IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CA-00955-SCT

PASCAGOULA SCHOOL DISTRICT, CITY OF PASCAGOULA, MISSISSIPPI, DANIEL J. MARKS, SR., INDIVIDUALLY AND AS A TAXPAYER OF THE PSD, AND KATHERINE LAIRD MITCHELL, A MINOR, BY AND THROUGH HER FATHER AND NATURAL GUARDIAN, RANDALL L. MITCHELL

v.

JOE TUCKER, TAX COLLECTOR, JACKSON COUNTY, MISSISSIPPI, BENNY GOFF, TAX ASSESSOR, JACKSON COUNTY MISSISSIPPI, THE BOARD OF SUPERVISORS OF JACKSON COUNTY, MISSISSIPPI, AND THE STATE OF MISSISSIPPI, AND DEFENDANTS - INTERVENORS JACKSON COUNTY SCHOOL DISTRICT, MOSS POINT SCHOOL DISTRICT AND OCEAN SPRINGS SCHOOL DISTRICT

DATE OF JUDGMENT:	05/13/2010
TRIAL JUDGE:	HON. FRANKLIN C. MCKENZIE, JR.
COURT FROM WHICH APPEALED:	JACKSON COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	LUTHER T. MUNFORD FRED L. BANKS, JR. R. GREGG MAYER A. KELLY SESSOMS, III JAMES L. ROBERTSON EDDIE C. WILLIAMS

ATTORNEYS FOR APPELLEES:	JAMES H. HEIDELBERG JESSICA M. DUPONT OFFICE OF ATTORNEY GENERAL BY: HAROLD E. PIZZETTA, III T. HUNT COLE, JR. CAROLINE M. UPCHURCH JACK C. PICKETT HENRY P. PATE, III ALWYN H. LUCKEY
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	REVERSED AND REMANDED - 04/12/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

LAMAR, JUSTICE, FOR THE COURT:

¶1. The Mississippi Legislature passed a law mandating that the revenue the Pascagoula School District ("PSD") collected from ad valorem taxes levied on liquified natural gas terminals and crude oil refineries be distributed to *all* school districts in the county where the terminals and refineries are located. The Pascagoula School District – which contains a Chevron crude oil refinery and a Gulf liquified natural gas terminal – brought suit, seeking a declaration that the new law was unconstitutional and requesting injunctive relief. All parties filed for summary judgment. After a hearing, the trial judge ruled that the law was constitutional, and the plaintiffs appeal that decision. Because we find the contested statute violates the constitutional mandate that a school district's taxes be used to maintain "its schools," we reverse and remand for proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

¶2. Jackson County has four school districts – the Jackson County School District (which educates about 37% of the county's total students), the PSD (28.5%), the Ocean Springs School District (22%), and the Moss Point School District (12.5%). The PSD's method[1] for collecting and distributing ad valorem tax revenue to its schools is based on statutory law and an "interlocal agreement"[2] and includes the following steps:

> 1. The County assesses the value of "all of the taxable property" within the school district.
> 2. The school district sets its budget for the coming school year. *See* Miss Code Ann. § 37-57-104(1) (Rev. 2007).
> 3. The City of Pascagoula, as the levying authority for the PSD, divides the budget by the value of "all of the taxable property" to yield a millage rate which, when applied to the assessed value, yields an amount "equal to the dollar amount" requested by the school district. *See* Miss. Code Ann. §§ 37-57-1 and 37-57-104(1) (Rev. 2007).
> 4. The County uses the millage rate to levy school taxes, collects them, and forwards the school tax money to the City for deposit into the "district maintenance fund of the school district." *See* Miss. Code Ann. § 37-57-1 (Rev. 2007).

The PSD's ad valorem tax base includes both a Chevron crude oil refinery and a Gulf liquified natural gas terminal.[3]

¶3. In 2007, the Mississippi Legislature passed Senate Bill 2403. Section 2 of SB 2403 was later codified as Mississippi Code Section 19-9-171, and states:

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[1] The record does not reveal how the other school district's ad valorem taxes are collected and distributed.

[2] This is an agreement between Jackson County and the City of Pascagoula, wherein Jackson County agreed to collect "all City and Pascagoula Municipal Separate School District ad valorem taxes" and deliver them to the City.

[3] The liquified gas terminal was in the planning stages when the suit was filed, but apparently now is completed.

> The revenue from ad valorem taxes for school district purposes that are levied upon 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, *shall be distributed to all public school districts in the county in which the facilities are located* in the proportion that the average daily attendance of each school district bears to the total average daily attendance of all school districts in the county. The county or municipal tax collector, as the case may be, shall pay such tax collections, except for taxes collected for the payment of the principal of and interest on school bonds or notes and except for taxes collected to defray collection costs, into the appropriate school depository and report to the school board of the appropriate school district at the same time and in the same manner as the tax collector makes his payments and reports of other taxes collected by him.

Miss. Code Ann. § 19-9-171 (Supp. 2011) (emphasis added). Concerned that it would lose a portion of the ad valorem tax revenue generated by the tax levy, the PSD, along with the City of Pascagoula, Daniel Marks (an individual taxpayer within the district) and Katherine Mitchell (a minor who attended school in the district) filed a Petition for Declaratory Judgment and Injunctive Relief in the Jackson County Chancery Court. The plaintiffs named as defendants Joe Tucker (Jackson County Tax Collector), Benny Goff (Jackson County Tax Assessor), the Board of Supervisors of Jackson County and the State of Mississippi.[4]

¶4. The plaintiffs asserted that Section 19-9-171 violates Article 4, Section 112 of the Mississippi Constitution,[5] because it prohibits the PSD from receiving the full ad valorem

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[4] The Attorney General's Office participated in this case in the court below and on appeal.

