

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MISSISSIPPI DEPARTMENT OF FINANCE
AND ADMINISTRATION, et al.,

APPELLANTS

vs.

CAUSE NO. 2022-SA-01129-SCT

PARENTS FOR PUBLIC SCHOOLS

APPELLEE

**BRIEF OF PUBLIC FUNDS PUBLIC SCHOOLS, THE MISSISSIPPI ASSOCIATION
OF EDUCATORS, AND PASTORS FOR CHILDREN AS AMICI CURIAE
SUPPORTING APPELLEE**

APPEAL FROM THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI,
FIRST JUDICIAL DISTRICT – CAUSE NO. 2022-705-M

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INTEREST OF AMICI CURIAE

The *amici curiae* respectfully submit this brief to provide the Court with crucial background on the history of Article VII, Section 208 of the Mississippi Constitution (“Section 208”), the enforcement of constitutional clauses like Section 208 by courts in other states, and the likely negative impact that upholding the statutes at issue in this case will have on Mississippi’s public schools and students. *Amici* draw on their longstanding experience and expertise in civil rights and education law and policy to provide the Court with this important context.

Public Funds Public Schools (“PFPS”) is a national campaign to ensure that public funds for education are used to maintain, support, and strengthen public schools. PFPS opposes the diversion of public funds to private education. PFPS is a partnership between two non-profit civil rights organizations, Education Law Center (“ELC”) and the Southern Poverty Law Center (“SPLC”). ELC, based in Newark, New Jersey, is a nonprofit organization founded in 1973 that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. SPLC, based in Montgomery, Alabama, is a nonprofit civil rights organization founded in 1971 that serves as a catalyst for racial justice in the South and beyond, working to advance human rights.

Mississippi Association of Educators (“MAE”) is the oldest organization of education professionals in the State of Mississippi and has extensive experience in education matters. The structure and financing of public schools strongly influence the learning environment of students, which in turn has a significant bearing on the working environment of MAE’s members.

Pastors for Children (“PFC”) is a nationwide network of faith leaders and community partners dedicated to school service and fair and equitable public school funding. The network

has affiliates in Tennessee, Texas, Oklahoma, Kentucky, Mississippi, Alabama, Florida, and North Carolina. PFC believes that God desires a quality education for every child.¹

SUMMARY OF ARGUMENT

Amici urge the Court to affirm the ruling below. First, Section 208 was born from a long-held interest in ensuring that all Mississippi children have access to free public schools—a n interest that the Mississippi Legislature has declared to be part of the state’s public policy, and that this Court has described as a *fundamental right*. Second, in the face of challenges to both the enforcement and constitutionality of no-aid clauses similar to Section 208, or constitutional provisions with similar functions, courts across the nation have repeatedly enforced such provisions. Third, upholding the statutes at issue would negatively impact the public funding of Mississippi public schools, which are already chronically underfunded. For these reasons, the trial court’s ruling invalidating Senate Bills 3064 and 2780 should be affirmed.

ARGUMENT

I. SECTION 208 RESULTS FROM A LONG-HELD INTEREST IN ENSURING ACCESS TO FREE PUBLIC SCHOOLS FOR ALL MISSISSIPPIANS

A. Section 208 Codified Mississippi’s Longstanding Interest in Ensuring the Use of Public Funds for Maintaining a System of Free Public Education, and Was Not Motivated by Discrimination Against Catholics or Any Religious Group

Every iteration of Mississippi’s constitution has emphasized the importance of an educated citizenry. 3 MS PRAC. ENCYCLOPEDIA MS LAW § 19:240 (3d ed.); MISS. CONST., art. VI, § 16 (1817) (“[S]chools and the means of education, shall forever be encouraged in this State.”); MISS. CONST., art. VII, § 14 (1832) (identical).² In 1868, Mississippi citizens voted to approve Article

¹ Additional information about the amici’s interests in this case and their relevant expertise is included in the accompanying motion.

² Even today, the importance of a free public education in Mississippi cannot be overstated. *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985) (holding that the right to education “created and entailed by the laws of this state is one we can only label fundamental”).

