IN THE MISSISSIPPI SUPREME COURT
CAUSE NO. 2015-CA-01227

CLARKSDALE MUNICIPAL SCHOOL DISTRICT, CLAY COUNTY SCHOOL DISTRICT, GREENE COUNTY SCHOOL DISTRICT, GREENVILLE PUBLIC SCHOOL DISTRICT, HATTIESBURG PUBLIC SCHOOL DISTRICT, HUMPHREYS COUNTY SCHOOL DISTRICT, JACKSON PUBLIC SCHOOL DISTRICT, LEAKE COUNTY SCHOOL DISTRICT, LELAND SCHOOL DISTRICT, NORTH BOLIVAR CONSOLIDATED SCHOOL DISTRICT, OKOLONA MUNICIPAL SEPARATE SCHOOL DISTRICT, PRENTISS COUNTY SCHOOL DISTRICT, RICHTON SCHOOL DISTRICT, SIMPSON COUNTY SCHOOL DISTRICT, SMITH COUNTY SCHOOL DISTRICT, SUNFLOWER COUNTY CONSOLIDATED SCHOOL DISTRICT, TATE COUNTY SCHOOL DISTRICT, WAYNE COUNTY SCHOOL DISTRICT, WEST BOLIVAR CONSOLIDATED SCHOOL DISTRICT, WEST TALLAHATCHIE SCHOOL DISTRICT, AND WILKINSON COUNTY SCHOOL DISTRICT **APPELLANTS**

VS.

THE STATE OF MISSISSIPPI **APPELLEE**

On Appeal from the Chancery Court of Hinds County, Mississippi
Cause No. 2014-1217 S/2

THE STATE OF MISSISSIPPI'S BRIEF OF APPELLEE

ORAL ARGUMENT REQUESTED

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CLARKSDALE MUNICIPAL SCHOOL DISTRICT, ET AL. **APPELLANTS**

VS.

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Clarksdale Municipal School District, Clay County School District, Greene County School District, Greenville Public School District, Hattiesburg Public School District, Humphreys County School District, Jackson Public School District, Leake County School District, Leland School District, North Bolivar Consolidated School District, Okolona Municipal Separate School District, Prentiss County School District, Richton School District, Simpson County School District, Smith County School District, Sunflower County Consolidated School District, Tate County School District, Wayne County School District, West Bolivar Consolidated School District, West Tallahatchie School District, and Wilkinson County School District, APPELLANTS;

2. Ronnie Musgrove, Michael S. Smith, II, Blake D. Smith, Jeffrey M. Graves, Musgrove/Smith Law, Michael V. Ratliff, Johnson Hall & Ratliff, Dorian E. Turner, Dorian E. Turner, PLLC, Casey L. Lott, Dustin C. Childers, Langston & Lott, PA, Jesse Mitchell, III, and The Mitchell Firm, PLLC, Counsel for APPELLANTS;

3. The State of Mississippi, APPELLEE; and

4. Harold E. Pizzetta, III, Justin L. Matheny, the Office of the Attorney General, Counsel for APPELLEE.

S/Justin L. Matheny
Counsel for the State of Mississippi

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STATEMENT OF THE ISSUES

Determining the amount of state funds to appropriate to local school districts, while balancing education funding with the needs of all other state entities and programs, is a complex and highly subjective task undertaken by the Mississippi Legislature annually. To assist in this process, in the 1990s, the Legislature established the modern-day version of the Mississippi Adequate Education Program. The program was designed as a means to collect data and better estimate the annual funding appropriated to maintain the state's public school system, and more equitably distribute available public funds amongst local school districts. Subsequently, at its 2006 Regular Session, the Legislature enacted Senate Bill 2604 to further those designs. That enactment included three provisions relevant here.

First, the 2006 Legislature declared its desire that "Effective with fiscal year 2007, the Legislature shall fully fund the [MAEP]." Second, for fiscal years 2007-2010, the 2006 Legislature identified minimum amounts future Legislatures should appropriate if it did not "fully fund" the MAEP. Third, for fiscal year 2011 and beyond, and, in connection with its future changes to the formula, the 2006 Legislature stated that "In any year in which the MAEP is not fully funded, the Legislature shall direct the Department of Education in the K-12 appropriation bill as to how to allocate MAEP funds to school districts for that year."

This case is about whether the 2006 Legislature imposed a judicially enforceable mandate–as opposed to policy directives–upon future Legislatures' appropriations discretion. The specific questions presented are:

(1) whether, as a matter of statutory construction, 2006 S.B. 2604 required post-

2009 Legislatures to annually appropriate the appellant districts a specific amount of state funds;

(2) if so, whether the 2006 Legislature could, consistent with the Constitution, statutorily bind future Legislatures to annually appropriate the appellant districts a specific amount of state funds; and

(3) if the appellant districts overcome both those hurdles, whether the State must pay the districts $235 million-plus in past money damages and, in the future, Mississippi courts can compel legislators to annually appropriate the appellant districts a specific amount of state funds.

A fourth peripheral question, which the districts failed to present below, is whether the Chancery Court procedurally erred by considering only the parties' legal arguments and legislative acts in evaluating the State's motion for judgment on the pleadings, and rejecting the districts' legal claims, without converting the State's motion to a motion for summary judgment.

STATEMENT OF THE CASE

Generously speaking, the Mississippi public education system is funded through a complex combination of annual contributions from the State and local governments, and other sources, such as the federal government. Beginning in the 1950s, the Legislature annually estimated and distributed the State's portion of annual funding to local school districts through the "Minimum Education Program" or "MEP," a funding system primarily keyed off of base-per-pupil allocations. In the mid-1990s, the Legislature enacted the Mississippi Accountability and Adequate Education Program Act of 1994. 1994 S.B. 3350; 1994, Laws, ch. 581. Under the 1994 Act, the MEP remained in

place. But the new legislation established the "Mississippi Adequate Education Program," which, among other things, provided for a budget estimation formula designed to produce data considered annually by legislators for appropriating and distributing State funds to local school districts, and the method for computing the annual amount of funds contributed to the program from local taxes. *Id.* at § 4.[1]

In 2006, the Legislature revisited the MAEP scheme by passing 2006 S.B. 2604. The enactment's Sections 2, 3, and 4 are central to the districts' claims on appeal.

- Section 2, codified as Code Section 37-151-6, provided:

> **SECTION 2.** Effective with fiscal year 2007, the Legislature shall fully fund the Mississippi Adequate Education Program.

2006 S.B. 2604, § 2; Laws, 2006, ch. 473, § 2.

- For fiscal years 2007-2010, Section 3(1) provided that, notwithstanding the use of the term "shall" in Section 2, "if sufficient funds are not available to fully fund [MAEP]," the 2006 Legislature explained that certain minimum appropriations of state funds below "full funding" should be made by these future Legislatures. 2006 S.B. 2604, § 3; Laws, 2006, ch. 473, § 3.

- For fiscal years 2011 and beyond, Section 4 added two material provisions to Code Section 37-151-7. First, the 2006 Legislature provided that the MAEP formula itself would be fundamentally changed beginning in 2011. *Compare* 2006 S.B. 2604, §§ 3(2), 3(3) (providing for the calculation of average daily attendance) *with* 2006 S.B. 2604, § 4(1)(a) & 4(1)(b) (providing new mechanisms for calculating average daily

[1] In 1997, the Legislature modified the 1994 enactment in the Mississippi Accountability and Adequate Education Program Act of 1997. 1997 S.B. 2649; Laws, 1997, ch. 612. The 1997 Act effectively phased out the MEP in favor of the MAEP over several succeeding fiscal years, to be completed by July 1, 2002. *See id.* at § 52.

attendance and base student cost beginning in 2011, codified as Code Section 37-151-7(1)(a), (b)):

> **SECTION 4.** Section 37-151-7, Mississippi Code of 1972, is amended as follows:
>
> 37-151-7. The annual allocation to each school district for the operation of the adequate education program shall be determined as follows:
>
> (1) **Computation of the basic amount to be included for current operation in the adequate education program.** The following procedure shall be followed in determining the annual allocation to each school district:
>
> (a) **Determination of average daily attendance.** Effective with fiscal year 2011, the State Department of Education shall determine the percentage change from the prior year of each year of each school district's average of months two (2) and three (3) average daily attendance (ADA) for the three (3) immediately preceding school years of the year for which funds are being appropriated. For any school district that experiences a positive
>
> (b) **Determination of base student cost.** Effective with fiscal year 2011 and every fourth fiscal year thereafter, the State Board of Education, on or before August 1, with adjusted estimate no later than January 2, shall * * * submit to the Legislative Budget Office and the Governor a proposed base student cost adequate to provide the following cost components of educating a pupil in a successful school district: (i)

Second, the 2006 Legislature, recognizing the foregoing changes in the MAEP formula contemplated some five years later in 2011, specifically provided:

> (f) **Total projected adequate education program cost.** The total Mississippi Adequate Education Program cost shall be the sum of the total basic adequate education program cost (paragraph (c)), and the adjustment to the base student cost for at-risk pupils (paragraph (d)) for each school district. In any year in which the MAEP is not fully funded, the Legislature shall direct the Department of Education in the K-12 appropriation bill as to how to allocate MAEP funds to school districts for that year.

2006 S.B. 2604, § 4; Laws, 2006, ch. 473, § 4; Miss. Code Ann. § 37-151-7(1)(f).[2]

Following 2006 S.B. 2604's enactment, for fiscal years 2010 to present, subsequent Legislatures have annually reviewed the data and estimates under MAEP, and exercised their independent and constitutionally protected judgment as to the proper amount of state funds allocated to local school districts in light of the State's finite financial resources and other demands of state government. Local school districts have received billions of dollars in legislative appropriations for the MAEP, consistently on average including state funds totaling roughly $2 billion annually,[3] which was exclusive of all their revenues derived from other local, State, and federal sources.

Nevertheless, in August 2014, fourteen of Mississippi's more than 140 public school districts filed this lawsuit against the State over the Legislature's annual education appropriations for fiscal years 2010-2015. R. I:21-99.[4] On September 26, 2014, the districts amended their complaint, and seven other districts joined the lawsuit. R. I:111-129, I:134-II:196.

The amended complaint laid out the districts' brief version of Mississippi public education funding's history, the Legislature's enactment of the MAEP formula, and the

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[2] Since its 2006 enactment, the Legislature has modified Code Section 37-151-7 on a few occasions, primarily by adding provisions regarding "dual enrollment-duel credit programs" and charter schools. *See* 2013 H.B. 369; Laws, 2013, ch. 497; 2012 S.B. 2792; Laws, 2012, ch. 521. However, the material amendments to Section 37-151-7 enacted in 2006 S.B. 2604 have remained unchanged at all times relevant to this case.

[3] *See* 2016 H.B. 1643; 2015 H.B. 1536; 2014 H.B. 1476; 2013 H.B. 1648; 2012 H.B. 1593; 2011 H.B. 1494; 2010 H.B. 1622; 2009 H.B. 49 (2nd Extraordinary Session).

[4] The State's record citations to portions of the Chancery Clerk's papers are designated as "R.[volume: page number]" together with a reference to the Appellants' Record Excerpts as "R.E. [tab number]" where applicable, and citations to the hearing transcript of the proceedings below are designated as "Tr.[page number]."

Code amendments adopted in 2006 S.B. 2604. R. I:117-22. Then the districts claimed the 2006 Legislature's enactment created a judicially enforceable legal right for the plaintiff districts, and all other local school districts, to receive the exact amount of annually estimated MAEP funding to the penny, which post-2009 Legislatures allegedly violated. R. I:121.

