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IN THE SUPREME COURT OF MISSISSIPPI

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	**APPELLANTS**
V.	**CAUSE NO. 2022-SA-01129-SCT**
PARENTS FOR PUBLIC SCHOOLS	**APPELLEE**
V.	
MIDSOUTH ASSOCIATION OF INDEPENDENT SCHOOLS	**APPELLANT**

BRIEF OF THE APPELLEE
PARENTS FOR PUBLIC SCHOOLS

ORAL ARGUMENT REQUESTED

<u>OF COUNSEL:</u>

Will Bardwell (Miss. Bar No. 102910)
Sarah Goetz (*pro hac vice*)
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
Tel.: (202) 448-9090
E-mail: wbardwell@democracyforward.org
E-mail: sgoetz@democracyforward.org

Robert B. McDuff (Miss. Bar No. 2532)
Mississippi Center for Justice
210 E. Capitol Street
Suite 1800
Jackson, Mississippi 39201
Tel.: (601) 259-8484
E-mail: rmcduff@mscenterforjustice.org

Joshua Tom (Miss. Bar No. 105392)
American Civil Liberties Union of Mississippi
101 S. Congress Street
Jackson, Mississippi 39201
Tel.: (601) 354-3408
E-mail: jtom@aclu-ms.org

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V.	**CAUSE NO. 2022-SA-01129-SCT**
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CERTIFICATE OF INTERESTED PERSONS

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

Plaintiff/Appellee

Parents for Public Schools

Defendants/Appellants

Mississippi Department of Finance and Administration
State Treasurer David McRae
State Fiscal Officer Liz Welch

Putative Intervenor/Appellant

Midsouth Association of Independent Schools

Attorneys

Rob McDuff, Josh Tom, Sarah Goetz, and Will Bardwell
Counsel for Parents for Public Schools

Rex Shannon, Jackie Bost, Justin Matheny, and Gerald Kucia
Counsel for the State Appellants

Ben Morgan and Buck Dougherty
Counsel for the Putative Intervenor Appellants

Judge

Hon. Crystal Wise Martin

SO CERTIFIED this Eleventh day of August 2023.

/s/ *Will Bardwell*
Will Bardwell
Counsel for Parents for Public Schools

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REQUEST FOR ORAL ARGUMENT

This case presents a convergence of several important subjects: constitutional law, public education, and the permissible uses of federal funding upon which Mississippi's state budget relies heavily. Relevant authority stretches back more than a century. The Court would benefit from argument at which attorneys can educate the Court on that precedent.

STATEMENT OF THE ISSUES

This case is a challenge to the constitutionality of a legislatively enacted program to appropriate $10 million in COVID relief funds for the exclusive use of private schools. Parents for Public Schools (plaintiff below, appellee herein) sought an injunction against the Mississippi Department of Finance and Administration, the state treasurer, and the state fiscal officer, to enjoin the program's administration.

Shortly before trial, the Midsouth Association of Independent Schools moved to intervene.

The Hinds County Chancery Court denied MAIS's Motion to Intervene and permanently enjoined the private schools funding program. Both MAIS and the State defendants appealed.

The appeal presents three issues.

First, whether Parents for Public Schools has associational standing to challenge an appropriation of public money to private schools.

Second, whether Section 208 of the Mississippi Constitution forbids appropriating funds to private schools.

Third, whether MAIS was entitled to intervene as of right.

STATEMENT OF THE CASE

Section 208 of the Mississippi Constitution unambiguously forbids appropriating "any funds . . . to any school that at the time of receiving such appropriation is not conducted as a free school." In its 2022 Regular Session, the Legislature attempted it nevertheless.

Senate Bill 2780 established a private schools funding mechanism called "the Independent Schools Infrastructure Grant Program." The bill directed the Mississippi Department of Finance and Administration to administer a program to distribute grants of up to $100,000 to private schools for infrastructure projects. Public schools were not eligible for the grants. Parents for Public Schools' Record Excerpts (herein "PPS R.E.") at 28-33, Record (herein "R.") at 49-51. In tandem,

Senate Bill 3064 designated $10 million of federal COVID relief money to fund the program. PPS R.E. at 40-41, R. at 61-62. The Legislature passed both bills, and the Governor signed them. The bills were scheduled to go into effect on July 1, 2022.

On June 15, 2022, Parents for Public Schools filed its Complaint in Hinds County Chancery Court. The Complaint alleged that, by appropriating money toward private schools, the private schools funding mechanism violated Section 208 of the Mississippi Constitution (forbidding appropriations of funds "to any school that at the time of receiving such appropriation is not conducted as a free school"). PPS R.E. at 16, R. at 22 (Compl. at 7).

Two days after filing its Complaint, Parents for Public Schools moved for a preliminary injunction. PPS R.E. at 17, R. at 38. Both Parents for Public Schools and the State Defendant-Appellants (the Mississippi Department of Finance and Administration, the State Treasurer in his official capacity, and the State Fiscal Officer in her official capacity) (hereinafter collectively "the State") agreed that the case demanded urgent resolution; therefore, they collaborated on a Scheduling Order, which the Chancellor entered on July 21, 2022. PPS R.E. at 49-50, R. at 96-97. That Order provided for no discovery period, and it consolidated the preliminary injunction hearing with trial on the merits, *see* Miss. R. Civ. P. 65(a)(2), which the Chancellor set for August 23, 2022. *Id.*

Just 12 days before trial, the Midsouth Association of Independent Schools ("MAIS") moved to intervene, both as of right and permissively. PPS R.E. at 51, R. at 147 (Motion of MAIS to Intervene). MAIS's motion claimed an economic interest in the private schools funding mechanism. PPS R.E. at 84. It also claimed that a separate portion of Section 208 not at issue in the case – a provision that forbids appropriating funds "toward the support of any sectarian school" – violated the First Amendment. PPS R.E. at 85. MAIS took a drastically different view of the case than that of the parties in other respects as well: despite appearing less than two weeks prior to trial, MAIS

argued that "this case is at an early stage." PPS R.E. at 89. Even though the parties had agreed no discovery was necessary, MAIS appeared to reopen that question. PPS R.E. at 86 ("[L]ittle if any discovery or testimony will be necessary . . . . MAIS pledges to work with counsel for the State Defendants to efficiently coordinate . . . any discovery . . . .").

Trial was held on August 23, 2022. Immediately preceding the trial, the Chancellor heard arguments on the Motion to Intervene. Following arguments, the Chancellor denied the Motion to Intervene from the bench. PPS R.E. at 156-57, R. at 456-57 (Transcript at 28-29). The trial then proceeded, and the Chancellor heard evidence.

In a subsequent written order on October 11, 2022, the Chancellor explained the denial of intervention, stating that "[t]he principal defect in MAIS's motion is that it is untimely," but that "timeliness is not the motion's only fatal defect." PPS R.E. at 94, R. at 371 (Order Denying Motion to Intervene at 3). In addition to the motion's untimeliness, the Chancellor found that intervention would "prejudice the existing parties"; that it would inject into the case a legal question that "is irrelevant to the subject of this case"; that MAIS could protect its interests by filing a separate lawsuit challenging Section 208; and that MAIS's "interests are adequately represented by State Defendants." PPS R.E. at 94, R. at 371. The Chancellor also noted that "[t]he unusual circumstances" of the case "counsel against intervention, because this is a time-sensitive case in which intervention could delay the Court from delivering an important ruling." PPS R.E. at 94-95, R. at 371-72. The Chancellor further found that MAIS was not entitled to intervene permissively. PPS R.E. at 95, R. at 372.

On October 13, 2022, the Chancellor entered a permanent injunction against the private schools funding mechanism. PPS R.E. at 96, R. at 373 (Order of the Court). As an initial matter, the Chancellor held that PPS had standing because of an adverse impact on "Plaintiff's members as parents of public school students." PPS R.E. at 104, R. at 381. The Chancellor then explained that

"[a]ny appropriation of public funds to be received by private schools adversely affects public schools and their students" because "[t]axpayer funding for education is finite," and Section 208 requires that public schools "be the exclusive beneficiaries of public funding for Mississippi's schools." PPS R.E. at 107, R. at 384. The Chancellor added that infrastructure funding for private schools leads to a "competitive advantage for private schools to the detriment of public schools." PPS R.E. at 108. Regarding the merits, the Chancellor held that after "[a]pplying Section 208's plain text," the private schools funding mechanism was unconstitutional. PPS R.E. at 110-11, R. at 387-88. Final Judgment was entered for Parents for Public Schools.

Both the State and MAIS lodged timely appeals.

SUMMARY OF THE ARGUMENT

Standing. The State and MAIS contest PPS's associational standing solely on the ground of whether its members would have standing to sue in their own right. But clearly they would, and particularly those members who are parents of public school children and are taxpayers. In that respect, like the taxpaying public-school parents in this Court's 2019 decision in *Araujo v. Bryant,* they "experience a different adverse effect than the general public due to the alleged unconstitutional spending" of public funds. 283 So.3d 73, 78 (Miss. 2019). There is only so much taxpayer money that will be spent on education, and Section 208 requires that it all go to public schools. Any breach of that principle – whether for $10 million or $100 million – violates the Constitution and adversely impacts public school students.

The fact that the private school funding at issue here originated with federal funds makes no difference. The State acknowledges that "PPS's members may pay state and local taxes," but ignores the fact that they also pay federal income and gas taxes. Thus, they contribute to the federal, state, and local fiscs. These particular federal funds became part of the state treasury, and the Legislature chose to spend them to help schools – and, more specifically, private schools. But Section 208

prohibits the appropriation of "any funds" to private schools, and these federal funds that the Legislature chose to spend on education certainly fit within that definition. While the federal courts have limited the doctrine of taxpayer standing in federal court cases, this Court in *Araujo* recognized that "this Court has been more permissive in granting standing to parties who seek review of governmental actions" than federal courts. 283 So.3d at 77 (cleaned up).

