IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2009-TS-00955

PASCAGOULA SCHOOL DISTRICT,
THE CITY OF PASCAGOULA, MISSISSIPPI,
DANIEL J. MARKS, SR., INDIVIDUALLY and
KATHLEEN LAIRD MITCHELL, a Minor,
by and through her father and natural guardian,
Randall L. Mitchell — APPELLANTS

VS.

JOE TUCKER, IN HIS OFFICIAL CAPACITY AS
TAX COLLECTOR OF JACKSON COUNTY,
MISSISSIPPI, and BENNY GOFF, IN HIS OFFICIAL
CAPACITY AS TAX ASSESSOR OF JACKSON
COUNTY, MISSISSIPPI, and BOARD OF SUPERVISORS
OF JACKSON COUNTY, MISSISSIPPI, and
THE STATE OF MISSISSIPPI — APPELLEES

ON APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY

BRIEF OF APPELLEES JOE TUCKER, BENNY GOFF AND BOARD OF SUPERVISORS OF JACKSON COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

JAMES H. HEIDELBERG (MSB#[redacted]
JESSICA M. DUPONT (MSB# [redacted]
HEIDELBERG, STEINBERGER
COLMER & BURROW, P.A.
Post Office Box 1407
Pascagoula, MS 39568-1407
Telephone: (228) 762-8021
Facsimile: (228) 762-7589

CERTIFICATE OF INTERESTED PERSONS

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

1. Pascagoula School District, Appellant

2. The City of Pascagoula, Mississippi, Appellant

3. Daniel J. Marks, Sr., Appellant

4. Katherine Laird Mitchell, Appellant

5. Joe Tucker, Appellee

6. Benny Goff, Appellee

7. Board of Supervisors of Jackson County, Mississippi, Appellee

8. The State of Mississippi, Appellee

9. Fred L. Banks, Jr., Luther T. Munford, R. Gregg Mayer, A. Kelly Sessums, III, Phelps Dunbar LLP, Attorneys for Pascagoula School District, City of Pascagoula, Daniel J. Marks, Sr., and Katherine Laird Mitchell, Appellants

10. Eddie C. Williams, Attorney for City of Pascagoula, Appellant

11. James L. Robertson, Wise Carter Child & Caraway, P.A., Attorney for Pascagoula School District, City of Pascagoula, Daniel J. Marks, Sr., and Katherine Laird Mitchell, Appellants

12. Alan W. Perry, T. Hunt Cole, Jr., Caroline M. Upchurch, Forman Perry Watkins Krutz & Tardy, LLP, Attorneys for Jackson County School District, Moss Point School District and Ocean Springs School District, Appellees

13. Jack C. Pickett, Attorney for Jackson County School District, Appellee

14. Henry P. Pate, III, Attorney for Moss Point School District, Appellee

15. Alwyn H. Luckey, Attorney for Ocean Springs School District, Appellee

16. Harold E. Pizzetta, III, Office of the Attorney General

17. Hon. James Hood, Attorney General of the State of Mississippi

18. James H. Heidelberg and Jessica M. Dupont, Heidelberg Steinberger Colmer & Burrow, P.A., Attorneys for Joe Tucker, Benny Goff and the Jackson County Board of Supervisors, Appellees

SO CERTIFIED, this, the 15th day of February, 2011.

JAMES H. HEIDELBERG

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SUPPLEMENTAL AUTHORITY:

STATEMENT REGARDING ORAL ARGUMENT

Appellees, pursuant to Rule 34(a)(3) of the M.R.A.P., would show the facts and legal arguments are adequately presented in the briefs and the record, part of the arguments are procedurally barred, and the decisional process would not be significantly aided by oral argument.

STATEMENT OF THE ISSUES

The trial court properly granted Defendants' Motion for Summary Judgment dismissing Plaintiffs' challenge to the constitutionality of Mississippi Code § 19-9-171.

STATEMENT OF THE CASE

Procedural History

This lawsuit and appeal stem from a bill signed into law during the 2007 legislative session. The Pascagoula School District and the City of Pascagoula (hereafter collectively referred to as "Pascagoula") filed this lawsuit on October 6, 2008, seeking a Declaratory Judgment and Injunctive Relief against Jackson County, its Tax Assessor and Tax Collector (hereafter collectively referred to as "the County"), and the State of Mississippi requesting the lower court declare Mississippi Code Annotated § 19-9-171 unconstitutional.

The petition claims Miss. Code Ann. § 19-9-171 is "in violation of Section 112 of the Mississippi Constitution of 1890" and further claims the statute violates Pascagoula's equal protection rights afforded them by the *Fourteenth Amendment* of the U.S. Constitution.

After the lawsuit was filed, the three other school districts within Jackson County[1], which are affected by Miss. Code Ann. § 19-9-171 moved to intervene, which the lower court allowed without objection. [Hereafter "Intervening School Districts".] They were

[1]Jackson County School District, Ocean Springs Municipal School District and Moss Point School District. The fourth municipality in Jackson County, the City of Gautier, does not have its own school district and is within the boundaries of the Pascagoula School District.

aligned as defendants below and are also Appellees in this Court.[2]

Discovery proceeded to a conclusion, then all parties moved for summary judgment. At the conclusion of oral argument the trial court denied Pascagoula's Motion for Summary Judgment and granted the Motions for Summary Judgment filed by the County, the State of Mississippi and the Intervening School Districts.

Pascagoula now appeals and continues to pursue its claim that § 19-9-171 is unconstitutional. It asks for the extraordinary relief of having this Court declare the duly-enacted statute unconstitutional and, in so doing, overrule the will of the people of Mississippi expressed through their Legislature and Governor.

