

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

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PARENTS FOR PUBLIC SCHOOLS,

*Plaintiff,*

v.

MISSISSIPPI DEPARTMENT OF  
FINANCE AND ADMINISTRATION,  
DAVID MCRAE, in his official capacity as  
State Treasurer, and LIZ WELCH, in her  
official capacity as State Fiscal Officer,

*Defendants.*

Civil Action No. \_\_\_\_\_

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. Section 208 of the Mississippi Constitution preserves all public education funding for the public schools of the state by providing that no appropriation shall be made “to any school that at the time of receiving such appropriation is not conducted as a free school.” This case challenges two recent bills passed by the Mississippi Legislature and signed by the Governor that appropriate \$10 million exclusively to private schools.

2. Senate Bill 2780 provides infrastructure grants solely to “private or nonpublic school[s].” Senate Bill 3064 appropriates \$10 million to fund the grants authorized by SB 2780 for those private or nonpublic schools. Because those schools are not “free schools” within the meaning of Section 208, the appropriation and the grants of public money in those bills violate Section 208. This suit seeks a declaration that the bills violate Section 208 and an injunction prohibiting the Defendants from giving that money to schools that are not public free schools.

## **PARTIES**

3. Plaintiff, Parents for Public Schools (“PPS”), is a national organization of community-based chapters that works to improve and strengthen local public schools. It was started as a local organization in Jackson, MS in 1989, and in 1991 incorporated as a national membership organization. PPS’s headquarters are in Jackson, MS. PPS has chapters in nine states and has thousands of members in Mississippi. PPS chapters guide and train parents and communities to work with school and community leaders to improve public schools and secure a high-quality public education for every child. PPS’s vision is a nation where families and communities are actively engaged in strengthening public schools for every child. PPS created a “new brand of parent involvement” which elevates the role of parents in public schools from passive consumers to active participants. PPS parents raise standards, solve problems, and advocate for their communities. In short, PPS parents demand excellent schools and have the skills to make it happen.

4. Each PPS chapter has individual members. The Mississippi chapters have individual members who are Mississippi taxpayers, parents of public-school students, public school teachers, public school principals, and public-school board members.

5. Section 208’s express purpose is to support public education by preserving state education funding for public schools alone. Any violation of that principle harms public schools and the students who attend them. Public schools like the ones attended by children of PPS’s members are in inherent competition with private schools. Private schools can operate only so long as students pay tuition. Public schools are obligated to serve every child in Mississippi. Infrastructure upgrades, like those challenged here, make private schools more competitive. And when students leave their public school, the public school’s state funding diminishes. This

competitive imbalance is further exacerbated by public schools' ineligibility to apply for grants through the challenged legislation. This ineligibility injures public schools to the benefit of private schools, which adversely affects children attending those schools (like the children of PPS's members). These children – like all children in Mississippi – enjoy a fundamental right to a minimally adequate public education. Any appropriation that violates the constitutional protections underlying children's fundamental right to education adversely affects public schoolchildren, like those of PPS's members, and weakens public schools.

6. Defendant, the Department of Finance and Administration is a state agency tasked by Senate Bill 3064 and Senate Bill 2780 with overseeing and administering the Independent Schools Infrastructure Grant Program, which is funded by an appropriation of public funds and designed to provide infrastructure grants to private schools.

7. Defendant, David McRae, is the State Treasurer of Mississippi. Section 7 of SB 3064 requires the State Treasurer to pay the money appropriated by Section 2 of SB 3064 upon warrants issued by the State Fiscal Officer. He is sued in his official capacity.

8. Defendant, Liz Welch, is the Executive Director of the Mississippi Department of Finance and Administration. The Executive Director of the Department of Finance and Administration is the State Fiscal Officer. Miss. Code § 27-104-6. Section 7 of SB 3064 requires the State Fiscal Officer to issue warrants for the money appropriated in Section 2 of SB 3064. She is sued in her official capacity.

### **JURISDICTION AND VENUE**

9. This Complaint raises claims under the laws of the State of Mississippi. The relief sought in this case are requests in equity. Therefore, subject-matter jurisdiction over this suit lies with the Chancery Court. Miss. Const. art. VI, § 159(a).

10. This Court is authorized to grant declaratory relief pursuant to Mississippi Rule of Civil Procedure 57(a).

11. Venue is proper because a suit against the State must be brought in the county where the seat of government is located. Miss. Code § 11-45-1.

