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

PARENTS FOR PUBLIC SCHOOLS **PLAINTIFF**

V. **CIVIL ACTION NO.: G2022-705-M**

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**

ORDER OF THE COURT

BEFORE THIS COURT is Plaintiff's Motion for Preliminary Injunction requesting this Court to declare Mississippi Senate Bills 2780 and 3064 unconstitutional as violation of Article 8, Section 208 of the Mississippi Constitution. This Court has carefully considered Plaintiff's Motion and Defendants' opposition thereto, as well as all relevant case and statutory law. After a consolidated hearing on the matter, this Court enters the following findings of fact and conclusions of law:

FACTS AND PROCEDURAL HISTORY

This Court must decide whether a publicly-funded infrastructure grant program for private schools violates Article 8, Section 208 of the Mississippi Constitution.

On March 11, 2021, Congress enacted the American Rescue Plan Act ("ARPA"), appropriating approximately $673 billion to support state and local governments' response to the ongoing COVID-19 pandemic. ARPA appropriated approximately $122 billion in education-related funding, of which the State of Mississippi received approximately $1.6 billion. Apart from education-related funding, ARPA appropriated over $375 billion to infrastructure-related

spending. Section 9901 of ARPA, in particular, allocated an estimated $335.5 billion towards water, sewer, and broadband infrastructure.

On April 19, 2022, Mississippi Senate Bills 2780 and 3064 were signed into law, with both bills taking effect on July 1, 2022. Senate Bill 2780 established the "Independent Schools Infrastructure Grant Program" ("Independent Schools Program"), a grant program to be administered by the Department of Finance and Administration ("DFA") and "funded from appropriations by the Legislature to the department from the Coronavirus State Fiscal Recovery Fund." S.B. 2780, 137th Leg., Reg. Sess. § 12(2) (Miss. 2022). Senate Bill 3064 appropriated $10 million "out of any money in the Coronavirus State Fiscal Recovery Fund not otherwise appropriated, to [DFA] for the purpose of funding the [Independent Schools Program]." S.B. 3064, 137th Leg., Reg. Sess. § 2 (Miss. 2022) (alteration added).

Under the Independent Schools Program, "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 [ARPA]." Miss. S.B. 2780 § 12(2) (alteration added). "'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.* § 12(4)(e). Only private schools are eligible to receive Independent Schools Program funds; public schools cannot receive funds under Senate Bill 2780. *See id.* § 12(2).

Recipients' use of disbursed grants is subject to audit by the U.S. Department of the Treasury's Office of Inspector General and the Mississippi State Auditor. *Id.* § 12(3). Funds are to

be disbursed by DFA for federally eligible projects in the following order of priority: eligible water, wastewater, and stormwater projects; broadband infrastructure projects; capital investments for prevention, mitigation, and ventilation in congregate living facilities and other key settings; and any other federally eligible projects, excluding premium pay for employees. *Id.* § 12(6). All funds disbursed by DFA under the Independent Schools Program are subject to statutes and regulations governing ARPA and its requirements for eligible infrastructure uses, *see, e.g.*, 42 U.S.C. § 802(c)(1)(D); 31 C.F.R. § 35.6(e), and eligible private schools applying for grants must certify to DFA that all expenditures of funds disbursed under the Independent Schools Program will comply with ARPA guidelines. Miss. S.B. 2780 § 12(7).

Senate Bill 2780 also requires DFA to promulgate rules and regulations necessary to administer the Independent Schools Program. Miss. S.B. 2780 § 12(5). Each grant application must include, at a minimum, the following information: applicant contact information; project description and type; project map; estimate of the population served by the project; estimated project cost and schedule; and readiness to proceed. *Id.* § 12(8). DFA must review all applications submitted and certify that each project submitted is eligible under ARPA and all applicable federal guidelines. *Id.* § 12(9). Senate Bill 2780 expressly provides that "[a]ll final awards shall be determined at the discretion of the executive director of [DFA]." *Id.* (alteration added).

Grant funds shall only be disbursed to an eligible applicant for an eligible use "upon the execution of a grant agreement between [DFA] and the approved applicant." *Id.* (alteration added). Additionally, grant funds shall only be used prospectively, and are not available to cover the cost of debt incurred before the effective date of Senate Bill 2780. *Id.* § 12(10). The maximum amount of grant funds that DFA may award to any eligible private school is $100,000. *Id.* § 12(11). Senate Bill 2780 requires DFA to provide the Legislature with annual reports of funds disbursed and

expended under the Independent Schools Program and the status of each approved project. *Id.* § 12(12). Grant funds disbursed by DFA under the Independent Schools Program must be obligated no later than December 31, 2024, and expended no later than December 31, 2026. *Id.* § 12(13).

On June 15, 2022, the present action was filed by Parents for Public Schools ("Plaintiff"). Plaintiff is a 501(c)(3) non-profit corporation that advocates on behalf of public schools. Incorporated in Jackson, Mississippi, in 1989, Plaintiff is a national membership organization with chapters in nine states. Headquartered in Jackson, Plaintiff claims over 3000 members in Mississippi, including parents of public school students, public school teachers, and public school administrators. Plaintiff filed suit against DFA, State Treasurer David McRae, and State Fiscal Officer Liz Welch ("Defendants"). Plaintiff challenges the Independent Schools Program established in Senate Bill 2780 and funded by Senate Bill 3064, alleging that the bills violate the Mississippi Constitution.

On July 21, 2022, this Court issued a scheduling order consolidating Plaintiff's Motion for Preliminary Injunction with a trial on the merits, which was heard on August 23, 2022. Defendants filed a Response in Opposition to Plaintiff's Motion for Preliminary Injunction on August 4, 2022. On August 11, 2022, Midsouth Association of Independent Schools ("MAIS") moved to intervene in this action. This Court held a hearing on MAIS's Motion to Intervene and heard arguments at trial on August 23, 2022. On October 11, 2022, this Court denied MAIS's Motion to Intervene.