Based upon the Legislature's purported statutory violations, the districts sought three forms of relief. First, the districts requested "a declaratory judgment declaring that the State has an obligation to fully fund its required share of public school funding as required by Miss Code Ann. §§ 37-151-1 to -107 and specifically by Miss. Code Ann. §§ 37-151-6 and 37-151-7." R. I:122-23. Second, the districts demanded a money damages plus interest judgment against the State to be divided amongst them and totaling more than **$ 235 million** "[i]n accordance with the State's legal duty and obligation to fund Plaintiffs for fiscal years 2010, 2011, 2012, 2013, 2014, and 2015[.]" R. I:123-27. The districts' pleading also further demanded a money damages plus interest judgment for "XYZ School Districts 1-127" based on fiscal years 2010-2015, and totaling more than **$ 1.425 billion**. R. I:127, II:154-60. Third, they requested an order permanently enjoining the Legislature and all future legislators "from further violating the provisions of Miss. Code Ann. §§ 37-151-1 to -107 and ordering the State to comply with the statutory requirement the State created requiring it to fully fund Plaintiffs and all Mississippi school districts in accordance with Miss. Code Ann. § 37-151-1 to -107 and specifically Miss. Code Ann. §§ 37-151-6 and 37-151-7." R. I:127.

The State timely answered the districts' amended complaint, R. II:197-205, and then moved for dismissal via judgment on the pleadings. R. II:206-263. The districts

responded to the State's dismissal motion, R:II:29-97, and filed their own counter-motions for summary judgment, and for a temporary restraining order and preliminary injunction. R. III:338-442, III:443-V:597.

On January 14, 2015, the Chancery Court heard arguments on the parties' motions. Tr. 1-70. After considering the parties' arguments and briefing, on July 15, 2015, the Chancery Court granted the State's motion for judgment on the pleadings, denied the districts' motions for summary judgment and for temporary restraining order and/or preliminary injunction, and dismissed the lawsuit with prejudice. R. XI:1516-20, R.E. 2. Although the parties each raised numerous arguments supporting their positions, constitutional and otherwise, the Chancery Court ultimately determined the threshold legal issue of whether 2006 S.B. 2604 required future Legislatures to annually "fully fund" the MAEP disposed of the districts' claims. The Chancery Court recognized

> Plaintiffs assert that Miss. Code Ann. § 37-151-6 establishes a mandatory annual duty upon the Legislature to automatically vote to appropriate and allocate to each Mississippi public school district 100% of the funds calculated under MAEP's budget estimation formula for every fiscal year after 2009.

R. XI:1518, R.E. 2. According to the Chancery Court, however, the districts' "limited interpretation of the statute fails to take into consideration the later provision of § 37-151-7(1)(f) providing for alternative procedures to 'fully funding' the MAEP." R. XI:1518, R.E. 2. The court reasoned

> the entirety of the Mississippi Accountability and Adequate Education Act of 1997 must be considered to determine the legislative intent thereof. While § 37-151-6 provides the general provision that the MAEP shall be fully funded beginning fiscal year 2007, § 37-151-7 describes the specific annual allocation of funds for MAEP, **including an alternative for years in which MAEP is not fully funded.**

R. XI:1518-19 (emphasis in original), R.E. 2. While the Chancery Court agreed with the

districts "that the term 'shall,'" enacted in Section 2 of 2006 S.B. 2604 and codified in Code Section 37-151-6, "generally denotes a mandate, our Mississippi courts have allowed for exceptions to this mandatory interpretation of 'shall' where it is necessary to carry out the purpose of the legislature, effect justice, secure public or private rights, or avoid absurdity." R. XI:1519 (internal quotation marks omitted), R.E. 2. The Chancery Court thus concluded it "must interpret the statutes in total as instructing the Legislature to fund the MAEP as fully as possible and providing an alternative when full funding is not had," and held the districts' claims lacked merit, as a matter of law. R. XI:1520, R.E. 2.

On July 27, 2015, the districts moved to alter or amend the Chancery Court's judgment. R. XI:1521-34. On August 14, 2015, the districts prematurely noticed an appeal from the Chancery Court's July 15 judgment to this Court. R. XI:1545-48.[5] In the meantime, on January 19, 2016, following briefing and a hearing, the Chancery Court denied the districts' post-judgment motion and confirmed its July 15, 2015 ruling. R. XI:1580-84, R.E. 3. On February 16, 2016, the districts filed an Amended Notice of Appeal from the Chancery Court's July 15, 2015 and January 19, 2016 orders.

SUMMARY OF THE ARGUMENT

Each session of the Mississippi Legislature possesses constitutional discretion to annually appropriate and distribute the State's limited financial resources amongst our government's entities and programs as it deems proper and necessary. Contrary to the appellant districts' mistaken belief, the 2006 Legislature did not, and could not,

[5] By order entered September 9, 2015, this Court stayed the appeal pending the Chancery Court's resolution of the districts' motion to alter or amend the July 15 judgment. Order, Cause No. 2015-TS-1227 (Sept. 9, 2015).

statutorily impose a judicially enforceable duty on future Legislatures to appropriate local school districts any specific amount of state funds for future fiscal years. For several reasons, the Chancery Court correctly rejected the districts' legal claims and awarded the State judgment as a matter of law.

First, as a matter of statutory interpretation, the Chancery Court appropriately held 2006 S.B. 2604's enactment did not create a judically enforceable mandate compelling future Legislatures to appropriate local school districts particular amounts of future state funds. "Shall" does not always and only impose a mandatory obligation, and, as used in 2006 S.B. 2604, the term plainly constitutes a directive rather than a mandate to future Legislatures. Read as a whole, although the bill's Section 2 declares that "Effective with fiscal year 2007, the Legislature shall fully fund the [MAEP]," Section 3 includes alternatives to appropriating "full funding" in fiscal years 2007-2010. And Section 4, applicable to fiscal year 2011 and beyond, establishes an alternative for "any year" legislators exercise their fiscal discretion to appropriate local school districts less than MAEP "full funding."

Statutory interpretation principles also demonstrate the Chancery Court correctly determined 2006 S.B. 2604 places no judicially enforceable mandate upon future legislators to "fully fund" the MAEP. Mississippi courts may look to subsequent legislative enactments on a subject in determining the meaning of earlier enactments. Each time post-2009 Legislatures addressed the subject of public education appropriations, their enactments were consistent with a directory reading of 2006 S.B. 2604's Section 2. Several other interpretative cannons also prove Section 2 is directory in light of Section 4, such as established principles that the last legislative expression in

an enactment controls, specific statutory provisions prevail over general ones, and the fact that 2006 S.B. 2604 fails to include any enforcement mechanism supporting the districts' interpretation of the bill.

Second, the Chancery Court aptly resolved the districts' case on statutory interpretation grounds, and thereby avoided the inherent constitutional flaws in the districts' attempt to wield 2006 S.B. 2604 as a judicially enforceable mandate against future legislators. But even wrongfully assuming the 2006 Legislature attempted to bind future Legislatures to annually and automatically appropriate the districts specific amounts of future state funds, our Constitution, this Court's decisions, and decisions from several other Supreme Courts around the country prove the 2006 Legislature could not do so.

Section 33 of the Constitution preserves the right of each session of the Legislature to legislate, and prohibits one session of the Legislature from imposing statutory inhibitions on future legislators' fiscal discretion. Sections 63 and 64 of the Constitution also prohibit one session of the Legislature from encroaching upon future Legislatures' appropriations discretion. Together, those provisions establish the 2006 Legislature could not constitutionally impose a statutory mandate on its successors to appropriate the districts a specific amount of state money.

The districts have not, and cannot, square their view of 2006 S.B. 2604 with the constitutional prohibition against one session of the Legislature statutorily binding its successors. Post-2009 Legislatures were not required to amend or repeal any prior legislative attempts to inhibit their appropriations discretion. They could simply disregard any so-called mandate upon their annual fiscal judgment, and none of the

districts' novel contentions to the contrary has any merit.

Third, even assuming the districts' mandatory interpretation of 2006 S.B. 2604 has any statutory or constitutional merit, they still are not entitled to any judgment granting them any form of relief. Sovereign immunity bars the districts' requests for money damages judgments collectively totaling more than $235 million. The State has not waived its immunity, and the districts lack any entitlement to their sought after multi-million dollar compensatory award. Additionally, the districts are barred from obtaining any court-ordered injunctive or declaratory relief due to basic constitutional separation of powers principles. Mississippi courts cannot award the districts an injunction compelling legislators to appropriate them future state funds, and the districts are not entitled to a declaration operating against the Legislature in the same manner. And, even further assuming that any of the districts' requested forms of relief are viable, numerous legal and factual issues that would remain to be tried in the Chancery Court preclude rendering any summary judgment here.

Finally, the Chancery Court committed no procedural error in rejecting the districts' claims on purely legal grounds while allegedly failing to convert the State's motion for judgment on the pleadings to a motion for summary judgment. The districts never raised their conversion argument at any time below. Moreover, in granting the State's motion and dismissing the districts' legal claims, the Chancery Court did not rely on matters outside the pleadings and thereby was not obligated to covert the State's Rule 12 motion to a motion under Rule 56.

For these, and all the reasons further explained below, the Hinds County Chancery Court's dismissal of the districts' lawsuit should be affirmed.

ARGUMENT

The districts' appeal involves pure questions of law regarding the meaning of the single sentence in 2006 S.B. 2604's Section 2, and its effect, if any, on future Legislatures' constitutional appropriations discretion. This Court reviews a trial court's resolution of legal questions *de novo*, ***Freeman v. State***, 121 So. 3d 888, 895 (¶ 14) (Miss. 2013), including issues of statutory interpretation, ***Tellus Operating Group, LLC v. Maxwell Energy, Inc.***, 156 So. 3d 255, 260 (¶ 11) (Miss. 2015), as well as a lower court's legal decisions arising from motions for judgment on the pleadings, ***Intrepid, Inc. v. Bennett***, 176 So. 3d 775, 778 (¶ 8) (Miss. 2015), or summary judgment. ***Bennett v. Highland Park Apartments, LLC***, 170 So. 3d 450, 452 (¶ 4) (Miss. 2015). A *de novo* review confirms that the Chancery Court correctly resolved the controlling statutory interpretation question presented. Alternatively, even if not, for other reasons it reached the right result in granting the State judgment as a matter of law. Either way, the Chancery Court's dismissal of this lawsuit should be affirmed.

I. The 2006 Legislature did not, as a Matter of Statutory Interpretation, Obligate Future Legislatures to Annually Appropriate a Specific Amount of State Funds to the Districts.

A. The term "shall" does not always create a mandatory legislative command; 2006 S.B. 2604's Section 2 is directory.

The districts focus on the 2006 Legislature's use of the term "shall" in Section 2's legislative appropriative desire that "Effective with fiscal year 2007, the Legislature shall fully fund the [MAEP]." 2006 S.B. 2604, § 2; Laws, 2006, ch. 473, § 2; Miss. Code Ann. § 37-151-6. In doing so, the districts ignore the explicit language in Sections 3 and 4 enacted at the same time by the 2006 Legislature. Section 3, applicable for the immediately following fiscal years of 2007 through 2010, sets out minimum amounts for

the Legislature to appropriate in those fiscal years if it did not "fully fund" the MAEP. 2006 S.B. 2604, § 3; Laws, 2006, ch. 473, § 3. And Section 4, applicable in fiscal years 2011 and beyond, altered the MAEP formula and states that "In any year in which the MAEP is not fully funded, the Legislature shall direct the Department of Education in the K-12 appropriation bill as to how to allocate MAEP funds to school districts for that year." 2006 S.B. 2604, § 4; Laws, 2006, ch. 473, § 4; Miss. Code Ann. § 37-151-7(1)(f).

The Chancery Court interpreted 2006 S.B. 2604 as a whole, and found the 2006 Legislature's use of the term "shall" in Section 2 merely directed future legislators to annually fund the MAEP to the greatest extent possible, while retaining their constitutional prerogative to annually appropriate and distribute specific amounts of state funds to local school districts as deemed warranted. R. XI:1518-20, R.E. 2. On appeal, the districts insist that Section 2's term "shall" connotes a mandate. Thus, so they argue, the Chancery Court erred in concluding Section 2 leaves legislators no choice but to annually appropriate and distribute 100% of the MAEP's projected state funding contribution to local school districts. The districts' myopic view of Section 2 fails to appreciate its meaning in the context of the entire bill.