[5] Section 112 of the Mississippi Constitution states, in pertinent part:

> The Legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations or associations not situated wholly in one (1) county. All such property shall be assessed in proportion to its value according to its class, *and no county, or other taxing*

tax revenue amount from the oil refinery and the gas terminal, thereby "denying [the PSD] the right to levy" on that property in the same way as it would on all other property in the district. The plaintiffs also asserted that Section 19-9-171 was invalid because it directly conflicts with Sections 37-57-1(2)[6] and 37-57-105(1),[7] which state that the county tax collector is to deposit all school taxes into *the district's* maintenance and depository funds.[8]

> *authority, shall be denied the right to levy county and/or special taxes upon such assessment as in other cases of property situated and assessed in the county*, except that the Legislature, by general law, may deny or limit a county or other taxing authority the right to levy county and/or special taxes on nuclear-powered electrical generating plants.

Miss. Const. art 4, § 112 (1890) (emphasis added).

[6] Mississippi Code Section 37-57-1(2) states, in pertinent part:

> The amount of taxes so collected as a result of such levy *shall be paid into the district maintenance fund of the school district* by the tax collector at the same time and in the same manner as reports and payments of other ad valorem taxes are made by said tax collector, except that the amount collected to defray costs of collection may be paid into the county general fund.

Miss. Code Ann. § 37-57-1(2) (Rev. 2007) (emphasis added).

[7] Mississippi Code Section 37-57-105(1) states, in pertinent part:

> The proceeds of such tax levy, excluding levies for the payment of the principal of and interest on school bonds or notes and excluding levies for costs of collection, *shall be placed in the school depository to the credit of the school district* and shall be expended in the manner provided by law for the purpose of supplementing teachers' salaries, extending school terms, purchasing furniture, supplies and materials, and for all other lawful operating and incidental expenses of *such school district*, funds for which are not provided by adequate education program fund allotments.

Miss. Code Ann. § 37-57-105(1) (Rev. 2007) (emphasis added).

[8] The plaintiffs also alleged several equal protection violations, but they do not advance those arguments on appeal.

The plaintiffs requested a declaration that Section 19-9-171 is unconstitutional and a permanent injunction prohibiting the defendants from "enforcing, assessing, levying and re-distributing any future ad valorem taxes levied by or on behalf of the [PSD] to other school districts . . . . "

¶5. After all named defendants filed their answers, the other three Jackson County school districts filed a motion to intervene as defendants, which the special chancellor granted.[9] After some discovery, the Jackson County Board of Supervisors, along with Goff and Tucker, jointly filed a motion for summary judgment, which the intervening school districts joined. The intervening school districts, the State of Mississippi, and the plaintiffs also filed motions for summary judgment. After responses were filed, the chancellor held a hearing on the motions. After hearing arguments from all parties, the chancellor found that the plaintiffs had not proven beyond a reasonable doubt that Section 19-9-171 is unconstitutional. He subsequently issued an order denying the plaintiffs' motion for summary judgment and granting all of the defendants' motions for summary judgment.

¶6. The plaintiffs filed a notice of appeal. A couple of months later, the plaintiffs filed a motion to stay in the chancery court, arguing for the first time that Section 19-9-171 violates Article 8, Section 206[10] of the Mississippi Constitution. The plaintiffs sought an

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[9] All three Sixteenth District Chancery Court chancellors recused themselves from the case, and this Court appointed Judge Franklin McKenzie as special chancellor.

[10] Section 206 of the Mississippi Constitution states, in pertinent part: "Any county or separate school district may levy an additional tax, as prescribed by general law, to maintain ***its schools***." Miss. Const. art. 8, § 206 (1890) (emphasis added).

order directing the Jackson County Tax Collector to distribute the disputed funds[11] to the City of Pascagoula, to be kept in a separate, interest-bearing account. After the chancellor denied their motion to stay, the plaintiffs filed a motion to reconsider, which the chancellor also denied. The plaintiffs then filed a motion to stay with their initial brief to this Court, which this Court also denied.

¶7. On appeal, the plaintiffs argue that Section 19-9-171 violates Article 8, Section 206 and Article 4, Section 112 of the Mississippi Constitution. Specifically, the plaintiffs ask:

> 1. When Section 206 of the Mississippi Constitution says the purpose of a local school district tax is to maintain "its schools," can the Legislature force a district to divide its maintenance tax levy with other districts?
>
> 2. When Section 112 of the Mississippi Constitution says a taxing authority shall not be denied the right to levy an ad valorem tax on "all property" in the same manner, can the Legislature force a city to exclude $46.8 million in property value from its tax base when it calculates the school maintenance levy so that [that] value can be taxed for the benefit of other districts?[12]

Because we find that Section 19-9-171 violates Article 8, Section 206, we decline to address whether it also violates Article 4, Section 112.

ANALYSIS

¶8. This Court conducts a de novo review when deciding whether the trial court properly granted a motion for summary judgment. ***Conrod v. Holder***, 825 So. 2d 16, 18 (Miss. 2002). Likewise, this Court applies de novo review to questions of law, including the

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[11] Jackson County had determined that approximately $66 million in real property qualified as post-2007 construction. Pursuant to Section 19-9-171, the tax revenues on that amount would be distributed to all the school districts in Jackson County, in proportion to their average daily attendance. Miss. Code Ann. § 19-9-171 (Supp. 2011).