Although the Legislature was not required to spend this money on schools, it chose to do so – and chose to give it to private and not public schools. Whether those funds would otherwise have been spent on public schools or for some other public purpose, they were diverted from lawful uses by the State to an unconstitutional use. Taxpaying parents have the same right to sue over that diversion that the taxpaying parents had in *Araujo,* a case where every justice on the Court agreed that the parents had standing.

The Merits. The appropriation of $10 million that goes to private schools violates Section 208 of the Mississippi Constitution, which provides: "[N]or shall any funds be appropriated . . . to any school that at the time of receiving such appropriation is not conducted as a free school." The State recognizes that Section 208 "precludes the Legislature from appropriat[ing] state education funds to 'independent' schools'" but claims that this appropriation did not violate Section 208 because a state agency, rather than private schools, "is the 'recipient' of the legislature's appropriation." State Br. at 29-30. Section 208's text refutes that view. The word "to" reflects movement toward something and is connected with the word "receiving." As commanded by the Legislature, the money was to be sent to private schools, which would receive and spend it. The word "appropriate" means to set apart from public revenue a sum of money to be direct to a specified object. Here, the money was to be set apart for private schools and directed to them. The fact that it is passed through a state agency makes no difference.

Under the State's position, the Legislature could run roughshod over the Constitution (particularly Section 208) by passing appropriated funds through a state agency every time it wanted to direct money to a purpose that is otherwise unconstitutional. By this means, the Legislature could pass appropriations to fund the budgets of every private school in the state despite Section 208. But the Constitution prohibits sophisticated as well as simple-minded modes of violating its guarantees, and the State's argument should be rejected.

The State's separate contention that Section 208 does not apply because its funding began with federal funds should also be rejected. Section 208 prohibits the appropriation of "*any* funds" to private schools. The federal funding here was deposited into the state treasury and distributed through a state agency at the direction of the state Legislature, which decided to spend the money on education and specifically on private schools. This certainly fits with the definition of "any funds." In a similar case, the South Carolina Supreme Court rejected the very same argument made here by the State and held that its constitutional provision prohibiting the use of "public funds . . . for the direct benefit of any . . . private educational institution" was violated by an appropriation of money stemming from federal funds that were distributed though the state treasury.

Indeed, many appropriations in Mississippi are first passed though a state agency, and much of Mississippi's budget involves funds that originated with the federal government. Nothing in the Mississippi Constitution suggests that its guarantees evaporate under either of these conditions. If it did, much of the operation of state government would be unconstrained by the state's own constitution. There is no precedent for such a drastic limitation on the reach of the Constitution.

Intervention. In its appeal, MAIS raises only the issue of intervention of right and does not challenge the denial of permissive intervention. The Chancellor found that MAIS failed to meet any of the four requirements for intervention of right under Miss. R. Civ. Proc. 24(a)(2), yet MAIS presents argument in this Court regarding only two of the four: timeliness and (arguably) its interest

in the case. With respect to the other two factors, MAIS fails to contend that disposition of this case would impair or impede its ability to protect that interest and fails to argue that its interest is not adequately represented by the State. Therefore, those issues are waived, and the denial of intervention should be affirmed on that ground alone.

Even if they are not waived, the denial should be affirmed. MAIS did not file its intervention motion until 12 days before trial; its intervention would have significantly delayed the trial and disposition of the case; its underlying claim was completely irrelevant to the issue raised in this case; and it easily could protect its interest by filing its own lawsuit. The Chancellor's decision denying intervention was not an abuse of discretion.

ARGUMENT

I. The Chancery Court Correctly Held that PPS Has Standing to Bring This Case.

"Mississippi's standing requirements are quite liberal." *Hall v. City of Ridgeland*, 37 So. 3d 25, 33 (Miss. 2010) (quoting *Dunn v. Miss. State Dep't of Health*, 708 So. 2d 67, 70 (Miss. 1998)). "[T]his Court has been more permissive [than federal courts] in granting standing to parties who seek review of governmental actions." *Araujo v. Bryant*, 283 So. 3d 73, 77 (Miss. 2019) (quoting *Burgess v. City of Gulfport*, 814 So. 2d 149, 152–53 (Miss. 2002)).

An association like Parents for Public Schools 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." *Miss. Manufactured Hous. Ass'n v. Bd. of Alderman*, 870 So. 2d 1189, 1192 (Miss. 2004) (citing *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)) (applying federal test for associational standing).

The State and MAIS contest only the first of these elements: that PPS's members would have standing to sue in their own right. PPS is a decades-old membership organization composed of

parents, teachers, and administrators with direct interests in enforcing the legal safeguards with which Mississippi protects its public schools. Its members, particularly the parents of public school children, would have standing to sue in their own right on two separate grounds, either of which is independently sufficient to confer standing. First, they and their children are adversely affected by the government's unconstitutional appropriation of state funds to private schools. Second, they are taxpayers challenging unconstitutional government spending of public funds. While each of these grounds is sufficient on its own, the combination of them brings this case squarely within the precedent of this Court's decision four years ago in *Araujo v. Bryant* confirming standing for taxpaying public-school parents who alleged an unconstitutional expenditure of public funds on charter schools. *See* 283 So.3d at 78. This brief first will discuss the issue of adverse impact, then taxpayer standing, and then the combination of the two with respect to taxpaying public-school parents that exists here and is governed by the precedent in *Araujo*.

A. PPS's Members are Adversely Affected by Senate Bill 2780's Unconstitutional Appropriation of State Funds.

In Mississippi, claimants have standing to sue when they show that they have suffered an "adverse impact . . . different from that likely to be suffered by the general public" as a result of a government action. *See Initiative Measure No. 65: Mayor Butler v. Watson*, 338 So. 3d 599, 605 (Miss. 2021); *Reeves v. Gunn*, 307 So. 3d 436, 439 (Miss. 2020). Mississippi courts take a particularly permissive approach to standing when a plaintiff challenges government action. *Araujo*, 283 So. 3d at 77.[1]

[1] Insofar as the State implies, at 17, that PPS relies on the erstwhile "colorable interest" standard – now replaced by the "adverse impact" test described above, *see Initiative Measure No. 65*, 38 So. 3d at 605 – to evaluate standing, it is mistaken. PPS asserts, and the Chancery Court below correctly concluded, that PPS's parent members will be adversely affected should the unlawful government appropriation take effect.

PPS exists to improve public schools and safeguard children's access to high-quality public education by engaging parents to be active participants in their children's schools and school communities. *See* PPS R.E. at 11, R. at 17 (Compl. at 2). Its members include Mississippi parents of public-school students, public-school teachers, principals, and other school officials. *Id.* PPS's parent-members are particularly affected by the government's actions because their children, on whose behalf the parents may sue, are adversely impacted.

Section 208 reflects its drafters' realistic recognition that there is only so much public money to be spent on education and their decision that all appropriations should go to public schools. Any breach of that principle – whether for $10 million or $100 million – violates the Constitution and adversely affects public schools and public-school students. And as the Chancery Court concluded, this effect is exacerbated by a government program like the one challenged here, where private schools are the sole and exclusive beneficiaries of a grant program and "chronically underfunded" public schools are excluded from eligibility. *See* PPS R.E. at 107-08, R. at 384-85 (Op. at 12–13); *see also* PPS R.E. at 105-107, R. at 382-84 (Op. at 10-12) (cataloging recent infrastructure problems identified at Mississippi public schools in the last year).

In addition, some parents' decisions about whether to send their children to private or public school will be affected by the quality of the infrastructure, and as the Chancery Court recognized, differences in facilities could work to the detriment of public schools and their students. *See* PPS R.E. at 108. When private schools have more resources to expend – including as a result of a government grant – they draw students who would otherwise attend public school. And when students leave their public school and the school's attendance declines, the public school receives less state funding, and the students still enrolled in the public school suffer. *See* Miss. Code Ann. § 37-151-7(1)(a) (funding based on average daily attendance). Indeed, as the Chancery Court concluded, "[i]t is common sense that private schools compete with public schools for students,"

PPS R.E. at 108, R. at 385 (Op. at 13) (citing *Mueller v. Allen*, 463 U.S. 388, 395 (1983))), and government funding for private schools "legislat[es] a competitive advantage for private schools to the detriment of public schools." *Id.*[2]

Thus, in multiple ways, public schools and the children attending them are harmed by breaches of Section 208 and their parents would have standing to challenge those violations on their behalf.

B. PPS's Members Have Taxpayer Standing.

Mississippi has recognized taxpayer standing for nearly a century. *See Brannan v. Bd. of Sup'rs of DeSoto Cnty.*, 106 So. 2d 768, 769 (Miss. 1926). This Court has repeatedly affirmed that taxpayers specifically have standing to challenge unlawful government appropriations. Hence, in *Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975), the Court held that a group of physicians had standing as taxpayers to sue a community hospital after its board used taxpayer funds to convert the hospital's nursing quarters into private offices. And in *Canton Farm Equipment, Inc. v. Richardson*, 501 So. 2d 1098, 1106–07 (Miss. 1987), the Court concluded that taxpayers had standing to challenge a county board of supervisors' allegedly unlawful purchase of a tractor. *See also* James L. Robertson, *Standing to Sue—Public Interest Civil Actions*, 3 Miss. Prac. Encyc. Miss. L. § 19:219 (3d ed. 2022) (citing *Prichard*, 314 So. 2d at 730) ("A taxpayer may challenge a legislative appropriation to an object not authorized by law.").

