validity." *Johnson v. Sysco Food Servs.*, 86 So. 3d 242, 243-44 (Miss. 2012). The Mississippi Supreme Court has instructed:

The power of the judiciary in determining the constitutionality of a statute is limited to deciding whether it is within the scope of the constitutional powers of the legislative department. The judiciary will interfere with acts of the legislative body only where they are beyond the bounds prescribed by the constitution, and a legislative usurpation of power should be clear, palpable, or oppressive, and the claimed infringement of the constitution must be real to justify interposition. Limitations on the power of the legislature which the people have been satisfied to leave to the judgment, patriotism, and sense of justice of the legislature are not within the control of the courts. ***It is for the legislature and not for the courts to determine what means shall be employed to accomplish ends within its constitutional powers.***

*Board of Ed. Of Benton County v. State Educational Finance*, 243 Miss. 782, 813-814 (1962) (quoting 16 C.J.S. Constitutional Law §151(1)) (emphasis added).



**I. Local School Tax Funding Properly Follows The Child To Public Charter School, Consistent With Mississippi Law That Requires School Tax Levies To Benefit Local Students**

The first challenge made by the SPLC is to Miss. Code Ann. §37-28-55(2), the provision for local-level funding for public charter schools. The SPLC wrongly asserts that this funding provision is unconstitutional under §206 of the Mississippi Constitution because the statute provides for local money to follow a student who elects to attend a public charter school. In relevant part, the statute provides:

(2) The 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.

*Id.*

The Mississippi Legislature is fully empowered to enact such a statutory provision under the broad 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.***

*Id.* (emphasis added). To challenge this broad power, the SPLC relies on an overbroad reading of *Pascagoula School District v. Tucker*, 91 So. 3d 598 (Miss. 2012), a case involving Section 206<sup>28</sup> of the Constitution that the SPLC asserts mandates that local money levied for schools can never leave the district from which it was initially levied. Under the SPLC's reading, local funds for traditional public school district must always stay within that district alone. The SPLC

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<sup>28</sup> In full, 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. 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.

*Id.*

fundamentally misreads *Tucker* and Section 206 of the Constitution, ignoring several other provisions of Mississippi law that establish local tax money follows the student to the place where he or she is educated.

Unlike here, *Tucker* involved whether the Pascagoula-Gautier School District would be forced to send *ad valorem* taxes raised from property within Pascagoula to other districts in Jackson County to educate students living (and educated) outside of the Pascagoula-Gautier School District. The school district in *Tucker* would lose money without any easing of the burden of the education of students within the district. There would be no local benefit to the students who lived there from the local taxes levied. The Mississippi Supreme Court held that local *ad valorem* taxes were levied to maintain “its schools,” and the district could not be unilaterally divested of those funds.

In contrast, §37-28-55 does exactly what other statutory school-funding provisions (discussed *infra*) under Mississippi law require: local taxes for education *follow the local students*. School taxes are levied for the students, not bricks and mortar within a confined district, as the SPLC suggests. Mississippi law has consistently and constitutionally followed this approach.

**Transfer Students.** 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. For decades, 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. The school district remits the local tax funding on a pro rata basis to the district that actually educates the students:

*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.*

*Id.* (emphasis added). In fact, it was because local money follows the student that Mississippi was able to desegregate its schools. See *Lauderdale County School District v. Enterprise Consolidated School District*, 24 F.3d 671, 687 (5<sup>th</sup> Cir. 1994) (discussing 25-year agreements between districts to pay for transfer of students as part of desegregation of schools)(“***The basic purpose of the [transfer] statute was to require local funds to follow transfer students***”) (emphasis added). The SPLC’s reading of *Tucker* would have hindered desegregation.

**Agricultural High Schools.** Similarly, 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. 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 County Agricultural High School. *Id.* The local school levy follows the student, just as the Mississippi Legislature has authorized here with public charter schools.

**Alternative School Programs.** 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.* 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.*” Miss. Code Ann. §37-13-92(6) (emphasis added).

All of these alternative educational opportunities would collapse under the SPLC’s overbroad interpretation of *Tucker* and Section 206. The SPLC’s wrongly attempts to stretch *Tucker* to mean more than it does, taking the case out of context, and ignoring that the entire purpose of a local school tax levy is to benefit local children. The SPLC’s overbroad reading of *Tucker* is contrary to Section 201 of the Mississippi Constitution.

For these reasons, the SPLC’s attack on Miss. Code Ann. §37-28-55(2) should be denied.

## **II. Legislature Has Power To Provide State Funds To Public Charter Schools, Which Are Free Schools Under Section 208 Of The Mississippi Constitution**

The SPLC next challenges the state-funding component<sup>29</sup> of public charter schools by arguing public charter schools are not “free schools” under Mississippi law and thus cannot receive “public funds.”<sup>30</sup> This argument likewise fails in light of the plain language of the Constitution.