[12] The plaintiffs also present a variation of these arguments in their briefs, asserting that allowing Section 19-9-171 to stand would violate the "local tax, local benefit" rule.

constitutionality of a statute. ***Wells by Wells v. Panola County Bd. of Educ.***, 645 So. 2d 883, 888 (Miss. 1994).

¶9. A party seeking to have a statute declared unconstitutional in Mississippi has a heavy burden: he must prove that the statute is unconstitutional "beyond a reasonable doubt." ***Cities of Oxford, Carthage, Louisville, Starkville, & Tupelo v. Northeast Mississippi Elec. Power Ass'n***, 704 So. 2d 59, 65 (Miss. 1997). "'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.'" ***State v. Bd. of Levee Comm'rs***, 932 So. 2d 12, 19 (Miss. 2006) (citations omitted). "[T]o state that there is doubt regarding the constitutionality of an act is to essentially declare it constitutionally valid." ***Moore v. Bd. of Supervisors of Hinds County***, 658 So. 2d 883, 887 (Miss. 1995). "Nonetheless, 'no citation of authority is needed for the universally accepted principle that if there be a clash between the edicts of the constitution and the legislative enactment, the latter must yield.'" ***Bd. of Levy Comm'rs***, 932 So. 2d at 26 (citation omitted).

¶10. As an initial matter, the defendants argue strenuously that the plaintiffs waived their argument that Section 19-9-171 violates Section 206 of the Mississippi Constitution, because they did not raise that argument until their motion to stay before the chancery court. The defendants are correct that this Court has stated repeatedly that constitutional questions not raised in the trial court will not be reviewed on appeal. *See e.g.,* ***Stockstill v. State***, 854 So. 2d 1017, 1023 (Miss. 2003) ("[T]his Court has also consistently held that errors raised for the first time on appeal will not be considered, especially where constitutional questions are

concerned."). However, in acknowledging this very "sound principle[,]" this Court also has stated that we will "depart from this premise . . . in unusual circumstances." ***Cockrell v. Pearl River Valley Water Supply Dis.***, 865 So. 2d 357, 360 (Miss. 2004); *see generally* ***Bd. of Educ. of Benton County v. State of Educ. Fin. Comm'n***, 138 So. 2d 912, 924-25 (Miss. 1962) (reviewing a constitutional issue raised for first time on appeal and requesting additional briefs on that issue).

¶11. We find this case presents such an unusual circumstance, compelling us to address the merits of the plaintiffs' Section 206 argument. First, we note that the plaintiffs *did* raise their Section 206 argument in the chancery court – albeit late – in their motion to stay, giving the defendants and the trial court an opportunity to address it. The defendants were aware of the argument, briefly addressed it in their initial briefs to this Court, and assert no prejudice from the plaintiffs' failure to raise this issue in their initial pleadings. And after oral argument before this Court, we granted the defendants' request to file a supplemental brief to more fully address the issue.

¶12. Additionally, this case affects the rights of all taxpayers in Jackson County and is of grave importance to every school district in the county. It would serve no purpose to delay our answer for another day while the revenue distributed according to that statute potentially is lost. But most significantly, Article 8, Section 206 is *the* enabling authority for a school district's ad valorem taxation power in this state, and we are unable to analyze the case without considering it. Consequently, we disagree with the dissent that we are abdicating our role as an appellate court and somehow creating original jurisdiction by reviewing Section 206. We are not deciding facts, but a legal question. In reviewing the substance of the

plaintiffs' arguments before the trial court (*see supra* ¶ 4), we are charged with considering all law bearing on this subject, which unavoidably includes Section 206. And this Court, "as a matter of institutional necessity and constitutional imperative, is the ultimate expositor of the law of this state [and] . . . on matters of law, it is *our* job to get it right." ***UHS-Qualicare, Inc. v. Gulf Coast Cmty. Hosp., Inc.***, 525 So. 2d 746, 754 (Miss. 1987). Thus, we must look to Section 206 regardless of the plaintiffs' failure to initially designate that section by name, since the substance of their argument unavoidably falls within that constitutional provision.

Whether Section 19-9-171 violates Section 206's mandate that a school district's taxes be used to maintain "its schools."

¶13. The plaintiffs argue that Section 19-9-171 violates Article 8, Section 206 of the Mississippi Constitution, based on Section 206's plain language, its history, the pre-2007 statutory scheme and caselaw. We look no further than the plain language of Section 206 to agree with the plaintiffs.

¶14. Article 8, Section 206 of the Mississippi Constitution states:

> 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.

Miss. Const. art. 8, § 206 (1890) (emphasis added). The plain language of Section 206 grants the PSD the authority to levy an ad valorem tax and mandates that the revenue collected be used to maintain only its schools. Conversely, no such authority is given for the PSD to levy an ad valorem tax to maintain schools outside its district. And as this Court stated in ***Board***

of Levee Commissioners, "'[the] expression of the purpose of the tax in the act is an exclusion of all other purposes.'" ***Bd. of Levee Comm'rs***, 932 So. 2d at 25 (citation omitted). However, the defendants urge a contrary interpretation of Section 206, so we now turn to address their arguments.