What's more, this Court has recognized taxpayers' interest in challenging unlawful appropriations specifically with respect to school funding. *See, e.g.*, *Pascagoula Sch. Dist. v. Tucker*, 91

[2] MAIS inaptly analogizes the standing analysis in this case to that of business competitors suing corporate rivals for their *ultra vires* activities. MAIS Br. 19–20. But this Court has expressly distinguished corporate *ultra vires* actions from other types of legal claims, including in the very case that MAIS cites. See *Tallahatchie Valley Elec. Power Ass'n v. Miss. Propane Gas Ass'n*, 812 So. 2d 912, 921–22 (Miss. 2002); see also *Miss. Manufactured Hous. Ass'n*, 870 So. 2d at 1194. That unrelated body of law is inapplicable here.

So. 3d 598 (Miss. 2012) (concluding that suit to enjoin a statute requiring school district to share property tax revenue with neighboring districts "affects the rights of all taxpayers" in the county, and proceeding to the merits of the case); *Chance v. Miss. State Textbook Rating & Purchasing Bd.*, 200 So. 706, 708–09 (Miss. 1941) (taxpayers had standing to challenge practice of loaning state-owned textbooks to students at private schools).

PPS's parent-members are federal, state, and local taxpayers. Senate Bill 2780 explicitly requires the private schools funding mechanism to be funded "from *appropriations* by the Legislature" (emphasis added). PPS R.E. at 29, R. at 50 (S.B. 2780 at § 12(2)). Consistent with longstanding Mississippi law, PPS's parent members have taxpayer standing to challenge that appropriation under Section 208 of the Mississippi Constitution, which forbids "any funds [from being] *appropriated* toward . . . any school that at the time of receiving such appropriation is not conducted as a free school," i.e., toward any private schools.

The two Mississippi cases that the State cites undermines its argument, rather than support it. First, the State contends that *Araujo* forecloses PPS's members' taxpayer standing because it recites the basic proposition that plaintiffs asserting taxpayer standing must "experience a different, adverse effect than the general public," and that "general taxpayers" lack standing to challenge "general government spending." State Br. 21 (quoting *Araujo*, 283 So. 3d at 78). But as explained *infra*, *Araujo*'s application of that principle shows how the State misses the mark.

And in *Pascagoula-Gautier School District v. Board of Supervisors*, 212 So. 3d 742, 748-49 (Miss. 2016), the plaintiffs – city and a school district – did not sue as or on behalf of taxpayers. They premised their standing on the economic harm that they stood to suffer as the "*direct* beneficiar[ies]" of the allegedly improperly low tax assessment at issue. *Id.* at 749. Nor could they have asserted taxpayer standing, as they did not challenge a government appropriation in the first instance; they challenged only the government's *income*, not its outlays.

C. As Taxpayers Who are Parents of Public Schoolchildren, PPS Members are Entitled to Assert Standing Under *Araujo v. Bryant*.

While either general standing or taxpayer standing is sufficient on its own, their combination brings this case squarely within the precedent of this Court's decision confirming standing for taxpaying public-school parents in *Araujo v. Bryant*. In *Araujo*, the plaintiffs claimed that a statute "unconstitutionally diverted public funds to charter schools . . . . [in violation of] Section 206 of the Mississippi Constitution." *Id.* at 75. All members of the Court agreed that the taxpaying parents had standing to challenge this "unconstitutional[] diver[sion of] public funds." *Id.* at 77-78 (majority opinion); 86 (Coleman J., concurring); 86-90 (King J., dissenting on the merits and concluding the Court should have held the statute unconstitutional).

As the majority explained:

> The Plaintiffs challenge the alleged unconstitutional spending of their *ad valorem* property taxes by governmental entities. "[T]his Court has been 'more permissive in granting standing to parties who seek review of governmental actions'" than federal courts. *State v. Quitman Cty.*, 807 So. 2d 401, 405 (Miss. 2001) (*quoting Van Slyke v. Bd. of Trs. of State Insts. of Higher Learning*, 613 So. 2d 872, 875 (Miss. 1993) (*Van Slyke II*)). The Plaintiffs own property in the school district, pay property taxes (a portion of which are designated to support JPS) and have children who attend JPS [Jackson Public Schools]. The Plaintiffs have also brought suit on behalf of their children as next friends of their children. Thus, the Plaintiffs are not simply general taxpayers challenging general governmental spending as unconstitutional. Instead, the Plaintiffs are *ad valorem* taxpayers alleging that governmental entities are spending *ad valorem* tax revenue in direct violation of Article 8, Section 206, of the Mississippi Constitution. Further, JPS's compliance with Section 37-28-55 diverts *ad valorem* funds from JPS public schools—where the Plaintiffs' children are enrolled—to the charter schools. Thus, the Plaintiffs experience a different, adverse effect than the general public due to the alleged unconstitutional spending of the *ad valorem* taxes.

Id. at 77-78.

Like the Plaintiffs in *Araujo,* some of the members of PPS own property in their school districts, pay property taxes as well as state sales tax and federal income and gas tax, have children who attend the public schools, and allege that the Legislature has passed a law spending tax revenue in violation of the Mississippi Constitution. *See, e.g.*, PPS R.E. at 172, 192, R. at 472, 492 (Tr. at 44,

64). Accordingly, the PPS parents "experience a different, adverse effect than the general public due to the alleged unconstitutional spending" of public funds. *Araujo*, 283 So. 3d at 78. As in *Araujo*: "The Plaintiffs claim to have suffered an adverse effect from [the challenged statute] that is different from the adverse effect suffered by the general public. Thus . . . the Plaintiffs have standing." *Id.*

The State acknowledges *Araujo* and *Pascagoula-Gautier Sch. Dist. v. Bd. of Sup'rs of Jackson County*, 212 So. 3d 742, 749 (Miss. 2016) (confirming taxpayer standing) but argues: "That latter rule [from those cases] does not support the taxpayer standing of PPS members to challenge ARPA expenditures. PPS's members may pay state and local taxes. But this case does not involve any expenditures of state or local taxes. Only federal ARPA money will be expended to fund SB 2780's grant program." State Br. at 21. While stating that the members "may pay state and local taxes," the State conspicuously fails to mention that many of PPS's taxpaying parents, like many other public-school parents, hold jobs and drive cars and therefore pay federal income and gasoline taxes. PPS R.E. at 172, 192, R. at 472, 492 (Tr. at 44, 64). Likewise, the State fails to acknowledge that these funds were deposited into the state treasury, appropriated by the state Legislature, and (if not enjoined) would be disbursed by the state Treasurer under a program administered by a state agency. They may have originated with a federal grant, but they are state funds. *See infra* at 22 (discussing *Adams v. McMaster*, 851 S.E.2d 703, 706-07 (S.C. 2020)). And either way, Section 208 forbids appropriating "*any* funds" to private schools, not just state-derived funds – and PPS members have an interest in vindicating that requirement on their children's behalf.

The State also cites to the opinion of three justices in *Hein v. Freedom from Religion Foundation, Inc.*, 551 U.S. 587, 593 (2007), and the holding in *Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447, 487 (1923). But those cases simply confirm that taxpayer standing generally does not exist in cases brought in federal courts relating to federal funding. However, that does not control this Court's jurisprudence regarding standing principles *in Mississippi state courts*. This Court reiterated four years

ago in *Araujo* what it has stated on multiple occasions in the past: "This Court has been more permissive in granting standing to parties who seek review of governmental actions than federal courts." 283 So.3d at 77 (cleaned up). In marked contrast to federal courts, *Araujo* and cases stretching back nearly a century confirm that Mississippi taxpayers generally have standing in state courts to challenge unlawful government appropriations. *See, e.g., Brannan v. Bd. of Sup'rs of DeSoto Cnty.*, 106 So. 2d 768, 769 (Miss. 1926); *Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975); *Canton Farm Equip., Inc. v. Richardson*, 501 So. 2d 1098, 1106–07 (Miss. 1987). Mississippi is unremarkable in this regard; some thirty-five other states provide for taxpayer challenges to illegal appropriations. See Joshua G. Urquhart, *Disfavored Constitution, Passive Virtues? Linking State Constitutional Fiscal Limitations and Permissive Taxpayer Standing Doctrines*, 81 Fordham L. Rev. 1263, 1313 (2012) (Appendix).

What's more, this Court has recognized that unlawful government spending with respect to school funding affects taxpayers' interests. *See, e.g.*, *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598 (Miss. 2012) (concluding that suit to enjoin a statute requiring school district to share property tax revenue with neighboring districts "affects the rights of all taxpayers" in the county, and proceeding to the merits of the case). Even more to the point, in *Chance v. Miss. State Textbook Rating and Purchasing Board*, 200 So. 706, 708-09 (Miss. 1941), this Court held that taxpayers had standing to challenge the practice of loaning state-owned textbooks to students at private schools as contrary to Section 208 of the Mississippi Constitution – the same section at issue here.

Accordingly, precedents related to taxpayer standing in federal courts have little to do with this case. And as in *Araujo,* this is not simply a taxpayer standing case, but a case about the standing of taxpaying *public-school parents* to challenge an allegedly unconstitutional expenditure of public funds relating to education. The State contends that a different result is required because the initial source of the public funds is federal taxpayer money rather than local property tax money. But that makes no difference for purposes of standing, because the money at issue here went to the state treasury

and then was appropriated by the state Legislature for the use of private schools in Mississippi. Although the federal treasury contains more money than the state treasury and more than local property taxes, these public-school parents contribute to each of those sources of public funding. Whether the educational funding at issue initially came from the federal treasury, the state treasury, or local property taxes, the parents have the same interest in insuring that the State of Mississippi's laws and actions regarding the spending of that money comply with the Mississippi Constitution.