## **FACTS**

### **I. Section 208 of the Mississippi Constitution**

12. Section 208 states, “[n]o religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.” Miss. Const. art. VIII, § 208.

### **II. Senate Bills 2780 and 3064**

13. The Mississippi Legislature passed Senate Bills 2780 and 3064 during the Regular Legislative Session of 2022, and Governor Reeves signed them into law.

#### **(i) SB 3064**

14. SB 3064 is titled “An Act Making an Appropriation from the ‘Mississippi Association of Independent Colleges and Universities (MAICU) Grant Program Fund’ to the Department of Finance and Administration for the Purpose of Administering the ‘Mississippi Association of Independent Colleges and Universities (MAICU) Infrastructure Grant Program Act of 2022’; to Make an Appropriation from the Coronavirus State Fiscal Recovery Fund to the Department of Finance and Administration for the Purpose of Administering the ‘Independent Schools Infrastructure Grant Program’; and for Related Purposes.”

15. Section 2 of SB 3064 “appropriate[s]” \$10 million “to the Department of Finance and Administration for the purpose of funding the Independent Schools Infrastructure Grant Program established in Senate Bill No. 2780, 2022 Regular Session.”

16. SB 3064 is an appropriations bill that funds the program created in SB 2780.

**(ii) SB 2780**

17. Section 12 of SB 2780 is the “Independent Schools Infrastructure Grant Program Act of 2022” (hereinafter “Independent Schools Act”). Section 12 also establishes the “Independent Schools Infrastructure Grant Program” (hereinafter “Independent Schools Program”), which is administered by the Department of Finance and Administration and under which “eligible independent schools may apply for reimbursable grants to make necessary investments in water, wastewater, stormwater, broadband and other eligible infrastructure projects to be funded by the Legislature using Coronavirus State Fiscal Recovery Funds made available under the federal American Rescue Plan Act (ARPA).” SB 2780, § 12(2). The Independent Schools Program “shall be funded from appropriations by the Legislature to the department from the Coronavirus State Fiscal Recovery Fund.” *Id.*

18. “‘Eligible independent’ school means any private or nonpublic school operating within the State of Mississippi that: (i) Is a member of the Midsouth Association of Independent Schools (MAIS) and located in the State of Mississippi; or (ii) Is accredited by a state, regional or national accrediting organization; and (iii) Is not subject to the purview of authority of the State Board of Education.” *Id.* at § 12(4)(e). Only “eligible independent schools” can receive funds under SB 2780. *Id.* at § 12(2).

### **III. The Appropriation of These Funds to Private Schools Violates Section 208**

19. The relevant part of Section 208 states: “nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.” Miss. Const. art. VIII, § 208.

20. The schools eligible to receive the funds appropriated in the two Senate Bills are “private or nonpublic” elementary and secondary schools. SB 2780, § 12(4)(e).

21. The Mississippi Supreme Court defined “free school” to mean a school that is “under the general supervision of the State superintendent and the local supervision of the county superintendent.” *Otken v. Lamkin*, 56 Miss. 758, 764 (1879). The Mississippi Supreme Court reaffirmed this definition years later, explaining that “[i]n order for a school to be within the system of free public schools required by section 201 of the Constitution, the establishment and control thereof must be vested in the public officials charged with the duty of establishing and supervising that system of schools.” *State Teachers’ Coll. v. Morris*, 144 So. 374, 376 (Miss. 1932) (citing *Lamkin*, 56 Miss. 758) (internal quotation marks omitted).

22. None of the schools eligible to receive these funds are “free school[s].” Thus, the appropriation of \$10 million in public funds made in Senate Bills 2780 and 3064 to these private schools violates Section 208 and is unconstitutional.

### **CLAIM FOR RELIEF**

#### **Violation of Section 208 of the Mississippi Constitution**

23. As set forth in this complaint, the appropriation of funds made in Senate Bills 3064 and 2780 is to schools that are not free schools and violates Section 208 of the Mississippi Constitution.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that Senate Bills 2780 and 3064's appropriation of funds to private or nonpublic schools, which are not "free," violates Section 208 of the Mississippi Constitution;
- B. Issue a preliminary and permanent injunction against Defendants from enforcing or complying with the appropriation provisions in Senate Bills 2780 and 3064 that fund private or nonpublic schools, which are not "free;"
- C. Award Plaintiff attorneys' fees in this action;
- D. Award Plaintiff its costs of suit; and
- E. Grant such other and further relief as this Court deems just and proper in the circumstances.

Dated: June 15, 2022

Respectfully submitted,

/s/ Joshua Tom

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