¶15. The defendants, and likewise Chief Justice Waller in his dissent, urge this Court to hold that Section 19-9-171 is a legitimate exercise of the Legislature's plenary power under Article 8, Section 201 of the Mississippi Constitution, which mandates that the Legislature shall "*as prescribed by general law*, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe." The defendants argue that the phrase "as prescribed by general law" in Section 201 clearly "recognizes and carries forth the historical and inherent prerogatives of the Legislature vis-a-vis the political subdivisions to act by statute in matters regarding local school revenues and support and taxation . . . . " The defendants argue that the Legislature has "prescribed by general law" the details of state and local school finance in Title 37, and that it has successfully incorporated Section 19-9-171 into that general law via Section 37-57-1.[13] We

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[13] Again, Section 37-57-1 provides, in pertinent part:

> *Except as otherwise provided in Section 19-9-171,* the county or municipal tax collector, as the case may be, shall pay such tax collections, except for taxes collected for the payment of the principal of and interest on school bonds or notes and except for taxes collected to defray collection costs, into the school depository and report to the school board of the appropriate school district at the same time and in the same manner as the tax collector makes his payments and reports of other taxes collected by him.

Miss. Code Ann. § 37-57-1 (Rev. 2007) (emphasis added.)

disagree and find that the phrase "as prescribed by general law" means that the Legislature is to establish, through general law, the *method* by which a "county or separate school district may levy an additional tax." No doubt Section 201 grants the Legislature broad power to regulate school finance, but it must be read in conjunction with Section 206. The Legislature's plenary power does not include the power to enact a statute that – on its face – directly conflicts with a provision of our Constitution. Section 206 specifically limits the use of the tax revenue from a school district's tax levy to the maintenance of "its schools," and the Legislature's plenary taxation power does not authorize it to ignore this restriction. The Legislature has no authority to mandate how the funds are *distributed*, as Section 206 clearly states that the purpose of the tax is to maintain the levying school district's schools. Thus, we conclude that the plain language of Section 206 that grants a school district the right to levy taxes to maintain "its schools" defines the limits of power granted to the Legislature by Section 201. Were we to adopt the defendants' position and uphold Section 19-9-171 as a legitimate exercise of legislative power under Section 201, the phrase "to maintain its schools" in Section 206 would be rendered a complete nullity. We decline to adopt that interpretation.

¶16. The defendants also argue that "statutes dealing with revenue, tax distribution and public monies are solely the province of the legislative branch of government." The Defendants cite several cases to support their proposition that the Legislature has plenary power over taxation issues, including the distribution of revenue. *See e.g.*, ***City of Belmont v. Mississippi State Tax Comm'n***, 860 So. 2d 289, 307 (Miss. 2003) ("The right of the Legislature to control the public treasury, 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 disbursement, is firmly and inexpugnably established in our political system."); ***McCullen v. State ex rel. Alexander for Use of Hinds County***, 63 So. 2d 856, 862 (Miss. 1953) ("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"); ***Adams v. Kuykendall***, 83 Miss. 571, 35 So. 830, 835 (1903) ("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.").

¶17. But, although these cases do recognize the power of the Legislature to control taxation issues, none holds that the Legislature may exercise that power in violation of the Constitution. This Court has explicitly recognized that legislative power in taxation issues is limited by the Constitution:

> Under all constitutional governments recognizing three distinct and independent magistracies, the control of the purse strings of government is a legislative function. Indeed, it is the supreme legislative prerogative, indispensable to the independence and integrity of the Legislature, and not to be surrendered or abridged, *save by the Constitution itself*, without disturbing the balance of the system and endangering the liberties of the people.

City of Belmont, 860 So. 2d at 306-07 (emphasis added).

¶18. Furthermore, the defendants' reliance on this Court's decision in ***Harrison County School District v. Long Beach School District***, 700 So. 2d 286 (Miss. 1997), is misplaced. There, the Legislature passed several bills allowing several municipalities on the Mississippi Coast to tax the casinos within their municipality. ***Id.*** at 287. Each bill directed the

municipality to use the collected funds for specific purposes, with the one at issue being "for educational purposes in Harrison County." ***Id.*** After the funds were distributed to the Harrison County School District only, the Long Beach School District brought suit, claiming that it was entitled to some of the funds. ***Id.*** at 287-88. The trial judge found that "the clear and unambiguous language of the statute required that the funds generated from the casino tax be distributed throughout the entirety of Harrison County for educational purposes[,]" and this Court affirmed. ***Id.*** at 288, 290.

¶19. The defendants claim that this 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." But we find this case distinguishable from the case at hand. In ***Harrison County***, the municipalities' power to tax the casinos came from the *Legislature*, so it follows that the Legislature had the authority to establish the purpose of the tax and to direct where the funds would be spent. But here, PSD's authority to tax comes from Section 206 of the *Constitution*, which provides that the purpose of the tax levied by the PSD is to "maintain its schools."

¶20. The defendants' reliance on this Court's decision in ***Miller v. State***, 130 Miss. 564, 94 So. 706 (1923), is also misplaced. The defendants argue that, under ***Miller***, "[Section] 206 cannot be given a narrow, purportedly 'literal' interpretation so as to invalidate the legislative statutes directed to the support of public schools." While it is true that the ***Miller*** Court chose a less restrictive view of Section 206, the facts are distinguishable. At the time ***Miller*** was decided, Section 206 stated:

> There shall be a county common school fund, which shall consist of the poll tax, to be retained in the counties where the same is collected, and a state common school fund, to be taken from the general fund in the state treasury, *which together shall be sufficient to maintain the common schools for the term of four months in each scholastic year*. But any county or separate school district may levy an additional tax to maintain its schools for a longer time than the term of four months. *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 from data collected through the office of the state superintendent of education in the manner to be prescribed by law.

Id. at 708 (emphasis added). At issue in ***Miller*** was a statute authorizing a separate state fund *in addition to* the state common school fund, which was to be distributed "in such a manner as to equalize public school terms as nearly as possible throughout the state[.]" ***Id.*** at 707.