ANALYSIS

I. Standing

This Court must resolve the threshold issue of Plaintiff's standing to sue before ruling on the merits. "Standing is a jurisdictional issue." *Mayor Butler v. Watson (In re Initiative Measure No. 65)*, 338 So.3d 599, 605 (¶ 12) (Miss. 2021). Proper resolution of standing is particularly significant "where, as here, a constitutional interpretation is sought." *Id.* (quoting *Williams v. Stevens*, 390 So.2d 1012, 1014 (Miss. 1980)).

Plaintiff claims associational standing on behalf of its members to challenge alleged unconstitutional government spending. In *Belhaven Improvement Association Incorporated v. City of Jackson*, the Mississippi Supreme Court established its requirements for an association to have standing to bring suit on behalf of its members:

> For standing, the person(s) aggrieved, or members of the association, whether one or more, should allege an adverse effect different from that of the general public. Also, they should show the fact of a representative capacity, particularly of those adversely affected. An association should not be permitted to close out minority members, cutting off their views entirely, particularly where the effect on some individuals could be greater than the effect on the majority. Membership in the association should be limited to residents and property owners, which would avoid intermeddling and disproportionate representation.

507 So.2d 41 (Miss. 1987). The Mississippi Supreme Court subsequently adopted the federal test for associational standing in *Mississippi Manufactured Housing Association v. Board of Alderman of the City of Canton*, 870 So.2d 1189 (Miss. 2004). Under this test, an organization has standing to sue "on behalf of its members when (1) its members would otherwise have standing to sue in their own right, (2) the interest it seeks are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* at 1192 (¶ 11).

Neither the Plaintiff's constitutional claim nor its request for injunctive relief require its members to participate in the present case. *See id.* at 1194 (¶ 21) ("When an association seeks only prospective relief and raises only issues of law, it need not prove the individual circumstances of its members to obtain that relief."). Additionally, Plaintiff is an organization founded to advocate for public schools and parents of public school students, and so its claim is germane to the organization's purpose. Pl.'s Mot. Prelim. Inj., Ex. C Aff. Kathy March 1:2-3. Defendants' challenge to Plaintiff's associational standing alleges that Plaintiff's members lack standing to sue in their own right because they would not suffer an adverse effect from DFA's prospective disbursement of ARPA infrastructure funds to eligible private schools. Def.'s Resp. Opp'n Pl.'s Mot. Prelim. Inj. 7-8. Plaintiff argues that its members have two independent grounds for standing: (1) taxpayer standing to challenge illegal government spending, and (2) adverse effects experienced by public school students, their parents, and public school employees. Pl.'s Reply Supp. Mot. Prelim. Inj. 1-7.

Mississippi's standing requirements as applied have traditionally been "quite liberal." *Araujo v. Bryant*, 283 So.3d 73, 77 (¶ 13) (Miss. 2019) (quoting *Davis v. City of Jackson*, 240 So.3d 381, 384 (¶ 10) (Miss. 2018)). While the Mississippi Supreme Court "recently abandoned the 'colorable interest' standard for establishing standing," *In re Initiative Measure No. 65*, 338 So.3d 599, 605 (¶ 13) (Miss. 2021) (citing *Reeves v. Gunn*, 307 So.3d 436, 438-439 (¶ 11) (Miss. 2020)), "'the traditional articulation of "adverse impact" to describe when a party can assert standing to bring a suit' survives," *id.* (quoting *Reeves*, 307 So.3d at 439 (¶ 11)). "[F]or a plaintiff to establish standing on grounds of experiencing an adverse effect from the conduct of the defendant/appellee, the adverse effect experienced must be different from the adverse effect experienced by the general public." *SASS Muni-V, LLC v. DeSoto Cty.*, 170 So.3d 441, 446 (¶ 13)

(Miss. 2015) (alteration in original) (internal quotations omitted) (quoting *Hall v. City of Ridgeland*, 37 So.3d 25, 33-34 (¶ 24) (Miss. 2010)). An adverse effect need not be quantifiable, *see, e.g.*, *State ex rel. Moore v. Molpus*, 578 So.2d 624, 632 (Miss. 1991) ("Secretary Molpus' refusal of Reps. Vecchio's and Diaz's petition inflicts upon them a legally cognizable adverse effect."); *Dye v. State ex rel. Hale*, 507 So.2d 332, 338 (Miss. 1987) ("The ongoing actions of Lt. Gov. Dye certainly have an adverse impact upon Sens. Hale and Taylor['s power and preogatives lawfully theirs as Senators] sufficient to confer upon them standing to sue."), but "vague allegations of 'immediate and irreparable' harm" will not satisfy the "adverse impact" standard, *Foster v. Sunflower Cty. Consol. Sch. Dist.*, 311 So.3d 705, 712 (¶ 20) (Miss. Ct. App. 2021).

Mississippi courts have also been "more permissive in granting standing to parties who seek review of governmental actions." *Araujo v. Bryant*, 283 So.3d 73, 77 (¶ 15) (Miss. 2019) (quoting *State v. Quitman Cty.*, 807 So.2d 401, 405 (¶ 11) (Miss. 2001)). This liberal construction of standing has historically allowed interested taxpayers to challenge unconstitutional or unauthorized legislative appropriations. *See, e.g.*, *State v. Quitman Cty.*, 807 So.2d 401 (Miss. 2001) (holding that Quitman County had standing to sue the State on behalf of county taxpayers for requiring the county to fund the representation of indigent criminal defendants); *Canton Farm Equip., Inc. v. Richardson*, 501 So.2d 1098 (Miss. 1987) (holding that an unsuccessful bidder for a contract with the county board of supervisors had standing as taxpayer to challenge an appropriation that did not comply with statutes awarding bids); *Prichard v. Cleveland*, 314 So.2d 729, 732 (Miss. 1975) (holding that "[t]he complainants, as taxpayers, had standing" to sue the board of trustees of a community hospital that expended public funds to convert part of hospital into office facilities to be leased to a private physician); *see also Pascagoula Sch. Dist. v. Tucker*, 91 So.3d 598, 604 (¶ 12) (Miss. 2012) ("[T]his case affects the rights of all taxpayers in Jackson

County and is of grave importance to every school district in the county. It would serve no purpose to delay our answer for another day while the revenue distributed according to [the challenged statute] potentially is lost.").