Generally, "[a] basic tenet of statutory construction is that 'shall' is mandatory and 'may' is discretionary." ***Franklin v. Franklin ex rel. Phillips***, 858 So. 2d 110, 115 (¶ 15) (Miss. 2003). But that is not always and absolutely true. As this Court has also recognized,

> [i]n construing statutes the word 'may' may be construed as mandatory in application, while 'shall' may be construed as permissive rather than mandatory; although in ordinary usage 'may' is used in a permissive sense, and 'shall' is mandatory and excludes discretion–*though not always*.

State ex rel. Attorney General v. School Board of Quitman County, 181 So.

313, 315 (Miss. 1938) (emphasis added). That the term "shall" is permissive rather than mandatory is especially true when the subject is one state legislature's intention regarding the appropriations discretion of future state legislatures. *See* ***State ex rel. Kansas City Symphony v. State***, 311 S.W. 3d 272, 277-78 (Mo. Ct. App. 2010) (interpreting statute providing funds "shall" annually be allocated and transferred to state entity's fund as "directory, rather than mandatory").[6]

When interpreting any statutory enactment, "[t]he primary rule of construction is to ascertain the intent of the legislature from the statute as a whole and from the language used therein." ***Clark v. State ex rel. Mississippi State Med. Ass'n***, 381 So. 2d 1046, 1048 (Miss. 1980). And that cardinal rule applies when interpreting multiple statutory provisions together, and particularly where, as here, each provision was enacted in the same legislative act. As this Court has explained, when analyzing "a comprehensive act of the Legislature, the legislative intent must be determined from the total language of the act and not from one section thereof considered apart from the remainder." ***Lee v. Alexander***, 607 So. 2d 30, 36 (Miss. 1992) (internal quotation marks omitted); *see also* ***Hollandale Ice Co. v. Board of Sup'rs, Washington County***, 157 So. 689, 690 (Miss. 1934) ("In construing statutes, the court looks to the entire legislation upon the subject, and determines the policy of the Legislature from a

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[6] The term "shall" undoubtedly does not always impose a mandatory duty. For example, Code Section 9-4-3 says "The Supreme Court *shall* issue a decision in every case within its original jurisdiction . . . within two hundred seventy (270) days after the final briefs have been filed with the court." Miss. Code Ann. § 9-4-3. "Shall" in the 270 day statute, like 2006 S.B. 2604's Section 2 here, is plainly directory instead of a mandate. The statute's intent is to encourage this Court to decide cases and avoid a pending case backlog, not to provide litigants (or anyone else) a mechanism to force the Court to decide cases. *See* ***Long v. McKinney***, 897 So. 2d 160, 186 n. 38 (Miss. 2004) (correctly noting Code Section 9-4-3 cannot constitute an enforceable mandatory command and co-exist with the Constitution).

consideration of all the statutes together.").

Read as a whole, 2006 S.B. 2604 places no judicially enforceable duty on future legislators to blindly appropriate local school districts any specific amounts of state funds. Initially, while Section 2 pronounces that "Effective with fiscal year 2007, the Legislature shall fully fund" the MAEP, Section 3 of the bill specifically provides alternative procedures for appropriations in fiscal years 2007-2010, if the Legislature determined not to "fully fund" the estimated state share of the projected program cost. 2006 S.B. 2604, § 3; Laws, 2006, Ch. 473, § 3. In light of Section 3, Section 2's "shall" did not attempt to place a mandatory duty on the 2006, 2007, 2008, or 2009 Legislatures.

The districts concede that the term "shall" in Section 2 did not have a mandatory meaning in 2006-2009 in light of the alternative language contained in Section 3. The districts argue instead that the 2006 Legislature intended "shall" to be discretionary in 2007 through 2009 and yet mandatory for fiscal years 2010 and beyond. Under the districts' counterintuitive reading, the 2006 Legislature declined to bind the 2006-2008 Legislatures to appropriate a specific amount of funds for education and, instead, reached even further into unknown future economic times and bound its successors to appropriate local school districts certain amounts of state money in fiscal year 2010 and beyond. But, just as the Chancery Court found, another feature of the enactment belies the districts' attempt to use Section 2 as an enforceable mandatory appropriations obligation on any future legislators.

Even though 2006 S.B. 2604's Section 2 says post-2006 Legislatures "shall fully fund" the MAEP, the bill's Section 4 supplies an alternative procedure to "fully funding"

MAEP when the Legislature undertakes its appropriations decision-making. Section 4 establishes that "*In any year* in which the MAEP is not fully funded, the Legislature shall direct the Department of Education in the K-12 appropriation bill as to how to allocate MAEP funds to school districts for that year." 2006 S.B. 2604, § 4 at lines 447-50 (emphasis added); Laws, 2006, Ch. 473, § 4; Miss. Code Ann. § 37-151-7(1)(f). Given that the 2006 Legislature employed Section 4 to make extensive changes to the MAEP formula beginning in 2011, and the fact that the 2006 Legislature could not foretell the State's economic condition some five years in the future, Section 4's broad phrase "in any year" clearly recognizes that future Legislatures were not obligated to "fully fund" the new MAEP formula. By contemplating that there would be successive years "in which the MAEP is not fully funded," and then setting a method for operating under that contingency, the 2006 Legislature itself confirmed that Section 2 plainly sets out an aspirational directive for future legislators in future fiscal years, rather than a mandatory inhibition on their appropriations discretion.[7]

[7] The districts' contrary contention, echoed by their *amicus* but rejected by the Chancery Court, that Section 4's "any year" contingency can only be read as a restatement of Section 3's provisions for fiscal years 2007, 2008, and 2009 and effective only in those years, has several flaws. For example, their argument does not explain why Section 4 specifically amended portions of the estimation formula in Code Section 37-151-7(1)(a) and (b) effective for fiscal year 2011 and beyond while including the amendment to Section 37-151-7(1)(f)'s method for determining the product of those post-fiscal year 2010 projections with the alternative for "any year" the funding estimates are not "fully funded." Their restatement argument also ignores that Section 3 includes specific contingencies for appropriating and distributing state funds in fiscal years 2007, 2008, and 2009, *see* 2006 S.B. 2604, § 3(2), (3), and fails to explain why the bill would have addressed those years twice in conflicting manners. Furthermore, their proposed reconciliation of Sections 2, 3 and 4 which would purportedly make Section 2 a judicially enforceable mandate does not account for the other interpretative problems it creates, such as the constitutional conflicts discussed below which only flow from treating Section 2 as an enforceable command as opposed to a policy goal for future legislators.

B. Statutory interpretation principles confirm Section 2 employs the term "shall" in its directory form.

Section 2 is directory even if the districts' perception of 2006 S.B. 2604's Section 2 as a mandatory legislative obligation could be considered a reasonable read of the bill, and thus requires resorting to reliable cannons of statutory interpretation. Numerous interpretative clues demonstrate the 2006 Legislature did not dictate its successors must, no matter what, appropriate and distribute to local school districts any particular amount of state funds revealed through the MAEP estimation formula in the future.

For example, the subsequent actions of the Legislature itself clearly indicate that it does not interpret Section 2 to mandate a specific level of appropriation. This Court may "look to later acts of the legislature to ascertain the legislative intent and in arriving at the correct meaning of a statute." ***Warner v. Board of Trustees of Jackson Separate Municipal School Dist.***, 359 So. 2d 345, 348 (Miss. 1978); *see also* ***Crosby v. Barr***, 198 So. 2d 571, 574 (Miss. 1967) (recognizing "this Court may utilize subsequent enactments or amendments of statutes as an aid in arriving at the correct meaning of a prior statute and in construing the statute").

According to the districts, none of the Legislature's K-12 appropriations bills passed for fiscal years 2010 and beyond "fully funded" the MAEP.[8] That fact, if true, shows that the last eight times the Legislature has spoken to the subject of Section 2's meaning, it has consistently said "shall" constitutes a mere directive, not a mandate. While they may be confined to fiscal subjects, appropriation bills are just as much an expression of legislative will as any other laws. ***Cassibry v. State***, 404 So. 2d 1360,

[8] *See* 2016 H.B. 1643; 2015 H.B. 1536; 2014 H.B. 1476; 2013 H.B. 1648; 2012 H.B. 1593; 2011 H.B. 1494; 2010 H.B. 1622; 2009 H.B. 49 (2nd Extraordinary Session).

1365-66 (Miss. 1981); *see also* ***City of Camden v. Byrne***, 411 A.2d 462, 472-73 (N.J. 1980) (holding a future legislature's appropriations enactment on a particular subject evidences "a definite legislative intent" itself which "supercedes and previously expressed legislative desires" regarding the amount of funding which is appropriate). The Legislature's appropriations bills clearly rule out attributing any mandatory meaning to Section 2.[9]

Other interpretative tools also demonstrate 2006 S.B. 2604's Section 2 uses "shall" in a non-mandatory sense. For instance, the districts' interpretation of the bill overlooks the fact that the Legislature placed Section 4 after Section 2 in the very same enactment. When two provisions of a single legislative Act conflict, the Act's later provision controls. *See* ***Coker v. Wilkinson***, 106 So. 886, 887 (Miss. 1926) ("Where there are two conflicting provisions in the same statute, the last expression of the Legislature must prevail over the former. Undoubtedly that principle of statutory

[9] The districts and their *amicus* rely on two unofficial "sources" of "legislative history" to prop up their mandatory interpretation of 2006 S.B. 2604's Section 2. First, after the Chancery Court issued its final dismissal order, the districts filed an affidavit of a former legislator and newspaper articles with their rebuttal brief seeking rehearing. R. XI:1571-74, R.E. 7. The Chancery Court properly disregarded that belated, so-called "evidence." Testimony of former legislators to prove legislative intent is "wholly inadmissible." ***Mississippi Gaming Comm'n v. Imperial Palace of Mississippi, Inc.***, 751 So. 2d 1025, 1028 (¶ 14) (Miss. 1999) (finding "the trial court erred by allowing testimony from legislators as to the motive or intent of their respective bodies"). And, even if considered admissible "evidence" of legislative intent, the districts' newspaper op-ed itself fails to prove Section 2 definitively constitutes an enforceable obligation on legislators. R. XI:1573 (describing Section 2 as "kind of open-ended and could be interpreted many different ways"), R.E. 7. Second, the districts' and their *amicus*' reliance on failed post-2009 legislative attempts to amend or repeal Section 2, or other portions of 2006 S.B. 2604, makes for a wash, at best. While they speculate attempts to change the law were motivated by a need to eliminate a mandatory obligation, any reasonable person could likewise easily conclude that – particularly in light of the Legislatures' post-2009 appropriations bills – the amendment attempts failed as unnecessary because Section 2 is directory rather than mandatory.

construction is sound.").[10] Section 2 says the Legislature "shall fully fund" MAEP beginning in fiscal year 2007. 2006 S.B. 2604, § 2; Laws, 2006, Ch. 473, § 2; Miss. Code Ann. § 37-151-6. Section 4, however, subsequently provides how to allocate annual appropriations whenever the state share of the Department of Education's "total projected adequate education program cost" is not "fully funded." 2006 S.B. 2604, § 4; Laws, 2006, Ch. 473, § 4; Miss. Code Ann. § 37-151-7(1)(f). By enacting Section 4 within 2006 S.B. 2604 after Section 2, the 2006 Legislature confirmed future Legislatures' discretion to appropriate the specific amount of state funds future Legislatures may appropriate to public education.[11]

If the 2006 Legislature realistically intended to perpetually handcuff its successors to "fully funding" MAEP formula estimates, and only "fully funding" those estimates when undertaking their successive annual appropriations decisions, then the

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[10] At pages 31 and 32 of their brief, the districts attempt to cast ***Coker***'s interpretative principle aside by pointing out this case involves "two statutes" rather than a conflict within "one statute." While following 2006 S.B. 2604's passage, Sections 2 and 4 were codified in two separate statutes, that is irrelevant. The two sections were both enacted in the same legislative act, and Section 4 is the last expression in the 2006 Act with respect to annual state share funding of MAEP estimates. *See* ***Warner***, 359 So. 2d at 347 (applying ***Coker***'s conflict principle to two enactments contained in the same bill passed by the Legislature).