“When interpreting a constitutional provision, we must enforce its plain language.”

*Johnson*, 86 So. 3d at 244. 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.*

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<sup>29</sup> In relevant part, the state-funding component of §37-28-55 provides:

(1) (a) The 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. In calculating the local contribution for purposes of determining the state share of the adequate education program payments, the department shall deduct the pro rata local contribution of the school district in which the student resides, to be determined as provided in Section 37-151-7(2)(a).

*Id.*

<sup>30</sup> See Memorandum In Support of Summary Judgment at 12 (Dkt. 17).

MISS. CONST., art. VIII § 208 (emphasis added). Public charter schools are indisputably “free schools,” *see* Miss. Code Ann. 37-28-43(4) (“A charter school may not charge tuition”), as there is no tuition charged to attend. This alone should end the analysis.

The SPLC, however, turns to the 1868 version of the Mississippi Constitution (which has changed many times over the years), and case law interpreting the 1868 version, to argue that a “free school” under Mississippi law means more than its plain language.

As noted above, today the Legislature has broad power under Section 201 in establishing and maintaining public schools “upon such conditions and limitations as the Legislature may prescribe.” *Id.* This broad, plenary power conferred on the Legislature, by its plain language, unequivocally allows for the public funding of public charter schools under Miss. Code Ann. 37-28-55(2).

By comparison, the closest, similar provision in the 1868 Mississippi Constitution, which is relied upon by the SPLC, requires that the system of schools be “uniform,”<sup>31</sup> an important distinction and one the SPLC ignores. There is no “uniformity” requirement under §201, or anywhere else in the current version of the Mississippi Constitution. The absence of such language is fatal to the SPLC’s entire argument.

Compounding its error, the SPLC relies chiefly on *Otken v. Lamkin*, 56 Miss. 758 (1879) in arguing that public charter schools are not “free” schools. *Otken*, however, focused on the uniformity requirement of the 1868 Constitution, a provision that (as noted above) does not exist today. *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-

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<sup>31</sup> The closest provision in Article 8 of the 1868 Constitution to the current version is found in Section 1 of Art. 8:

Section 1. As the stability of a republican form of government depends mainly upon the intelligence and virtue of the people, it shall be the duty of the Legislature to encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement, by establishing a uniform system of free public schools, by taxation or otherwise, for all children between the ages of five and twenty-one years, and shall, as soon as practicable, establish schools of higher grade.

existing Article 8 of the 1868 Constitution. The SPLC reads *Otken* to establish a purported four-part test<sup>32</sup> to be considered a free public school, but that analysis simply does not hold up under today's Constitution because of the broad power conferred under §201 and the absence of any uniformity requirement.

Times have changed, the Constitution has changed, and, more importantly, public charter schools under Miss. Code Ann. §37-28-1, *et. seq.* are free public schools within Mississippi, not private schools. *Otken* and the 1868 Constitution are inapplicable in every respect.<sup>33</sup>

Leaving the above aside, the SPLC's purported four-part test to be a "free school" also fails because of the alleged fourth prong – "local supervision of the county superintendent" – that SPLC argues is mandatory to be a free public school in order to receive public funds. Such a requirement runs contrary to any number of publicly funded schools in Mississippi, none of which are under the "supervision" of a "county superintendent":

- Miss. Code Ann. 37-139-1, et. seq. ("Mississippi School for Mathematics and Science" - A school "governed by the State Board of Education," §37-139-3, with the purpose "to educate the gifted and talented students of the state, and its curriculum and admissions policies shall reflect such purpose," and funded by the State. *See* Miss. Code Ann. §37-139-13.
- Miss. Code Ann. §37-140-1, et. seq. ("Mississippi School of the Arts") A "residential school for eleventh and twelfth grade high school students located on the campus of Whitworth College in Brookhaven, Mississippi. The purpose of the school shall be to provide a more challenging educational experience for artistically talented and gifted students," governed by the State Board of Education, §37-140-5, and receives public funds from the State. *See* Miss. Code Ann. §37-140-13

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<sup>32</sup> The SPLC wrongly argues that to be a free public school today, a school must be "(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.'" SPLC's Brief at 13 (Dkt.# 17).

<sup>33</sup> Likewise, the SPLC's reliance on *State Teachers' College v. Morris*, 144 So. 374, 376 (Miss. 1932) as "reaffirming" *Otken* is misplaced because the "uniform system of free public schools" language was still in the Constitution in 1932. Moreover, *Morris* holds only that to be a "free public school," "establishment and control thereof must be vested in the public officials charged with the duty of establishing and supervising that system of schools," not based on a four-factor test. Public charter schools operate under the state-established Authorizer Board, which oversees public charter schools and has the power to close them. Consequently, even though *Morris* was reviewing the Constitution with a uniformity provision from 1932, it appears in line with how the Legislature has created public charter schools in 2013.