Taxpayer standing "allow[s] a private citizen to challenge governmental actions contrary to law where the actions would otherwise escape challenge." *Green v. Clearly Water, Sewer & Fire Dist.*, 17 So.3d 559, 569 (¶ 28) (Miss. 2009) (alteration added) (quoting *USPCI of Miss. v. State ex rel. McGowan*, 688 So.2d 783, 789 (Miss. 1995)). In *Van Slyke v. Bd. of Trs. of State Insts. of Higher Learning* (*Van Slyke II*), the Mississippi Supreme Court stated its reasoning for granting standing to citizens challenging the constitutionality of governmental action:

> *The argument persists that citizens should have the authority to challenge the constitutionality and/or review of governmental action, and if individuals do not have such authority, how else may constitutional conflicts be raised.* This is particularly true when a public official charged with such a duty fails to act. Constitutional litigation by private citizens may be maintained in cases where there is no probability of the statute being challenged by one of the class discriminated against; or, when a decision on validity would not be necessary, one not within the class may question the validity of the statute.

613 So.2d 872, 875 (Miss. 1993) (emphasis added) (quoting *Bd. of Trs. of State Insts. of Higher Learning v. Van Slyke* (*Van Slyke I*), 510 So.2d 490, 497 (Miss. 1987) (Prather, J., dissenting)). "*Van Slyke II* did not confer any special standing," but rather held "that individual 'citizens should have the authority to challenge the constitutionality and/or review of governmental action' when there was no other way to raise constitutional conflicts or no probability that the class injured by the unconstitutional act would bring suit." *Reeves v. Gunn*, 307 So.3d 436, 445 (¶ 33) (Miss. 2020) (Maxwell, J., concurring in part and in result) (quoting *Van Slyke II*, 613 So.2d at 875). Taxpayer standing should be found in "a situation in which an individual citizen should be granted standing because the injured class . . . was unable to seek redress for an alleged unconstitutional action." *Id.*

Despite this more permissive standard for taxpayers challenging the constitutionality of governmental actions, taxpayer status is not always an exemption to Mississippi's traditional standing jurisprudence (i.e., the "adverse effect" requirement). *See, e.g.*, *Foster v. Sunflower Cty. Consol. Sch. Dist.*, 311 So.3d 705 (Miss. Ct. App. 2021); *Doss v. Claiborne Cty. Bd. of Sup'rs*, 230 So.3d 1100, 1105 (¶ 14) (Miss. Ct. App. 2017) ("As the Supreme Court stated, a taxpayer cannot rely on a claim 'that he suffers in some indefinite way in common with people generally.' That statement is strikingly similar to the Mississippi Supreme Court's pronouncement that a plaintiff lacks standing unless he can show that 'the [alleged] adverse effect experienced [is] different from the adverse effect experienced by the general public.'") (citations omitted). However, this Court declines to decide here whether Plaintiff's members have standing under *Van Slyke II*'s standard for taxpayers challenging the constitutionality of government activity, as Plaintiff has associational standing to sue under the traditional standing requirement of adverse effect.[1] The appropriation of public monies for infrastructure grants to be exclusively received by eligible private schools adversely impacts Plaintiff's members as parents of public school students differently than the general public.

Plaintiff argues that public schools operate "in inherent competition with private schools." Pl.'s Mem. Supp. Mot. Prelim. Inj. 7. If private schools receive public funding for infrastructure improvements, Plaintiff argues, then private schools will be more competitive against public schools (which cannot apply for or receive the contested infrastructure funds) for tuition-paying students. *Id.* When students discontinue their public school attendance, that public school district's

[1] Ironically, if Defendants' argument were correct—that, because public schools were not even eligible for the contested infrastructure grant funds, public school students and their parents do not experience an adverse effect required for standing—then this case would be a situation in which *Van Slyke II*'s standard for taxpayers challenging the constitutionality of government activity would apply. *See Reeves*, 307 So.3d at 445 (¶ 33) (Maxwell, J., concurring in part and in result). If parents of public school students do not have standing in their own right to challenge an alleged unconstitutional appropriation to private schools, "how else may [this] constitutional conflict[] be raised?" *Van Slyke II*, 613 So.2d 872, 875 (Miss. 1993) (alteration added).

state funding decreases. *Id.* (citing MISS. CODE ANN. § 37-151-7(1)). If a public school's funding decreases, then students still enrolled in that school suffer an adverse impact to their fundamental right to a minimally adequate public education system. *Id.* (citing *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So.2d 237, 240 (Miss. 1985)).

Defendants argue that because "the ARPA funds at issue were never earmarked for public schools in the first place," Plaintiff's members "stand to lose exactly nothing as a proximate effect of DFA's payment of such funds to eligible private schools under the Grant Program." Def.'s Resp. Opp'n Pl.'s Mot. Prelim. Inj. 7. Defendants also argue that Plaintiff provided no evidence that a "competitive imbalance" between public and private schools will adversely impact Plaintiff's members or public school students differently from the general public, or "that infrastructure improvements at private schools will somehow result in a migration of students from public schools to private schools." *Id.* at 8.

This Court need only sit in Hinds County and take notice of current events to find that exclusive public infrastructure funding for private schools adversely affects public school students differently than the general public.[2] On August 23, 2022, the same day that this Court heard oral arguments in this case, Forest Hill High School, a school in the Jackson Public School District (JPS), had to dismiss students early because of low water pressure in school buildings. *Forest Hill High School Will Be Virtual Wednesday Due to Low Water Pressure*, CLARION-LEDGER (Aug. 24, 2022), https://www.clarionledger.com/story/news/2022/08/24/forest-hill-high-school-virtual-wednesday-because-water-pressure/7882983001/; Jackson Pub. Sch. (@JPSDistrict), TWITTER

[2] This Court may judicially notice a fact not subject to reasonable dispute if it "(1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." M.R.E. 201(b). This Court may take judicial notice regardless of whether it is requested, but a party is entitled upon timely request to be heard on the propriety of taking judicial notice and the nature of facts noticed; and if judicial notice is taken prior to notifying parties, a party is still entitled to be heard upon request. *Id.* 201(e). Judicial notice may be taken at any stage of the proceeding. *Id.* 201(d).