Indeed, the State of Mississippi and its Legislature and its agencies are bound by the Mississippi Constitution irrespective of the original source of the money. There is no exemption for the expenditure of federal funds by the State. And there should be no exemption from the general principles regarding standing to challenge a constitutional violation where the public-school parents at issue in this case pay not only state and local taxes but federal taxes too.

The out-of-state case law that MAIS draws upon, *see* MAIS Br. at 14–15, does not support its position that the taxpaying public-school parents in this case lack standing to challenge the government's unconstitutional expenditure of public funds when those public funds originate from a federal grant program. The cases that it cites are either unsupportive of its position, factually distinct from the appropriation at issue here, or otherwise inconsistent with Mississippi taxpayer standing.

To start, one of the cases that MAIS cites was subsequently abrogated and replaced with a more lenient standard for taxpayer standing that actually supports PPS's position, not MAIS's. *See Faden v. Philadelphia Hous. Authority*, 227 A.2d 619 (Pa. 1967) ("Rather than recognize the fact that public policy favors judicial review of the statutory and constitutional validity of the acts of public bodies and officials, courts too often require strict compliance with the traditional requirements . . . that the taxpayer establish a direct pecuniary loss. . . . We believe . . . that this Court's broadened philosophy of standing . . . supersedes *White* [*v. City of Philadelphia*, 184 A.2d 266 (1962)].").

Several of the other cases are factually distinct or otherwise rest on features of the particular funding schemes at issue that are not present in this case. For example, one of the cases that MAIS cites did not actually involve a challenge to a state's unlawful appropriation at all, but instead a challenge to a state action that would have resulted in the state's losing its eligibility for participation in a federal grant program. *See St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 589 (Minn. 1977) ("Loss of Federal assistance simply does not analogize to illegal use or waste of state taxpayers' money"). Another case challenged a city's expenditure of funds under federal law as inconsistent with the parameters of the federal grant program, a matter "for the consideration and concern of the federal administrator," and not for the taxpayer or the state court. *In re Redevelopment Plan for Bunker Hill Urban Renewal Project 1B*, 389 P.2d 538, 573 (Cal. 1964). Still another held that a taxpayer's challenge could not survive because the taxpayer did not allege that the federal grant funds "could be used for general expenditures or for obligations that are paid out of the city's general tax revenues." *Altman v. Lansing*, 321 N.W.2d 707 (Mich. App. 1982).

Other out-of-state cases cited by MAIS are rooted in the notion that a taxpayer's standing owes to the specific pocketbook injury to the taxpayer herself — that is, the "liability to replenish the public funds." *Broxton v. Siegelman*, 861 So. 2d 376, 385 (Ala. 2003). *See also Chapman v. Bevilacqua*, 42 S.W.3d 378 (Ark. 2001) (no taxpayer standing where taxpayers couldn't show that they "would be liable to repay any misapplied funds"); *Matthaei v. Hous. Authority of Baltimore City*, 9 A.2d 835, 838 (Md. 1939). But neither *Araujo* nor other taxpayer lawsuits in Mississippi depended on an individual showing a pecuniary injury. Rather, taxpayer standing is rooted in the notion that a "liberal construction of standing" should apply to allow "interested taxpayers to challenge unconstitutional or unauthorized legislative appropriations." R.E. at 102, R. at 379 (Op. at 7) (citing cases).

The challenged appropriation here – and this Court's longstanding view of taxpayer standing – is more akin to the case law permitting taxpayers to challenge unlawful appropriations of federal

funds. *See, e.g.*, *Taylor v. Town of Cabot*, 178 A.3d 313 (Vt. 2017) (holding that taxpayer standing is rooted not in "any direct loss" to the plaintiff but instead to the "waste[]" of public assets, and that "[n]otwithstanding the federal origin of the monies at issue here, we conclude that plaintiffs can assert municipal taxpayer standing . . . . [based] on the language of the [federal] authorization, the extensive control the Town has over the funds, the absence of meaningful federal oversight of the Town's use of the funds, and the fact that the funds would otherwise be available for potential municipal expenditures"); *see also Shipley v. Smith*, 107 P.2d 1050, 1051 (N.M. 1940) (concluding that taxpayer was entitled to challenge unlawful appropriation by municipality regardless of whether the funds appropriated originated through taxation or through a gift – once the funds "become[] part of the public funds of the county, the resident taxpayers' interest therein immediately attaches and their right immediately rises, to prevent waste of such funds, through injunction"); *Faden*, 227 A.2d at 621–22 (explaining the importance of taxpayers' suits to subject public bodies – who "must act strictly within their legislative mandates" and who "stand in a fiduciary relationship to the public which they are created to serve" – to judicial scrutiny for their activities and expenditures).

In the event this Court grants intervention, MAIS raises a separate argument, contending that the public funds at issue were "highly flexible," did not have to be spent on education at all, and therefore were not "diverted" from public schools to private schools in the sense that funds were diverted in *Araujo*. MAIS Br. at 15-16. But *Araujo* does not suggest that these supposed distinctions are relevant, much less when they are based on pure speculation.

Although the Legislature could conceivably have used the $10 million in funds at issue here for something else, the Legislature chose to use those funds for schools. And in any event, those funds were "diverted" from legitimate public purposes to an unconstitutional purpose when they were designated for private schools. As stated in the Complaint in this case: "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." R.E. at 11, R. at 17 (Compl. at 2). When the legislature commits a particular amount of money – in this case $10 million for infrastructure – but gives it to private schools and not public schools, there is an adverse effect on public schools and the students.

The State contends, in the main, that public schools and schoolchildren are not adversely affected by the government's action because the unlawfully appropriated money was a newly created program for private schools (rather than a diversion of funding public schools previously received), and because public schools in Mississippi receive more state and federal funding than do private schools. *See* State Br. 17-19. But whether PPS's members and their children are adversely affected by the appropriation does not hinge on who gets more funding *in toto*. As explained above, Section 208 forbids appropriating *any* funds to private schools, and PPS members and their children are harmed by *any* unlawful appropriation to private schools. Appellants' various other attempts to reframe PPS's associational-standing claim and recast PPS's membership are likewise unavailing. Appellants take issue with the Chancellor's finding that the private schools funding mechanism affects "public schools and their students," arguing that public schools and public-school students are not members of PPS and therefore cannot confer associational standing on PPS. *See* State Br. at 20–21; MAIS Br. at 18. But again, that ignores the fact that parents of public-school children may sue on behalf of their children to vindicate their children's interests in securing an adequate public education. *Araujo v. Bryant*, 283 So. 3d 73, 77-78 (Miss. 2019). *See also Clinton Mun. Sch. Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985) (lawsuit brought by parents on children's behalf in which Court held that "the right to a minimally adequate public education created and entailed by the laws of this state is one we can only label fundamental"). And misapprehending PPS's associational-standing claim, MAIS contends that PPS lacks standing because it is not itself "in direct competition with" private schools, and that it additionally lacks third-party standing because it is not sufficiently close to public schools so as to

represent the schools' interests in litigation. MAIS Br. at 18–19. But PPS does not assert that it has standing in its own right as an organization, or that it has third-party standing on behalf of public schools; it asserts associational standing on behalf of parents of public-school children.

In summary, PPS's members include public-school parents who pay federal, state, and local taxes. Because they would have standing as parents and separately as taxpayers, and because their combined status places them squarely within this Court's recent precedent in *Araujo,* PPS has associational standing to purse this claim of an unconstitutional appropriation of public funds.

II. Section 208 Prohibits Appropriating Any Funds to Private Schools.

In cases of constitutional construction, the Constitution's plain language controls. *Thompson v. Attorney Gen. of State*, 227 So. 3d 1037, 1041 (Miss. 2017); *Dye v. State ex rel. Hale*, 507 So. 2d 332, 349 (Miss. 1987). And Section 208 of the Mississippi Constitution plainly states: "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*" (emphasis added). By appropriating $10 million to private schools, the Legislature violated Section 208's ban on appropriating money "to any school that . . . is not conducted as a free school."

Rather than accepting the Constitution's plain language, the State urges this Court to uphold the Legislature's actions in designating and appropriating this money for private schools because (1) the funds were first sent to a state agency before being distributed to private schools and (2) the federal government was the original source of the funds. Neither of these facts circumvents Section 208.

A. Funneling Money Through a State Agency Is Not a Workaround for Section 208.

The State first argues that Section 208's ban on appropriating "any funds . . . to any school that at the time of receiving such appropriation is not conducted as a free school" allows the

Legislature to fund private schools as long as the money is first funneled through a state agency. In the State's view, the private schools funding mechanism does not violate Section 208 because the Legislature appropriated the $10 million to the Department of Finance and Administration – even though the Legislature instructed the Department to disburse the funds for the exclusive benefit of private schools. PPS R.E. at 30, R. at 51 (S.B. 2780 (Reg. Sess. 2023)) at §12(4)(e)) (limiting eligibility to "any private or nonpublic school operating within the State of Mississippi"). *See* State Br. at 29-30 (acknowledging that Section 208 "precludes the Legislature from 'appropriat[ing]' state education funds 'to' independent schools" but claiming it is not violated because "DFA is the 'recipient' of the legislature's appropriation").

For at least two reasons, the State's view does not hold water. First, it is contrary to the Constitution's plain text. Second, it would allow the Legislature to circumvent the Constitution by the simple expedient of channeling public funds through a state agency.

