

IN THE SUPREME COURT OF MISSISSIPPI

CAUSE NO. 2018-CA-235

**CHARLES AND EVELYN ARAUJO, ET AL
APPELLANTS**

v.

**PHIL BRYANT, ET AL
APPELLEES**

APPEAL FROM THE CHANCERY COURT OF
HINDS COUNTY, MISSISSIPPI
CIVIL ACTION NO. G2016-1008
HONORABLE DEWAYNE THOMAS, CHANCERY JUDGE

BRIEF OF APPELLEE

ORAL ARGUMENT REQUESTED

JoAnne N. Shepherd, MSB #8598
Jackson Public School District
662 S. President Street
Jackson, Mississippi 39201
601-960-8916 telephone
jnelson@jackson.k12.ms.us

ATTORNEY FOR APPELLEE
JACKSON PUBLIC SCHOOL DISTRICT

CERTIFICATE OF INTERESTED PERSONS

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

1. Honorable Dewayne Thomas, Chancellor, Chancery Court of Hinds County, Mississippi
2. Charles and Evelyn Araujo, Appellants
3. John and Kim Sewell, Appellants
4. Lutaya Stewart, Appellant
5. Cassandra Overton-Welchlin, Appellant
6. Arthur Brown, Appellant
7. Will Bardwell, Attorney for Appellants
8. Jody E. Owens, II, Attorney for Appellants
9. Christine Bischoff, Attorney for Appellants
10. Southern Poverty Law Center, Counsel for Appellants
11. Governor Phil Bryant, Appellee
12. Mississippi Department of Education, Appellee
13. Krissy Nobile, Attorney for Appellees Governor Bryant and the Mississippi Department of Education;
14. Harold Pizzetta, Attorney for Appellees Governor Bryant and the Mississippi Department of Education;
15. Jackson Public School District, Appellee
16. Joanne Nelson Shepherd, Attorney for Appellee Jackson Public School District

17. Midtown Partners, Inc., Appellee
18. Midtown Public Charter School, Appellee
19. Michael Bentley, Attorney for Appellees Midtown Partners Inc., and Midtown Public Charter School;
20. Molly Walker, Attorney for Appellees Midtown Partners Inc., and Midtown Public Charter School;
21. Mississippi Charter School Association, Appellee
22. James Shelton, Attorney for Appellee the Mississippi Charter School Association
23. Gladys and Andrew Overton, Appellees
24. Ella Mae James, Appellee
25. Tiffany Minor, Appellee
26. Michael B. Wallace, Attorney for Appellees Gladys and Andrew Overton, Ella Mae James, and Tiffany Minor
27. Aaron Randall Rice, Attorney for Appellees Gladys and Andrew Overton, Ella Mae James, and Tiffany Minor
28. Shadrack White, Attorney for Appellees Gladys and Andrew Overton, Ella Mae James, and Tiffany Minor

THIS the 9th day of November, 2018.

/s/ JoAnne N. Shepherd
JoAnne N. Shepherd, MSB #8598

**Attorney for Appellee
Jackson Public School District**

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STATEMENT OF THE ISSUE

Did the lower court err in determining that the Jackson Public School District was a necessary party to Plaintiff's original lawsuit when the District's participation in suit does not impact the outcome of whether Section 206 of the Mississippi Constitution is unconstitutional?

STATEMENT OF ASSIGNMENT

Pursuant to Rule 16(d) of the Mississippi Rules of Appellate Procedure, the Supreme Court of Mississippi should retain this case. The Plaintiff's challenge of the constitutionality of Section 37-28-55(22) falls under Rule 16(d)(1) which provides for issues of first impression. Additionally, the outcome of the Court's decision regarding the constitutionality of Section 37-28-55(22) presents an urgent broad public importance requiring a determination by this Court. M.R.A.P.16(d)(2). Therefore, the Supreme Court should retain this case.

STATEMENT OF THE CASE

I. Factual Background

The Mississippi Legislature passed the Mississippi Charter School Act in 2013 allowing charter schools to be established in certain school districts throughout the state. As a result, Reimagine Prep and Midtown Public Charter School were established within the the geographical boundaries of the Jackson Public School District (“the District”). Accordingly, the District paid Reimagine Prep \$317,486.06 and Midtown Charter \$278,129.16 during the 2015-2016 academic year; in compliance with the funding requirements under the Mississippi Charter Schools Act of 2013 (“MCSA”). The following year, the District paid ReImagine Prep \$618,512.97 and Midtown Charter \$440,251.59.

II. Procedural History

In July 2016, Plaintiffs instituted this action challenging the constitutionality of the funding provisions of the MCSA, alleging that this provision violates Section 206 and 208 of the Mississippi Constitution. The original suit named Governor Phil Bryant, the Mississippi Department of Education, and the Jackson Public School District as Defendants. R. at 115-116. In January 2017, the District filed its Motion to Dismiss, asserting its dismissal as it should not be considered a necessary party to the action. R. at 498. In May 2017, the lower court denied the District’s Motion because the District did not choose a position regarding the constitutionality of the relevant code section. R. at 994-995. In February 2018, the lower court determined that the funding provisions did not violate Section 206 or 208. R. at 1118.