(Aug. 24, 2022, 6:33 AM), https://twitter.com/JPSDistrict. The next day, students at another JPS school, Jim Hill High School, were dismissed early because of flash flooding, Jackson Pub. Sch. (@JPSDistrict), TWITTER (Aug. 24, 2022, 12:02 PM), https://twitter.com/JPSDistrict, while flooding also closed schools in the Canton Public School District. *CPSD Closing Early Due to Flooding 8/24/2022*, CANTON PUB. SCH. DIST., https://www.cantonschools.net (follow "NEWSROOM: MORE" hyperlink) (last visited Sept. 21, 2022).

By August 30, continued flooding of the Pearl River and the systemic failure of the City of Jackson's water treatment plant forced all fifty-two JPS schools to transition to virtual learning due to inadequate city water supplies. *See All JPS Schools Shift to Virtual Learning on Tuesday, August 30 Due to Citywide Water Shortage*, JACKSON PUB. SCH. (Aug. 29, 2022), https://web.archive.org/web/20220901095527/https://www.jackson.k12.ms.us/; Jackson Pub. Sch. (@JPSDistrict), TWITTER (Aug. 29, 2022, 6:16 PM), https://twitter.com/JPSDistrict. Students did not return to their classrooms until September 6, when improvements in water pressure allowed in-person instruction to resume districtwide. *JPS to Remain Open for In-Person Learning on September 7*, JACKSON PUB. SCH. (Sept. 6, 2022), https://web.archive.org/web/20220908125900/https://www.jackson.k12.ms.us/; Jackson Pub. Sch. (@JPSDistrict), TWITTER (Sept. 5, 2022, 11:59 AM), https://twitter.com/JPSDistrict. Even then, Forest Hill students had to attend classes at other JPS schools until September 8 while their school water system underwent repair. *See id.*; *Forest Hill High School Building Reopens for In-Person Learning on September 8*, JACKSON PUB. SCH. (Sept. 7, 2022), https://web.archive.org/web/20220908125900/https://www.jackson.k12.ms.us/; Jackson Pub. Sch. (@JPSDistrict), TWITTER (Sept. 7, 2022, 6:16 PM), https://twitter.com/JPSDistrict. This infrastructure crisis affected the quality of education for JPS's approximately 20,000 students. *See*

MISS. DEP'T OF EDUC., DATA EXPLORER: JACKSON PUB. SCH. DIST. (2022), https://newreports.mdek12.org/DataExplorer.

"Our legislature has declared a part of the public policy of this state the provision of 'quality education for all school age children in the state,' this out of recognition of the effect of education 'upon the social, cultural and economic enhancement of the people of Mississippi.'" *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So.2d 237, 240 (Miss. 1985) (citations omitted) (quoting MISS. CODE ANN. § 37-1-2 (Supp. 1984)). In 1997, the State established the Mississippi Adequate Education Program (MAEP), requiring the state legislature to fully fund its public schools. *See* MISS. CODE ANN. § 37-151-6 (2014). Yet since then, Mississippi's public education system has been chronically underfunded. *See Clarksdale Mun. Sch. Dist. v. State*, 233 So.3d 299, 301 (¶ 4) (Miss. 2017) ("During fiscal years 2010–2015, the Legislature did not fully fund the MAEP in its annual appropriations."); *see also* LaJuana Davis, *Emerging School Finance Litigation in Mississippi*, 36 MISS. C.L. REV. 245, 252 (2018) ("[T]he central criticism of the MAEP has been that the formula has been fully funded only twice in the twenty years since its implementation.").

Any appropriation of public funds to be received by private schools adversely affects public schools and their students. Taxpayer funding for education is finite, *see generally* MISS. DEP'T OF REVENUE, ANN. REP. FISCAL YEAR 2021 (2022) (state funding for education accounted for approximately 7.5% of Mississippi's general fund for fiscal year 2021), and our Constitution prohibits appropriating funds "to any school that at the time of receiving such appropriation is not conducted as a free school," MISS. CONST. art. VIII, § 208. Plaintiff argues that the appropriation of public infrastructure funds for private school recipients violates the constitutional decree that public schools and their students be the exclusive beneficiaries of public funding for Mississippi schools. *See* Pl.'s Mem. Supp. Mot. Prelim. Inj. 10. This Court agrees. When public schools have

been chronically underfunded, the prescribed unavailability of these public infrastructure funds adversely affects Mississippi public schools, their employees, their students, and the parents of those students differently from the general public.

Infrastructure funding for private schools and only private schools also injures public schools and their students by legislating a competitive advantage for private schools to the detriment of public schools. It is common sense that private schools compete with public schools for students. *See Mueller v. Allen*, 463 U.S. 388, 395 (1983) ("Parochial schools, quite apart from their sectarian purpose, have provided an educational alternative for millions of young Americans; they often afford wholesome competition with our public schools . . . .") (citation omitted). Private schools generally depend on student tuition payments to operate. If an eligible private school receives public grant funding for an approved infrastructure project, then it may divert existing school funds to some other purpose, thus improving its market competitiveness. Public funding for private school infrastructure projects will adversely impact public schools in their competition for students, affecting public schools' overall student attendance and thereby decreasing the funding available for those students still enrolled in public schools. *See* MISS. CODE ANN. § 37-151-7(1) (public school funding determined by average daily attendance and base student cost).

This Court holds that Plaintiff has standing to challenge the constitutionality of Senate Bills 2780 and 3064.

II. Constitutional Challenge

Plaintiff argues that Senate Bills 2780 and 3064 violate Article 8, Section 208 of the Mississippi Constitution, based on Section 208's plain text, its history, and its intent. Analysis of Section 208's history and intent is unnecessary in the present case. This Court applies only Section 208's plain language in holding Senate Bills 2780 and 3064 unconstitutional.