Summary of Argument

Miss. Code Ann. § 19-9-171 is a constitutional and valid statute, and Pascagoula has failed to met its burden to show otherwise. Despite Pascagoula's discontent with the legislative process, the Court will recognize the majority of the arguments made by Pascagoula are neither relevant to this appeal nor pertinent to the Court's decision. Ultimately, the decision for this Court is whether it will second guess the Legislature and the Governor, and void the duly enacted statute by declaring it unconstitutional.

The issue before this Court on appeal is quite narrow – whether Miss. Code Ann. § 19-9-171 violates Section 112 of the Mississippi Constitution of 1890 or any equal protection rights afforded Pascagoula by the *Fourteenth Amendment* of the U.S. Constitution.

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[2]The County incorporates the arguments and briefs of the co-Appellees, Intervening School Districts and the State of Mississippi before this Court.

Pascagoula has not presented this Court with adequate authority on which to overrule the lower court's decision on these grounds.

What this case is about

Recognizing that crude oil refineries and liquified natural gas facilities are monumental financial investments with huge values in the billions of dollars, the Mississippi Legislature enacted § 19-9-171 to provide that all school children within any Mississippi county where such a facility is located share in the tax revenue collected on the facility in a reasonable and proportional manner.

The Chevron Refinery, located in Jackson County is outside the city limits of the City of Pascagoula but within the boundaries of the Pascagoula School District, and had an appraised value in 2007 of $1,438,977,780.00. There were over $400,000,000.00 in expansions and improvements to the Chevron facilities in 2008 alone, and by 2009, the value of the Chevron facilities exceeded $2,000,000,000.00. The new Gulf LNG facility[3], separate and distinct from the Chevron Oil Refinery, is now under construction and has a cost over $1,200,000,000.00[4].

Pascagoula, being unsatisfied with the judgment of the Legislature, the Governor and the Chancellor, now seeks anew to declare Miss. Code Ann. § 19-9-171 unconstitutional and

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[3] "LNG" is an acronym for liquified natural gas.

[4] In fact, the monumental expenditures continue to grow in Jackson County. In February of this year, Chevron announced an additional $1,400,000,000.00 expansion to its Jackson County Facility.

to nullify the law so Pascagoula can hoard the entire amount of tax receipts to be realized from these multi-billion-dollar facilities[5]. The Court should consider the following:

(a) Section 19-9-171 was duly passed by the Mississippi Legislature and signed by Governor Barbour as a "general law" and not a "special law". It applies to any property in any Mississippi county that comes within the legislatively-defined classification.

(b) The statute does not affect the power of Pascagoula, or any other taxing authority, to levy taxes equally on any property, and does not tax any property unequally.

(c) This case is not about the "*re*distribution" of collected tax revenue – it is about the *distribution* of collected tax revenue.

(d) Under the principles of separation of power in the Mississippi Constitution, the distribution of tax revenue is a specific power reserved solely for the Mississippi Legislature.

(e) No federal claim of "equal protection" is implicated or violated, and this Court, in construing federal rights and claims, does not have any special authority to act as a "super legislature" and

[5] The Appellants make no claim of any illegality in the legislative process which created § 19-9-171 nor should they. Even though the bill passed the legislature by a 50-2 vote in the Senate and 120-1 vote in the House of Representatives and was signed into law by Governor Barbour, they concentrate their criticism and comments to one single legislator. This statute was passed by the entire legislature by an overwhelming margin, was signed into law by Governor Barbour and has not been repealed or amended in the intervening terms of the legislature.

second guess valid state legislative enactments merely because a federal claim has been made.

(f) The City of Pascagoula and the Pascagoula School District were created by the Legislature, and thus have no standing to bring an "equal protection" claim.

(g) The Mississippi Legislature had a valid and rational purpose in enacting the statute to provide that all of the school children of any Mississippi county where such facilities are located receive a portion of the tax revenue from this certain classification of property and enacted a legitimate, laudable, proper, and reasonable method to insure this valid governmental, societal, and educational purpose.

(h) A Mississippi Supreme Court decision has recently held the distribution of tax revenue to multiple school districts within a county collected through a tax obligation imposed by another taxing authority is constitutional, proper, and reasonable. In fact, this Court has determined it is not only constitutional, but "fair" and embodies a legitimate and rational governmental purpose as determined by the Mississippi Legislature. *Harrison County School District, et al. v. Long Beach School District, et*

al., 700 So. 2d. 286 (Miss. 1997).

(i) Last, but not least, the same formula for the distribution of in lieu tax revenues to all the school districts in Jackson County, utilizing student population ratios of the four school districts, has been used since 1982. Pascagoula is knowledgeable of this and has acquiesced in such a method of distribution of revenue for almost thirty years.

This Court needs to keep one guiding principle in mind when deciding this case. Miss. Code Ann. § 19-9-171 does not affect any *taxing power* of Pascagoula or any other taxing authority of the State of Mississippi. Section 19-9-171 deals solely and exclusively with the *distribution* of revenue, not the levying or collection of taxes. It does not affect any power of the Pascagoula to tax the statutorily-classified property, and it does not call for the unequal taxation of any property. Contrary to Pascagoula's repeated protests, it does not deal with "*re*distribution" of tax revenue. Rather, it determines the "*distribution*" – a critical difference.

ARGUMENT

Pascagoula Never Made Any Claim Regarding a Violation of Section 206 of the Mississippi Constitution before the Trial Court

Contrary to established Mississippi law, on appeal Pascagoula changes the theory of its case and argues § 19-9-171 violates Section 206 of the Constitution. However, this theory and claim are simply not before this Court because they were never raised below.