¶21. The State Auditor brought suit, arguing that the new law was void because, among other things, it provided for distribution of the fund on a non-per-capita basis. ***Id.*** at 708. But this Court declined to invalidate the law, holding that, although the Auditor's argument was not without merit, "it is a reasonable view to interpret that part of [S]ection 206 which provides for a per capita distribution as meaning that the distribution on this basis should be made with reference solely to the funds provided for the four months term named in this section." ***Id.*** at 709. But here, the plain language of the current version of Section 206 (which was not in effect at the time of ***Miller***) clearly states that a school district may tax to fund "its schools," leaving no room for an interpretation allowing the Legislature to mandate that the funds be distributed elsewhere.

CONCLUSION

¶22. We find that Section 19-9-171 violates Section 206's constitutional mandate that a school district's taxes be used to maintain "its schools." And because we find that Section 19-9-171 violates Section 206, we decline to address whether it violates Section 112 as well. We reverse and remand this case to the trial court for further proceedings consistent with this opinion.

¶23. **REVERSED AND REMANDED.**

CARLSON AND DICKINSON, P.JJ., KITCHENS AND KING, JJ., CONCUR. WALLER, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED IN PART BY RANDOLPH AND CHANDLER, JJ. RANDOLPH, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY WALLER, C.J., AND CHANDLER, J. PIERCE, J., NOT PARTICIPATING.

WALLER, CHIEF JUSTICE, DISSENTING:

¶24. I concur with Justice Randolph that we should not consider the plaintiffs' argument regarding Article 8, Section 206, of the Mississippi Constitution, as this issue was neither timely presented to nor addressed by the trial court. I further disagree with the majority's interpretation of Article 8, Section 206, of the Mississippi Constitution. I do not believe that Section 19-9-171 of the Mississippi Code conflicts with Article 8, Section 206. I respectfully dissent.

¶25. Legislative enactments carry a strong presumption of validity; all doubts must be resolved in favor of the statute's constitutionality. ***Loden v. Miss. Pub. Serv. Comm'n***, 279 So. 2d 636, 640 (Miss. 1973). And, "[i]f possible, courts should construe statutes so as to render them constitutional rather than unconstitutional if the statute under attack does not clearly and apparently conflict with organic law . . . ." ***Id.*** (citing ***Bd. of Educ. v. State Educ.***

Fin. Comm'n, 243 Miss. 782, 138 So. 2d 912 (1962)). Section 19-9-171 can and should be construed as constitutional.

¶26. I agree that Section 206 of the Mississippi Constitution grants a school district the right to levy additional taxes "to maintain its schools." But that right is not unfettered; the school district may levy such taxes only "as prescribed by general law," i.e., as authorized under general law. Section 206, in other words, provides that a school district's authority to levy additional taxes for its schools remains subject to the general law or Legislative prerogative. The Legislature has plenary power over all matters concerning taxation. *See e.g.*, ***City of Belmont v. Miss. State Tax Comm'n***, 860 So. 2d 289, 307 (Miss. 2003); ***McCullen v. State***, 63 So. 2d 856, 862 (Miss. 1953); ***Adams v. Kuykendall***, 35 So. 830, 835 (Miss. 1903). Moreover, the Constitution requires that "[t]he Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe." Miss. Const. art. 8, § 201. The "as-prescribed-by-general-law" caveat in Section 206 affirms that ultimate authority rests with the Legislature; county and separate school districts may levy additional taxes to maintain their schools but only to the extent that the general law permits them to do so.

¶27. Here, the Legislature enacted a general law — Section 19-9-171 — that limits the Pascagoula School District's (PSD) right to levy certain additional taxes to maintain its schools. Under Section 206, the PSD's rights must give way to limitations set forth in Section 19-9-171.

¶28. Because Section 19-9-171's constitutionally under Article 8, Section 206, is not properly before us, and because the statute passes muster under that provision regardless, I respectfully dissent.

RANDOLPH AND CHANDLER, JJ., JOIN THIS OPINION IN PART.

RANDOLPH, JUSTICE, CONCURRING IN PART AND DISSENTING IN PART:

¶29. Justice should never yield to expediency, and we ought not rush to judgment based on a perceived notion that we can omnipotently decide a dispute which was never presented to the trial court. Thus, I concur that the case *sub judice* should be remanded to the chancery court, however, the doctrine of *stare decisis* dictates a different disposition when it arrives in the appropriate forum, a trial court. Anyone who desires to claim that Mississippi Code Section 19-9-171 violates Article 8, Section 206, of the Mississippi Constitution should first contest it in a court of original jurisdiction, the chancery court. *See* Miss. Const. art. 8, § 206; Miss. Code Ann. § 19-9-171 (Rev. 2003). This claim was neither pleaded nor argued before, nor ruled upon by, the chancery court. It was first raised on appeal. In no event does the Mississippi Constitution grant this Court the authority to act as a court of original jurisdiction, save for the limited circumstances prescribed therein. *See* Miss. Const. art. 6, § 146. Indeed, with all due respect to my learned colleagues, there is no sound basis to depart from both the constitutional limitation and established precedent that this Court will not consider issues raised for the first time on appeal (which represents the collective wisdom of scores of our predecessors, dating back for more than 160 years). *See infra* ¶¶ 9-11 (providing extensive citation of the time-honored precedent that this Court, as a "court of

appeals," refuses to address issues raised for the first time on appeal and/or will not hold a trial court in error for issues not presented to it). No one legitimately can contend that the rule precluding consideration of an issue first raised on appeal is "pernicious, impractical, or mischievous in its effect[,]" such that *stare decisis* should not control. ***Caves v. Yarbrough***, 991 So. 2d 142, 152 (Miss. 2008) (quoting ***Smith v. State***, 839 So. 2d 489, 495 (Miss. 2003)) (this Court must "find that the law as it stands is pernicious, impractical, or mischievous in its effect and resulted in a detriment to the public in order to modify the law.").