VIII of a new state constitution, establishing a state-wide system of free public education. John W. Winkle III, *Constitution of 1868*, MISSISSIPPI ENCYCLOPEDIA (Apr. 13, 2018), <http://mississippiencyclopedia.org/entries/constitution-of-1868/>; *see also* MISS. CONST., art. VIII, §§ 1 *et seq.* (1868). Section 9 of Article VIII (“Section 9”) provided that: “No religious sect or sects shall control any part of the school or university funds of this State.” MISS. CONST., art. VIII, § 9 (1868). During Mississippi’s constitutional convention of 1890 (the “1890 Convention”), Section 9 was “brought forward, with a slight change” in language, becoming what is now Section 208. *State Tchrs.’ Coll. v. Morris*, 144 So. 374, 378-79 (Miss. 1932); *see also* MISS. CONST., art. VIII, § 208 (1890). In short, the delegates to the 1890 Convention clarified the scope and intent of Section 9 by updating the language as follows:

Section 9 (1868)

No religious or other sect or sects shall ever control any part of the school or university funds of this State.

Section 208 (1890)

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.*

Thus, contrary to what Appellant MAIS claims (App. Br. at 25-36), the principles embodied in Section 208 and its predecessor Section 9, prohibiting the use of public funds in support of private schools, reflect Mississippi’s long-standing and deep-seated interest in supporting a uniform system of free public education for the common good. Section 208 and Section 9 are not a reflection of negative animus towards religious or “sectarian” groups.

Even before the adoption of Section 9 in 1868, Mississippi had long sought to establish a system of public education, supported by public funds, separate and distinct from the establishment (and funding) of private schools. In fact, even prior to Mississippi’s admission to the Union, “the people of Mississippi Territory . . . were not content to rely on private resources for the support of

elementary education.” William Weathersby, *A History of Educational Legislation in Mississippi From 1798 to 1860* 24 (The University of Chicago 1921). In 1821, the Legislature established the “Literary Fund,” the balance of which was to “be reserved and invested as an endowment for public education,” and then distributed to the counties once it reached \$50,000. *Id.* at 27; *see also* Rev. Stat. of the State of Miss., Tit. II Art. II. §§ 13, 16 (1836) (requiring that revenues for support of public schools “shall be applied to no other purpose”). Where the local township or village elected a school’s trustees, it received public “support from public funds of one kind or another,” while the private schools were funded by religious denominations or fraternal societies and governed by trustees/boards of their own. Weathersby at 71-72.

Despite its keen interest in establishing a system of free public education, Mississippi’s early efforts to do so were plagued by underfunding and fragmentation. *Id.* at 13-15 (noting that early legislation “forbade the possibility of the system becoming uniform,” leaving it “shattered like a broken mirror”). To rectify such issues, following his 1845 re-election, Governor Albert Brown corresponded with noted reformer, abolitionist, and the first Secretary of the Massachusetts Board of Education, Horace Mann, with an aim to model Mississippi’s public school system after that of Massachusetts. *Id.* at 15.³ Importantly, Brown submitted his correspondence with Mann alongside his plan for a uniform school system to the Legislature, which adopted the system in 1846. *Id.* Mann had long sought to secularize education, and his education model became the standard by the mid-Nineteenth Century. Steven K. Green, *The Insignificance of the Blaine Amendment*, 2008 B.Y.U. L. REV. 295, 307 (2008). “Mann’s modifications to [public] education, introduced in the late 1830s, were not precipitated by the burgeoning Catholic immigration. Rather, [they] stemmed from lingering inter-Protestant conflicts that had led to disestablishment

³ *See generally* Horace Mann, Encyclopedia Britannica, <https://www.britannica.com/biography/Horace-Mann> Brown.

in Massachusetts.” *Id.* at 306. Thus, “[w]hile Mann’s assumptions about being able to distill and teach universal religious values can now be questioned, his efforts were not based on any animus toward Catholics, Jews, or evangelical sects.” *Id.*

A similar aversion to inter-sectarian conflict and an emphasis on standardization, rather than anti-Catholic or anti-religious sentiments, also motivated Mississippi’s push to secularize schools. For instance, the early historical influence of religious denominations in the incorporation of secondary schools in Mississippi was “remarkably slight.” Weathersby at 74. This was by design, as the emphasis was on uniformity of curriculum and not conformity of religious belief:

[T]he paucity of denominational secondary schools was not due to any lack of religious or sectarian interest. **The re is abundant evidence that the people of the state were rather strong sectarians. But in school matters the y apparently wished to lay aside their religious differences and work in harmony for the education of their youth.** A number of charters contain the injunction that the trustees “shall take effectual care that students of all denominations be admitted to equal advantages,” and “receive a like fair and generous treatment.”