> "The pleadings frame the issues in the lawsuit. They create the structure the Supreme Court reviews... a party cannot assert on appeal claims and defenses not raised in the pleadings or by a proper motion." [6]

One of the most fundamental and long established rules of law in Mississippi is that the Supreme Court will not review matters on appeal that were not raised at the trial court level. *Estate of Myers v. Myers*, 498 So. 2d 376, 378 (Miss. 1986); accord *R & S Development, Inc. v. Wilson*, 534 So. 2d 1008, 1012 (Miss. 1988); *Strait v. Pat Harrison Waterway Dist.*, 523 So. 2d 36, 41 (Miss. 1988); *Methodist Hospitals of Memphis v. Marsh*, 518 So. 2d 1227, 1228 (Miss. 1988); *Estate of Johnson v. Adkins*, 513 So. 2d 922 (Miss. 1987); *Bailey v. Collins*, 60 So. 2d 587, 589 (Miss. 1952). Although this Court may review questions of law raised below de novo:

> The Supreme Court is a court of appeals, it has no original jurisdiction; it can only try questions that have been tried and passed upon by the court from which the appeal is taken. Whatever remedy appellant has is in the trial court, not in this court. This court can only pass on the question after the trial court has done so. *Collins v. State*, 173 Miss. 179, 180 (1935).

Pascagoula has asserted an entirely different claim and theory on appeal than the one pursued in the lower court. In *Strait*, this Court held that on appeal, a party must pursue the same legal theory advanced in the trial court. Similarly, this Court in *Bailey v. Collins* ruled: "Appellant has now chosen an entirely different line of battle from that chosen in the court below, and we think the theory of the case as now presented on this appeal is not properly

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[6]*See* Mississippi Appellate Practice, Luther Munford, § 3.1. The exception cited in § 3.7 of this treatise is not applicable to the case before this Court.

before us for review." 60 So. 2d at 589.

This Court has consistently held that constitutional questions not raised at the lower court will not be reviewed on appeal. *Stockstill v. State*, 854 So.2d 1017, 1023 (Miss. 2003); *Ellis v. Ellis*, 651 So.2d 1068, 1073 (Miss. 1995); *Patterson v. State*, 594 So.2d 606, 609 (Miss. 1992). As this Court concisely stated in *Patterson v. State*, "[t]hese questions are waived -- forfeited, if you please -- if not asserted at the trial level." 594 So.2d at 609. See also, *Contreras v. State*, 445 So.2d 543, 544 (Miss. 1984).

Pascagoula asserts it should be heard on this legal theory because its post-judgment Motion for Stay Pending Appeal raises an argument regarding Section 206.[7] However, in the two and a half years this lawsuit has been pending, Pascagoula never alleged § 19-9-171 violates Section 206 of the Mississippi Constitution, despite the voluminous and intricate briefing on the merits at the trial court level. "This Court will not entertain on appeal a new theory of unconstitutionality which could have been raised, but was not advanced, before the trial court until a post-judgment motion." *Wright v. White*, 693 So. 2d 898, 903 (Miss. 1997)(overruled in part on other grounds). See also, *CIG Contractors, Inc. v. Miss. State Bldg. Comm'n*, 510 So. 2d 510, 514 (Miss. 1987)(theory argued for the first time in a post-trial motion was barred on appeal).

Essentially, Pascagoula seeks to have this Court interpret a de novo review of "pure

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[7]Neither did Pascagoula ever ask the trial court to consider § 206 in any request by way of rehearing or reconsideration of its judgment. The only mention of § 206 was in a request for a "stay" of the ruling, a motion Pascagoula lost twice in the trial court and has already lost in this appeal before this Court. (See this Court's Order denying Motion to Stay of January 18, 2011.)

issues of law" as the opportunity for a "do-over" or a fresh start on a new theory, which is simply and plainly impermissible.

Regardless, Pascagoula's reliance on Art. 8, § 206 of the Mississippi Constitution of 1890 is misplaced and benefits them not. The sovereign power of the Legislature to "provide for the establishment, maintenance and support of free public schools" is commanded by § 201 of the Constitution, and § 206 does not expressly restrict or limit the Legislature's power to appropriate or direct funds for that purpose.

Although not properly before the Court, in addressing Section 206, Pascagoula cites to Virginia case law and the application of the Virginia Constitution as being on point with the issue presented to this court, however it is not similar at all. Article IX, Section 136 of the Virginia Constitution of 1902, as relied upon by a Virginia court in *Harrison v. Day*, 106 S.E.2d 626 (Va. 1959) provides as follows:

> Each county, city or town, if the same be a separate school district, and school district is authorized to raise additional sums by a tax on property, subject to local taxation, not to exceed in the aggregate in any one year a rate of levy to be fixed by law, to be apportioned and expended by the local school authorities of said counties, cities, towns and districts in establishing and maintaining such schools as in their judgment the public welfare may require; provided that such primary schools as may be established in any school year shall be maintained at least four months of that school year, before any part of the fund assessed and collected may be devoted to the establishment of schools of higher grade. The boards of supervisors of the several counties, and the councils of the several cities and towns, if the same be separate school districts, shall provide for the levy and collection of such local school taxes.

By contrast, Article VIII, Section 206 of the Mississippi Constitution provides as follows:

> There shall be a state common-school fund, to be taken from the General Fund in the State Treasury, which shall be used for the maintenance and support of the common schools. Any county or separate school district may levy an additional tax, ***as prescribed by general law***, to maintain its schools. The state common-school fund shall be distributed among the several counties and separate school districts in proportion to the number of educable children in each, to be determined by data collected through the office of the State Superintendent of Education in the manner to be prescribed by law. (Emphasis added).

The obvious difference in these Constitutional provisions is the Virginia Constitution expressly gives local school authorities sole control over establishing and maintaining the schools, and the levying and collection of those school taxes is constitutionally reserved to the boards of supervisors and/or city councils.