"When faced with a question regarding interpretation of our Constitution, the Court begins by examining the plain text of our Constitution." *In re Initiative Measure No. 65*, 338 So.3d 599, 607 (¶ 21) (Miss. 2021). Courts must "enforce the 'plain language' of the Constitution." *Id.* (quoting *Thompson v. Att'y Gen. of Miss.*, 227 So.3d 1037, 1041 (¶ 11) (Miss. 2017)). This Court "may strike down an act of the legislature 'only where it appears beyond all reasonable doubt' that the statute violates the clear language of the constitution." *Araujo v. Bryant*, 283 So.3d 73, 78 (¶ 19) (Miss. 2019) (internal quotations omitted) (quoting *James v. State*, 731 So.2d 1135, 1136 (¶ 4) (Miss. 1999)). If the Constitution's plain meaning "lacks ambiguity, then there is 'no reason for legislative or judicial construction.'" *In re Initiative No. 65*, 338 So.3d at 607 (¶ 22) (quoting *Dunn v. Yager*, 58 So.3d 1171, 1189 (¶ 46) (Miss. 2011).

Section 208 of the Mississippi Constitution provides,

> No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.

MISS. CONST. art. VIII, § 208. Plaintiff limits its constitutional challenge to the following language: "nor shall any funds be appropriated . . . to any school that at the time of receiving such appropriation is not conducted as a free school." *Id.*; *see* Pl.'s Reply Supp. Mot. Prelim. Inj. 7-8. Therefore, this Court will similarly limit its analysis to that language.[3]

In relevant part, Senate Bill 2780 provides,

> **<u>SECTION 12.</u>** (1) This section shall be known and may be cited as the "Independent Schools Infrastructure Grant Program Act of 2022."

[3] The challenged legislative scheme is likely constitutionally suspect under Section 208's prohibition on funding for sectarian schools, as many grant-eligible private schools in Mississippi, including a significant majority of Midsouth Association of Independent Schools ("MAIS") member schools, have a religious or sectarian character. *See* Directory, Midsouth Ass'n of Indep. Schs., https://newsite.msais.org/test/tangolofus.php (last visited Sept. 21, 2022); *see also* *List of Nonpublic Schs. Accredited by The State Bd. of Educ.*, Miss. Dep't of Educ. (May 26, 2022), https://www.mdek12.org/Accred/index. However, "[c]ourts do not touch the constitutionality of a statute when it is unnecessary to do so under the particular facts of the case." *W. Line Consol. Sch. Dist. v. Greenville Mun. Separate Sch. Dist.*, 433 So.2d 954, 958 (Miss. 1983) (alteration added).

> (2) There is established the Independent Schools Infrastructure Grant Program, to be administered by the Department of Finance and Administration. Under the program, 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). The program shall be funded from appropriations by the Legislature to the department from the Coronavirus State Fiscal Recovery Fund.
>
> . . .
>
> (4) For purposes of this section, unless the context requires otherwise, the following terms shall have the meanings as defined in this subsection:
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> . . .
>
> (e) "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.
>
> . . .
>
> (11) The maximum amount of grant funds that may be awarded to any eligible independent school under the program is One Hundred Thousand Dollars ($100,000.00).

S.B. 2780, 137th Leg., Reg. Sess. § 12(1)-(11) (Miss. 2022). Senate Bill 3064 appropriates $10 million from "the Coronavirus State Fiscal Recovery Fund . . . to the Department of Finance and Administration for the purpose of funding the Independent Schools Grant Program established in Senate Bill No. 2780." S.B. 3064, 137th Leg., Reg. Sess. § 2 (Miss. 2022). Both bills establish that infrastructure grant recipients must comply with federal ARPA guidelines and certify their compliance with the DFA. *See* Miss. S.B. 2780 § 12(3), (8)-(9); Miss. S.B. 3064 § 5. The bills also grant the DFA with discretionary authority to establish program regulations and determine funding disbursements for recipients. Miss. S.B. 2780 § 12(5), (9); Miss. S.B. 3064 §§ 4(2), 5(1).

Applying Section 208's plain text, this Court holds that Senate Bill 2780 violates the Mississippi Constitution by establishing the Independent Schools Program for the prohibited

purpose of disbursing public funds to schools not conducted as free schools, and that Senate Bill 3064 unconstitutionally appropriates $10 million in public funds to the program for such purpose.

Defendants argue that Senate Bills 2780 and 3064 do not violate Section 208 because the Mississippi Legislature appropriated $10 million to the Department of Finance and Administration (DFA), not "to any school." MISS. CONST. art. VIII, § 208. In fact, the Defendants claim that "the ARPA Bills do not provide for an appropriation of funds *to any school whatsoever*." Def.'s Resp. Opp'n Pl.'s Mot. Prelim. Inj. 13 (emphasis in original). Specifically, Senate Bill 2780 establishes the Independent Schools Program and provides that "[t]he program shall be funded from appropriations by the Legislature to the [DFA] from the Coronavirus State Fiscal Recovery Fund," Miss. S.B. 2780 § 12(2) (alteration added), and Senate Bill 3064 provides that public infrastructure funds will be "appropriated . . . to the Department of Finance and Administration for the purpose of funding the Independent Schools Infrastructure Grant Program," Miss. S.B. 2780 § 2. According to Defendants, to prove the alleged constitutional violation, "Plaintiff must show that the Legislature" appropriated funds directly to a private school, Def.'s Resp. 15, and because the "funds at issue will be appropriated exclusively to DFA, a state agency charged with oversight of the Grant Program, and not 'to any school,'" *id.* at 14 (quoting MISS. CONST. art. VIII, § 208), the infrastructure grant program for private schools is valid.

To support their theory, Defendants allege a "fundamental[] differen[ce]" in Section 208's construction of "to" and "toward." *Id.* at 13 (alteration added). They argue, and Plaintiff conceded at trial, Oral Argument at 2:06 PM, *Parents for Pub. Sch. v. Miss. Dep't of Fin. & Admin.*, No. 22-cv-00705 (First Jud. Dist. Hinds Cty. Ch. Ct. 2022), that Section 208's prohibition on "appropriating funds '*toward the support* of any sectarian school'" is a more general restriction on the State's appropriating power, Def.'s Resp. 13 (emphasis in original) (quoting MISS. CONST. art.