[11] Other interpretative cannons also demonstrate Section 2 contains a directive rather than an enforceable mandate. When two statutes encompass the same subject matter, the specific statute controls over the general statute. ***Yarbrough v. Camphor***, 645 So. 2d 867, 872 (Miss. 1994). Section 2 may generally provide that successive Legislatures "shall fully fund" MAEP estimates, but Section 4's specific alternative applies whenever the estimates are not fully funded. As another example, to decide whether a statutory command constitutes a mandate or a mere directive, courts may look to whether or not the statutory scheme specifies a consequence or provides an enforcement mechanism. *See* 82 C.J.S. Statutes § 493 ("The rule that imperative words may be construed as having only a directory meaning does not apply when a consequence or penalty is prescribed for failure to do the act commanded. On the other hand, if the statute does not declare what result will follow a failure to do the required acts, it generally is directory."). The 2006 Legislature's failure to prescribe any consequence or specify any enforcement mechanism in 2006 S.B. 2604 – or elsewhere in any other legislative enactment on the subject – for a failure to comply with Section 2 (as the districts interpret it) is further evidence Section 2 does not use the word "shall" in a mandatory sense.

2006 legislation would not have included a contingency for "any year" the Legislature chooses not to "fully fund" MAEP. As a matter of statutory interpretation, 2006 Senate Bill 2604 plainly does not mandate that future legislators must automatically appropriate and distribute to local school districts whatever specific amounts of funds can be said to constitute "full funding." The Chancery Court below appropriately reached that conclusion and dismissed the districts' claims. Its decision should be affirmed.

II. The 2006 Legislature could not, Consistent with the Constitution, Legally Bind Future Legislatures to Annually Appropriate a Specific Amount of State Funds to the Districts.

When a potential constitutional conflict could arise from interpreting a legislative enactment a particular way, Mississippi courts should avoid the conflict by exercising its "duty to adopt a construction of the statutes which would purge the legislative purpose of any constitutional invalidity." ***Cole v. National Life Ins. Co.***, 549 So. 2d 1301, 1305 (Miss. 1989) (internal quotation marks omitted). It is also well-settled that Mississippi courts do not address constitutional concerns "where the issues involved in a particular case are such that the case may be decided on other grounds." ***Mississippi Power Co., Inc. v. Mississippi Public Service Comm'n***, 168 So. 3d 905, 910 (¶ 7) (Miss. 2015) (internal quotation marks omitted).

The Chancery Court below admirably averted the constitutional problems posed by the districts' interpretation of 2006 S.B. 2604 by legitimately interpreting the bill to avoid them. Nevertheless, if the bill is, as the districts claim, only capable of being construed as a mandatory and judicially enforceable command to future legislators to "fully fund" the MAEP, then the Chancery Court's judgment should still be affirmed. *See*

Falco Lime, Inc. v. Mayor and Aldermen of City of Vicksburg, 836 So. 2d 711, 725 (¶ 62) (Miss. 2002) ("We affirm where an agency or lower court reaches the right result for the wrong reason."). The districts' interpretation of 2006 S.B. 2604 puts the act in direct conflict with our Constitution.

A. The appropriations mandate the districts ascribe to 2006 S.B. 2604 would violate our Constitution's prohibition on one Legislature statutorily obligating its successors to annually appropriate the districts any particular amount of state funds.

The fatal constitutional flaws in the districts' argument that the 2006 Legislature bound future Legislatures to give them specific amounts of state funds flow from the Constitution's first two provisions. Our Constitution initially divides the government's authority among three branches, and expressly precludes one branch from encroaching upon the constitutional powers of the others. Miss. Const., art. 1, §§ 1, 2. Within that constitutional framework, discretionary authority over the State's finances is dedicated to the legislative branch. ***Alexander v. State by and through Allain***, 441 So. 2d 1329, 1339 (Miss. 1983). And, not only does the Legislature possess "the control of the purse strings of government," discretion over raising and spending state funds is its "supreme legislative prerogative, indispensable to the independence and integrity of the Legislature, and not to be surrendered or abridged, save by the Constitution itself, without disturbing the balance of the system and endangering the liberties of the people." ***Colbert v. State***, 39 So. 65, 66 (Miss. 1905).

In addition to devoting discretionary fiscal authority to the legislative branch, and precluding the other branches from encroaching on it, our Constitution also significantly protects future Legislatures' fiscal authority from prior Legislatures. Past Legislatures cannot statutorily prescribe mandatory appropriations by restricting or limiting future

Legislatures' "supreme legislative prerogative" over the State's finances. In at least two related ways relevant here, our Constitution guarantees both past and future legislators equal rights to annually exercise their appropriations discretion on behalf of the people.

First, purported mandatory appropriations statutes–like 2006 S.B. 2604's Section 2, as the districts interpret it–are ineffective because, as a general matter derived from the Legislature's constitutional power to legislate, one session of the Legislature cannot statutorily bind a succeeding Legislature to exercise its legislative powers in any particular manner.

When each regular session of the Legislature convenes, its plenary legislative authority is only limited by the state and federal Constitutions. Miss. Const., art. 4, § 33; ***Albritton v. City of Winona***, 178 So. 799, 803 (Miss. 1938) (the Legislature "is invested, by Section 33 of our State Constitution, with all legislative power, except insofar as other sections of the Constitution place a limitation thereon."). Each successive Legislature may legislate on any constitutionally permissible subject because the Constitution "does not grant specific legislative powers, but limits them," ***Moore v. Grillis***, 39 So. 2d 505, 509 (Miss. 1949), and thereby establishes "the lawmaking department possesses all legislative powers not prohibited or restricted by the state or federal constitution, and certainly the power extends to circumstances not covered by the constitutions at all." ***Farrar v. State***, 2 So. 2d 146, 148 (Miss. 1941). Given only the Constitution restrains the Legislatures' power to legislate, it follows that a statutory enactment cannot restrict or limit the right of future legislators to legislate on any legislative subject committed to them under our Constitution.

The constitutional prohibition against one Legislature statutorily inhibiting its

successors' legislative authority has long been accepted in Mississippi, and all states with similar constitutional systems. This Court has acknowledged the prohibition exists. *See* ***Pace v. State ex rel. Rice***, 4 So. 2d 270, 278 (Miss. 1941) (collecting United States Supreme Court cases recognizing that a "prior legislature had no power to bind a subsequent one" with respect to a "public subject"). Individual opinions issued from this Court have also specifically explained one Legislature cannot place "a limitation or restriction on a future legislature, or on future legislation," such that it is "familiar knowledge that one legislature cannot bind future legislatures." ***Gulley v. Lumbermen's Mut. Cas. Co.***, 166 So. 541, 542 (Miss. 1936) (Ethridge, J., concurring in part and dissenting in part); *see also* ***Bank of Morton v. State Bond Comm'n***, 199 So. 507, 511-12 (Miss. 1941) (Ethridge, J., concurring) (the "lack of power in one legislature to bind a succeeding legislature is so clear that it is unnecessary to discuss it"). And numerous other authorities around the country uniformly recognize that one legislature cannot inhibit future legislatures' power to legislate on any proper subject of legislation.[12]

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[12] *See*, *e.g.*, ***Reichelderfer v. Quinn***, 287 U.S. 315, 318 (1932) (finding Congressional Act purporting to devote land to a particular use "expressed no more than the will of a particular Congress which does not impose itself upon those to follow in succeeding years"); ***State ex rel. Stenberg v. Moore***, 544 N.W. 2d 344, 349 (Neb. 1996) ("absent a constitutional restriction on the legislative power, one legislature cannot restrict or limit the right of a succeeding legislature to exercise the power of legislation"); ***Newton v. State***, 375 So. 2d 1245, 1248 (Ala. Crim. App. 1979) ("no action by one branch of the legislature can bind a subsequent session of the same branch"); ***Frost v. State***, 172 N.W. 2d 575, 583 (Iowa 1969) ("The authority of a legislature is limited to the period of its own existence. One general assembly cannot bind a future one."); ***Village of North Atlanta v. Cook***, 133 S.E. 2d 585, 589 (Ga. 1963) (one legislature "can not tie the hands of its successors, or impose upon them conditions, with reference to subjects upon which they have equal power to legislate"); ***Iowa-Nebraska Light & Power Co. v. City of Villisca***, 261 N.W. 423, 429 (Iowa 1935) ("The power of the Legislature is derived from the Constitution and thereunder one Legislature cannot bind a succeeding Legislature."); 82 C.J.S. Statutes § 11 (an act by one branch of the legislature does not "bind a subsequent session of the same branch").

Second, one Legislature's statutory attempt to inhibit succeeding Legislatures' ability to legislate is particularly illegitimate when it tramples on future Legislatures' discretionary spending authority, such as in the manner the districts interpret and seek to apply 2006 S.B. 2604's Section 2 here. This is rooted in the constitutional prohibition against one legislature statutorily binding its successors, as well as the Constitution's requirements that expenditures of state funds can only be made through appropriations, and each Legislature may only exercise its appropriations discretion on a year-by-year basis.

In Mississippi, a legislative appropriation is required to draw any money from the state treasury, and Article 4 of "the Constitution regards the Legislature as the sole repository of power to make appropriations of state money to be paid out of the state treasury." ***Colbert***, 39 So. at 67; *see also* ***In re: Hood ex rel. State Tobacco Litigation***, 958 So. 2d 790, 813 (Miss. 2007) ("Before money can come out of the state treasury, such money must be appropriated by the Legislature."). Article 4 specifically limits the Legislature to exercising its discretionary spending authority annually through passing appropriations bills. Each annual appropriation bill must include a definite and fixed maximum dollar amount appropriated. Miss. Const., art. 4, § 63. Additionally, appropriations must be strictly time-limited, in that no appropriations bill can remain in force and permit withdrawals from the state treasury more than two months after the next fiscal year expires. Miss. Const., art. 4, § 64. Several other requirements on annual appropriations also exist.[13] In the meantime, Sections 63 and 64 establish that no

[13] *See*, *e.g.*, Miss. Const., art. 4, § 68 (appropriation bills take precedence at regular legislative sessions); Miss. Const., art. 4, § 69 (appropriation bills must contain certain contents); Miss. Const., art. 4, §§ 72, 73 (appropriations bills subject to gubernatorial veto and line-item veto process).

money may be drawn from the treasury without an annual appropriation consistent with those provisions, and that our Constitution does not allow one session of the Legislature to enact "permanent or standing appropriations." ***State ex rel. Barron v. Cole***, 32 So. 314, 315 (Miss. 1902). These constitutional provisions establsh a sound fiscal policy precluding one session of the Legislature from passing laws that effectively write blank checks, or authorize perpetual expenditures, to be paid with future state funds.

In sum, Section 33 preserves each Legislature's discretionary authority to legislate. Sections 63 and 64 limit each Legislature solely to exercising its discretionary spending authority annually. Together, these constitutional provisions concretely establish that one Legislature cannot *statutorily* dictate that Legislatures must annually spend any particular amount of state funds on any particular state program in the future. As a constitutional matter, then, the districts cannot complain that 2006 S.B. 2604, as they interpret it, obligated any post-2009 Legislature to appropriate them any specific amount of state funds correlating with the Department of Education's annual MAEP formula estimates in the past, or requires any future legislators to do so either.[14]

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[14] Another insurmountable constitutional flaw in the districts' view of Section 2 is that post-2009 Legislatures cannot be required to annually appropriate school districts whatever amount of state funds the Department of Education submits as its MAEP formula-based budget estimates without violating Constitution Sections 1 and 2 as an improper delegation of legislative power. Control of the State's revenues and expenditures is the Legislature's core constitutional function. ***Colbert***, 39 So. at 66. As set forth in the briefing below, 2006 S.B. 2604's Section 4, and specifically current Code Section 37-151-7, charges the MDE with annually using the MAEP formula to estimate what amount of state appropriation funding would be considered "full funding" of education. Under the districts' argument, the dollar amount MDE arrives at using the MAEP formula must be appropriated in full and without deviation by each Legislature. Important to the unconstitutional delegation argument, the MAEP formula is itself vague and subjective so that MDE has considerable discretion in the information it uses, and the manner in which it uses that information, to produce MAEP estimations. *See* R. VIII:1087-91. If the districts' argument is correct, then the discretion afforded MDE constitutes an unconstitutional delegation of authority through which MDE dictates to future Legislatures the amount of education appropriations. MDE would possess and exercise appropriations authority that would violate the separation of powers doctrine. *See, e.g.*, ***Howell v. State***, 300

B. Legislators do not have to "amend, repeal, or be bound" by 2006 S.B. 2604 (as the districts interpret it) to exercise their appropriations discretion.