This is simply not so in Mississippi Section 206. In fact, the Constitution expressly limits the power of the local authorities by reserving the right to the Legislature to control the distribution of taxes through the inclusion of "as prescribed by general law". The detailed "history of Section 206" provided by Pascagoula in its brief proves this point. Section 206 of the Constitution of 1890 did not include the language "as prescribed by general law". As aptly stated by Pascagoula, the "three-fund structure" of Section 206 was abolished when the Constitution was amended in 1989, though, the amendment indeed altered the "identity of the noun to which the pronoun in 'its schools' referred". The amendment added the critical words "as prescribed by general law." The Virginia Constitution was self-executing, while the Mississippi Constitution, necessarily through its language, relies on the Legislature for execution.

Pascagoula also cites to case law arising out of Texas – case law, of course, based on the Texas Constitution. As indicated by Pascagoula, it is true the court in *Edgewood Independent School District v. Kirby*, 804 S.W.2d 491 (Tex. 1991), found that state-wide recapture of local ad valorem tax revenue was impermissible and unconstitutional. However, Pascagoula omitted a critical constitutional provision that the Texas court relied upon to come to this conclusion – Texas' Constitution explicitly prohibits "state ad valorem taxation".

Neither does the Attorney General's opinion cited by Pascagoula give aid to the issues presented. The opinion is in response to the following question, in sum: Whether a board of supervisors has the authority to levy upon property within another entity's school district even though it is outside any municipal boundary. At first blush, this opinion seems on point with today's appeal. However, a reading of the request to the Attorney General and the response deals with the authority of the board of supervisors to levy upon property outside of its jurisdiction, not whether the Legislature can direct the distribution of taxes. The Opinion states:

> In short, the **county** does not have the authority to **levy** a tax on the proposed industrial site and divide the tax revenues between the municipal and county school districts.
>
> Although a proposed industrial development is located outside the corporate limits of the municipality, the county board of supervisors does not have the authority to **levy** an ad valorem school tax when the site is within the municipal separate school district. The municipality has sole jurisdiction in **levying** a school tax on property located within the municipal separate school district. (Emphasis added.)

While there is no question the property in question here is outside the city limits of Pascagoula, but within the Pascagoula School District, the City of Pascagoula remains the levying authority, the "county" is not levying on anything, nor is the "county" the authority at question. The Legislature is the governmental entity, who by "general law" enacted the statute. The opinion itself states that it is based on the fact there was no "statutory authority"[8] where here § 19-9-171 is the statutory authority enacted by the Legislature for the very purpose. Again, the statute at issue does not affect the levying authority of City of Pascagoula and it is the express statutory authority for the distribution of taxes from this classification of property.

Also, Pascagoula relies upon an explicit exception contained within § 37-57-1 in an attempt to further support its claim that § 19-9-171 is unconstitutional, however, in doing so, Pascagoula admits that Section 206 of the Constitution requires legislative action to create a "maintenance fund" on the one hand and on the other hand asserts that Section 206 asserts that Section 206 by itself creates the "maintenance fund" which cannot be infringed upon. As stated previously, Section 206 allows the Legislature, by its prerogative and through general law, to establish a district maintenance fund. The Legislature prior to the enactment of § 19-9-171 had done just that, and provided direction for those funds. When enacting § 19-9-171, the Legislature purposely excluded the revenues from taxes levied upon the

[8]"I am unable to find any statutory authority that allows the Board of Supervisors to make such requirement or condition, or in any way allows them to divert funds from another school division within the boundaries of the county." (See, Opinion No. 2004 0041, March 5, 2004, second paragraph) (emphasis added)

specific properties at issue and guided the distribution of those specific revenues through a general law, which is clearly allowed by Section 206.

Pascagoula's reliance on *Miller v. State*, 130 Miss. 564; 94 So.2d 706 (Miss. 1922) also does not support their argument. In that case, the Mississippi Supreme Court decided authoritatively that:

> (a) "...it is our plain duty to adopt the construction upholding the statute where there are two reasonable constructions, one of which upholds the statute, and the other invalidates it";
> and
> (b) "It is our judgment that Section 206 does not expressly or by implication limit or restrict the Legislature to appropriations for the four month term mentioned in the section of the Constitution, but that sovereign power of the Legislature to provide funds for public education is commanded by Section 201 of the Constitution is not limited to a four month term by Section 206, and may be extended within the bounds of Legislative discretion." (At p. 587)

While *Miller* did not address the precise issue before this court, it did express the Mississippi Supreme Court's position that the construction of Section 206 argued by Pascagoula is not contained in the express language of the section, nor does Mississippi case law support Pascagoula's proposed application.

Pascagoula cannot establish Miss. Code Ann. § 19-9-171 is unconstitutional beyond a reasonable doubt.

As this Court is aware, legislative enactments are cloaked with the strong presumption of constitutionality, and that acts of the Legislature are valid. *Dillard v. Musgrove*, 838 So.2d 261, 264 (Miss. 2003); *Arant v. Hubbard*, 824 So. 2d 611, 614 (Miss. 2002). All presumptions and intendments must be indulged in favor of the validity of a

statute. Its unconstitutionality must appear beyond a reasonable doubt before a court is empowered to declare it invalid. *Richmond v. City of Corinth*, 816 So. 2d 373, 378 (Miss. 2002).

When a statute can be interpreted either as constitutional or unconstitutional, the Court must adopt the constitutional construction. *In Interest of B.D.*, 720 So. 2d 476 (Miss. 1998). Statutory classifications and legislative judgment must be upheld from attack "if any state of facts can reasonably be conceived to sustain it." *Board of Education of Benton County v. State Educational Finance Comm.*, 138 So. 2d 912, 926 (1962). In other words, all doubts must be resolved in favor of the validity of a statute. *Wallace v. Town of Raleigh*, 815 So. 2d 1203, 1206 (Miss. 2002). Thus, Pascagoula must tote the heavy burden of establishing the unconstitutionality of § 19-9-171 beyond any reasonable doubt.