The State rests its interpretation on what it perceives to be a difference between the words "to" and "toward." State Br. at 26. There is no basis for such a view. In the late Nineteenth Century, courts interpreted the word "to" to convey "the idea of movement *towards*, and actually reaching, a specified point or object, and the meaning is not satisfied unless the point or object be actually attained." *Stevens v. Ambler*, 23 So. 10, 12 (Fla. 1897) (emphasis added) (citing *Moran v. Lezotte*, 19 N.W. 757 (Mich. 1884)). *See also Balch v. Arnold*, 59 P. 434, 437 (Wyo. 1899) ("The preposition 'to' generally indicates direction . . . ."). Conversely, late-Nineteenth Century courts viewed the word "toward" as meaning "[i]n the direction to" and "[w]ith direction to." *Hudson v. State*, 6 Tex. App. 565, 575-76 (1879). If there is any difference between these words, it is not meaningful to this case. When it enacted the private schools funding mechanism, the Legislature ordered that public funds be "move[d] towards" and "with direction to" private schools – exactly what Section 208 forbids.

Further, Section 208's use of the word "to" is connected to "receiving." Obviously, the money is ultimately received by the private school. That is the purpose of the appropriation. The legislation creating the private schools funding mechanism made clear that *only* private schools were eligible to receive funding. PPS R.E. at 30, R. at 51 (S.B. 2780 (Reg. Sess. 2023)) at §12(4)(e)). The fact that the money is "receiv[ed]" by the school means it was appropriated "to" the school. The legislation itself makes clear that the appropriation had only one possible target: schools not operated as free schools.

Late-Nineteenth Century legal writers understood that an "appropriation" was "[t]he act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund." Black's Law Dictionary 82 (1st ed. 1891); *see also, e.g.*, *State ex rel. Norfolk Beet-Sugar Co. v. Moore*, 69 N.W. 373, 376 (Neb. 1896) (defining "appropriate" to mean "to set apart from the public revenue a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and for no other"); *State v. Lindsley*, 27 P. 1019, 1019-20 (Wash. 1891) (defining "appropriation" to mean "an authority from the legislature, given at the proper time, and in legal form, *to the proper officer*, to supply sums of money out of which may be in the treasury in a given year *to specified objects* or demands against the state") (emphases added). In legislative terms, an "act by which the legislative department of government designates a particular fund . . . to be applied to some general object of governmental expenditure" is an appropriation. Black's Law Dictionary 82 (1st ed. 1891). That is what the Legislature did. It "set apart" $10 million for a specified object: namely, private schools. That the funds were to pass through a state agency before reaching private schools does not disprove that the Legislature affected an appropriation. Quite the opposite: as the term's definition was understood by the Framers' contemporaries, designating "the executive officers of the government . . . authorized

to use that money . . . for that object, and for no other" is inherent to an appropriation. *Norfolk Beet-Sugar Co.*, 69 N.W. at 376.

Moreover, the State's construction would write Section 208 out of the Mississippi Constitution. It would allow private schools to receive appropriations so long as the Legislature funnels the money through an agency. But constitutional rights and commands cannot be so easily circumvented. The Legislature routinely distributes money through executive agencies and this Court has never suggested that this mechanism somehow absolves the Legislature from adhering to the Constitution. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 829 (1995) ("'Constitutional rights would be of little value if they could be . . . indirectly denied.' The Constitution 'nullifies sophisticated as well as simple-minded modes' of infringing on constitutional protections.") (internal citations omitted); *Frazier v. State By & Through Pittman*, 504 So. 2d 675, 694–95 (Miss. 1987) ("It is not the function of judges to dwarf the grandeur of a Constitution by decisions which stifle any of its promises.") (internal citations omitted); *id.* at 697 ("[I]t would insult the common sense of the 1890 Constitutional Convention that they intended any interpretation of [the Constitution] . . . to trickle down to triviality.").

B. Appropriating $10 Million to the Private Schools Funding Mechanism Violated Section 208's Ban on Appropriating "Any Funds" to Private Schools.

Another interpretation that the State advances is its suggestion that Section 208, when read together with surrounding provisions, applies only with what the State calls "state education funds." State Br. at 28. This is a misreading: Section 208 forbids sending "any funds" at all to private schools. And Section 208's neighboring provisions undermine, rather than support, the State's case.

The surrounding provisions identified by the State refer to three specific kinds of funds: Section 203 (1890) ("the school funds"); Section 205 ("the free school fund"); and Section 206 ("common school fund"). Section 208, on the other hand, uses an all-inclusive term: "any funds." *State Tchrs.' Coll, v. Morris*, 144 So. 374, 377 (Miss. 1932) (defining "funds" within Section 208 to

mean "public funds of some character"). Late-Nineteenth Century legal writers understood the word "any" to be just as all-inclusive as readers understand it today. *See, e.g.*, *Logan v. Small*, 43 Mo. 254 (1869) ("The term 'any cause' . . . is broad enough, at least, to embrace any civil cause, and therefore to include this[.]"). Authority continued to apply that all-inclusive understanding throughout the first half of the Twentieth Century. *See, e.g.*, Black's Law Dictionary (4th ed. 1951) (definition of "any") ("In its broad, distributive sense, the sense in which the word is frequently used, it may have the meaning of 'all,' 'every,' or 'each one of all.'").

The State also argues that Section 208 does not invalidate the private schools funding mechanism because its funding began with federal funds rather than state revenue. State Br. at 30. Setting aside the fact that federal funds make up a massive part of Mississippi's annual budget, this argument, too, ignores the Constitution's plain text. Section 208's plain language forbids appropriating "any funds" to "any school that at the time of receiving such appropriation is not conducted as a free school." It makes no exceptions based on the origin of the funds.

Indeed, the South Carolina Supreme Court recently considered and rejected the very argument that the State makes here. In *Adams v. McMaster*, South Carolina's governor created a program – funded with federal COVID relief money – to subsidize private school students' tuition costs. 851 S.E.2d 703, 706-07 (S.C. 2020). When plaintiffs challenged the program under a South Carolina constitutional provision forbidding the use of "public funds . . . for the direct benefit of any religious or other private educational institution," *id.* at 709 (quoting S.C. Const. art. XI, § 4), the governor claimed that funds originating with the federal government were not "public funds" within the meaning of the South Carolina Constitution. *Id.* The South Carolina Supreme Court rejected that view: "[T]he General Assembly has mandated that all federal funds be deposited into and withdrawn from the State Treasury. Given this clear directive, we must conclude that when the [federal] funds

are received in the State Treasury and distributed through it, the funds are converted into 'public funds' within the meaning of" the South Carolina Constitution. *Id.* (citations omitted).

This case is nearly identical. As in the South Carolina case, the funds here originated with the federal government. As in the South Carolina case, the Mississippi Legislature directed that the COVID relief money at issue in this case be deposited into a state fund (here, the Coronavirus State Fiscal Recovery Fund) – which, like the South Carolina fund, is overseen by the state treasurer. Miss. Code Ann. § 27-104-321(1) ("All funds received by or on behalf of the State of Mississippi through the Coronavirus State Fiscal Recovery Fund in Section 9901 of the American Rescue Plan Act of 2021 . . . shall be deposited into the Coronavirus State Fiscal Recovery Fund . . . ."). And as in the South Carolina case, the funds at issue here are (1) summoned from a state fund (2) that is overseen by a state official (3) and appropriated to private schools through a program overseen by yet another state official (4) at the direction of state law. Therefore, as in the South Carolina case, the funds used for the private schools funding mechanism are subject to the proscriptions of the Mississippi Constitution.

In all events, Section 208 does not limit its reach to state-generated revenue. Although part of Section 208 only implicates "school or educational funds of this state," the portion of Section 208 on which this case turns is open-ended: it applies to "*any* funds" (emphasis added). *See also Morris*, 114 So. at 377 (defining "funds" within Section 208 to mean "public funds of some character").

Moreover, even if "school or educational funds of this state" was the operative definition, these funds would fit within it because the Legislature specifically converted them to an educational use. As noted by the State, the relevant federal statue restricted the use of the funds "to make necessary investments in water, sewer, or broadband infrastructure." 42 U.S.C. § 802(c)(1)(D) (cited by State Br. at 7). But nothing required the money to be used for schools. The money was deposited

into the state treasury, and the Legislature converted it into "school or educational funds of this state" by appropriating it for an educational purpose.

Much of the budget of the State of Mississippi comes from federal funds. Nothing in the Mississippi Constitution states that its guarantees evaporate if federal funding is involved. If they did evaporate, much of the operation of state government would be unconstrained by the state's own constitution. There is no basis for adopting such a vast limitation of the reach of the Mississippi Constitution.

Almost in passing, the State refers to Section 90(p) of the Mississippi Constitution and suggests that it permits the private schools funding mechanism. State Br. at 28-29. This is not an argument that was raised in the court below and it should not be considered here. Moreover, Section 90(p) does not bolster the State's arguments.

Section 90 provides: "The Legislature shall not pass local, private, or special laws in any of the following enumerated cases, but such matters shall be provided for only by general laws, viz.: . . . (p) Providing for the management or support of any private or common school, incorporating the same, or granting such school any privileges." However, the fact that a general law can provide for some "management or support" of a private school does not nullify Section 208's prohibition on financial appropriations to private schools. The challenged legislation appropriated $10 million to the exclusive use of private schools. That violated Section 208.