¶30. By abandoning these principles, the majority denies the thousands of citizens represented by the tax collector, assessor, and board of supervisors of Jackson County, and the thousands of students in the Jackson County, Moss Point, and Ocean Springs school districts their collective right to a fair trial with fully developed pleadings, facts, and issues of law.

¶31. One glaring issue which lacks development, raised in Jackson County's "Motion for Summary Judgment" and attachments, is acquiescence (i.e., estoppel, laches, waiver), based upon the "interlocal agreements" first identified in paragraphs 17-18 of the plaintiffs' Petition for Declaratory Judgment and Injunctive Relief (although not attached thereto). In 1982, Chevron and Jackson County entered into "In Lieu Tax Agreements," as part of the extension of a lease between Jackson County and the company, in an amount equal to an ad valorem assessment, *inter alia*. The defendants pleaded that, because the plaintiffs did not challenge the method of distribution of the in lieu tax payments by Chevron (not ad valorem taxes) over the past thirty years, they acquiesced thereto. The plaintiffs responded there was no such

acquiescence. The trial court has never ruled upon this contested issue. This issue is quite significant, for even assuming *arguendo* that Section 19-9-171 is unconstitutional, such a ruling does not *ipso jure* invalidate the "In Lieu Tax Agreements" or the Jackson County Board of Supervisors' resolution of how monies received in lieu of ad valorem taxes shall be divided. Today's decision does not decide that issue, nor does today's decision prevent the tax collector and assessor from continuing the division of monies received in lieu of ad valorem taxes, as prescribed by the Board of Supervisors. Thus, there is no finality.

¶32. Only after such proceedings can the trial court enter a mature judgment, which we may ***then*** consider, and either affirm or reverse, in whole or in part. The issue before the chancery court was whether Section 19-9-171 was unconstitutional under Article 4, Section 112, of the Mississippi Constitution. *See* Miss. Const. art. 4, § 112; Miss. Code Ann. § 19-9-171. If we confine our inquiry to the issues joined and the learned chancellor's ruling, no error has been discerned by this court of errors and appeals.[14] *See*, *e.g.*, ***Dismukes v. Stokes***, 41 Miss. 430 (1867) (this Court was originally known as the "High Court of Errors and Appeals of Mississippi"). Therefore, I dissent to the disposition mandated by the majority. Upon remand, the plaintiffs would be able to advance their claim of a Section 206 violation, while the defendants would be able to develop their defenses. Then, after the trial court entered judgment, any dissatisfied party might properly appeal.

[14]As the majority does not reverse on the issue ruled upon by the chancellor (i.e., Section 112), no error has been found in his ruling.

FACTS AND PROCEDURAL HISTORY

¶33. The record clearly reveals the issue presented to the chancery court for decision. The plaintiffs' October 6, 2008, Petition for Declaratory Judgment and Injunctive Relief averred time and time again, *inter alia*, that Section 19-9-171 violated Article 4, Section 112. The petition includes not a single averment or claim based upon an alleged Article 8, Section 206, violation. The evidence submitted to support the plaintiffs' claim included a November 30, 2009, report of their retained expert, Robert H. Alexander. The report reiterated that the plaintiffs "filed suit against various State and County officials alleging that [Section] 19-9-171 is in violation of Section 112 . . . ." No proof or testimony averred a Section 206 violation. The plaintiffs' Motion for Summary Judgment, filed on March 22, 2010 (nearly one-and-one-half years after their petition was filed), contended, *inter alia*, that Section 19-9-171 "violates Section 112 of the Mississippi Constitution." No averment or claim of a Section 206 violation can be found therein. The plaintiffs' April 5, 2010, Response In Opposition to Defendants' Motions for Summary Judgment emphatically stated that, "as the Court fully appreciates, *the issue at hand is the validity of [Section] 19-9-171 under Section 112 of the Mississippi Constitution* . . . ." (Emphasis added.) At the May 5, 2010, hearing, plaintiffs' counsel neither amended their pleadings nor argued a Section 206 violation.[15] At the conclusion of the hearing, the chancellor unambiguously annunciated that:

> *[t]he question before the Court is whether or not [Section 19-9-171] violates Section 112 of the Mississippi Constitution. The Court finds* that it does not, or at least *that there is a reasonable doubt that it does not violate the Mississippi Constitution . . . Section 112*. The burden of proof was on the

[15]Counsel for the defendants summarized the plaintiffs' constitutional arguments as follows, "[f]irst of all, it violates equal protection and it violates [Section] 112."

> [P]laintiffs . . . to make that showing beyond a reasonable doubt or beyond any reasonable doubt, and the Court is satisfied they've not met that burden.

(Emphasis added.) The "Final Judgment" of the chancery court, which granted summary judgment in favor of the defendants, specifically concluded that Section 19-9-171 "does not violate Section 112 of the Mississippi Constitution, or at least there is reasonable doubt . . . ." The chancellor found that the plaintiffs had failed to meet the burden of proof.

¶34. On June 4, 2010, consistent with the issues presented for judicial determination, the plaintiffs filed a Notice of Appeal regarding "*the Final Judgment entered by the Court* . . . ." (Emphasis added.) On June 9, 2010, the plaintiffs filed their Designation of the Record on Appeal. It stated that "the issues presented by this appeal" were whether the chancery court, "*under the issues presented*," had erred in denying the plaintiffs' Motion for Summary Judgment and in granting the defendants' Motion for Summary Judgment, without averment or claim of a Section 206 violation. (Emphasis added.)