SUMMARY OF THE ARGUMENT

The lower court incorrectly found the District to be a necessary party to this action. Therefore, the District should not be required to address the issue of whether the funding provisions of the MCSA are unconstitutional. That issue can be determined without the District, and the Plaintiffs can obtain relief without any interference or delay. Whether the Act violates the Mississippi Constitution is a question of law and is a matter for the Court to decide. *Wells by Wells v. Panola County Bd. Of Educ.*, 645 So. 2d 883, 888 (Miss. 1994). While the District will be affected by the outcome of this case, the District takes no position on whether the MCSA is or is not a violation of the Mississippi Constitution. This matter can be resolved without the District being a named party and no party will be prejudiced by the District not being a named party in this case.

ARGUMENT

The lower court incorrectly held that the District was a necessary action to this lawsuit.

The lower court determined that the District was a necessary party to this action solely because the District did not address the constitutionality of the funding provisions. However, the District is not a necessary party because regardless of the District's participation in this lawsuit, the Plaintiffs can obtain relief. Plaintiffs are asking this Court to determine that the funding provisions of the MCSA unconstitutional and order the District to stop complying with its funding provisions. If the District is a party to the lawsuit and the Court finds the statute unconstitutional, it must discontinue providing funds to the charter schools. If the District is not a party to the lawsuit and the Court finds the statute unconstitutional, the District must still discontinue providing funds to the charter schools. Regardless of the District's participation in the lawsuit, if the Court finds

that the funding provision of the MCSA is constitutional, the District must and will comply with the ruling of the Court.

To determine whether the District should have been included as a party, this Court should consider the applicable law:

A necessary party is a person who has such a substantial interest in the suit that no complete, practical, and final judgment can be made without directly affecting his interest or else leaving the controversy in such condition that its final determination may be wholly inconsistent with equity and good conscience. Any person in whose behalf a substantial interest is or may be claimed is more than a nominal party.

Mahaffey v. Alexander, 800 So.2d 1284, 1285 (Miss. Ct. App. 2001) (citing Warner's Griffith, *Mississippi Chancery Practice*, § 108 (1991)).

Plaintiffs have previously contended that the District's "good faith" in complying with its legal obligations under the MCSA is irrelevant. To support this argument, Plaintiffs cite to *Pascagoula School District v. Tucker*, 91 So. 3d 598 (Miss. 2012), where this Court ruled that a statute, mandating the school district distribute its ad valorem taxes levied on natural gas terminals and crude oil refineries to all school districts in the county where the terminals and refineries were located, was unconstitutional. Plaintiffs' reasoning suggests that when the Mississippi Supreme Court ruled that the statute was unconstitutional, its ruling only affected the parties involved in the case. The Court's judgment not only enjoined the defendants to follow its ruling, but it applied to everyone in the State. Similarly, when the Court makes a determination in this case on whether the funding provision is constitutional or not, the District will be bound by that ruling. The District's duty to follow a constitutional state statute remains. As such, it cannot follow an unconstitutional statute.

Even still, the Plaintiffs make no mention of whether the District is in violation of the statute or the like. Rather, in their appeal, Plaintiffs only argue that Section 206 restricts the use of

a school district's ad valorem tax revenue to maintaining the levying school district's schools. This argument does not comport with the notion that the District should have been a party to this lawsuit. It is the Plaintiffs' burden to prove that the statute is unconstitutional, and it is unreasonable for Plaintiffs to continuously assert that the District has been violating the Mississippi Constitution without this Court first determining whether or not the statute is constitutional. Therefore, the lower court erred in finding that the District is a necessary party to this lawsuit.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the lower court and find that the District is not a necessary party to determine the constitutionality of Section 206 of the Mississippi Charter Schools Act.

Respectfully submitted, this the 9th day of November, 2018.

s/ JoAnne N. Shepherd
JoAnne N. Shepherd, Esq.

JoAnne N. Shepherd, MSB #8598
Jackson Public School District
662 S. President Street
Jackson, Mississippi 39201
601-960-8916 telephone
jnelson@jackson.k12.ms.us

ATTORNEY FOR APPELLEE
JACKSON PUBLIC SCHOOL DISTRICT

CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day caused to be served a true and correct copy of the foregoing Brief of Appellee to all counsel of record registered with the Mississippi Electronic Court System to receive such notices, and mailed via U.S. Mail to the following:

Honorable Dewayne Thomas, Chancellor
Chancery Court of Hinds County, Mississippi
First Judicial District
Post Office Box 686
Jackson, Mississippi 39205-0686

THIS the 9th day of November, 2018.

/s/ JoAnne N. Shepherd
JoAnne N. Shepherd, MSB #8598
662 S. President Street
Jackson, Mississippi 39201
601-960-8916 telephone
601-973-8545 facsimile
jnelson@jackson.k12.ms.us

**Attorney for Appellee
Jackson Public School District**