VIII, § 208), while the clause "provid[ing] that no funds shall be 'appropriated . . . *to* any school that . . . is not conducted as a free school'" is a prohibition only on direct appropriations to private schools, *id.* (alteration added) (emphasis in original) (quoting MISS. CONST. art. VIII, § 208). Defendants allege that Senate Bills 2780 and 3064 do not violate Section 208 "because they do not appropriate funds 'to any school,'" *id.* (quoting MISS. CONST. art. VIII, § 208), but "appropriate funds to DFA, which is not a school. Nothing . . . in Section 208 prohibits the Legislature from appropriating funds to any entity that is not a school." *Id.*

Defendants misinterpret Section 208's plain text. It is well established that our Constitution grants the Mississippi Legislature with the power to enact laws and appropriate funds. *See* MISS. CONST. art. IV, § 33; MISS. CONST. art. VIII, § 201 ("The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools . . . ."); *see also Clark v. Bryant*, 253 So.3d 297, 302 (¶ 17) (Miss. 2018) ("Constitutionally, budget-making is a legislative prerogative and responsibility in Mississippi."). However, the Legislature is not mentioned in Section 208. Section 208 states that funds shall not "be appropriated . . . to any school that at the time of receiving such appropriation is not conducted as a free school," but this prohibition is not limited to any specific governmental entity. MISS. CONST. art. VIII, § 208.

Analysis of Section 208's grammatical structure supports this finding. In its entirety, Section 208 is a compound sentence comprising three clauses. The first clause states that "[n]o religious or other sect or sects shall ever control any part of the school or other educational funds of this state." MISS. CONST. art. VIII, § 208 (alteration added). The second clause, separated from the first clause by a semicolon and the third clause by a comma, states, "nor shall any funds be appropriated toward the support of any sectarian school." *Id.* In the second and third clauses, the adverbial phrases "toward the support of any sectarian school" and "to any school," respectively,

both modify a single subject, "any funds." *Id.*; *see* BRYAN A. GARNER, THE REDBOOK: A MANUAL ON LEGAL STYLE 209 (3d ed. 2013) ("[A] preposition's role is to relate its object to another word in the sentence . . . . The resulting prepositional phrase may serve as an adjective or adverb . . . ."). Therefore, the third clause—and the text relevant to Plaintiff's claim—reads as follows: "nor shall any funds be appropriated . . . to any school that at the time of receiving such appropriation is not conducted as a free school." MISS. CONST. art. VIII, § 208.

The section is drafted in the passive voice, with "any funds" in the second clause functioning as the subject receiving the action of the verb phrase "be appropriated." *Id.*; *see* GARNER, *supra*, at 198 ("The structure of the passive voice makes the subject the recipient of the action or state that the verb expresses."). However, the actor performing the action in the sentence (i.e., the appropriator) is not specified. This omission is significant. Section 208's emphasis is not on the governmental entity appropriating "any funds"; its emphasis is on "any school" prohibited from "receiving such appropriation." MISS. CONST. art. VIII, § 208; *see* GARNER, *supra*, at 199 ("[T]he passive voice is appropriate in some places, especially when the emphasis is on the recipient of the action instead of the actor, and when the actor is unknown or unimportant."). This syntax shows that Section 208 concerns the recipient of prohibited funding appropriations. The entity that appropriates the funds is irrelevant.

If Section 208 were ambiguous, then perhaps it would be proper to narrowly interpret its third clause as forbidding only direct legislative appropriations to specific private school recipients. *See Hood ex rel. State Tobacco Litig.*, 958 So.2d 790, 812 (¶ 77) (Miss. 2007) ("[T]he control of the purse strings of government is a legislative function . . . .") (citation omitted). Yet this Court "must enforce the articles of the Constitution as written." *In re Initiative Measure No. 65*, 338 So.3d 599, 607 (¶ 21) (Miss. 2021) (quoting *Pro-Choice Miss. v. Fordice*, 716 So.2d 645,

652 (¶ 23) (Miss. 1998), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (U.S. 2022)). As written, Section 208 is a general prohibition against the State's appropriation of any funds intended to be received by any school that is not conducted as a free school, regardless of what governmental entity disburses the appropriated funds or how the funds are to be received.

Defendants' emphasis on the Legislature's role in the appropriation process also disregards settled principles of delegated authority. "[C]onstitutional provisions do not force upon the legislature and courts a monopoly of legislating and adjudicating." *State v. Allstate Ins. Co.*, 97 So.2d 372, 375 (Miss. 1957) (alteration added). The Mississippi Legislature "can delegate to an administrative agency the power to determine some fact or state of things upon which the law makes or intends to make its application depend." *Clark v. State ex rel. Miss. State Med. Ass'n*, 381 So.2d 1046, 1050 (Miss. 1980) (quoting *State ex rel. Attorney General v. Land*, 95 So.2d 764, 777 (Miss. 1957)). Here, the Legislature appropriated public infrastructure funds for a grant program and delegated to the DFA the discretionary power to disburse grants to approved private school recipients upon certification of their eligibility. In making this determination, the DFA must apply federal guidelines set by the U.S. Treasury Department for the use of designated ARPA funds. S.B. 2780, 137th Leg., Reg. Sess. § 12(8)-(9) (Miss. 2022); S.B. 3064, 137th Leg., Reg. Sess. § 5 (Miss. 2022). If the DFA disburses grant funds to an eligible applicant, then that initial appropriation will ultimately be received by a school that is not conducted as a free school. Miss. S.B. 2780 § 12(4)(e) (defining "[e]ligible independent school"). The State cannot avoid compliance with our Constitution simply by delegating the power to disburse appropriated funds to an executive agency.

The proposed distinction between the adverbial phrases "*to* any school" and "*toward the support* of any sectarian school" in Section 208 is similarly unfounded. MISS. CONST. art. VIII, § 208 (emphasis added). Defendants argue:

> [T]he drafters of Section 208 could have written the text appearing after the semicolon to read as follows: "nor shall any funds be appropriated toward the support of any sectarian school or any school that at the time of receiving such appropriation is not conducted as a free school." However, the drafters did *not* write Section 208 that way. Instead, they included a comma after "any sectarian school" and the word "to" immediately preceding "any school . . . not conducted as a free school." In separating and differentiating the actions proscribed by the portion of Section 208 following the semicolon, the drafters left the third clause of Section 208 open to only one reasonable interpretation—namely, that the Legislature is prohibited from appropriating funds "to any school" that is not conducted as a free school when such appropriation is received.