There are few disputes before any court which require such a high burden of proof as the one required here. The Court does not require citation of authority for the proposition it lacks the authority under the Mississippi Constitution to act as the "third house" of the Legislature and to second guess its decision in making laws. This principle applies whether the Court is considering acts of the Mississippi Legislature or determining claims under the Mississippi or Federal Constitutions.

Pascagoula's tremendous burden is only made greater because the subject of this dispute deals with taxation and a decision by the people's elected representatives in the Legislature to determine how tax revenues are distributed after they are collected. This is a

core legislative function rather than a judicial one, which the Mississippi Supreme Court recently made crystal clear again in its decision of *In Re: Jim Hood, Attorney General, Ex Rel v. State of Mississippi*, 958 So. 2d 790 (Miss. 2007). The Supreme Court observed, without question, the duty of determining how public funds and other state resources are allocated lies with the Legislature, it does not lie with the courts.

Merely because Pascagoula wants all of the *ad valorem* revenues from the subject properties is not grounds to declare the statute unconstitutional. While this statute embodies wise, just and appropriate policy making, the Supreme Court stated in *Pathfinder Coach Division of Superior Coach Corp. v. Cottrell*, 62 So.2d 383, 385 (1953), that even if this were not the case, "statutes cannot be declared invalid on the ground that they are unwise, unjust, unreasonable, immoral, or because opposed to public policy, or the spirit of the Constitution."

Miss. Code Ann. § 19-9-171 is a general law that rationally furthers a legitimate State interest.

Pascagoula complained to the trial court the statute's revenue-sharing provisions violate its *Fourteenth Amendment* right to equal protection of law because the Pascagoula School District is the only school district affected by this statute. However, it was conceded below that the Pascagoula School District and the City of Pascagoula had no standing[9] to

[9]The City of Pascagoula and the Pascagoula School District do not even have standing to assert the statute contravenes the *Fourteenth Amendment* because they are "creatures of the State ... [and] have no standing to invoke the ... provisions of the *Fourteenth Amendment of the Constitution* in opposition to the will of their creator." *Coleman v. Miller*, 307 U.S. 433, 441 (1939). *See* Record, Transcript p. 60, statement of counsel during oral argument to the Court

bring a claim under the *Fourteenth Amendment* of the *U.S. Constitution.* Besides having no standing, Pascagoula's assertion fails for at least two additional reasons: (1) the statute is a general law, broad enough to encompass all properties within the state of Mississippi matching the legislatively defined classification, even though presently, Jackson County may be the only county affected; and (2) Miss. Code Ann. § 19-9-171 withstands *Equal Protection Clause* scrutiny because it rationally furthers a legitimate state purpose or interest[10].

A. Miss. Code Ann. § 19-9-171 is a valid "general" law because it applies to any property in any Mississippi county that falls under the legislatively-defined classification.

Pascagoula also implies to this Court that § 19-9-171 is invalid local and private legislation. To the contrary, § 19-9-171 is a valid general law. Section 87 of the Mississippi Constitution defines a law as "general" when it operates uniformly on all members of a class of persons, places or things requiring legislation peculiar to the class with which it deals. When discussing classifications drawn by the Legislature in statutes and laws, the Court affords the Legislature great latitude in its exercise of that power and "nowhere is the power of classification accorded more latitude than in the field of taxation." *Burrell v. State Tax*

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below. "Certainly we're aware of the fact that political subdivisions do not have standing to raise equal protection arguments." The individual Appellants are nominal at best and have not actually participated in this proceeding. Any claim they have is so speculative it is not worthy of consideration and was not pursued in any fashion by Appellants.

[10] While Appellant does not separately designate a "equal protection" argument in its brief as such, they certainly assert in their challenge the principle that they are not treated "equally" by the operation of the statute.

Commission, 536 So. 2d 848, 861 (Miss. 1989).

Pascagoula implies its rights are violated because under the statute's terms and classification, it currently applies only to the Pascagoula School District. Pascagoula is wrong. Our Supreme Court has addressed that very argument when deciding whether a law is general or special:

> Where a law is broad enough to reach every portion of the state and to embrace within its provisions every person or thing distinguished by characteristics sufficiently marked and important to make them clearly a class by themselves, it is not a special or local, but a general law *even though there may be but one member of the class or one place on which it operates*. (Emphasis in original). *Burrell*, 536 So.2d at 862.

This Court must uphold statutory classifications and legislative judgment if "any state of facts can reasonably be conceived to sustain it." *Id.* Obviously, the statute encompasses the revenues of any *ad valorem* taxes for school district purposes levied upon any "liquefied natural gas terminals or improvements thereto constructed after July 1, 2007, crude oil refineries constructed after July 1, 2007, and expansions or improvements to existing crude oil refineries constructed after July 1, 2007".[11] Neither Jackson County, nor the Pascagoula School District, nor the Chevron or Gulf LNG facility are mentioned in the statute. The statute clearly applies to any liquefied natural gas terminals or improvements, crude oil refineries, and expansions or improvements to existing crude oil refineries constructed after July 1, 2007 regardless of the situs within the State of Mississippi.

B. Miss. Code Ann. § 19-9-171 rationally furthers the legitimate purpose to provide all

[11]Miss. Code Ann. § 19-9-171.

school children of any Mississippi county with an education.

Section 19-9-171 withstands constitutional scrutiny, not only because Pascagoula has no standing to raise the claim, but also because the statute rationally furthers a legitimate state purpose or interest. No suspect class or fundamental right is involved and so the "rational relationship" test applies. *State v. Jones*, 726 So. 2d 572, 574 (Miss. 1998). For a statute to be constitutional under the *Fourteenth Amendment*, the statute in question must be rationally related to a proper legislative purpose. *Wheeler v. Stewart*, 798 So. 2d 386, 391 (Miss. 2001). In a rational basis analysis, courts presume the statute is constitutional. As stated above, Pascagoula carries the heavy burden of proving either the Legislature had no constitutionally valid purpose to develop the classifications or the Legislature could not have reasonably concluded the classifications were rationally related to that purpose.