¶35. Nearly two years after filing their original petition (and nearly *three months* after filing their Notice of Appeal), the plaintiffs filed a Motion for Stay Pending Appeal on September 3, 2010. The motion sought "a stay of distribution of contested tax revenues to preserve the status quo pending appeal . . . ." The motion reiterated that the plaintiffs had filed notice of appeal "from this Court's *May 2010 judgment*[,]" and inserted the new issue, post-judgment. For the first time, the plaintiffs asserted that the "good grounds *for appeal*" included that "Section 19-9-171 . . . conflicts with Mississippi Constitution of 1890 § 206 . . . ." (Emphasis added.) On September 21, 2010, the defendants filed their Response In

Opposition to Motion to Stay. Regarding the plaintiffs' ***new*** claim that Section 19-9-171 violates Article 8, Section 206, the defendants stated:

> PSD is attempting to raise issues on appeal which were not raised at the trial court. This argument was not asserted in Plaintiffs' complaint nor was it addressed in any briefings submitted to the trial court. It is hornbook law that claimed errors and legal theories raised for the first time on appeal "will not be considered, especially when constitutional questions are concerned." ***Stockstill v. State***, 854 So. 2d 1017, 1023 (Miss. 2003); ***In re V.R.***, 725 So. 2d 241, 245 (Miss. 1998) . . . . A trial court cannot be placed in error on a matter not presented to it. ***Southern v. Mississippi State Hosp.***, 853 So. 2d 1212, 1214 (Miss. 2003).

On September 24, 2010, the chancery court denied the plaintiffs' Motion for Stay Pending Appeal. Following that denial, on September 27, 2010, the plaintiffs belatedly noticed the Attorney General, pursuant to Mississippi Rule of Civil Procedure 24(d) and Mississippi Rule of Appellate Procedure 44, providing "that the plaintiffs contend [Section] 19-9-171 is unconstitutional because, among other reasons, it conflicts with the Mississippi Constitution of 1890 § 206." *See* Miss. R. Civ. P. 24(d); Miss. R. App. P. 44. On September 30, 2010, the plaintiffs filed a Motion to Reconsider Order Denying Motion to Stay. Attached to that post-judgment motion were, *inter alia*, an affidavit and fact-related documents regarding the Section 206 issue. In short, nearly four-and-one-half months after final judgment and nearly four months after filing their notice of appeal, the plaintiffs offered new putative facts in support of the unconstitutionality of Section 19-9-171 under Section 206, without any opportunity for the defendants to contest the validity of the newly offered "facts."[16]

[16]Furthermore, the plaintiffs then included these averments as a record excerpt to this appeal.

Subsequently, the chancery court denied the plaintiffs' Motion to Reconsider Order Denying Motion to Stay.

¶36. On December 15, 2010, the plaintiffs filed a Motion for Stay Pending Appeal in this Court, seeking "that this Court order the Jackson County Tax Collector to hold the money in question, an amount equivalent to 71% of the ad valorem taxes on District 3059, in trust in a separate interest bearing account until final issuance of this Court's mandate in this appeal." On January 29, 2011, a panel of this Court entered an Order denying the plaintiffs' Motion for Stay Pending Appeal.

ANALYSIS

I. The plaintiffs are barred from arguing on appeal that Section 19-9-171 violates Article 8, Section 206 of the Mississippi Constitution.

¶37. Article 6, Section 146, of the Mississippi Constitution provides, in pertinent part, that "[t]he Supreme Court shall have such jurisdiction as properly belongs to a *court of appeals* . . . ." Miss. Const. art. 6, § 146 (emphasis added). *See also* Luther T. Munford, *Mississippi Appellate Practice* § 1.1 at 1-1 (2010) ("Final *appellate* jurisdiction in Mississippi rests in the Supreme Court of Mississippi . . . .") (emphasis added). This Court has stated that:

> [t]he jurisdiction which properly belongs to a court of appeals includes only such as is of a *revisory character*, and necessarily implies that the matter revised must be a judicial decision, rendered by a tribunal clothed with judicial power. ***Planters' Ins. Co. v. Cramer***, 47 Miss. 200 [(1872)]; ***Y & M.V.R.R. Co. v. Wallace***, 90 Miss. 609, 43 So. 469 [(1907)]. . . . "Judicial decision is the application, by a court of competent jurisdiction, of the law to a state of facts proved, or admitted to be true, and a declaration of the consequences which follow." ***Le Blanc v. Railroad Co.***, 73 Miss. 463 [(1896)] . . . .
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> . . .

> The rule herein announced has the sanction of the great name of Story, for in Section 1761 of the second volume of the fourth edition of his Commentaries on the Constitution he used this language: "*The essential criterion of appellate jurisdiction is that it revises and corrects the proceedings of a cause already instituted, and does not create that cause*. In reference to judicial tribunals, an appellate jurisdiction, therefore, *necessarily implies that the subject-matter has been already instituted in and acted upon by some other court*, whose judgment or proceedings are to be revised.["]

Illinois Cent. R. Co. v. Dodd, 105 Miss. 23, 61 So. 743, 743-44 (1913) (emphasis added). *See also* ***Patterson v. State***, 594 So. 2d 606, 609 (Miss. 1992) (quoting ***Leverett v. State***, 197 So. 2d 889, 890 (Miss. 1967)) ("The Supreme Court is a court of appeals, it has no original jurisdiction;[17] *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.") (emphasis added); ***Glenn v. Herring***, 415 So. 2d 695, 697 (Miss. 1982) ("appellate jurisdiction necessarily implies that the subject matter must have been acted upon by the tribunal whose judgment or proceedings are to be reviewed."); ***Collins v. State***, 173 Miss. 179, 159 So. 865, 865 (1935); ***Estes v. Memphis & C. Ry. Co.***, 152 Miss. 814, 119 So. 199, 202 (1928); *Black's Law Dictionary* 405 (9th ed. 2009) (an appellate court "has jurisdiction to review decisions of lower courts . . .").