C. The History and Intent of Section 208 Refute the State's Effort to Create Unwritten Exceptions.

"In interpreting the Mississippi Constitution, 'we seek the intent of the draftsmen, keeping in mind, 'the object desired to be accomplished and the evils sought to be prevented or remedied.'" *Myers v. City of McComb*, 943 So. 2d 1, 7 (Miss. 2006) (internal citations omitted). "The subject-matter in the mind of the Convention which adopted the Constitution must be ascertained from the words used in the Constitution, their context, the purpose sought to be accomplished, and the

circumstances surrounding the Convention at the time the Constitution was framed and adopted." *Morris*, 144 So. at 377. "[A] Constitution must be construed so as to vivify and effectuate, not to defeat in whole or in part, the policy indicated by its framers." *Moore v. Gen. Motors Acceptance Corp.*, 125 So. 411, 413 (Miss. 1930).

> The plain meaning that Section 208 prohibits any funding of any non-public school
>
> is not only not overcome, but is strongly reinforced, when the history of the adoption of the section, as disclosed by public records, including the Journal of the Convention which adopted it, are considered, together with the contemporary and long–continued construction placed on the section by the Legislature and the state's executive officers charged with the duty of administering the affairs of its colleges, which construction should not now be departed from unless manifestly incorrect.

Morris, 144 So. at 378 (cleaned up).

Here, the history of Section 208 shows that it was drafted to prevent the Legislature from appropriating public funds to private schools and to prevent private schools from receiving such funds.

As explained in *Morris*, the common school system in 1878 did not have high schools, and the Legislature that year tried to fill this gap by funding private schools out of the common fund. *Id.* at 378. *Otken v. Lamkin* held that this violated section 1, art. 8, of the Constitution of 1869, which was the current Section 208's predecessor. *Id.* "Nevertheless, privately owned and controlled schools, some of them of a sectarian character, continued to affiliate with the state's common schools, and to be supported, in part, from the common school fund." *Id.* This problem was addressed by the 1890 Constitutional Convention. The *Morris* Court explained that "excerpts from the Convention Journal, from Governor Lowry's message, the state superintendent of education's report, and chapter 71, Laws 1890, demonstrate that what the Convention had in mind when considering section 9 of the Jamison report was the prohibiting of the custom referred to in the report of the state superintendent of education of appropriating public funds to the support of sectarian schools and to a private school, whether sectarian or not, that at the time of receiving such

appropriation is not conducted as a free school." *Id.* at 379 (quotation omitted). As this demonstrates, the drafters of the Constitution of 1890 wanted to prevent the State from appropriating public funds to private schools.

This history and intent, along with language of Section 208, refute the State's argument that broad exceptions to Section 208's prohibition should be created when the funds are passed through a state agency or initially came from the federal government. The drafters wanted to prevent the practice of funding non-free schools – not to allow it so long as the Legislature could interpose some technicality. The State's interpretation defies Section 208's plain text and disregards the documented intent of its drafters. That interpretation should be rejected.

III. The Chancellor Correctly Denied MAIS's Motion to Intervene.

Intervention of right must be denied when any of the four factors controlling such requests is not satisfied. MAIS appeals the Chancery Court's denial of its request to intervene as of right. But its appeal brief waives argument on two of the four timeliness factors *and* two indispensable prerequisites for intervention as of right. Even if MAIS had not waived argument on mandatory requirements for intervention, the Chancellor's decision still would be entitled to affirmance: the Motion to Intervene was untimely because it would have delayed trial and prejudiced the parties, and MAIS failed to establish any of the four factors that govern intervention of right. Therefore, the Chancery Court's denial of MAIS's Motion to Intervene should be affirmed.

A. The Chancellor's Decision to Deny Intervention as of Right Should Be Affirmed, Both Because MAIS Has Waived Essential Arguments and Because the Chancellor's Decision is Legally Correct.

Intervention as of right is governed by Rule 24(a) of the Mississippi Rules of Civil Procedure. Where, as here, no statute grants an unconditional right to intervene, Rule 24(a)(2) imposes four requirements on a litigant seeking intervention as of right:

> (1) he must make timely application, (2) he must have an interest in the subject matter of the action, (3) he must be so situated that disposition of the action may as a practical matter impair or impede his ability to protect his interest, and (4) his interest must not already be adequately represented by existing parties.

Guaranty Nat'l v. Pittman, 501 So. 2d 377, 381 (Miss. 1987) (citing Miss. R. Civ. P. 24(a)(2)).

These requirements are mandatory on would-be intervenors. *Hood ex rel. State Tobacco Litigation*, 958 So. 2d 270, 808 (Miss. 2007) (all four requirements must be satisfied for intervention of right). In this case, MAIS did not merely fail to satisfy one of Rule 24(a)(2)'s four requirements; it failed to satisfy *all* of them. The Chancellor explicitly found against MAIS on each factor. PPS R.E. at 94-95, R. at 371-72. Yet MAIS's brief to this Court fails even to mention at least two of those factors (impediment of the would-be intervenor's purported interest and adequate representation of the interest), much less argue them – a failure that waives essential arguments on which it would need to prevail to hold the Chancellor in error. Even the arguments MAIS does make lack merit, which provides a further basis to affirm the Chancellor.

1. MAIS Has Waived Argument on Two Mandatory Prongs of the Intervention Test.

An appellant's failure to raise an argument in its principal brief waives that argument. *Sanders v. State*, 678 So. 2d 663, 669-70 (Miss. 1996) ("We will not consider issues raised for the first time in an appellant's reply brief.") (quoting *United States v. Anderson*, 5 F.3d 795, 801 (5th Cir. 1993)); *Biegel v. Gilmer*, 329 So. 3d 431, 434 (Miss. 2020) (issues not raised in principal appellate brief are "procedurally barred").

On appeal, MAIS claims that the Chancellor erred by denying its motion to intervene as of right. MAIS Br. at 8-13. But MAIS addresses, at most, just two of the four factors that govern intervention of right: timeliness and (arguably) its putative interest in the case. *Id.* MAIS's brief to this Court says nothing of the other two factors that courts use to evaluate intervention of right – all of which must be met to intervene by right. *See Hood ex rel. State Tobacco Litigation*, 958 So. 2d 790,

808 (Miss. 2007) (all four factors must be satisfied to support intervention of right). This failure waives arguments that MAIS was obligated to raise in order to hold the Chancellor in error. Because of MAIS's waiver, the Court need proceed no further to affirm the Chancellor's denial of the Motion to Intervene.

2. MAIS's Attempt to Intervene 12 Days Before Trial Would Have Disrupted the Proceedings by Delaying Trial and Introducing Legal Issues that Were Irrelevant to the Case.

Rule 24(a)(2)'s first requirement for would-be intervenors is that a motion to intervene must be "timely." *Guaranty Nat'l Ins. Co. v. Pittman*, 501 So. 2d 377, 381 (Miss. 1987) (citing Miss. R. Civ. P. 24(a)(2)). A motion to intervene's timeliness is evaluated under a four-factor test:

> These factors are (1) the length of time during which the would be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case; (3) the extent of the prejudice that the would be intervenor may suffer if his petition for leave to intervene is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely.

Guaranty Nat'l, 501 So. 2d at 381-82.

The Chancellor correctly found that all four factors weighed against a finding of timeliness. Her decision should stand because she did not abuse her discretion.

a. Although Intervention of Right is Reviewed *De Novo* as a Whole, the Timeliness Component is Reviewed for Abuse of Discretion When a Trial Judge Explains Her Decision.

In general, this Court reviews decisions concerning intervention of right under the *de novo* standard. *Madison HMA, Inc. v. St. Dominic-Jackson Memorial Hosp.*, 35 So. 3d 1209, 1215 (Miss. 2010). However, a Chancellor's decision concerning a motion to intervene's timeliness is reviewed for an abuse of discretion. *See Hood ex rel. Tobacco Litigation*, 958 So. 2d 790, 808 (Miss. 2007); *Vasser v. Bibleway M.B. Church*, 50 So. 3d 381, 383 (Miss. Ct. App. 2010).

MAIS acknowledges that abuse of discretion is the general standard of review for reviewing timeliness. MAIS Br. at 4. But MAIS claims that the Chancellor failed to analyze each factor explicitly – and that the absence of such explicit analysis requires *de novo* review. MAIS Br. at 9.

For two reasons, MAIS is wrong.

First, contrary to MAIS's retelling, the Chancellor's Order made findings on all four timeliness factors: length of time ("MAIS waited until just twelve days before trial to file its Motion to Intervene, despite its knowledge of Plaintiff's challenge and request for preliminary injunction."), PPS R.E. at 94, R. at 371; prejudice to existing parties ("MAIS's intervention would prejudice the existing parties by delaying trial and a final outcome in a time-sensitive case where the parties have acted to expedite the matter."), *id.*; prejudice to the movant if intervention is denied ("Disposition of this action will not prevent MAIS from challenging Section 208's constitutionality; it still may file a separate lawsuit."), *id.*; and unusual circumstances militating either for or against timeliness ("The unusual circumstances in the present case counsel against intervention, because this is a time-sensitive case in which intervention could delay the Court from delivering an important ruling."), PPS R.E. at 94-95, R. at 371-72.

Second, MAIS's reliance on prior cases is unavailing. To support its argument that it is entitled to *de novo* review, MAIS relies on the Mississippi Court of Appeals' decision in *Vasser v. Bibleway M.B. Church*, 50 So. 3d 381 (Miss. Ct. App. 2010). *See* MAIS Br. at 9. But *Vasser* offers no support. In *Vasser*, a chancellor denied a motion to intervene because the movant had no interest in that case. 50 So. 3d at 383. When the would-be intervenor appealed, the Court of Appeals evaluated the timeliness of the intervention motion *de novo* "[b]ecause the chancellor made no express finding on *any* of the timeliness factors but instead rested her decision *on another ground*." *Id.* at 384 (emphases added). The *Vasser* Court relied expressly on the Fifth Circuit's approach:

> If a court denies a motion to intervene because it was untimely, we generally review this decision, and only this decision, for an abuse of discretion. To be entitled to the

> deferential standard of review, however, a court must articulate the reason the motion was untimely. If the court fails to articulate the reason the motion to intervene was untimely, we review the timeliness element *de novo*.

