IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2010-CA-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

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# BRIEF OF APPELLEE STATE OF MISSISSIPPI

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On Appeal from the Chancery Court of Jackson
County, the Honorable Franklin C. McKenzie, Jr.

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ORAL ARGUMENT NOT REQUESTED

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## Statement of the Issue

Whether the Chancellor correctly concluded that Appellants failed to establish beyond a reasonable doubt that Mississippi Code Section 19-9-171 is in palpable conflict with the clear language of Article 4, § 112 of the Constitution.

## Summary of Argument

In order to prevail in this challenge to the constitutionality of a duly enacted statute, the Appellants must establish beyond a reasonable doubt that Section 19-9-171 is in palpable conflict with plain language in the Constitution. The Chancellor correctly determined that the Appellants failed to meet their high burden. Mississippi law is clear; the municipality and school district appellees in this matter are subdivisions of the state, created by statute, and subject to plenary legislative control. The State's "creator power" over the these subdivisions extends to the control of funds in the possession of political subdivisions of the State. The plain language of Article 4, Section 112's pronouncement regarding equal taxation simply does not extend so broadly as to prohibit the legislature from directing the expenditure of revenues collected via such equal taxation and in the possession of subordinate political subdivisions.

## Argument

Defendant State of Mississippi joins the factual and legal arguments advanced in the lower court and before this Court by Co-Appellees Jackson County School District, Moss Point School District, Ocean Springs School District, the Board of Supervisors of Jackson County, Jackson County Tax Collector Joe Tucker, and Jackson County Tax Assessor Benny Goff. The State writes separately to amplify selected arguments that refute Appellants' contentions regarding the constitutionality of Mississippi Code Section 19-9-171.

### I. Appellants Cannot Overcome Code Section 19-9-171's Strong Presumption of Constitutionality.

Appellants face a very heavy burden in assailing the constitutionality of a duly enacted state statute. Appellants must "overcome the strong presumption" that the legislature – this Court's co-equal branch of government – acted within its constitutional authority in adopting Section 19-9-171. *Cities of Oxford, Carthage, Starkville and Tupelo v. Northeast Elec. Power Ass'n*, 704 So.2d 59, 65 (Miss. 1997); *James v. State*, 731 So.2d 1135, 1136 (Miss. 1999). Appellants must demonstrate that Section 19-9-171 is in direct conflict with "the clear language of the constitution." *PHE, Inc. v. State*, 877 So.2d 1244, 1247 (Miss. 2004). The judiciary's respect for the

legislature's constitutional judgment and plenary authority to establish state policy is well and properly established.

> In determining whether an act of the Legislature violates the Constitution, the courts are without the right to substitute their judgment for that of the Legislature as to the wisdom and policy of the act and must enforce it, unless it appears beyond all reasonable doubt to violate the Constitution. Nor are the courts at liberty to declare an Act void, because in their opinion it is opposed to a spirit supposed to prevail the Constitution, but not the expressed words.

*Pathfinder Coach Division of Superior Coach Corp. v. Cottrell,* 62 So.2d 383, 385 (Miss. 1953) (citation omitted). This Court has previously cautioned trial courts that "[w]hen a party invokes our power of judicial review, it behooves us to recall that the challenged act has been passed by legislators and approved by a governor sworn to uphold the selfsame constitution as are we." *State v. Roderick,* 704 So.2d 49, 52 (Miss. 1997).

It is well established that a "Mississippi court may strike down an act of the legislature only where it appears beyond all reasonable doubt that the statute violated the clear language of the constitution." *PHE, Inc.*, 877 So.2d at 1247 (internal quotation omitted). "All doubts must be resolved in favor of validity of a statute, and any challenge will fail if the statute does not clearly and apparently conflict with organic law after first resolving all doubts in favor of validity." *Id.* (internal quotation omitted). In fact, even where there exists a conflict between a statute and the Constitution, the conflict must be

"palpable before the courts of this State will declare a statute unconstitutional." *Quitman County v. State of Mississippi*, 910 So.2d 1032, 1036 (Miss. 2005). In the final analysis, "to state that there is doubt regarding the constitutionality of an act is to essentially declare it constitutionally valid." *Moore v. Board of Supervisors of Hinds County,* 658 So.2d 883, 887 (Miss. 1995).