The districts primarily attempt to wish away the constitutional problems with their view of 2006 S.B. 2604 by arguing the Legislature could repeal or amend the law, but, unless and until that action is taken, Section 2 statutorily bound post-2009 Legislatures to appropriate annual MAEP "full funding." Appellants' Br. at pp. 37-42. The flaw in the districts' contention that future Legislatures must either "amend, repeal, or be bound" by Section 2 of 2006 S.B. 2604 is the argument's premise that absent an amendment or repeal of the statute future Legislatures are, indeed, statutorily **bound** to appropriate funds in the amount specified by the 2006 Legislature. In fact, previous legislators have no constitutional authority to statutorily bind future Legislatures to appropriate specific funds for a specific purpose. Any such attempt to bind a future Legislature would be a constitutional nullity and may be "disregarded" by future legislators. Future legislators need not draft, file, successfully pass, and have the Governor approve a repeal or amendment of 2006 S.B. 2604 before those legislators could reclaim their *tabula rasa* constitutional authority to appropriate an amount of funds they deem appropriate for education. *See*, *e.g.*, ***Town of Milton v. Commonwealth***, 623 N.E. 2d 482, 483-84 (Mass. 1993); ***Frederick v. Presque Isle Cnty. Circuit Judge***, 476 N.W. 2d 142, 147-48 (Mich. 1991); ***Byrne***, 411 A.2d at 469-75.

The districts have not come forward with any apposite authority, from any jurisdiction, demonstrating that one session of a state legislature can *statutorily* inhibit

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So. 2d 774, 781 (Miss. 1974).

its successors' appropriations discretion.[15] Meanwhile, as explained above, this Court has acknowledged that one legislature cannot legislatively bind future legislatures. And plenty of supreme courts in states with similar constitutional schemes have faced arguments like the districts', and roundly rejected them in holding that one state legislature cannot statutorily inhibit future legislators' fiscal authority.

For example, in ***City of Camden v. Byrne***, 411 A.2d 462 (N.J. 1980), the New Jersey Supreme Court held that statutes enacted by New Jersey Legislatures in the 1960s could not obligate successive Legislatures to appropriate specific amounts of state funds to local political subdivisions. Subsequent Legislatures quintessentially had the "inherent power to disregard" prior statutory enactments attempting to "dedicate" future state revenues for any particular purpose. ***Id.*** at 469.

The New Jersey Constitution, like Mississippi's, commits appropriations authority to its legislature and restricts authorizations to expend state funds to each

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[15] Instead of citing any cases to support their argument that one state legislature can statutorily inhibit its successors' appropriations discretion, the districts rely on a law review article for the proposition that, as long as a state statute does not expressly restrict a subsequent legislature's ability to amend or repeal it, then one legislature can statutorily and permissibly interfere with the discretion of future legislatures. Appellants' Br. at p. 35. However, the "rule against entrenchment" invoked by the districts is not so narrow. Our Constitution grants each session of the Legislature the equal constitutional right to exercise its collective appropriations judgment and to enact future laws free from statutory interference. The districts are correct that one session of the Legislature cannot legitimately place an express "anti-repealer" provision in a law, but they incorrectly contend it follows that one session of the Legislature can enact an implicit statutory obstacle which effectively requires a subsequent legislature to first successfully pass an amendment to a general law, and secure the governor's signature, before enacting an appropriation bill which fails to comport with the desires of a prior legislature. The districts' argument that the constitution and the anti-entrenchment doctrine protect the judgment and authority of future legislatures by prohibiting the former but yet authorizes the erosion of authority through the later is counterintuitive and simply wrong. Rather, because 2006 S.B. 2604 is "a general law enacted by the legislature," and "not a constitution provision," "it may be repealed, amended, **or disregarded** by the legislature which enacted it." ***Manigault v. Springs***, 199 U.S. 473, 487 (1905) (emphasis supplied). The statute is "not binding upon any subsequent legislature" and "noncompliance with it [does not] impair or nullify the provisions of an act passed" by future legislatures. ***Id.***

fiscal year. ***Id.*** at 468. The primary statute at issue in ***Byrne*** purported to place a perpetual and mandatory obligation on future Legislatures to appropriate a specific amount of taxes collected to counties for highway costs. ***Id.*** at 467. Subsequent Legislatures in the mid-1970s passed appropriation bills failing to allocate the funds to the counties. ***Id.*** at 472. The court rejected the counties' claim to enforce the supposed appropriations requirement of the previously enacted laws. ***Id.*** at 475. The court found that in refusing to adhere to the earlier statutes, and by subsequently enacting appropriations inconsistent with the statutory terms, the "Legislature itself has expressed its intent with sufficient clarity to render it singularly inappropriate for this Court to give any legal effect whatsoever to the earlier statutory enactments." ***Id.*** at 473. Furthermore, the court reasoned that

> It follows that such a definite legislative intent as reflected in the general appropriation laws necessarily supersedes any previously expressed legislative desires at least for the duration of the particular appropriation act. The earlier statutes cannot coexist with the enacted appropriation and, consequently, must be deemed to be suspended by adoption of the later appropriation acts.

Id. at 472-73.[16]

As ***Byrne*** illustrates, future state legislatures are not bound by statutory

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[16] The suspension principle applied in ***Byrne*** answers the districts' misplaced contentions at page 20 of their brief, and elsewhere, to the effect that "general law prevails over any conflict with an appropriation bill" and Section 69 of the Constitution precludes an appropriations bill from "engrafting language onto general law." The Attorney General opinion cited for the first proposition does not say general laws *always* prevail over *any conflict* with appropriations bills. *See Polles*, 2014 WL 581502, at *1 (Miss. A.G. Jan. 10, 2014) ("It is our opinion that the general law prevails over an appropriations bill *insofar as the appropriations bill would purport to repeal or amend the general law*.") (emphasis added). As to the second proposition, when the Legislature has passed appropriations bills inconsistent with the districts' view of 2006 S.B. 2604, it has not permanently altered any general laws–rather–acting consistent with Sections 33, 63 and 64, the appropriation merely suspends any so-called mandatory operation of Section 2 for the limited duration of the appropriations bill.

attempts to dictate their future appropriations discretion. And they are not required to amend or repeal a supposed statutory "mandate" to appropriate state funds, or otherwise resurrect their appropriations discretion, before annually appropriating the funds for a state program as they see fit. Legislators can entirely disregard prior legislative enactments which purportedly inhibit their appropriations discretion. ***Id.*** at 469.

The same result holds true, even when the original enactment speaks in what could be construed as "mandatory" or "non-discretionary" terms, as the districts portray 2006 S.B. 2604 here. No amendment or repeal of the original enactment is necessary to free up state legislators' appropriations discretion from a statute purportedly dictating that they "shall" appropriate any particular amount of state money in the future. For instance, in the late 1980s, the Massachusetts Legislature enacted a statute providing that cities and towns "shall be reimbursed" by the State for one half of certain police officers' salaries. ***Town of Milton v. Commonwealth***, 623 N.E. 2d 482, 483 (Mass. 1993). When the 1988-1990 Legislatures refused to appropriate 100% of the funds contemplated, numerous cities brought suit seeking injunctive and declaratory relief forcing the Legislature to make up the difference with a future appropriation. ***Id.***

The Massachusetts Supreme Court found that explicit and mandatory language in a statute "alone does not create a right to reimbursement, either as a statutory mandate or as a contractual obligation." ***Id.*** A prior session of the Legislature could not enact a self-executing appropriation of future funds since reimbursement to the municipalities depended upon availability of future funding. ***Id.*** at 484. Furthermore, and regardless of whether or not the funds were or would be available, the municipalities' claims lacked

merit since "one Legislature may not bind a successor Legislature (or even itself) to make an appropriation." ***Id.***; *see also* ***Associated Indus. of Massachusetts v. Sec'y of Commonwealth***, 595 N.E. 2d 282, 286-87 (Mass. 1992) ("The Legislature cannot, through enactment of an act or statute, bind itself or its successors to make a particular appropriation."). Successor Massachusetts Legislatures could ignore the putative statutory "mandate" to appropriate funds, and certainly were not required to "amend, repeal, or be bound" by their predecessor's enactment.

Like the ***Town of Milton*** decision, in ***Frederick v. Presque Isle Cnty. Circuit Judge***, 476 N.W. 2d 142, 147 (Mich. 1991), the Michigan Supreme Court held the bar against obligating future legislators to any particular future appropriation decision applies regardless of whether the original purportedly binding enactment used mandatory terminology. The 1980 Michigan Legislature enacted a statute providing that "(1) The legislature *shall appropriate sufficient funds* in order to fund: . . . (e) at least 100% of all court operations expenses in the state fiscal year beginning October 1, 1988." ***Id.*** (quoting M.C.L. § 600.9947) (emphasis added). The ***Frederick*** court found the "shall" language to "at most, merely express an intention of the Legislature with regard to appropriations which will be made in future years." ***Id.*** at 148 (internal quotation omitted). And, regardless of the "shall appropriate sufficient funds" language used by the 1980 Legislature, that putative command was "not binding on subsequent Legislatures" since "[o]ne legislature cannot limit the power of successor legislatures to appropriate funds." The court concluded that

> [b]ecause § 9947 was enacted in 1980 and became effective on September 1, 1981, it cannot bind the Legislature with regard to 1988 appropriations. Therefore, the promise or intention expressed in M.C.L. § 600.9947; M.S.A. § 27A.9947 is not binding and cannot compel the state to assume

the responsibility for paying the fees of assigned appellate attorneys. ***Id.***; *accord* ***Kansas City Symphony***, 311 S.W. 3d at 277 (holding statutory language directing that state funds annually "shall be allocated" to a state agency's account was merely "directory, rather than mandatory, and does not supplant the appropriations process," otherwise the statute would violate the prohibition against one legislature binding its successors); ***Maine State Housing Authority v. Depositors Trust Co.***, 278 A.2d 699, 707-08 (Me. 1971) ("One legislature cannot impose a legal obligation to appropriate money upon succeeding legislatures. An attempt to do so would be invalid and we should avoid giving the section a construction which would render it unconstitutional[.]"). Nowhere did the ***Frederick*** court suggest that the Michigan Legislature had to "amend, repeal, or be bound" by the prior statute. The Michigan Legislature could, and did, simply disregard it, just as post-2009 Mississippi Legislatures were, and are entitled to treat 2006 S.B. 2604's Section 2 here.

C. The districts are not bondholders or contract beneficiaries.

Apart from their dodgy "amend, repeal, or be bound" argument, the districts also attempt to skirt the constitutional prohibition against one legislature statutorily binding its successors in fiscal matters by conflating the Legislature's ability to authorize state entities to issue bonds, and/or execute contracts, with its inability to dictate specific appropriations for state programs far into the future. Appellants' Br. at pp. 36-37. As this Court's ***Bank of Morton*** decision cited by the districts and other cases demonstrate, the Legislature has the power to authorize a bond issuance and thereby contractually obligate the State or state entities to repay the bonds. ***Bank of Morton***, 199 So. at 507-08; *see also* ***Bacot v. Board of Sup'rs of Hinds County***, 86 So. 765,

766-67 (Miss. 1925) (confirming legislative power to authorize counties to issue bonds). Likewise, the Legislature can empower the State, and its agencies and political subdivisions, to undertake contractual obligations such as those requiring compensation to state employees. *See*, *e.g.*, Miss. Code Ann. § 25-3-1 *et seq*. (regulating compensation of public officials).