Def.'s Resp. Opp'n Pl.'s Mot. Prelim. Inj. 15, No. 22-cv-00705 (alteration added) (emphasis in original) (citations omitted). It is not this Court's role to hypothesize how the drafters of Section 208 could have written the text; instead, a proper interpretation of the constitutional text "stud[ies] the words used by it in context." *Kerr-McGee Chem. Corp. v. Buelow*, 670 So.2d 12, 17 (Miss. 1995) (alteration added) (quoting *Back-Acres Country Club, Inc. v. Miss. State Tax Comm'n*, 216 So.2d 531, 534 (Miss. 1968)). "Our Constitution's plain language is to be given its 'usual and popular signification and meaning.'" *In re Initiative Measure No. 65*, 338 So.3d 599, 607 (¶ 22) (Miss. 2021) (quoting *Town of Sumner v. Ill. Cent. R.R. Co.*, 236 Miss. 342, 111 So. 2d 230, 233 (1959)). "When searching for a popular or usual meaning of a term, the Court often turns to dictionaries for guidance." *Id.* (citing *Watson v. Oppenheim*, 301 So.3d 37, 42 (¶ 12) (Miss. 2020).

The definitions of the words "toward" and "to" show that there is no "fundamental[] differen[ce]" between the two phrases. Def.'s Resp. 13 (alteration added). In Section 208, "toward" is used as a preposition that means "in the direction of." *Toward*, MERRIAM-WEBSTER DICTIONARY (2016). Section 208's second clause thus means to prohibit the appropriation of funds "in the

direction of support of any sectarian school." The definition of "to" is functionally synonymous with that of "toward": when used as a preposition, "to" means "in the direction of and reaching"; and when used as an adverb, "to" means "in a direction toward." *To*, MERRIAM-WEBSTER DICTIONARY (2016). Again, "to any school" is an adverbial phrase, so in the context of Section 208, the phrase "nor shall any funds be appropriated . . . to any school" is understood to mean "nor shall any funds be appropriated . . . in a direction toward any school." MISS. CONST. art. VIII, § 208. While courts tend to presume "that 'differences in language . . . convey differences in meaning,'" *Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1939 (2022) (quoting *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1723 (2017)), there is no "canon of interpretation that forbids interpreting different words used in different parts of the same [provision] to mean roughly the same thing," *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 540 (2013) (alteration added). This Court will not read into Section 208's proscriptions a "separate[e] and different[]" meaning where none exists. Def.'s Resp. 15 (alteration added).

Section 208 plainly prohibits the appropriation of "any funds" to private or nonpublic schools. MISS. CONST. art. VIII, § 208. This Court does not need a dictionary to interpret the phrase "any funds" in Section 208. In *State Teachers College v. Morris*, 144 So. 374 (Miss. 1932), the Mississippi Supreme Court interpreted Section 208's text in holding that the Constitution did not prohibit the State Teachers College's (now the University of Southern Mississippi's) tuition policy. There, the Court stated:

> A casual examination of the second clause of the section discloses that the broad scope of the word "funds" must be limited by construction, for, unless so limited, all funds, of every character, both public and private, are included therein; *but, of course, the words were intended to apply only to public funds of some character.*

Id. at 377 (emphasis added). In the present case, the prohibition on the appropriation of any "public funds of some character" includes Senate Bill 3064's appropriation of "Coronavirus State Fiscal

Recovery Funds made available under the federal American Rescue Plan Act (ARPA)." *Id.*; S.B. 2780, 137th Leg., Reg. Sess. § 12(2) (Miss. 2022).

Finally, Defendants allege that Senate Bills 2780 and 3064 do not violate Section 208 of the Mississippi Constitution because the bills "do not contemplate that any school will at any time 'receive' any appropriation of ARPA funds from the Legislature. Even the disbursement of ARPA funds from DFA is not guaranteed to any particular private school given the federally mandated eligibility requirements applicable to all potential recipients of such funds." Def.'s Resp. 14 (citations omitted). This argument is untenable. The plain meaning of the verb "appropriated" in Section 208's second clause is "to set apart for a particular use;" *Appropriate*, MERRIAM-WEBSTER DICTIONARY (2016); in the third clause, "appropriation" is a noun meaning "something (as money) set aside by formal action for a specific use," *Appropriation*, MERRIAM-WEBSTER DICTIONARY (2016). The public funds appropriated in this case were set aside for a specific, exclusive use—so that "eligible independent schools may apply for reimbursable grants to make necessary investments in water, wastewater, stormwater, broadband and other eligible infrastructure projects." S.B. 2780, 137th Leg., Reg. Sess. § 12(2) (Miss. 2022).

It is uncontested that schools "not conducted as . . . free school[s]" in Section 208 includes "eligible independent school[s]" as defined in Senate Bill 2780. MISS. CONST. art. VIII, § 208 (alteration added); Miss. S.B. 2780 § 12(2)(e) (alteration added). Indeed, Senate Bill 2780 explicitly identifies in-state members of MAIS as "eligible independent school[s]," *id.* § 12(2)(e)(i) (alteration added), implying that the Legislature intended for at least some private schools to be beneficiaries of appropriated funds. Furthermore, the criteria for grant eligibility are not stringent. Senate Bill 2780 requires grant recipients to comply with the U.S. Treasury Department's broad eligibility guidelines, which provide recipients with "considerable flexibility to use" appropriated

ARPA funds. U.S. TREASURY DEP'T, CORONAVIRUS STATE & LOCAL FISCAL RECOVERY FUNDS: OVERVIEW OF THE FINAL RULE 41 (2022); *see also id.* at 37-42 (summarizing eligible water, sewer, and broadband infrastructure projects and applicable standards, requirements, and restrictions on use of appropriated funds). Statutorily established grant application requirements are also minimal: other than any conditions that the DFA may prescribe, grant proposals are required only to submit basic information, like applicant contact information and project descriptions and estimates. *See* Miss. S.B. 2780 § 12(7)-(8). While "[a]ll final awards shall be determined at the discretion of the executive director of the [DFA]," *id.* § 12(9) (alteration added), Senate Bill 2780 obliges the DFA to submit to the Legislature annual reports "contain[ing] the applications received, the amount of grant funds awarded to each applicant, the amount of grant funds expended by each applicant, and the status of each applicant's project," *id.* § 12(12) (alteration added). All of this supports the conclusion that the funds appropriated for the Independent Schools Program were intended to be received and used by eligible private and nonpublic schools. For Defendants to otherwise argue that the challenged legislation does not contemplate that any school will ever receive any grant funds is unreasonable and misleading.