Id. (quoting *John Doe No. 1 v. Glickman*, 256 F.3d 371, 376 (5th Cir. 2001)).

Unlike *Vasser*, the Chancellor in this case made an express finding of untimeliness and explained her reasoning: the request was made just 12 days prior to trial and would have prejudiced the existing parties. PPS R.E. at 94, R. at 371. That decision was well explained. It should stand unless MAIS can show that the Chancellor abused her discretion.

Under either standard, though, the Chancellor correctly determined that MAIS's motion was untimely because each of *Guaranty National*'s four timeliness factors cuts against intervention.

b. The Length of MAIS's Delay Weighed Against the Timeliness of the Motion to Intervene.

First, MAIS waited until 12 days prior to trial before it moved to intervene. MAIS acknowledged to the Chancellor that it had learned of this case "shortly" after its filing. PPS R.E. at 83. And no later than July 21, 2022, the parties' agreement on the necessity of an urgent outcome was a matter of public record when the Chancellor entered a scheduling order that set trial for August 23, 2022. PPS R.E. at 49-50, R. at 96-97. Nevertheless, MAIS sat on its hands until 12 days before trial before filing its Motion to Intervene. The Chancellor justifiably described this eleventh-hour arrival as the motion's "principal defect." PPS R.E. at 94, R. at 371. *See also Timeliness of Application for Intervention as of Right Under Rule 24(a) of Federal Rules of Civil Procedure*, 57 A.L.R. Fed 150 (originally published in 1982) ("An application to intervene will not normally be allowed once the actual trial is about to begin, especially where the applicant wishes to tender new and independent issues, where intervention would result in setting a later date for the trial, or where the applicant could have sought intervention earlier."). *See also Creusere v. Bd. of Educ. of City Sch. Dist. of City of Cincinnati*, 88 Fed. Appx. 813, 825 (6th Cir. 2003) (affirming denial of intervention as untimely

where, *inter alia*, "the trial was scheduled in about a month"); *Bassett Seamless Guttering, Inc. v. GutterGuard, LLC*, No. 1:05cv00184, 2007 WL 2079718, *2 (M.D.N.C. July 13, 2017) (denying motion to intervene filed "less than a month before trial was set to begin"); *Suter v. Appalachian Regional Healthcare, Inc.*, Civil No. 14-43-ART, 2015 WL 12990211, *1-2 (E.D. Ky. Mar. 6, 2015) (denying as untimely motion to intervene filed "less than a month before trial," which court described as "the very eve of trial"); *McWhorter v. Elsea, Inc.*, No. 2:00-cv-473, 2006 WL 3526405, *3 (S.D. Ohio Dec. 6, 2006) ("[T]he Court concludes that it would be prejudicial to the plaintiffs and the defendants to postpone their pre-trial preparations to re-open discovery for the proposed-intervenor mere months before trial.").

MAIS argues that the Chancellor should have evaluated the motion's timeliness by looking solely at the amount of time between the Complaint's filing and the Motion to Intervene's filing, without regard to the amount of time between the Motion to Intervene's filing and the trial date. MAIS Br. at 9. MAIS cites no authority for this argument. *See id.*[3] Rule 24's text sets no such requirement. To be sure, courts must review motions to intervene for "the length of time during which the would be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene," *Guaranty Nat'l*, 501 So. 2d at 382, but it would be impossible to sort shorter lengths of time from overlong ones without considering the lifespan of the specific case and thus the time before trial. What is timely in a case with no trial date and no motion for immediate injunctive relief may be an unduly late intervention in a case like this one with a fast-approaching trial.

[3] This argument is inconsistent both with an abuse-of-discretion review and with this Court's longstanding admonition that "[l]egalistic formalism and mechanical jurisprudence simply do not fit the language or philosophy of" Rule 24. *Guaranty Nat'l Ins. Co. v. Pittman*, 501 So. 2d 377, 384 (Miss. 1987). *See also id.* at 385 ("In the final analysis we consider our task as arbiters of the practice of intervention of right under Rule 24(a)(2) as 'not to require an elaborate minuet in the courts below, but to support the efforts of those courts to insure that litigation moves sensibly and purposefully forward.") (quoting *Martin v. Travelers Indemnity Co.*, 450 F.2d 542, 554 (5th Cir. 1971)).

In contrast to the many cases showing that the time of filing issue is a fact-specific judgment left to the discretion of the trial court, MAIS urges this Court to adopt the exact "mechanical" approach to timeliness that precedent warns against. *See Guaranty Nat'l*, 501 So. 2d at 384. MAIS relies on two cases in its claim that the "length of delay" factor weighs in favor of intervention. In the first case, this Court held that a chancellor should have permitted intervention when the would-be intervenor filed its request some four months after the case began. *Madison HMA, Inc. v. St. Dominic-Jackson Memorial Hosp.*, 35 So. 3d 1209, 1217 (Miss. 2010) (cited by MAIS Br. at 10). In the second case, this Court reversed the denial of a motion to intervene that was filed roughly four months after issuance of a default judgment. *Guaranty Nat'l*, 501 So. 2d at 382 (cited by MAIS Br. at 10-11).

But *Madison HMA* and *Guaranty National* do not support MAIS's claim – they refute it. Both looked at the length of time between the complaint and the intervention motion *in the context of the case's progression*. In *Madison HMA*, the would-be intervenor represented "that there was no need for extended discovery and advised the [chancellor] that [intervention] would not delay the trial." 35 So. 3d at 1217. In this case, though, precisely the opposite occurred: MAIS's intervention would have delayed the trial, as the Chancellor found, and MAIS raised the potential for discovery despite the parties' agreement that no discovery would occur. PPS R.E. at 89-90. Similarly, in *Guaranty National*, the intervenor sought to vacate a default judgment under Rule 60(b) 119 days after its entry – comfortably within that rule's six-month limitation. *Guaranty Nat'l*, 501 So. 2d at 382. But this Court noted that even then the length of time would weigh against intervention if it "delay[ed]" the existing parties "in the prosecution of claims or defenses in the pending action." *Id.* In this case, that is precisely what MAIS's motion to intervene risked. PPS R.E. at 94-95, R. at 371-72 (chancellor's finding that MAIS's intervention would "delay[ ] trial and a final outcome in a time-sensitive case where the parties have acted to expedite the matter").

c. Intervention Would Have Prejudiced the Existing Parties by Delaying Trial and Potentially Introducing a Discovery Period.

Weighing a motion to intervene's timeliness also requires a court to consider "the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case." *Guaranty Nat'l*, 501 So. 2d at 381-82. This Court has explained that "[p]rejudice to existing parties would ordinarily, in a Rule 24 context, consist of delaying them in the prosecution of claims or defenses in the pending action." *Id.* at 382.

As the Chancellor properly determined, granting intervention would have delayed the parties in the prosecution of their claims and defenses. PPS R.E. at 94, R. at 371. Her conclusion was well supported: contrary to Parents for Public Schools' and the State's agreement that the case required an expeditious ruling, MAIS took the view that "this case is at an early stage," PPS R.E. at 89, and that discovery might be necessary. PPS R.E. at 90. MAIS also sought to add a constitutional challenge that was irrelevant to the issues raised by the parties. PPS R.E. at 93, R. at 370 (chancellor's finding that "MAIS seeks to inject into the case a legal issue that is not part of Plaintiff's claim"). Even on the day of trial, MAIS maintained that the proceeding before the Chancery Court was merely a "hearing" rather than a trial on the merits. PPS R.E. at 139, R. at 439 (Tr. at 11) ("[W]e're not here to stop any hearing today. We're simply saying we want to intervene."). Particularly in view of all parties' opposition, the Chancellor was within her discretion to conclude that intervention would prejudice the parties.

MAIS does not address those problems. Instead, it conflates the "length of time" factor with the prejudice factor by arguing that because (in its view, but not the Chancellor's) its 57-day delay satisfied the "length of time" factor, prejudice to the parties or the Court is not relevant. *See* MAIS Br. at 12 ("[P]rejudice to the existing parties is not relevant here because MAIS acted promptly."); *id.*

at 13 ("[P]rejudice to the trial court is also not relevant because MAIS acted promptly").[4] MAIS argues:

> The trial court analyzed prejudice to the existing parties as a separate and distinct element untethered to the intervenor MAIS's actions and whether it acted promptly. But prejudice to the existing parties is only relevant if it is caused by the potential intervenor's failure to act promptly, not whether intervention itself initiates a domino effect upon the existing parties that delays the action.

MAIS Br. at 12.

But analyzing timeliness without considering prejudice is precisely the mistake that the dissent made in *Hood*. 958 So. 2d 270, 808 (Miss. 2007). There, the dissent disagreed with the majority's conclusion that an intervention motion was timely despite a delay in seeking intervention. As the majority explained, concluding that the "length of time" factor weighed toward untimeliness did not obviate the need to evaluate the timeliness test's remaining three factors:

> The dissent correctly sets out the four-part test to be applied in determining whether an application for intervention is timely; however, the dissent, after discussing the first timeliness factor, "fast-forwards" past the remaining factors . . . . In all deference to the dissent, we refuse to abandon the four-part timeliness test already discussed, and we are firmly convinced that our thorough analysis of all four of the 'timeliness' factors leads us to the inescapable conclusion we reach today concerning the timeliness issue.

Hood, 958 So. 2d at 808.

d. The Third and Fourth Timeliness Factors Also Support the Chancellor's Decision.