In both those common scenarios, the Legislature authorizes the state government to incur a contract-based obligation to pay a debt. The obligation created may influence future appropriations. That, however, does nothing for the districts' case here. The districts are obviously not bondholders, debt holders, state employees, or contract beneficiaries. They have no viable contention (and have never even pled) that 2006 S.B. 2604 created a bond debt or some other contractual obligation enforceable against future Legislatures.[17]

D. "Public education funding" litigation elsewhere does not help the districts.

The districts also attempt to undermine the prohibition against one legislature statutorily dictating its successors' appropriations discretion by superficially mentioning public education funding lawsuits in New Jersey and Michigan. Appellants' Br. at pp.

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[17] The districts cite to the State's homestead exemption reimbursement statutes as proof that the 2006 Legislature had the power to compel future Legislatures to appropriate them "full funding" of MAEP. Appellants' Br. at p. 27 (citing Miss. Code Ann. §§ 27-33-3, 27-33-41). A statutory city and county homestead exemption partial refund scheme exists under Code Sections 27-33-1 *et seq*., and the 2016 Legislature appropriated $84,454,641 to fund fiscal year 2017 payments to cities and counties consistent with (according to the districts' brief) the statutes. *See* 2016 S.B. 2885, § 6. Those facts, however, do not prove the 2016 Legislature, or any prior Legislature, was mandatorily obligated by the homestead exemption statutes to appropriate the money. All they demonstrate is that, if a local government entity ever sues over how much they get appropriated, in that hypothetical case, the entity would likely face the exact same constitutional problem the districts do here: one Legislature cannot statutorily bind future legislators to appropriate political subdivisions any particular amount of future money.

37-39. Those decades long court battles, however, had nothing to do with enforcing one legislature's statutory "mandates" to appropriate money as the districts seek to do here. Both the New Jersey Supreme Court's ***State ex rel. Abbott v. Burke***, 20 A.3d 1018 (N.J. 2011) and Michigan Supreme Court's ***Durant v. State***, 566 N.W. 2d 272 (Mich. 1997) decisions related to public education funding. But that surface similarity is about as close as they come to this case.

In ***Abbott***, after protracted litigation over twenty years, the New Jersey Supreme Court entered judicial orders in favor of a plaintiff class of students (as opposed to school districts) obligating the State to remedy proven violations of the students' rights under the New Jersey Constitution and specifically fund particular urban school districts at enhanced levels. ***Abbott***, 20 A.3d at 1027-29. When the New Jersey Legislature failed to comply with the judicial orders, the plaintiff class moved for a new remedial order "in aid of litigants' rights." ***Id.*** at 1035. Along the way to enforcing its prior orders, the ***Abbott*** majority rejected a defense premised on the legislature's authority to ignore statutory attempts to inhibit its appropriations discretion, previously examined in ***City of Camden v. Byrne***. ***Abbott***, 20 A.3d at 1037-38. The majority held the legislature's authority to "'disregard prior fiscal enactments,'" does not include "a corresponding authority to suspend judicial decrees issued to remedy substantiated constitutional violations." ***Id.*** at 1037 (quoting ***Byrne***, 411 A.2d at 469).

In this case, and completely unlike ***Abbott***, the appellant Mississippi school districts are not a student class student class seeking to enforce judicial decrees built on proven violations of individual constitutional rights. They are attempting to enforce their reading of a statutory enactment against subsequent Mississippi Legislatures.

Abbott does not assist their crusade.

The districts' reliance on the Michigan ***Durant*** litigation is also way off-base. After more than fifteen years of litigation, the Michigan Supreme Court addressed a slew of consolidated lawsuits brought by local school districts under the Michigan Constitution's "Headlee Amendment." ***Durant***, 566 N.W. 2d at 276-78.[18] Those constitutional amendments established a judicial enforcement mechanism whereby the Michigan Court of Appeals could enforce "Headlee" violations by awarding appropriate relief, including money damages, equitable relief, and attorneys fees and costs. ***Id.*** at 284 (citing Mich. Const., art. 9, § 32). Since the Michigan Supreme Court determined the Michigan Legislature violated the "Headlee" scheme in 1991-94 by failing to appropriate sufficient funds to certain education programs, it awarded the plaintiff school districts a multi-million dollar money damages judgment stemming from the violations. ***Id.*** at 289-91.

Suffice it to say, ***Durant*** did not involve one legislature's alleged statutory attempt to bind successor legislatures to appropriate funds. The case merely proves Michigan has a voter-enacted constitutional scheme different from Mississippi's. And it certainly does not support the districts' proposition that one Mississippi Legislature, consistent with our Constitution, can statutorily bind its successors to appropriate them

[18] Michigan's unique "Headlee" scheme – adopted by Michigan voters at the 1978 general election as a battery of ten constitutional provisions which imposed a "fairly complex system of revenue and tax limits" on state and local governments – constitutionally required the State to freeze local contribution levels for state required "activities" and "services," and fund future program increases exclusively through state appropriations. ***Durant***, 566 N.W. 2d at 275.

any particular amounts of future state money.[19]

E. Section 201 of the Constitution did not authorize the 2006 Legislature to dictate future legislators' appropriations as the districts mistakenly contend.

Finally, in two ways, the districts invoke Section 201 of the Constitution to support their contention that the 2006 Legislature could through the enactment of a statute create a judicially enforceable mandate binding future Legislatures to appropriate a specific amount of funds for education. Neither of their inventive Section 201-based arguments holds water.

First, the districts assert a misleading "constitutional conflict" argument. They contend that unless 2006 S.B. 2604 is interpreted by this Court to impose a mandatory duty on future Legislatures to appropriate a specific amount of funds for education, the Legislature would be in violation of Section 201. Appellants' Br. at pp. 19-23. In other words, the districts believe that reading 2006 S.B. 2604 as maintaining future Legislatures' discretionary authority to determine the exact amount of funding to be

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[19] In addition to ***Abbott*** and ***Durant***, the districts' supporting *amicus* cites Arizona education funding litigation in ***Cave Creek Unified School District v. Ducey***, 295 P.3d 440 (Ariz. Ct. App. Div. 1 2013), *aff'd*, 308 P.3d 1152 (Ariz. 2013) in arguing that one legislature can require future legislators to appropriate school funds when the funding legislation specifies the legislature "shall" provide a specific amount of funding. CFJ Brief at p. 2. ***Cave Creek***, like the ***Durant*** and ***Abbott*** litigation, has no bearing on this case. The "statute" at issue in ***Cave Creek***, which mandated the Arizona legislature "shall" increase funding levels to account for an inflation adjustment, was not an ordinary statute. ***Cave Creek***, 295 P.3d at 446. It was a voter-approved statutory initiative. ***Id.*** Under the Arizona voter-initiative scheme, voter-enacted laws are binding on the state legislature. ***Id.*** at 446-47. As this Court is aware, Mississippi voters recently considered whether to re-write our Constitution in a manner which, according to proponents of one of the proposed amendments, may have effectively turned the MAEP estimation formula into a court-enforceable "constitutional mandate." *See* ***Legislature of State v. Shipman***, 170 So. 3d 1211 (Miss. 2015). That amendment failed at the last general election. Meanwhile, Mississippi has no voter-initiative approval process like Arizona, and needless to say, 2006 S.B. 2604 is not a voter-approved law. ***Cave Creek*** and other "public education funding" cases cited by the districts and their *amicus* do not solve their problem with the constitutional prohibition against statutorily inhibiting future legislators' appropriations discretion.

appropriated for education would cause a conflict between 2006 S.B. 2604 and Section 201 of the Constitution.

Section 201 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. The interpretation of 2006 S.B. 2604 adopted by the State, and by the Legislature, which preserves the judgment of each successive Legislature to determine the exact amount of state funding to dedicate to education each year would satisfy Section 201: there is a "general law" which establishes mechanisms for state funding (through appropriation) and local funding (through local taxation) under which public schools are maintained. For example, that the 2016 Legislature appropriated more than $2.3 billion to local school districts, rather than whatever amount the districts might contend is "full funding" under the MAEP formula, did not violate Section 201. *See* 2016 H.B. 1643. There still exist general laws which "provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe." Meanwhile, the appropriation and 2006 S.B. 2604 complied with Section 201 whether the bill's Section 2 is interpreted as directory rather than mandatory. Thus, no "constitutional conflict" exists between Section 201 and a discretionary interpretation of 2006 S.B. 2604's Section 2.

Second, the districts try to glide past the constitutional prohibition on one legislature statutorily restricting its successors' appropriations discretion by claiming that Section 201 provides a "constitutional mandate" allowing the 2006 Legislature to override the discretion of future Legislatures. Appellants' Br. at p. 43. The 2006

Legislature enacted 2006 S.B. 2604, according to the districts, as "an expression" of its Section 201 constitutional "power to fund public education." *Id.* Therefore, so they apparently contend, the 2006 Legislature had the power to bind its successors to appropriate specific amounts of future state funds to the districts.

Section 201 does not defeat the constitutional prohibition against one Legislature inhibiting future Legislatures' appropriations discretion. As this Court has recognized, Section 201 is not a license for any session of the Legislature to disregard other commands of the Constitution. In ***Pascagoula School Dist. v. Tucker***, 91 So. 3d 598 (Miss. 2012), for instance, the 2007 Legislature enacted a statute requiring the distribution of certain taxes collected to all county school districts as opposed to only the district from which the money was raised. The enactment conflicted with Section 206, which preserves individual school districts' ability to retain taxes collected from within their district. ***Id.*** at 604-05 (¶¶ 13-14). Section 201 did not save the 2007 Act, for as this Court succinctly recognized, although Section 201 grants the Legislature "broad power to regulate school finance," ***id.*** at 605 (¶ 15), it "does not include the power to enact a statute that–on its face–directly conflicts with a provision of our Constitution." ***Id.***

Section 201 does not grant the Legislature "super-authority" to enact statutes prohibited by other parts of the Constitution that protect each Legislature's right to legislate and appropriations discretion. Interpreting 2006 S.B. 2604's Section 2 as an enforceable mandate upon future Legislatures would put it to the same fate as the statute in ***Tucker***.

For all the foregoing reasons, if the Chancery Court somehow incorrectly concluded that Section 2 does not dictate future legislators must "fully fund" the MAEP

formula as a matter of statutory interpretation, its judgment should at least be affirmed because the 2006 Legislature could not bind its successors to appropriate the districts any particular amount of future funds under our Constitution.

III. If the 2006 Legislature did, and Legally could, Require Future Legislatures to Appropriate the Districts any Specific Amounts of State Funds, the Districts are Still not Entitled to any Judicial Relief, much less Summary Judgment.

In addition to the insurmountable constitutional problems with the districts' interpretation of 2006 S.B. 2604's Section 2, even assuming for the sake of argument they could be correct, there also exist many other reasons they have no valid claims to the relief sought in their lawsuit. The districts cannot recover any money damages, obtain any injunctive or declaratory relief, and certainly are not entitled to have summary judgment rendered here in their favor.

A. The State's immunity bars the districts' requested multi-million dollar damage award.

The districts plead that they "have suffered" and "continue to suffer" injuries "as a result of the State's failure to fully fund MAEP in accordance with its statutory obligations," such as, facing "tough budget cuts," and making "budget cuts" that "have resulted in both scaling back and eliminating certain programs such as before-school programs, after-school programs, summer school, dual enrollment, and fine arts programs" and "further resulted in reductions in professional development for teachers and administrators, delays in purchasing textbooks and buses, increases in teacher-student ratios, and the closure of some educational buildings." R. I:122. Based on those injuries allegedly caused by the Legislature's supposed MAEP "under-funding" in fiscal years 2010-2015, their amended complaint seeks a collective damages "judgment in

their favor" plus interest against "the State" compensating the school districts with more than $ 235 million. R. I:123-27.[20] At a minimum, the State's immunity from money damage awards bars their requested money judgment.