III. Injunctive Relief

Plaintiff requests a preliminary and permanent injunction against Defendants' compliance with and enforcement of the appropriation provisions in Senate Bills 2780 and 3064 that fund private or nonpublic schools. Pl.'s Compl. Decl. Inj. Relief 7. To succeed, Plaintiff "must show an imminent threat of irreparable harm for which there is no adequate remedy at law." *Varnell v. Rogers*, 198 So.3d 1278, 1282 (¶ 13) (Miss. Ct. App. 2016) (quoting *Punzo v. Jackson Cty.*, 861 So.2d 340, 347 (¶ 26) (Miss. 2003)). "[R]emedy by injunction is preventive in its nature, and . . . it is not necessary to wait for the actual occurrence of the injury, since, if this were required, the

purpose for which the relief is sought would, in most cases, be defeated." *Heidkamper v. Odom*, 880 So.2d 362, 366 (¶ 11) (Miss. Ct. App. 2004) (alteration added) (internal quotations omitted) (quoting *McGowan v. McCann*, 357 So.2d 946, 949 (Miss. 1978)). This Court consolidated the hearing on Plaintiff's Motion for Preliminary Injunction with the trial on the merits. *See* Miss. R. Civ. P. 65(a)(2).

"[T]he circumstances in which a preliminary injunction may be granted are not prescribed by the [Mississippi Rules of Civil Procedure], but remain a matter of the trial court's discretion, exercised in conformity with traditional equity practice." *Moore v. Sanders*, 558 So.2d 1383, 1385 (Miss. 1990) (alteration added). In exercising that discretion, this Court must balance the following factors:

> 1) there exists a substantial likelihood that the plaintiff will prevail on the merits; 2) the injunction is necessary to prevent irreparable harm; 3) the threatened injury to the plaintiff outweighs the harm an injunction might do to the defendants; and 4) granting a preliminary injunction is consistent with the public interest.

Hinton v. Rolison, 175 So.3d 1252, 1259-60 (¶ 25) (Miss. 2015) (quoting *Littleton v. McAdams*, 60 So.3d 169, 171 (¶ 10) (Miss. 2011)). "While the requirements for permanent injunctive relief are substantially the same as a preliminary injunction, there is one exception. In order to receive a permanent injunction, the plaintiff must prove 'actual success on the merits' rather than a 'substantial likelihood of success on the merits.'" *T.M.T., LLC v. Midtown Market Wine & Spirits, LLC*, 310 So.3d 1217, 1228 (¶ 38) (Miss. Ct. App. 2021) (citing *Winter v. Nat. Res. Defense Council Inc.*, 555 U.S. 7, 32 (2008)).

This Court holds that Senate Bills 2780 and 3064 violates the plain language of Article 8, Section 208 of the Mississippi Constitution beyond all reasonable doubt. Therefore, Plaintiff shows actual success on the merits of their claim. Injunctive relief is also necessary to prevent irreparable harm to Plaintiff. If the Independent Schools Program is implemented, it will

unconstitutionally disburse public monies to schools not conducted as free schools and provide a competitive advantage for private schools against public schools, affecting available funding for public schools. Plaintiff's interest in students' fundamental right to a minimally adequate public education will be irreparably harmed if an injunction is not granted. *See Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So.2d 237, 240 (Miss. 1985). While injunctive relief will prevent irreparable harm to Plaintiff, this Court is not persuaded that Defendants will suffer any significant harm if the injunction is granted. Because Plaintiff has shown actual success on the merits of their claim that Senate Bills 2780 and 3064 violate Section 208 of the Mississippi Constitution, this Court finds that the threatened harm to Plaintiff outweighs any injury a permanent injunction may cause to Defendants.

This Court does find tension in its analysis of the public interest factor. Mississippi's private schoolchildren would undoubtedly benefit from an influx of public grant funding for necessary infrastructure projects. "From the standpoint of public health and the public welfare, it cannot be said that the infrastructure needs of children who attend such private schools merit any less consideration when it comes to federal relief than those of public-school students." If an injunction is granted, it will potentially affect thousands of private school students for whom infrastructure improvements would provide tangible benefits. Yet failure to enjoin Defendants' enforcement of the Independent Schools Program would permit the State to commit a clear violation of the Mississippi Constitution, to the detriment of the very public schools that our Constitution so plainly prescribes as the only schools that may receive public monies. The public interest factor is thus balanced in such a way that favors neither party.

This Court acknowledges that a permanent injunction is an extraordinary remedy that should only be granted in special circumstances, especially when it enjoins enforcement of a

statute. However, injunctive relief is appropriate here given the plain unconstitutionality of Senate Bills 2780 and 3064.

CONCLUSION

Pursuant to the restrictions imposed on the State by Article 8, Section 208 of the Mississippi Constitution, this Court holds that Senate Bills 2780 and 3064 violate the constitutional prohibition against the appropriation of public funds for private school recipients. The Plaintiff's Motion for Preliminary Injunction is granted. Because the Court consolidated the motion's hearing with a trial on the merits, see Miss. R. Civ. P. 65(a)(2), the Court grants judgment for the Plaintiff on the merits and grants the request to permanently enjoin implementation of Senate Bills 2780 and 3064 and the Independent Schools Program established and funded by those bills.

SO ORDERED AND ADJUDGED this 13th day of October, 2022.

CHANCELLOR CRYSTAL WISE MARTIN