Weathersby at 74 (emphasis added).

That same ethos of uniformity in education, rather than conformity with religion, appears in this Court’s early jurisprudence regarding Section 208’s predecessor, Section 9. In *Otken v. Lamk in*, this Court struck down an act attempting “to devote the proportionate share of the [public] school fund . . . to the benefit of the private academies and colleges which the children may elect to attend in preference to free schools[.]” 56 Miss. 758, 764 (1879). There, a parent sought *pro rata* shares of the “common-school fund” for his children to attend the school at issue, Lea Female College—a Baptist school, founded by an ordained Baptist minister and delegate to the Mississippi Baptist Convention.⁴ *Id.* at 759. Applying Section 9, this Court held that the “building up of

⁴ Z.T. Leavell & T.J. Bailey, *A Complete History of Mississippi Baptists, From the Earliest Times, Vol. II.* at Table of Contents 3, 1280-83 (1904), <https://archive.org/details/completehistoryo02leav/mode/2up>.

private educational enterprises” with public funds, which operated outside of the state’s “general scheme,” “plainly” violated “the fundamental purpose of . . . constitutional safeguards thrown around” public education funding. *Id.* at 765. Further, funding such a school was untenable, as:

[T]here [was] no requirement, in the [act], that these private institutions shall be free from sectarian control in religious matters; it is manifest that they are not to come under the supervision, in any respect, of the State or county superintendent; and, so far from being free, it is expressly enacted that the pupils attending them shall pay the full tuition exacted by the private persons conducting them, who can, of course, exclude any pupils they see fit, since the schools are wholly private establishments, over which the law has no control.

Id. at 764-765. Although this Court recognized the right of private institutions, sectarian or otherwise, to exist, to admit or exclude students, and to collect tuition, it nevertheless maintained that because such institutions existed outside of the “uniform system” controlled by the state, “it [was] manifest, under [the 1868 Constitution] that no portion of the school fund can be diverted to the support” of such schools, Baptist or otherwise. *Id.* at 764.

It is possible to trace a direct line from the reasoning and holding in *Otken* to Section 208. As noted above, the provision at issue in *Otken*—Article VIII, Section 9 of the 1868 Constitution—was merely “brought forward, with a slight change” during the 1890 Convention, becoming what is now Section 208. *State Tchrs.’ Coll.*, 144 So. at 378. Given that many delegates to the 1890 Convention were lawyers and judges, it is unsurprising that they merely adopted the same neutral, universal principles that *Otken* articulated regarding Mississippi’s system (and funding) of public education. Importantly, relevant sections of the *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi* (1890) that recorded the drafting of Section 208 during the 1890 Convention do not reference either Catholicism or other religious groups, much less animosity towards any religion. *Id.* at 356. To the contrary, the delegates clarified the language

of Section 9 to make explicit that the prohibition on use of public funds for non-public schools extended to all private schools, sectarian or otherwise.⁵

B. The Principles Embodied in Section 208 Predate the “Blaine Amendment”

Contrary to Appellant MAIS’s assertions that Section 208 has its origins in the “Blaine Amendment” and anti-Catholic sentiments (App. Br. at 25-36), the history of Section 208, its predecessor Section 9, and the even earlier motivations to establish a uniform system of free public education behind their adoption, make clear that Mississippi’s prohibition on public funding of private schools, sectarian or otherwise, well predates the Blaine Amendment (and was not rooted in anti-Catholic sentiments). Proposed in 1875 by Republican Congressman James G. Blaine, the federal Blaine Amendment post-dated, by some seven years, Mississippi’s adoption of Section 9 (which was proposed at a convention dominated by Mississippi Democrats, no less). 4 Cong. Rec. 205 (1875). No credible evidence connects the failed Blaine Amendment of 1875 with the adoption of either Section 9 in 1868 or Section 208 in 1890. And courts have rejected other attempts to link state constitutional no-aid provisions to the Blaine Amendment. *E.g.*, *Locke v. Davey*, 540 U.S. 712, 723, n.7 (2004) (upholding aid restriction where “neither [Appellee] nor amici have established a credible connection between the Blaine Amendment and Article I, § 11, the relevant [state] constitutional provision”).⁶

⁵ The circumstances leading up to the 1890 Convention support that the delegates to the 1890 Convention did not adopt Section 208 due to anti-Catholic or anti-religious bias. Shortly before the 1890 Convention, the then Governor and state superintendent of education revealed that, without any statutory justification, private and denominational schools had been receiving public funds. *State Tchrs.’ Coll.*, 144 So. at 378. To counteract that practice, the committee at the 1890 Convention charged with drafting Section 208 specifically sought to clarify that Mississippi’s Constitution prohibited the use of public funds for any private institution, sectarian or otherwise. *Id.* at 379.