Recognizing that crude oil refineries and liquified natural gas facilities worth billions of dollars are monumental financial investments with incrédibly huge values, the Mississippi Legislature enacted § 19-9-171 in 2007 so that all school districts within a Mississippi county where such a facility is located can share in the revenue from taxes levied on such a facility in a reasonable and proportional manner. The Mississippi Legislature certainly had a valid and rational purpose in enacting the statute to provide that all of the school children of any Mississippi county receive a portion of the tax revenue. To that end, the Legislature enacted a legitimate, laudable, proper, and reasonable method to insure this valid governmental, societal, and educational purpose.

Certainly, at a minimum, the statute is rationally related to the primary goal and duty of assuring the education for every public school child in any Mississippi county. Pascagoula has not and cannot provide this Court evidence to the contrary. By lacking standing and having failed to satisfy its burden of proving the statute violates its *Fourteenth Amendment* right, Pascagoula's implied equal protection challenge to the statute fails.

Statutes dealing with revenue, tax distribution, and public monies are the province of the legislative branch of government.

This Court has repeatedly acknowledged that statutes dealing with revenue, tax distribution and public monies are solely the province of the legislative branch of government. Municipalities and other taxing authorities derive their power to levy taxes only through a delegation from the State of Mississippi: "The legislature has plenary power to deal with the entire subject of taxation. Its power is supreme in devising the machinery for assessing the taxable property, imposing taxes thereon, and collecting and disbursing the same." *Adams v. Kuykendall*, 35 So. 830, 835 (Miss. 1903).

Fifty years later, the Court declared the "Legislature has the power to distribute a portion of the tax in any manner, upon any basis, and under any formula which it may prescribe." *McCullen v. State*, 63 So.2d 856, 862 (Miss. 1953).

Another fifty years later, the Court in *City of Belmont v. Mississippi State Tax Comm.*, 860 So. 2d 289 (Miss. 2003), again confirmed the Legislature's fundamental right "to determine the sources from which the public revenues shall be derived and the objects upon which they shall be expended, to dictate the time, the manner, and the means both of their

collection and disbursements," and stated that:

> . . . in Mississippi, a municipality is a 'creature' of the State, possessing only such power as may be granted by statute. It necessarily follows that of the three branches of state government, the legislative branch is the one possessing the constitutional and statutory authority to not only divert sales taxes to the various municipalities, but to also establish exemptions to the sales tax diversions ... *With matters involving the collection, expenditure and disbursement of the taxpayers' monies, we must afford great deference to that branch of state government vested with clear constitutional and statutory responsibilities.* 860 So. 2d at 306. (Emphasis added.)

Mississippi courts have consistently and repeatedly held for over one hundred years that disbursement of taxpayers' money is purely a function of the Legislature. The City of Pascagoula and the Pascagoula School District are creatures of legislative will and their powers are entirely dependent upon legislative discretion. Furthermore, the mere fact that Pascagoula collects the taxes does not prohibit the distribution of the taxes to other entities.[12]

This Court has recently held the Legislature can constitutionally distribute tax revenue to school districts regardless of the entity levying and collecting the tax. In 1997, the Supreme Court was faced with a very similar issue in *Harrison County School District v. Long Beach School District*, 700 So.2d 286 (Miss. 1997). In *Harrison County School District*, the Court addressed three House bills which were signed into law dealing with the distribution of an authorized 3.2 percent tax on the gross revenue generated by casinos docked within various Harrison County municipalities. Each House bill authorized specific municipalities to impose a tax upon the docked casinos within that municipality, and directed

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[12]In fact, Jackson County actually collects the tax for Pascagoula by virtue of an Interlocal Agreement entered into by the City of Pascagoula to do so.

a certain percentage of the collected tax "shall be expended for educational purposes in Harrison County". The collected taxes were initially distributed solely to the Harrison County School District without regard to any other school district within Harrison County.

Aggrieved, Long Beach School District filed suit arguing "Harrison County" encompassed the entirety of the county, rather than just the Harrison County School District. Finding in favor of Long Beach School District, the trial judge found the statutory language unambiguously encompassed the whole county, which the Supreme Court affirmed.

The Harrison County School District decision ratifies the constitutionality of a legislative decision allowing the revenue which is levied and collected by one political subdivision to be distributed to other political subdivisions. In fact, this Court determined it is not only constitutional but "fair" in the sense that it embodies a legitimate and rational governmental purpose as determined by the Mississippi Legislature. *Harrison County School District, et al. v. Long Beach School District, et al.* 700 So. 2d. 286 (Miss. 1997).

The distribution of revenue called for by the statute is reasonable, rational, and has been used in Jackson County for many years.

A distinction crucial to the Court's inquiry is that of "re-distribution" versus "distribution". Pascagoula repeatedly asserts that Miss. Code Ann. § 19-9-171 "redistributes" Pascagoula School District's money. This necessarily implies Pascagoula is constitutionally entitled to receive the full amount of tax revenue levied upon this classification of property. However, this is simply not true for two reasons: (1) The City, on behalf of Pascagoula School District, is the entity which will levy taxes – however, there is

no constitutional entitlement to the collected taxes by the levying authority; and (2) the statute's distribution formula is logical and has been used in a similar context within Jackson County and with Pascagoula School District since 1982 – not through a legislative enactment, but through an In Lieu Tax Agreement entered into with Chevron U.S.A., Inc.

A. Pascagoula continues to levy taxes equally – there is no constitutional entitlement to the full revenue from the collected taxes.