- Miss. Code Ann. §37-17-13 (Conservatorships), created when the Governor declares a state of emergency and the State takes over the district. No local control at all once the State takes over, although public funding (both local and state) continues.

In fact, not even the Jackson Public School District, or any separate municipal school district, is “under...the local supervision of the county superintendent,” yet all of the districts receive state funds. To accept the SPLC’s argument would render all of the above unconstitutional. The results of SPLC’s argument are absurd.

Likewise misplaced is SPLC’s reliance on *League of Women Voters of Washington v. State*, 184 Wash. 2d 393, 402, 355 P.3d 1131, 1136 (2015), a case the SPLC claims is comparable to its arguments in this case. In *League of Women Voters*, the Washington court considered a much different constitutional provision necessitating that there be a “general and uniform system of public schools” and that such schools had to be “common schools” in order to receive public funds. *Id.*; see also Article IX, Section 2 of the Washington Constitution. An earlier Washington case had established that to be a “common school,” a school had to be under the control of qualified voters in the district. See *School District No. 20 v. Bryan*, 51 Wash. 498, 99 P. 28 (1909). Consequently, because Washington charter schools fell outside that limited definition of “common schools” under that state’s law, charter schools were not eligible to receive “common school” funds. The narrowly tailored Washington decisions that analyze a more rigid constitutional provision have no applicability here. Nor does the SPLC cite any authority that it does.

A more analogous case is *Council of Organizations and Others for Education About Parochial, Inc. v. Governor of the State of Michigan*, 566 N.W.2d 208 (Mich. 1997). The Michigan Constitution does not specifically define “public schools,” just as “free schools” are not specifically defined under Mississippi’s Constitution beyond the plain language of what a

“free school” is – one that does not charge tuition. The challengers to Michigan’s charter schools asserted that charter schools were unconstitutional because they were not under the immediate control of the state. In rejecting these challenges and finding charter schools constitutional, the Michigan Supreme Court noted:

Our constitution does not mandate exclusive control [of public schools], it requires that ‘[t]he legislature shall maintain and support a system of free public elementary and secondary schools...Therefore, the plaintiff’s first assertion fails because there is no requirement in our constitution that the state must have exclusive control of the school system.

*Id.* at 574. Similarly, in California, in rejecting a challenge to charter schools as outside the legislative purview, the appeals court stated: “[A]ppellants take too myopic a view of what it means for the state to retain control of our public schools, including charter schools.” *Wilson v. State Bd. of Educ.*, 75 Cal.App.4<sup>th</sup> 1125 (1999). In reaching that decision, the California appeals court explained: “[W]e emphasize that the Legislature’s power over our public school system is plenary, subject only to constitutional restraints.” *Id.* at 1134.

So, too, it is in Mississippi. There is nothing in Mississippi’s Constitution that requires that all schools fall under the Mississippi Department of Education, or be supervised by a local county superintendent, or that “free schools” means something more than exactly what it says. The Legislature has broad and flexible authority to establish positive educational options for Mississippi’s children.

As noted above, the Legislature has long done so in other education areas. To impose the SPLC’s definition of Section 208 of the Mississippi Constitution would result in the abolition of all separate municipal school districts, the Mississippi Math and Science School, the Mississippi School For The Arts, and even prohibit the State’s ability to use conservatorships to takeover failing school districts. The court should refuse to reach such an absurd result.



Section 208 of the Mississippi Constitution does not prohibit state funding of public charter schools under §37-28-55.

**CONCLUSION**

The SPLC has failed to meet its high burden of showing beyond a reasonable doubt that Miss. Code Ann. §37-28-55 is unconstitutional. On the contrary, as established by numerous, similar educational opportunities in Mississippi that are funded in the same vein, public charter schools are constitutional. Local taxes follow local students; and public charter schools are free schools.

The Legislature has properly exercised its authority under Section 201 of the Mississippi Constitution in creating public charter schools as a means of improving education in Mississippi. Nationwide, charter schools are helping millions of children. Mississippi has made a choice to join in that effort.

The Mississippi Charter Schools Association respectfully requests that the Court deny the SPLC's Motion For Summary Judgment, and grant the Association's Cross-Motion For Summary Judgment.

This, the 13<sup>th</sup> day of February, 2017.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, R. Gregg Mayer, do hereby certify that I have on this date filed the foregoing with the Clerk of Court using the MEC system which sent notification to all counsel of record.

This, the 13<sup>th</sup> day of February, 2017.

/s/ R. Gregg Mayer  
R. GREGG MAYER