While the strong presumption in favor of the constitutionality of statutes reflects on the part of the judiciary the respect due to the legislature as a co-equal branch comprised of popularly elected representatives, there is an additional consideration relevant to the State's ability to adopt complex social and financial policy in an ever-changing landscape that may not be readily apparent. To properly apply the heavy burden of proof associated with a challenge to the constitutionality of a statute, the finality and ramifications of a decision that the Constitution forbids a legislative act must be considered. By way of comparison, a judicial determination that an agency has exceeded its statutory authority may be addressed by the legislature enacting changes to the agency's governing statutes. Similarly, a decision that the Division of Medicaid is required by state statute to reimburse medical providers at a particular monetary level may be later adjusted or alleviated altogether by the legislature through an amendment to the Medicaid statute. A state statute that inartfully addresses a particular need

can be remedied by electoral pressure brought to bear on legislators. Indeed, even the statute at issue, Section 19-9-171, is subject to the legislative's revision and/or improvement. In sum, statutory rights and obligations are fluid and the citizens, through the legislature, retain the important and fundamental ability to change statutory obligations to reflect changes in social policy or economic conditions.

In contrast to matters of statutory concern, because the ability to amend the Constitution is so limited, a judicial decision that the Constitution forbids a particular legislative act is likely final for all time and forever prohibit the legislature from revisiting the matter. To declare, as Appellants suggest, that the Constitution forbids the legislature from any action related to these funds would be to restrict the legislature, tying its hands, and the hands of the State, from addressing the social or financial policy at issue. Constitutional pronouncements remove, for practical purposes, the issue from the political and representative field of play comprised of the ballot box.

In this respect, the judiciary's use of the Constitution to declare void an act of the legislative branch has the immediate impact of overturning the will of its co-equal and representative body, as well as the long-term ramification of limiting future state policy in a manner likely not immediately comprehendible. The future ramifications of this ultimate judicial act is an important consideration when this Court is asked to declare for all time that

Constitution prohibits the legislature from addressing revenue in the possession of a subordinate political subdivision. This consideration is especially prominent when the issue at hand involves the fluid and complex matters of taxation and finance as between the state and subordinate subdivisions. To declare an act unconstitutional is to strike with a heavy, and most likely permanent, blow.

## II. Article 4, Section 112 Must be Read in Connection With the Legislature's Unquestioned Authority to Control Funds in the Possession of Subordinate Political Subdivisions.

The briefs to the lower court and to this Court of the State's Co-Appellees correctly note the obvious and important difference between Article 4, Section 112's pronouncement regarding uniform taxation and Code Section 19-9-171's application to the revenue generated as a result of that taxation.[1]

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[1] Appellants' pleadings and arguments before the trial court asserted that Section 19-9-171 violated Section 112 of the Constitution. The Chancellor found that argument to be without merit. However, on appeal the Appellants now argue that the Chancellor erred because Section 19-9-171 allegedly violated Section 206 Constitution; the arguments concerning Section 112 being relegated to an afterthought. Obviously, the Chancellor could not have committed any error with respect to Section 206 because that argument was never presented to the chancery court. "Because these claims were presented only on direct appeal, we have no evidence or rulings before us to evaluate. An appellant is not entitled to raise a new issue on appeal, since to do so prevents the trial court from having an opportunity to address the alleged error." *Hemba v. Mississippi Dept. of Corrections*, 998 So.2d 1003, 1008 -1009 (Miss. 2009). Even more applicable in this matter, in *Ellis v. Ellis*, 651 So.2d 1068 (Miss.1995), the well-established principle was reaffirmed that "this Court has also consistently held that errors raised for the first time on appeal will not be considered, especially where constitutional

Section 112 does not exist in a vacuum and it is to be read in connection with this Court's long recognized holdings that the legislature has plenary authority over funds in the possession of counties, municipalities, and other subordinate political subdivisions. That Appellants' interpretation of Section 112 reorders the balance between the State and its subordinate subdivisions should serve as a warning that the interpretation is incorrect.