⁶ *Espinoza v. Montana Dep’t of Rev.*, 140 S. Ct. 2246 (2020), should not alter this Court’s analysis. First, the dispute in that case concerned Montana’s ban on assistance to sectarian schools versus non-sectarian private schools. *Id.* at 2261. That dispute is fundamentally different than the dispute here, where Mississippi seeks to divert public funds away from public schools to private schools, sectarian or otherwise. As the United States Supreme Court made clear in *Espinoza*, “[a] State need not subsidize private education.” *Id.* Second, contrary to Justice Alito’s assertion, in his separate concurrence (which

Even if some delegates to the 1868 Convention may have harbored anti-Catholic or anti-religious sentiments, such bias cannot be imputed to the 1868 Convention as a whole. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2256 (2022) (“Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, [courts are] reluctant to attribute those motives to the legislative body as a whole.”); *see also United States v. Barcenas-Rumualdo*, 53 F.4th 859, 866 (5th Cir. 2022) (“First, we presume the legislature acted in good faith”). Further, the ratification of the 1868 Constitution by Mississippi voters would have cleansed the provision of any animus. *See Harness v. Watson*, 47 F.4th 296, 311 (5th Cir. 2022) (upholding a provision of the Mississippi Constitution despite allegations of animus because the Legislature and the “general electorate” approved it). At bottom, it is plainly “irresponsible for critics of the no-funding principle to transfer only the anti-Catholic animus from the national debate to the state levels without including the reform impulses [like those of Horace Mann] that were shared nationwide.” Green at 330.

C. There Is No Evidence that Racial Animus Informed the Adoption of Section 208

The history of Section 208, and its predecessor Section 9, does not indicate that racial animus towards Black and African-American citizens, or any other racial or immigrant group,

was one among three concurrences and three dissents), that seventeen states (including Mississippi) had done nothing to cleanse their no-aid clauses of potential religious bias by readopting or amending them, *id.* at 2274 & n. 20, the Mississippi Legislature and Mississippi citizens have expressly reconsidered the terms of Article VIII of the 1890 Constitution and stricken those provisions that they concluded had been improperly motivated by bias. *See* Section I.C, *infra* (discussing repeal of Section 207 regarding segregated schools). Moreover, it is likely that a neutral provision such as Section 208 could and would be enacted again if necessary without any animus, which would cleanse the provision of any prior discriminatory intent had there been any (and there was not). *See infra* Section I.C, n. 9 (discussing attempts to repeal Section 208); *see also Harness*, 47 F.4th at 303-11 (holding subsequent amendments to Section 241 of the Mississippi Constitution cleansed any discriminatory intent in its drafting, and that the provision would have been passed in its current form without discriminatory motivation). Finally, as discussed above, Mississippi has a “historic and substantial” interest in using public funds to support public schools, and not private schools. *Cf. Espinoza*, 140 S. Ct. at 2258 (reasoning that Montana lacked such a history).

directly influenced the adoption of these provisions.⁷ Although the system of public education codified in the 1868 Constitution “*later* became entangled in the unremitting racial tension wrought by white supremacy,” Winkle, *supra* (emphasis added),⁸ at the outset, the delegates to the 1868 Convention and the 1890 Convention adopted textually neutral provisions with respect to the public funding of public education.