Pursuant to the longstanding sovereign immunity doctrine, "there was no right to sue the State or its political subdivisions at common law." ***Barnes v. Singing River Hosp. Sys.***, 733 So. 2d 199, 203 (¶ 10) (Miss. 1999). In the 1980s, this Court's decisions in ***Pruett v. City of Rosedale***, 421 So. 2d 1046 (Miss. 1982) and its progeny abolished the common law sovereign immunity doctrine, and left sovereign immunity to "the legislative branch's prerogative to address limitations upon suits against government entities." ***Robinson v. Stewart***, 655 So. 2d 866, 869 (Miss. 1995). The Legislature responded by enacting the Mississippi Tort Claims Act, which "reaffirmed the principle of sovereign immunity." ***Tallahatchie Gen. Hosp. v. Howe***, 49 So. 3d 86, 91 (¶ 15) (Miss. 2010) (citing Miss. Code Ann. § 11-46-3). Through the MTCA, the Legislature enacted a limited waiver for civil actions seeking money damages against the State and state governmental entities, Miss. Code Ann. § 11-46-5(1), and established the Act as the "*exclusive* remedy for *civil claims* against governmental entities and employees." ***Little v. Mississippi Dept. of Transp.***, 129 So. 3d 132, 136 (¶ 8) (Miss. 2013) (emphasis added) (citing Miss. Code Ann. § 11-46-7(1)).

As it stood at all times relevant to this case, and stands today, sovereign immunity is alive and well. When it comes to civil claims to recover damages, the "state may not

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[20] The districts' amended complaint only expressly seeks $235 million (plus pre- and post-judgment interest) in money damages in favor of the named plaintiff districts. R. I:123-27. However, their pleading and motion for summary judgment intimate that all local school districts would be entitled to a money damages award, and represents the total amount potentially at issue for all districts exceeds $1.452 billion. R. I:127, III:339.

be sued except by its consent." ***City of Jackson v. Powell***, 917 So. 2d 59, 73 (¶ 51) (Miss. 2005) (citing ***Hall v. State***, 29 So. 944 (Miss. 1901)). Consequently, sovereign immunity bars the districts' claim to money damages, unless they can identify some waiver of the State's immunity within the MTCA, or elsewhere in the Code, which permits their claim.

The MTCA does not waive the State's immunity or authorize the districts to recover money for the Legislature's alleged statutory violations. If they tried to take advantage of the MTCA's limited waiver scheme, then the Act would defeat their multi-million dollar damages demand. Among many other things, the MTCA prohibits actions for damages premised on legislative acts or inaction, Miss. Code Ann. § 11-46-9(a), and precludes liability arising from the adoption or failure to adopt legislation. Miss. Code Ann. § 11-46-9(e). And, as this Court has recognized, the sovereign immunity doctrine, as well as the MTCA itself, bars the State's political subdivisions from obtaining money damages from the State for allegedly failing to adequately fund their operations. ***State v. Hinds County Board of Supervisors***, 635 So. 2d 839, 842 (Miss. 1994).

The districts make no mention of any non-MTCA statutory waiver of immunity allegedly authorizing their damages claims, and cannot identify any Mississippi case recognizing a political subdivision can sue the State for damages. That leaves them with no good response to the State's sovereign immunity. So they offer two bad ones.

First, the districts resort to inapposite non-Mississippi case law. They proclaim that "[b]efore turning to a discussion of sovereign immunity, it is important to point out that none of the other educational funding cases discussed from New Jersey, Massachusetts, or Michigan were subject to sovereign immunity." Appellants' Br. at p.

44. That half-truth is unhelpful to the districts. None of the districts' cited "educational funding" disputes in New Jersey, Massachusetts, or Michigan applied sovereign immunity *because* none of the claims at issue in those cases was anything like the districts' claims for money damages here.[21]

Second, the districts tacitly acknowledge the MTCA would bar their money damage claims, but contend that "under the legislative system of sovereign immunity, the state is still subject to any and all suits which are 'not claims' for 'injuries'" under the MTCA. Appellants' Br. at p. 45. Thus, according to the districts, their action for money damages against the State really consists of claims for "reimbursement," or "an equitable one for specific relief," and are not subject to sovereign immunity or the MTCA. *Id*.

It is true that the State's sovereign immunity generally only bars money damages claims as opposed to claims for declaratory relief. ***City of Jackson v. Sutton***, 797 So. 2d 977, 980 (¶ 11) (Miss. 2001) ("While there is provision for making a claim against a government entity and its employees outside of the Tort Claims Act, it is limited to declaratory actions and not intended for claims involving money damages."). It is also

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[21] As discussed above, in ***State ex rel. Abbott v. Burke***, 20 A.3d 1018 (N.J. 2011), the New Jersey Supreme Court awarded a judgment encompassing past money damages, but only after finding the defendants violated its prior court orders entered finding the State had violated the New Jersey Constitution's mandate for funding and the statute enacted to remedy that constitutional failing found by the Court after more than twenty years of litigation. ***Id.*** at 1045. The districts' case here has nothing to do with any alleged violations of court orders. In ***Durant v. State***, 566 N.W. 272 (Mich. 1997), the plaintiffs recovered money damages. But that was only because Michigan's Constitution (as amended by popular initiative) specifically entitled the ***Durant*** plaintiffs to pursue civil actions for money damages. *See* ***id.*** at 284-91 (applying Mich. Const., art. 9, § 32). Of course, sovereign immunity did not bar the ***Durant*** plaintiffs' claims since Michigan's Constitution had waived it. The districts here do not enjoy that luxury. Finally, as to "the Massachusetts case" referenced by the districts, they only cite an internet article describing the litigation. There is no need to wonder why they do not specifically cite the Massachusetts Supreme Court's opinion in ***Hancock v. Commissioner of Education***, 822 N.E. 2d 1134 (Mass. 2005). That decision, and the decades worth of litigation that preceded it, did not involve awarding anyone past money damages.

true, as the districts briefly mention, that in ***Bowen v. Massachusetts***, 487 U.S. 879 (1988), the United States Supreme Court discussed the distinction between specific performance and damage remedies at law in the context of a federal Medicaid "reimbursement" allowance dispute:

> Damages are given to the plaintiff to substitute for a suffered loss, whereas specific remedies are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled. Thus, while in many instances an award of money is an award of damages, occasionally a money award is also a specie remedy.

Bowen, 487 U.S. at 895 (internal quotation marks, citations, and alterations omitted).[22] But, neither the truism that equitable relief lies beyond the State's immunity, nor the proposition that, in rare circumstances, money awards may equate to an equitable remedy of specific performance, cures the sovereign immunity problem with the districts' damage claims in this case.

The incurable defect in the districts' reliance on any distinction between damages versus specific performance remedies is that their damages claims are not, as their appellate brief now conveniently argues, claims for specific performance in name or character. The truth is, as their amended complaint confirms, the districts' damages claims are damages claims seeking compensation for past losses. They describe their alleged injuries as including past "suffering" from dealing with "tough budget cuts," "scaling back and eliminating certain programs," and other various harms purportedly

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[22] The districts' *amicus* elaborates on the districts' damages versus specific performance argument by referencing ***Bowen***, as well as hornbook authorities ***Bowen*** relied upon, and other federal cases addressing the remedy issue in Medicaid "reimbursement" disputes or otherwise. CFJ Brief at pp. 11-13. The *amicus*'s conclusion, however, shares the fundamental flaw as the districts': *in this case*, the source and nature of the districts' damages claims belies the notion that they are seeking anything other than compensation for past alleged injuries stemming from alleged statutory violations.

stemming from the Legislature's alleged failure to "fully fund" the MAEP in fiscal years 2010-2015. R. I:122-23. Then, they demand a "judgment" for hundreds of millions of dollars and interest to make up for those losses. R. I:123-27.[23] They demand money damages, not a claim to "specific performance" that by happenstance requires a monetary payment to compensate them for past alleged injuries. Accordingly, the districts have no viable damage claims on account of the State's sovereign immunity.

B. The separation of powers doctrine bars the districts' requested injunctive and declaratory relief.

Not only are their damages claims are ruled out by sovereign immunity, if the districts are somehow correct that 2006 S.B. 2604 requires the Legislature to appropriate them any particular amount of state funds, the districts are not entitled to a judicial decree operating against the Legislature in the future for at least two reasons.

First, the districts are not entitled to an injunction compelling the Legislature to appropriate them (and, according to their pleading, all Mississippi school districts) any future state funds. Such relief is clearly unavailable as "no writ of injunction or mandamus or other judicial remedial writ will run against the Governor or any member of the Legislature, in his official capacity." ***State v. McPhail***, 180 So. 387, 391 (Miss. 1938); *cf.* ***Barbour v. State ex rel. Hood***, 974 So. 2d 232, 238 (¶ 10) (Miss. 2008) ("This Court repeatedly has prohibited issuance of a writ of mandamus against the Governor."). Mississippi courts cannot prospectively enjoin legislators to draft, and vote to enact any particular appropriations bill. Courts cannot effectively enjoin the

[23] In addition to the amended complaint's telling admissions, the districts' appellate representations to this Court likewise eschew any conclusion that their damages demand seeks a multi-million dollar specie remedy rather than damages. *See* Appellants' Br. at p. 48 (alternatively requesting the Court to render judgment for the districts "on the question of liability; and remand the case to the lower court for a hearing on *damages*.") (emphasis added).

Governor to veto or not to veto an appropriations bill. And, even if possible given the significant separation of powers concerns those sorts of injunctions would raise, the districts cannot explain how courts could feasibly enforce any such injunction.

Second, for similar reasons, in the circumstances of this case, even awarding the districts their requested declaratory relief would be constitutionally problematic under the separation of powers doctrine. As a basic matter, Mississippi courts do not step in and direct legislators how they must go about passing laws to comply with statutes directed at their duties. *See* ***Tuck v. Blackmon***, 798 So. 2d 402, 407 (¶ 7) (Miss. 2001) ("procedural provisions for the operation of the Legislature–whether created by the constitution, statute or rule adopted by the houses–should be left to the Legislature to apply and interpret without judicial review."); *see also* ***Hunt v. Wright***, 11 So. 608, 609 (Miss. 1892); ***Ex parte Wren***, 63 Miss. 512, 534 (1886). Generally, the separation of powers doctrine precludes courts from declaring how legislators must interpret any obligations the MAEP statutes allegedly impose on them, and specifically, the doctrine prohibits declaring how legislators had to vote on past education appropriations, or ordering legislators to cast their votes in favor of a future education appropriations bill. But those are precisely the things the districts seek via their lawsuit. Their requested judicial relief amounts to appropriation by judicial decree which would remove education funding policy from the legislative decision-making process. That would be a textbook separation of powers violation and entirely inconsistent with Mississippi's tripartite system of government.[24]

[24] Apart from a direct encroachment separation of powers problem, ordering that the Legislature must annually appropriate any particular amount of state funds for public education would also have political question doctrine implications. In a recent case related to education funding, members of the Court aptly recognized issues such as "to whom and how much money

Presumptively dictating future education appropriations through judicial orders would also impermissibly intrude upon the Legislature's "supreme legislative prerogative" over the State's finances for other separation of powers reasons as well. ***Colbert***, 39 So. at 66. The judiciary certainly has the authority to review the Legislature's exercise of its fiscal power. When it comes to another branch's exercise of its core constitutional power, however, the judicial branch's power of review only extends to circumstances where constitutional rights are implicated. *See* ***In re: Hooker***, 87 So. 3d 401, 402 (¶ 1) (Miss. 2012); ***Dye ex rel. State v. Hale***, 507 So. 2d 332, 338-39 (Miss. 1987). The districts have no constitutional rights at stake here. Their amended complaint does not even attempt to identify any constitutional right they possess and claim has ever been violated.[25] Rather, they allege previous Legislatures

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should be spent to provide services to the public is a policy choice and value determination committed for resolution to the Legislature according to our Constitution," and that a "textually demonstrable constitutional commitment of the issue to a coordinate political department" implicates the political question doctrine. ***Legislature of the State***, 170 So. 3d at 1225 (¶ 44) (Randolph, P.J., concurring in part and in result) (internal quotation marks omitted). The same things can be said about this case, which provides another reason our Constitution's separation of powers bars all the districts' requested relief.