Contrary to Pascagoula's repeated assertions that § 19-9-171 calls for a "re-distribution" of "its" tax revenues and to that end, its enforcement violates § 112 of the Mississippi Constitution, the provisions of § 19-9-171 relate to the distribution of tax revenues collected from a specific property classification. Any argument that §19-9-171 violates Section 112 of the Mississippi Constitution is on its face contrary to the statutory and constitutional language. Section 112 of the Mississippi Constitution deals quite specifically with the levying of taxes. Once the taxing authority levies upon all property, and the county officials collect the taxes, § 19-9-171 then directs the distribution of the tax revenue collected on certain properties.

As such, the distribution of tax revenues as directed by Miss. Code Ann. § 19-9-171 does not run afoul § 112 of the Mississippi Constitution of 1890. As this Court has previously rendered many times, "the revenues of a [political subdivision] are not the property of the [political subdivision]...The revenues of a [political subdivision] are subject to the control of the Legislature..." *State v. Hinds County Board of Supervisors*, 635 So. 2d 839, 843 (Miss. 1994).

In the lower court, Pascagoula argued § 19-9-171 violates the Constitution "by restricting [its] authority to levy and collect school district *ad valorem* taxes."[13] This interpretation of the statute is contrary to the clear and unambiguous language of the statute. A simple reading of the statute plainly establishes distribution of collected tax revenues is the sole subject, and Pascagoula's ability to levy and collect tax revenues is unaffected. Because Pascagoula has failed to show any unequal levy of taxes, its theory again shifts under §112 to claim the "levy is not based upon all the property" within its district.

Pascagoula is mistaken in this argument and seems to confuse the subject of Section 112. Pascagoula has not been, and will not be, denied any right to levy taxes on any property by § 19-9-171 nor does the statute compel an unequal levy of taxes. Section 112 requires an equal and uniform levy of taxes, and Miss. Code Ann. § 19-9-171 does not affect that levying power.

The levy upon the certain properties classified under Miss. Code Ann. § 19-9-171 remains unchanged. To that end, it is important to note that neither Chevron USA nor Gulf LNG (the two entities which own the properties presently falling within this statute's classification) have moved to intervene in this lawsuit, nor have they at any time protested their rights have been violated or they will be treated unfairly or unequally.

Further, Pascagoula represents to this Court that under Section 112 of the Constitution, it is inherently entitled to any and all tax revenues collected and that the statute

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[13]*See*, Petition for Declaratory Judgment and Injunctive Relief at p. 6, ¶ 30, see Record p. 6.

is in violation of that entitlement. Contrary to Pascagoula's assertion the statute's distribution of the tax receipts violates the constitutional mandate of equal taxation, Mississippi courts have repeatedly held there is "no requirement of uniformity or equal protection under the Mississippi and federal Constitutions [which] limits the power of the legislature in respect to the allocation, distribution and application of public funds. The equal and uniform requirement relates to the levy of taxes, and not to the distribution or application of the revenue of the state." *Culley, et al. v. Pearl River Industrial Commission*, 108 So.2d 390, 399 (Miss. 1959)(Emphasis added).

Pascagoula's brief contains arguments regarding the process of tax computation that could mistakenly be understood to say that tax payers in Pascagoula will have to pay HIGHER taxes due to this statue and that is "unfair" as well as unconstitutional. An examination of the facts finds this is not necessarily so and even if it occurs, it will not be a result of the operation of this statute.

Recall that the Pascagoula School District requests a DOLLAR AMOUNT to the City of Pascagoula, it does not request an amount of MILLAGE. The millage amount is a consequence of the dollars requested by the School District.

Clearly, the Pascagoula School District will receive MORE DOLLARS due to more revenue generated by these tremendously large expansions. If Pascagoula's millage rate remains the same, by simple math Pascagoula will receive additional dollars because they will receive 100% of the tax revenue from the property not affected by this statute, as well

as an additional 29% of the tax dollars which result from the expansions.

Said another way, Pascagoula School District will get MORE DOLLARS in addition to what they were already receiving from the same millage. Therefore, the only reason for a higher millage amount would be the Pascagoula School District's demand for an increase in DOLLARS from the City of Pascagoula.

Contrary to the assertion by Pascagoula there is no "extra burden borne by Pascagoula tax payers", unless the Pascagoula School District increases its dollar amount request by a figure larger than what it has been receiving, PLUS what it receives from the new classification of property.

B. From 1982 and continuing today, Pascagoula has acquiesced in the same manner of distribution of in lieu tax revenue from property located within the Pascagoula School District.

Pascagoula does not receive the full amount of in lieu tax revenue levied upon certain properties within the Pascagoula School District[14] – not through any legislative enactment but because of a 1982 In Lieu Tax Agreement with Chevron U.S.A. Inc. The same formula of distribution of in lieu tax revenues to all the school districts within Jackson County's boundaries has been utilized by using student population ratios of the four school districts. Pascagoula and the Pascagoula School District are knowledgeable of and have acquiesced to such a method of distribution of tax revenue for almost thirty years and continue to do so to this very day.

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[14]Likewise, located within the Chevron facility outside the city limits of Pascagoula.

Jackson County and Chevron U.S.A., Inc. entered into a lease agreement in connection with the Pollution Control Projects in 1981 and restated that lease agreement in 1982. That same year, Jackson County issued multi-million dollar Pollution Control Bonds and Port Bonds to defray the cost of pollution control facilities and port facilities at Chevron U.S.A., Inc.'s crude oil refinery. Due to this, Jackson County entered into two In Lieu Tax Agreements with Chevron U.S.A., Inc., one pertaining to the Pollution Control Bonds and the other pertaining to the Port Bonds. Both In Lieu Tax Agreements stated, *inter alia*:

> the Company agrees to pay to the County as additional annual payments ...an amount equal to the annual municipal separate school district ad valorem taxes which otherwise would be lawfully levied by the City of Pascagoula...which annual payments shall continue ... so long as the Pollution Control Project and the Additional Pollution Control Project [and Port Project] are owned by the County.[15]

During that same period, the Jackson County Board of Supervisors passed a resolution declaring "the monies to be received in lieu of the School District Ad Valorem Taxes shall be divided by the County among all of the School Districts in Jackson County based upon the average daily attendance of the number of pupils attending the public schools in Jackson County."[16] The Resolution's language for the distribution of these funds is nearly identical to that in the challenged statute.