By contrast, those same 1890 delegates expressed nakedly prejudicial sentiment in their proposal for Article VIII, Section 207, which required that “[s]eparate schools shall be maintained for children of the white and colored races.” MISS. CONST. art. VIII, § 207 (repealed 1978). The contrast between Section 207 and Section 208 strongly signals that the express racial prejudice motivating the former did not animate the latter. Unsurprisingly, the repeal of Section 207 by the Legislature in 1977 (ratified by Mississippi voters in 1978), did not implicate Section 208.⁹

Where racial animus motivated a constitutional provision, this Court has not hesitated to say so. *Compare Ratliff v. Beale*, 20 So. 865, 868 (Miss. 1896) (admitting racial motivations for voting restrictions and poll taxes), *with State Tchrs.’ Coll.*, 144 So. at 379 (summarizing reasons for Section 208’s adoption and not referencing racial prejudice). Yet, surveying the cases that involved Section 208 over the century following its enactment, this Court has consistently endorsed Section 208. *E.g.*, *State Tchrs.’ Coll.*, 144 So. at 378; *Morris v. Vandiver*, 145 So. 228, 236 (1933) (noting that “under our system of public education in this state, there are only two

⁷ Moreover, no one has argued, and *amici* have found no evidence indicating, that Section 208 has a discriminatory impact on Black and African-Americans, or anyone else.

⁸ John W. Winkle III, *Constitution of 1868*, MISSISSIPPI ENCYCLOPEDIA (Apr. 13, 2018), <http://mississippiencyclopedia.org/entries/constitution-of-1868/> (“The document also established free public education throughout Mississippi, though that issue later became entangled in the unremitting racial tension wrought by white supremacy.”)

⁹ Subsequent legislative efforts to repeal Section 208 have died in committee, suggesting an understanding that the provision is neutral, if not good, both in intent and effect. *See e.g.*, Miss. B. Hist., 2013 Reg. Sess. S.C.R. 524.

classes of schools provided for, the colleges and the common free schools”); *Chance v. Miss. State Textbook Rating & Purchase Bd.*, 200 So. 706, 713 (Miss. 1941); *Craig v. Mercy Hosp.-St. Mem’l*, 209 Miss. 427, 496 (1950).

II. SEVERAL STATES HAVE UPHELD NO-AID CLAUSES SIMILAR TO SECTION 208

State constitutions across the country contain no-aid clauses similar to Mississippi’s Section 208, or clauses with similar functions. In cases in other states where the enforceability and constitutionality of such provisions have been challenged, courts on several recent occasions have proceeded to enforce these provisions.

The South Carolina Supreme Court recently enforced a no-aid clause found in Article XI, Section 4 of the South Carolina Constitution, which is comparable to Mississippi’s Section 208.¹⁰ *Adams v. McMaster*, 432 S.C. 225 (2020). Following *Adams v. McMaster*, in *Bishop of Charleston v. Adams*, the federal court expressly rejected arguments that Section 4 of the South Carolina Constitution violated the United States Constitution because it was motivated by racial and religious prejudice. 584 F. Supp. 3d 131, 147 (D.S.C. 2022), *vacated on other grounds*, No. 22-1175, 2023 WL 4363654 (4th Cir. July 6, 2023).¹¹ The court held that the plaintiffs had failed to demonstrate both intentional discrimination against an identifiable group and an actual discriminatory effect on that group. *Id.* at 147.

The Kentucky Supreme Court also recently enforced Section 184 of the Kentucky Constitution, a provision similar in function to Section 208. *Commonwealth ex rel. Cameron v.*

¹⁰ Section 4 provides: “No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution.” S.C. CONST. art. XI, § 4.

¹¹ The United States Court of Appeals for the Fourth Circuit vacated the opinion as moot because the funds at issue had been fully disbursed. *Bishop of Charleston*, 2023 WL 4363654, at *3. The Fourth Circuit did not address the merits of the district court’s opinion.

Johnson, 658 S.W.3d 25, 35 (Ky. 2022) (prohibiting the use of “common school funds,” including amounts raised through tax credits, for purposes other than to support common, *i.e.* public, schools). There, parents of public school children, among others, argued that the Kentucky Education Opportunity Account Act of 2021 (“EOA Act”), which allowed taxpayers to provide funds to private school voucher-granting organizations and receive credits against their income taxes, violated Section 184. *Id.* at 29. The Kentucky Supreme Court agreed, holding that the EOA Act violated the plain language of Section 184: “Simply stated, it puts Kentucky in the business of raising sums[s] . . . for education other than in common schools.” *Id.* at 36 (internal quotation marks omitted).