MAIS's brief addresses just two of the four timeliness factors: it claims to satisfy the four-part test's first two factors, but its brief lacks any discussion of the remaining two. Therefore, it has

[4] MAIS suggests an irony to the Chancellor's finding of untimeliness alongside what MAIS described as a 51-day delay "from the date of trial before delivering its ruling on the merits of [Parents for Public Schools]'s claim." MAIS Br. at 13. There is nothing unusual about this. If anything, the fact that the Chancellor needed time to draft an opinion underscores that delaying the trial at MAIS's behest would have pushed back the case's resolution and substantially prejudiced the parties.

waived essential arguments on those timeliness factors and the overall timeliness analysis. MAIS Br. at 8-13. This failure dooms MAIS's assignment of error.

For the sake of completeness, though, the third and fourth factors of the timeliness test also support the Chancellor's conclusion that MAIS's motion to intervene was untimely.

MAIS suffered no prejudice from denial of its Motion to Intervene. When trial began, counsel for the State pursued MAIS's ultimate goal of preserving the private schools funding mechanism and MAIS remained free to raise its constitutional challenge to a separate part of Section 208 in a separate action.

Finally, unusual circumstances militated against granting intervention. As both Parents for Public Schools and the State agreed, this case required expeditious consideration. The parties collaborated on a truncated scheduling order that reflected their agreement. PPS R.E. at 49-50, R. at 96-97. MAIS's attempted intervention threatened to delay the trial and transform the case beyond anything that any party contemplated. That goal supported the Chancellor's conclusion that MAIS's Motion to Intervene was untimely, as did all the other factors that govern timeliness. *See Cherokee Nation of Okla. v. United States*, 54 Fed. Cl. 116, 119 (2002) (unusual-circumstances factor of timeliness test cuts against intervention when the would-be intervenor slept on its rights).

3. MAIS Has No Interest in This Case Because the Constitutional Interest that It Claims is Irrelevant.

On its own, the untimeliness of MAIS's Motion to Intervene required the Chancellor to deny the request. But MAIS also failed to satisfy the remaining requirements for intervention as of right.

After timeliness, Rule 24(a) required MAIS to demonstrate an interest that supported intervention. It failed to do this. MAIS claimed two interests in this case: an economic interest and a constitutional interest. PPS R.E. at 84. But "more than a mere economic interest must be shown" to

support intervention as of right. *Kinney v. Southern Mississippi Planning & Development Dist., Inc.*, 202 So. 3d 187, 197 (Miss. 2016) (quotation omitted). That left MAIS relying on a purported constitutional interest in the litigation – i.e., its belief that a portion of Section 208 different from the one at issue in this case violated the First Amendment.

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.

This section of the Constitution contains three clauses, each of which the drafters separated from one another with punctuation:[5] the "no religious sect" clause, the "sectarian school" clause, and the "free school" clause. Parents for Public Schools' case relied solely on the last of these: the portion of Section 208 forbidding the use of state funds for "any school that at the time of receiving such appropriation is not conducted as a free school." PPS R.E. at 15-16, R. at 21-22 (Compl. at 6-7). But MAIS's attempt to intervene rested on a different clause in Section 208: the "sectarian school" clause. PPS R.E. at 94, R. at 371 (chancellor's finding that "[t]he portion of Section 208 that MAIS challenges as violating the federal constitution is irrelevant to the subject of this case"). MAIS intended to argue that the "sectarian clause" violated the First Amendment and, therefore, the United States Constitution protected its interest in the private schools funding mechanism. MAIS Br. at 21 ("Section 208 is one integrated whole that targets fundings for non-public schools."). The Chancellor correctly held that Parents for Public Schools' challenge only implicated Section 208's

[5] To state the obvious, it is common for a constitution's drafters to draft provisions that contain several different clauses, each of which limits government power in different ways. *See, e.g.*, U.S. Const. am. I.

"free school" clause and, therefore, that the question MAIS hoped to litigate was not at issue. PPS R.E. at 94-95, R. at 371-72.[6]

Without any claim on the portion of Section 208 at issue, MAIS had no interest to support intervention as of right.

4. MAIS's Interests are Not Impeded, Because If It Wants to Challenge Section 208's Viability Under the First Amendment, It Can File Its Own Lawsuit.

The third requirement for intervention as of right is that the would-be intervenor "must be so situated that the disposition of the action may as a practical matter impair or impede his ability to protect his interest." *Guaranty Nat'l*, 501 So. 2d at 381. MAIS's brief includes no argument on this requirement, which must always be satisfied to support intervention as of right. Miss. R. Civ. P. 24(a)(2). This is a waiver, and MAIS's argument for reversing the Chancellor's decision fails as a result. *Biegel v. Gilmer*, 329 So. 3d 431, 434 (Miss. 2020) (issues not raised in principal appellate brief are "procedurally barred").

Even if MAIS had not waived this argument, the Chancellor's decision still should be affirmed because ruling on this case would not practically impede MAIS's ability to protect whatever interest it believes it has. As the Chancellor noted, if MAIS believes that any portion of Section 208 is unenforceable, then it is free to file its own lawsuit raising that challenge. PPS R.E. at 94, R. at 371. But Parents for Public Schools' claim turns on a separate section of Section 208 that does not

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[6] Even if the question that MAIS hoped to litigate had been at issue, the Chancellor's decision still would not have resulted in prejudice because recent United States Supreme Court precedent forecloses MAIS's theory. In *Carson v. Makin*, 142 S.Ct. 1987 (2022), the Court held that state law violates the First Amendment's Free Exercise Clause if it allows public benefits to non-religious private schools while forbidding the same benefits to religious private schools. *Id.* at 1997. But *Carson* also cautioned that its ruling did not forbid state laws that deny public funding to all private schools. "A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious." *Id.* at 2000 (quoting *Espinoza v. Montana Dep't of Revenue*, 140 S.Ct. 2246, 2261 (2020)). *Carson* simply requires that state law treat all private schools the same, without regard to whether they are religious or non-religious. Section 208 does that.

implicate the portion of Section 208 with which MAIS quarrels. PPS R.E. at 94, R. at 371 (chancellor's finding that "[t]he portion of Section 208 that MAIS challenges as violating the federal constitution is irrelevant to the subject of this case"). Therefore, the Chancellor's decision to deny MAIS's intervention did not impede or affect the legal interest that MAIS purports to have.

5. MAIS's Interest Has Been Adequately Represented by Existing Parties.

Finally, Rule 24(a)(2) required MAIS to show that its interest was "not already . . . adequately represented by existing parties." *Guaranty Nat'l*, 501 So. 2d at 381 (citing Miss. R. Civ. P. 24(a)(2)). The Chancellor explicitly found that MAIS's interest was adequately represented. PPS R.E. at 94, R. at 371. Again, MAIS's brief offers no argument on this point. This separate waiver again dooms MAIS's appeal.

At any rate, MAIS's interest has been adequately represented throughout the case. The Office of the Attorney General has diligently pursued the same goal MAIS had, which was to defend against the claim that Section 208 renders the private schools funding mechanism unconstitutional. Indeed, MAIS endorsed the construction of Section 208 that the State offered in its brief. *See* MAIS Br. at 38 (arguing that this Court should "adopt[ ] the State Defendants' proposed construction of Article 8, Section 208"). That the Office of the Attorney General has chosen to pursue its goal through a different legal strategy than the one preferred by MAIS is irrelevant. *See, e.g., United States v. State of Louisiana*, 90 F.R.D. 358, 364 (E.D. La. 1981) (denying intervention where representation found adequate because "the ultimate objectives of applicants and of the United States are the same"), aff'd, 669 F.2d 314 (5th Cir. 1982); *Ordnance Container Corp. v. Sperry Rand Corp.*, 478 F.2d 844, 845 (5th Cir. 1973) ("[S]ince the ultimate objectives of both [the plaintiff] and [the would-be intervenor] . . . are identical, the presumption is that the interests of [the would-be intervenor] will be adequately protected by [the plaintiff].").

CONCLUSION

The Chancellor correctly determined that the private schools funding mechanism violated Section 208 of the Mississippi Constitution, and that MAIS did not establish a right to intervene. The Chancery Court's Final Judgment should be affirmed in all respects.

RESPECTFULLY SUBMITTED this Eleventh day of August 2023.

/s/ *Will Bardwell*
Will Bardwell
Counsel for Parents for Public Schools

OF COUNSEL:

Will Bardwell (Miss. Bar No. 102910)
Sarah Goetz (*pro hac vice*)
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
Tel.: (202) 448-9090
E-mail: wbardwell@democracyforward.org
E-mail: sgoetz@democracyforward.org

Joshua Tom (Miss. Bar No. 105392)
American Civil Liberties Union of Mississippi
101 S. Congress Street
Jackson, Mississippi 39201
Tel.: (601) 354-3408
E-mail: jtom@aclu-ms.org

Robert B. McDuff (Miss. Bar No. 2532)
Mississippi Center for Justice
210 E. Capitol Street
Suite 1800
Jackson, Mississippi 39201
Tel.: (601) 259-8484
E-mail: rmcduff@mscenterforjustice.org

CERTIFICATE OF SERVICE

I, Will Bardwell, hereby certify that a copy of this brief is to be served electronically upon all counsel of record contemporaneous with its filing through the Mississippi Electronic Courts filing system.

Furthermore, a physical copy of this brief is being mailed through United State Postal Service mail, postage prepaid, to the Hon. Crystal Wise Martin, Hinds County Chancery Court, P.O. Box 686, Jackson MS 39205.

SO CERTIFIED this Eleventh day of August 2023.

/s/ *Will Bardwell*
Will Bardwell
Counsel for Parents for Public Schools