[25] The districts and their *amicus* both loosely reference ***Clinton Mun. Separate School Dist. v. Byrd***, 477 So. 2d 237 (Miss. 1985) as establishing Mississippi students have a "fundamental right" to education. Their reading of ***Byrd***, which decided the limited issue of whether students have protected due process rights in conjunction with attending public school, is entirely overbroad. In any event, ***Byrd*** and the concept of attending free schools as a student's "fundamental right," does not improve the districts' position. They are political subdivisions, not students. The State's political subdivisions do not have enforceable constitutional rights against the State that created, regulates, and can dissolve them. ***Williams v. Mayor and City Council of Baltimore***, 289 U.S. 36, 40 (1933); ***City of Trenton v. State of New Jersey***, 262 U.S. 182, 187 (1923); ***Hinds County***, 635 So. 2d at 843. That is particularly the case when the dispute, like this one, turns on the Legislature's power regarding the State's and its political subdivisions's fiscal matters. ***Hinds County***, 635 So. 2d at 843; ***State ex rel. Knox v. Board of Supervisors of Grenada County***, 105 So. 541, 547 (Miss. 1925); ***Jackson County v. Neville***, 95 So. 626, 629 (Miss. 1923). The districts have not claimed, and cannot claim, the Legislature's past or future appropriations have or will infringe upon any constitutional right *they possess*.

violated a *statute* by failing to appropriate them certain amounts of state funds they believe were warranted, and future Legislatures may do so again in the future. The districts' failure to legitimately tie their claims to a putative constitutional right they possess disqualifies them from attaining any judicial relief commanding legislators to act, or regulating past legislative acts.[26]

C. The districts are not entitled to summary judgment.

Assuming solely for the sake of argument that the none of the State's grounds for dismissal prevail, and any form of the districts' requested relief is viable, this Court still should not render a full or partial summary judgment in the districts' favor. In that hypothetical scenario, numerous unresolved legal and factual disputes would remain to be addressed by the Chancery Court in the first instance.

Unresolved legal issues would remain if for some reason the court below's judgment is reversed. For example,[27] the districts have not proven, as a matter of law,

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[26] The districts' brief does not invoke this Court's decision in ***Hosford v. State***, 525 So. 2d 789 (Miss. 1988) to argue that failing to annually appropriate them any specific amounts of state funds would violate the Constitution. But their *amicus* cites ***Hosford*** and claims it recognized the Legislature has a "non-discretionary, constitutional duty" to fulfill "constitutional mandates." CFJ Brief at p. 9 (citing ***Hosford***, 525 So. 2d at 797). ***Hosford*** did find the "Constitutional requirement for our courts to exist obviously carries with it the duty on the part of the Legislative branch to provide sufficient funds and facilities for [courts] to operate independently and effectively," and the judiciary may protect itself and its constitutional powers when the legislative branch fails in that duty. ***Hosford***, 525 So. 2d at 797; *see also* ***In re: Fiscal Year 2010 Judicial Branch Appropriations***, 27 So. 3d 394, 395 (Miss. 2010) (separation of powers precludes State Fiscal Officer from reducing judicial branch's current appropriations). But ***Hosford*** is unhelpful to the districts. No "constitutional mandate" exists here. Moreover, the districts are political subdivisions created by the Legislature, not a co-equal branch of government with authority conveyed and protected by the Constitution. ***Hosford*** does not establish they have any enforceable constitutional rights assertable against the State.

[27] All the disputed issues that would remain should the Chancery Court's grant of the State's motion for judgment on the pleadings be reversed are too numerous to reprint within the confines of the State's brief. But many were laid out for the trial court and supported by the record as explained in the State's response to the districts' motion for summary judgment, and the State incorporates by reference those grounds for denying the districts any Rule 56

that any post-2009 Legislature has actually failed to "fully fund" any valid MAEP formula estimates produced by the Department of Education. The MAEP budget estimation formula, set forth principally at Code Section 37-151-7, requires the Mississippi Department of Education to provide its "estimated calculations" under the formula based on data submitted by districts and other sources. Miss. Code Ann. § 37-151-7(1)(g). Significantly, the process also requires the State Auditor to review and verify each estimate. *Id.* The districts' failure to prove any valid and verified estimates exist, at a minimum, precludes this Court from rendering a judgment in their favor as opposed to a remand for trial on that issue.

Factual issues would also have to be tried before the districts could obtain any judgment for liability or any remedy. For instance, during the proceedings below, the districts submitted "evidence" that the Legislature "underfunded" the MAEP in fiscal years 2010-2015 consisting of spreadsheets, apparently prepared by "The Parents' Campaign." *See* R. III:354-64, R.E. 5. Whether or not the Campaign's "evidence" is accurate, and whether or not the Legislature actually "underfunded" any of the particular plaintiff districts are certainly disputed issues, and contradicted by the State's evidence that the amounts calculated are flawed. *See* R. VIII:1111-XI:1498.

In short, the Chancery Court's decision should be affirmed and all claims for relief dismissed. But if not, the most the districts are entitled is remand for trial on the parties' claims and defenses, and any forms of relief this Court's judgment does not conclusively eliminate.

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judgment. *See* R. VIII:1095-1104.

IV. The Chancery Court did not Violate Rule 12(c) in Granting Judgment for the State on Purely Legal Grounds.

As a final matter, the districts' creative attempt to put the Chancery Court in error for failing to comply with Miss. R. Civ. P. 12(c)'s "conversion rule" lacks merit. In the proceedings below, the State moved for judgment on the pleadings. R. II:206-63. The State's grounds for dismissal presented pure questions of law, and, in the end, the Chancery Court only relied on one of them. The fact that the parties both submitted "exhibits" on their cross-motions[28] did not require the Chancery Court to treat the State's motion "as one for summary judgment," or dispose of it "as provided in Rule 56" and provide all parties another "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Miss. R. Civ. P. 12(c).

Initially, the districts' procedural argument fails (with a touch of irony) on procedural grounds. They did not object to the Chancery Court's alleged failure to convert the State's Rule 12 motion at the January 14, 2015 hearing on the all parties' motions, at any time between the hearing and the Chancery Court's entry of final judgment seven months later, or during the subsequent proceedings on their Rule 59 motion to alter or amend the final judgment. The districts waived any "conversion" objection by failing to raise the issue at any point in the Chancery Court. ***Champluvier***

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[28] The State submitted two "exhibits" with its Rule 12 motion for the court's convenience: copies of (1) 1994 Laws, ch. 581, 1994 S.B. 3350 and (2) 2006 Laws, ch. 473, 2006 S.B. 2604. R. II:210-63. The districts responded, R. II:290-97, and also filed their own motions for summary judgment, and for a temporary restraining order/preliminary injunction, with several exhibits attached. R. III:338-V:597. The State filed a combined brief supporting its motion, and responding to the districts' motions. R. VII:1061-1110. The State's response included several exhibits geared toward the districts' motions for summary judgment and injunctive relief. R. VII:1111-XI:1498. The districts also presented, and referred to several "exhibits" at the January 14, 2015 hearing, largely consisting of copies of statutes, legislative acts, and judicial opinions. *See* Tr. 2-4.

v. Beck, 909 So. 2d 1061, 1064 (¶ 17) (Miss. 2004).

Beyond the procedural flaw in the districts' newfound "conversion" claim, their argument is also substantively misplaced. "Whether a Rule 12 motion ought be converted into a motion for summary judgment is a function of whether the [trial court] finds it necessary to resort to matters outside the pleadings in order to dispose of the motion." ***Walton v. Bourgeois***, 512 So. 2d 698, 700 (Miss. 1987). Accordingly, Rule 12(c), exactly like its counterpart Rule 12(b)(6), only requires a "conversion" from a motion for judgment on the pleadings to a motion for summary judgment if "matters outside the pleadings are presented to *and not excluded by the court*." Miss. R. Civ. P. 12(c) (emphasis added). The Chancery Court below did not resort to matters outside the pleadings to grant the State's dispositive motion. Its July 15, 2015 final order cited only the pleadings and legal authorities, and plainly did not rely on any of the parties' evidentiary materials or other "matters outside the pleadings" in concluding the districts "will be unable to prove any set of facts that can support the claims alleged in their Amended Complaint," and dismissing their claims. *See* R. XI:1516-20, R.E. 2.[29]

By not relying on "matters outside the pleadings" to reach its legal conclusions,

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[29] The Chancery Court's January 19, 2016 order denying the districts' motion to alter or amend its judgment likewise confirms the court did not rely on any "matters outside the pleadings" in granting the State's 12(c) motion. *See* R. XI:1582 ("For numerous months, the Court received voluminous and complex *written argument* regarding all aspects of this cause. The Court then *reviewed all pleadings and argument*, in addition to conducting its own additional research. While the Court was sympathetic to Plaintiffs' position, it ultimately found the relevant statutory scheme simply did not support Plaintiffs' assertions.") (emphasis added), R.E. 3. Relying on legal authorities, legislative acts, and the parties' arguments does not require converting a motion for judgment on the pleadings to a motion for summary judgment. *See*, *e.g.*, ***Anheuser-Busch, Inc. v. Schmoke***, 63 F.3d 1305, 1312 (4th Cir. 1995), *vacated on other grounds*, 517 U.S. 1206 (1996) (legislation and legislative history do not constitute "matters outside the pleadings"); ***Nix v. Fulton Lodge No. 2 of Intern. Ass'n of Machinists and Aerospace Workers***, 452 F.2d 794, 797-98 (5th Cir. 1971) (copies of case law and legal memoranda are not "matters outside the pleadings"); ***United States v. Tuente Livestock***, 888 F.Supp. 1416, 1418 (S.D. Ohio 1995) (legislation not a "matter outside the pleadings").

the Chancery Court did not trigger any summary judgment conversion Rule 12 prescribes. *See* ***Harper v. Lawrence County, Alabama***, 592 F.3d 1227, 1232 (11th Cir. 2010) ("A judge need not convert a motion to dismiss into a motion for summary judgment as long as he or she does not consider matters outside the pleadings. According to case law 'not considering' such matters is the functional equivalent of 'excluding' them–there is no more formal step required."); ***Favre Property Management, LLC v. Cinque Bambini***, 863 So. 2d 1037, 1043 (¶ 16) (Miss. Ct. App. 2004) (no Rule 12 "conversion" is required when the lower court's opinion demonstrates it did not rely on matters outside of the pleadings).[30] For that simple reason, the districts' contention that the Chancery Court procedurally erred by not converting the State's motion from a Rule 12 to a Rule 56 lacks substantive merit.

CONCLUSION

For all the foregoing reasons, the Hinds County Chancery Court's judgment should be affirmed because it correctly dismissed this case on statutory interpretation grounds, and, even if not, since it reached the correct result for several other reasons.

THIS the 14th day of November, 2016.

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[30] Allowing trial courts discretion to rely on, or not rely on, evidentiary materials in evaluating Rule 12 and 56 motions, and thereby control whether a conversion is required, makes for sound procedural policy as recognized by this Court, as well as federal courts. *See* ***Hartford Cas. Ins. Co. v. Halliburton Co.***, 826 So. 2d 1206, 1213 (¶ 24) (Miss. 2001) (recognizing when parties submit evidentiary materials on a motion for summary judgment, the trial court may effectively convert the Rule 56 motion into a Rule 12(c) motion by not relying on the outside evidentiary materials); Wright, Miller & Kane, 5C Fed. Prac. & Proc. Civ. § 1366 (3d ed.) (collecting authorities and observing "federal courts have complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed electronically with the Clerk of Court and thereby served on all counsel who have entered their appearance in this action, and also served on the following persons via US Mail, properly addressed and postage prepaid:

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S/Justin L. Matheny
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