III. UPHOLDING THE STATUTES AT ISSUE WOULD NEGATIVELY IMPACT THE FUNDING OF MISSISSIPPI PUBLIC SCHOOLS, WHICH ARE ALREADY CHRONICALLY UNDERFUNDED

A. Mississippi Public Schools Are Already Chronically Underfunded

The Mississippi Legislature has declared the “provision of quality education for all school age children in the state” to be part of the state’s public policy, and a fundamental right. *Clinton Mun. Separate Sch. Dist.*, 477 So. 2d at 240 (internal quotation marks omitted). The Legislature’s declaration was “out of recognition of the effect of education upon the social, cultural and economic enhancement of the people of Mississippi.” *Id.* (internal quotation marks omitted). In order to provide a quality public education, Mississippi enacted a school funding formula in 1997, the Mississippi Adequate Education Program (“MAEP”). The goals of MAEP, which was designed to pay for school operating expenses, were to provide adequate funding to all school

districts so they could ensure that students learn successfully, and to improve the state accreditation standing of the schools in each district. Miss. Code Ann. § 37-151-5(a).¹²

Yet Mississippi's overall level of public school funding remains one of the lowest in the nation.¹³ Over the last fifteen years, the funding levels prescribed under MAEP have not been fully provided to the districts.¹⁴ Indeed, MAEP has only ever been fully funded in two separate years during its twenty-year existence.¹⁵ A study by Education Law Center also shows that Mississippi spends less per pupil than each of its surrounding states – Louisiana, Arkansas, Tennessee, and Alabama. According to the report, per pupil spending in Mississippi is approximately \$11,348, more than \$4,000 below the national average of \$15,446,¹⁶ placing the state at 45th out of 50 for per-pupil spending.

This chronic underfunding of Mississippi public schools directly impacts their students. *See, e.g.,* Jamiles Lartey, *Two Schools in Mississippi – And a Lesson in Race And Inequality in America*, THE GUARDIAN (Aug. 27, 2017), <https://www.theguardian.com/us-news/2017/aug/27/two-schools-in-mississippi-and-a-lesson-in-race-and-inequality-in-america> (parent noting that child's school did not provide enough textbooks for children to take them home, among other resource deficiencies). Numerous studies indicate that there is a positive causal relationship between per-pupil spending and student achievement, especially for students from

¹² Dr. Ed. Leonard & Jennifer A. L. Box, *The Impact of Increased Funding for the Mississippi Adequate Education Program (MAEP) on State Assigned School Accreditation Levels*, U.S. DEP'T OF EDUC. NAT'L CTR. FOR EDUC. STAT. (2010), <https://files.eric.ed.gov/fulltext/ED509171.pdf> at page 6.

¹³ Danielle Farrie & David G. Sciarra, *Making the Grade: How Fair Is School Funding in Your State?*, EDUCATION LAW CENTER 9 (2022), <https://edlawcenter.org/research/making-the-grade-2022.html>.

¹⁴ *School District MAEP Funding for FY2018*, THE PARENTS' CAMPAIGN RESEARCH & EDUCATION FUND, http://www.tpcref.org/wp-content/uploads/PERDIST-MAEP_FY09-FY18.pdf.

¹⁵ Jack Brister, *Mississippi's Underfunded Education Program*, HARVARD ECON. REV. (Aug. 17, 2020).

¹⁶ Farrie & Sciarra, *supra* n. 13.

low-income families.¹⁷ These findings have particular relevance to Mississippi, where over 75% of the public school students are economically disadvantaged.¹⁸ Recent studies also demonstrate a link between maintaining adequate school facilities and student achievement.¹⁹

B. Senate Bills 3064 and 2780 Would Exacerbate the Chronic Underfunding of Mississippi Public Schools

Senate Bills 3064 and 2780 are particularly jarring because they divert public funds to support the provision of resources at private schools that their underfunded public school counterparts critically lack, specifically facilities and infrastructure. Section 12 of Senate Bill 2780, establishing the “Independent Schools Infrastructure Grant Program,” provides reimbursable grants to “eligible independent schools . . . to make necessary investments in water, wastewater, stormwater, broadband and other eligible infrastructure projects” Miss. S. B. 2780, § 12(2). Yet Mississippi public school districts lack adequate funding for school facilities and infrastructure—and which MAEP, even if fully funded, would not cover. According to a 2021 report, Mississippi schools have a combined facilities maintenance, operating, and capital budget