Mississippi law is clear; counties, municipalities, and school districts are subdivisions of the state, created by statute for administration and other public purposes. *See City of Belmont v. Mississippi State Tax Com'n*, 860 So.2d 289, 306 (Miss. 2003) ("municipalities are but creatures of the state and they possess only such power as conferred upon them by statute"); *State of Mississippi v. Hinds County Board of Sup'rs*, 635 So.2d 839, 843 (Miss. 1994); *State v. Board of Sup'rs of Grenada County*, 105 So. 541, 546 (Miss. 1925) ("a county . . . is a subdivision of the state, created for administration and other public purposes, and owes its creation to the state, it is a rule that it is subject at all times to legislative control and change") (cited approvingly in *Hinds County*, 635 So.2d at 843); Miss. Code Ann. § 37-6-5 (school districts are "political subdivision[s]").

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questions are concerned."

The State's "creator power" over the these subdivisions extends to the control of funds in their possession. *See City of Belmont*, 860 So.2d at 306 (legislature's control includes "the right of the Legislature to determine the amount of sales taxes which will be diverted to the municipalities of this State"); *Hinds County*, 635 So.2d at 843 ("anything that belonged to a county also belonged to the state and that the state simply had a creator's power to control the county"); *Jackson County v. Neville*, 95 So. 626, 629 (Miss. 1932) ("The revenues of a county are subject to the control of the Legislature, and when the Legislature directs their application to a particular purpose or to the payment of the claims of particular parties, the obligation to so pay is thereby imposed on the county.") Placing Appellants' expansive interpretive of Section 112 next to the traditionally recognized authority of the legislature shows the degree to which their arguments run counter to law. To state it clearly: the plain language of Section 112's pronouncement regarding equal taxation simply does not extend to prohibit the legislature from directing the expenditure of revenues collected via such equal taxation and in the possession of subordinate political subdivisions.

This is not the first instance in which a political subdivision of the State has alleged "financial ruin" at the hands of the legislature and in each such instance courts have properly noted that the judiciary does not sit to second guess the financial priorities set by the legislature for subordinate

subdivisions. *See e.g., Hinds County*, 635 So.2d at 843 (not unconstitutional to require counties to house State prisoners at cost to county); *Mississippi Municipal Assoc. Inc. v. State*, 390 So.2d 986 (Miss. 1980) (refusing to review "fairness" of statute setting distribution of gasoline tax to various municipalities). As the Supreme Court noted in *State ex rel. Patterson v. Board of Sup'rs of Prentiss County*, even when the subdivision alleges that a financial obligation will allegedly

> destroy local government in the counties and municipalities, that is a question to be settled at the ballot boxes between the people and the Legislature. And whether the law is needed or not, or whether it is wise or not, cannot be settled here. Our functions are to decide whether the Legislature has the power to act in passing the law and not whether it ought to have acted in the manner it did. The Court will uphold the Constitution in the fullness of its protection, but it will not and cannot rightfully control the discretion of the Legislature within the field assigned to it by the Constitution.

105 So.2d 154, 159-160 (Miss. 1958). In this respect, claims of alleged financial ruin are the easiest for this Court to adjudicate because "[i]n determining whether an act of the Legislature violates the Constitution, the courts are without the right to substitute their judgment for that of the Legislature as to the wisdom and policy of the act." *Cottrell*, 62 So.2d at 385.

## Conclusion

Section 19-9-171 may only be overturned if "found in palpable conflict with some plain provision of the constitution." *State v. Mississippi Ass'n of*

*Sup'rs, Inc.*, 699 So. 2d 1221, 1223 (Miss. 1997). Appellants' appeal to Section 112 as a limit on the legislature's plenary authority over these funds is the type of appeal to "a spirit supposed to prevail the Constitution, but not the expressed words" that this Court has said is an insufficient basis on which to declare a statute to be unconstitutional. *See Cottrell*, 62 So.2d at 385. The decision of the chancery court should be affirmed.

This the 17th day of February, 2011.

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## CERTIFICATE OF SERVICE

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This the 17th day of February, 2011.

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