Although Pascagoula argues it is somehow constitutionally entitled to the full receipt of all the tax revenues, the fact remains Pascagoula has shared payments (revenue) using the

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[15]*See*, R. 288-289

[16]*See*, R. 297

exact distribution formula now challenged since 1982 with the other three school districts and continue to do so today. In short, Pascagoula is not constitutionally "entitled" to the full sum of any tax revenue, and the statute simply does not violate any constitutional authority or right of Pascagoula to levy taxes. Furthermore, the statute does not modify the existing rules for the appraisal and/or assessment of the subject properties.

CONCLUSIONS

The Court should uphold the Chancellor's grant of summary judgment for the following reasons:

1. Pascagoula bears the burden of proving this statute is unconstitutional beyond a reasonable doubt, and it has failed to do so.
2. The City of Pascagoula and the Pascagoula School District lack the legal standing to make the equal protection arguments they made before the trial court and now make here.
3. This Court has been shown no authority that allows it to substitute its judgment on policy and nullify a statute passed by the overwhelming majority of the Legislature and signed by the Governor which has not been amended, repealed, or modified in the three intervening legislative sessions.
4. Pascagoula's disparagement of certain lawmakers and the legislative process provides no legal basis for this Court to substitute its judgment for the Legislature.

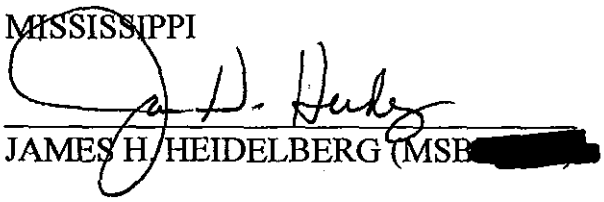
5. This statute is a general law and not a "special" law contrary to the assertions and argument of Pascagoula.

6. Mississippi law unquestionably holds that the distribution of tax revenue is a legitimate and rational governmental purpose which is within the province of the Mississippi Legislature.

7. Pascagoula has failed to prove the lack of a legitimate or rational purpose for the enactment of the statute or the distribution of the tax revenue on a rational student population ratio basis.

RESPECTFULLY SUBMITTED,

JOE TUCKER, IN HIS OFFICIAL CAPACITY AS TAX COLLECTOR OF JACKSON COUNTY, MISSISSIPPI, and BENNY GOFF, IN HIS OFFICIAL CAPACITY AS TAX ASSESSOR OF JACKSON COUNTY, MISSISSIPPI and BOARD OF SUPERVISORS OF JACKSON COUNTY, MISSISSIPPI

BY: 

JAMES H. HEIDELBERG (MSB[redacted]

JAMES H. HEIDELBERG (MSB#[redacted]
JESSICA M. DUPONT (MSB#[redacted]
HEIDELBERG, STEINBERGER COLMER & BURROW, P.A.
Post Office Box 1407
Pascagoula, MS 39568-1407
Telephone: (228) 762-8021/Facsimile: (228) 762-7589

CERTIFICATE

I, James H. Heidelberg, of the law firm of HEIDELBERG, STEINBERGER, COLMER & BURROW, P.A., do hereby certify that I have this day served a copy of the above ***BRIEF OF APPELLEES*** via U.S. Mail, postage prepaid, on the following:

A. Kelly Sessums, III, Esq.
PHELPS DUNBAR LLP
P.O. Box 30
Pascagoula, MS 39568

Eddie C. Williams, Esq.
P.O. Box 908
Pascagoula, MS 39568

James L. Robertson, Esq.
Wise Carter Child & Caraway, P.A.
401 East Capitol Street
Heritage Building, Suite 600
Jackson, MS 39205

Fred L. Banks, Jr., Esq.
Luther T. Munford, Esq.
Robert Gregg Mayer, Esq.
PHELPS DUNBAR LLP
4270 I-55 North
Jackson, MS 39211
Attorneys for Plaintiffs

Harold E. Pizzetta, III
Office of the Attorney General
State of Mississippi
P.O. Box 220
Jackson, MS 39205
Attorney for State of Mississippi

Jack C. Pickett, Esq.
P.O. Drawer 1268
Pascagoula, MS 39568-1268
Attorney for Jackson County School District

Henry R. Pate, III, Esq.
712 Watts Avenue
Pascagoula, MS 39567
Attorney for Moss Point School District

Alwyn H. Luckey, Esq.
Luckey & Mullins, PLLC
2016 Bienville Blvd
Ocean Springs, MS 39564
Attorney for Ocean Springs School District

Alan W. Perry, Esq.
T. Hunt Cole, Jr., Esq.
Caroline M. Upchurch, Esq.
Forman, Perry, Watkins, Krutz & Tardy, LLP
P.O. Box 22608
Jackson, MS 39225-2608
Attorneys for Defendants-Intervenors

THIS, the 15th day of February, 2011.

JAMES H. HEIDELBERG

CERTIFICATE

I, James H. Heidelberg, of the law firm of HEIDELBERG, STEINBERGER, COLMER & BURROW, P.A., do hereby certify that I have this day served a copy of the above ***BRIEF OF APPELLEES*** via U.S. Mail, postage prepaid, on the following:

Franklin C. McKenzie Jr.
Special Chancellor
P O Box 1961
Laurel, MS 39441-1961

THIS, the 17th day of February, 2011.

JAMES H. HEIDELBERG