¹⁷ E.g., C. Kirabo Jackson, Rucker C. Johnson, & Claudia Persico, *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms*, (Nat’l Bureau of Econ. Rsch., Working Paper No. 20847, 2015), <http://www.nber.org/papers/w20847>; Chris Candelaria & Ken Shores, *Court-Ordered Finance Reforms in the Adequacy Era: Heterogeneous Causal Effects and Sensitivity*, VANDERBILT UNIV. & UNIV. OF PA. (2017); C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question*, (Nat’l Bureau of Econ. Rsch., Working Paper No. 25368, 2018), <http://www.nber.org/papers/w25368> (finding “compelling evidence of a real positive causal relationship between increased school spending and student outcomes on average”).

¹⁸ *Student Profile for School Year 2018-2019*, MISSISSIPPI LIFETRACKS (2019), <https://lifetracks.ms.gov/PK12/ViewReport.aspx?reportName=PK12StudentProfile>.

¹⁹ E.g., Erika Eitland, et al., *Schools for Health: Foundations for Student Success*, HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH (2021); Lorraine E. Maxwell, *School Building Condition, Social Climate, Student Attendance and Academic Achievement: A Mediation Model*, 46 J. ENVIRON. PSYCH. 206-216 (2016).

gap of \$619 million every year.²⁰ During the period studied, 2009-19, the state paid for 0% of the construction capital outlay for public schools, compared to a national average of 22%.²¹

Mississippi's public schools are also plagued by water issues, the resolution of which would require the same resources that are withheld from them under Senate Bill 2780. *See, e.g.,* Tesfaye Negussie, Sabina Ghebremedhin, & Abigail A. Cruz, *Ongoing Water Issues Force Jackson, Mississippi, Public Schools To Go Virtual*, ABC News (Jan. 5, 2023), <https://abcn.ws/3CriDGj> (former kindergarten teacher noting that insufficient water pressure has caused schools to close on multiple occasions); Kaitlin Howell, *All JPS Schools Move To Virtual Learning Due To Water Issues*, WJTV (Aug. 30, 2022), <https://www.wjtv.com/news/jacksons-water-crisis/all-jps-schools-move-to-virtual-learning-due-to-water-issues/> (ongoing water conditions force all of Jackson Public Schools to close). On October 19, 2021, attorneys representing 600 Jackson children filed a federal lawsuit claiming that the children had been exposed to lead in their drinking water for years.²² Separately, the Mississippi Association of Educators, *amicus*, found that in 2021, more than half of Mississippi's public schools closed at some point because of water issues.²³

²⁰ *State of Our Schools Report 2021: Mississippi Public School Facilities Overview*, 21st Century Fund, National Council on School Facilities, International Well Building Institute, <https://static1.squarespace.com/static/5a5ccab5bff20008734885eb/t/619c0708efa84d1c4da37c5c/1637615369461/State+Profiles+2021+-+MS.pdf>.

²¹ *Id.*

²² Adam Ganucheau, *The Next Flint: City of Jackson, State Leaders Sued Over Lead In Drinking Water*, MISSISSIPPI TODAY (Oct. 20, 2021), <https://mississippitoday.org/2021/10/20/jackson-state-leaders-sued-lead-in-drinking-water/>.

²³ Edwin Rios, *Jackson Water Crisis Heaps More Disruption On City's Schoolchildren*, THE GUARDIAN (Aug. 31, 2022), <https://www.theguardian.com/us-news/2022/aug/31/jackson-water-crisis-schools-mississippi>.

In the face of deteriorating public school infrastructure, Senate Bills 3064 and 2780 would divert essential public funds that could be used to address these critical problems to instead be spent on the infrastructure of private schools.

CONCLUSION

For the reasons set forth above, this Court should affirm the trial court's decision.

RESPECTFULLY SUBMITTED, this **5th** day of **September**, 2023.

PUBLIC FUNDS PUBLIC SCHOOLS,
THE MISSISSIPPI ASSOCIATION OF
EDUCATORS, PASTORS FOR CHILDREN

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**Pro hac vice motion forthcoming*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed electronically with the Clerk of Court via the Court's MEC system and thereby served on all counsel of record who have entered their appearance in this appeal. I further certify that I have mailed by United States Postal Service, postage prepaid, the above and foregoing document to the following:

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This **5th** day of **September**, 2023.

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