¶38. Consistent with the principle that we are a "court of appeals," this Court has long stated that we will ***not*** address issues raised for the first time on appeal, particularly where

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[17]This is apart from the original jurisdiction expressly provided for in Section 146. *See* Miss. Const. art. 6, § 146.

constitutional questions are concerned.[18] *See* ***Mabus v. Mabus***, 890 So. 2d 806, 811 (Miss. 2003); ***Stockstill***, 854 So. 2d at 1023; ***Southern***, 853 So. 2d at 1214; ***Marcum v. Hancock County Sch. Dist.***, 741 So. 2d 234, 238 (Miss. 1999); ***In re V.R.***, 725 So. 2d at 245; ***Wright v. White***, 693 So. 2d 898, 903 (Miss. 1997), *overruled on other grounds by* ***East Mississippi State Hosp. v. Callens***, 892 So. 2d 800 (Miss. 2004) ("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."); ***Ellis v. Ellis***, 651 So. 2d 1068, 1073 (Miss. 1995); ***Patterson***, 594 So. 2d at 609; ***Estate of Johnson v. Adkins***, 513 So. 2d 922, 925 (Miss. 1987) (quoting ***Bailey v. Collins***, 215 Miss. 78, 83, 60 So. 2d 587, 589 (1952)) ("Appellant has now chosen in this Court an entirely different line of battle from that chosen in the court below, and we think the theory of the case as now presented to us on this appeal

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[18]The exception is that "matters of jurisdiction may be raised for the first time on appeal." ***Patterson***, 594 So. 2d at 609 (quoting ***Colburn v. State***, 431 So. 2d 1111, 1114 (Miss. 1983)).

The majority relies upon ***Cockrell v. Pearl River Valley Water Supply District***, 865 So. 2d 357 (Miss. 2004), for the proposition that constitutional questions not raised in the trial court will not be reviewed on appeal absent "*unusual circumstances*." (Maj. Op. at ¶ 10) (quoting ***Cockrell***, 865 So. 2d at 360) (emphasis added). The majority then proceeds to contend that the case *sub judice* presents such an unusual circumstance. Yet ***Cockrell*** relied upon ***Educational Placement Services v. Wilson***, 487 So. 2d 1316, 1320 (Miss. 1986), for the "unusual circumstances" principle. *See* ***Cockrell***, 865 So. 2d at 360 (citing ***Wilson***, 487 So. 2d at 1320). A review of ***Wilson*** reflects no citation of authority whatsoever for its "unusual circumstances" language. ***Wilson***, 487 So. 2d at 1320. Furthermore, in ***Wilson***, this Court determined that there were "[n]o such [unusual] circumstances" to justify addressing an issue which had not been presented to and decided by the trial court. ***Id***. Likewise, in ***Cockrell***, this Court concluded that a challenge to the constitutionality of a statute that provided all Mississippi Tort Claims Act ("MTCA") claims are to be determined without a jury was barred, as it was not presented to and decided by the trial court. *See* ***Cockrell***, 865 So. 2d at 360. In sum, the general "unusual circumstances" language in ***Cockrell*** and ***Wilson*** lacks any underlying authority, and this Court's disposition in both cases was that issues raised for the first time on appeal were barred.

is not properly before us to review."); ***CIG Contractors, Inc. v. Mississippi State Bldg. Comm'n***, 510 So. 2d 510, 514 (Miss. 1987) ("CIG is barred from pursuing this theory for the first time on appeal."); ***First Mississippi Nat'l Bank v. S&K Enters.***, 460 So. 2d 839, 841 (Miss. 1984); ***Contreras v. State***, 445 So. 2d 543, 544 (Miss. 1984); ***Colburn***, 431 So. 2d at 1114; ***New South Corp. v. Godley***, 301 So. 2d 307, 310-11 (Miss. 1974); ***Stewart v. City of Pascagoula***, 206 So. 2d 325, 328 (Miss. 1968); ***Comfort v. Landrum***, 52 So. 2d 658, 659 (Miss. 1951); ***Adams v. Bd. of Supervisors of Union County***, 177 Miss. 403, 170 So. 684, 685 (1936) (issue "was neither presented to, considered, nor passed on, by the trial court. It is a long established rule in this state that a question not raised in the trial court will not be considered on appeal."); ***Huston v. King***, 119 Miss. 347, 80 So. 779, 779 (1919); ***Alexander v. Eastland***, 8 George 554, 1859 WL 5348, at *3 (Miss. Err. App. 1859).

¶39. Relatedly, this Court repeatedly has stated that "a trial judge *cannot* be put in error on a matter not presented to him." ***Southern***, 853 So. 2d at 1214 (citing ***Bender v. N. Meridian Mobile Home Park***, 636 So. 2d 385, 389 (Miss. 1994); ***Mills v. Nichols***, 467 So. 2d 924, 931 (Miss. 1985)) (emphasis added). *See also* ***Hughes v. Hosemann***, 68 So. 3d 1260, 1265 (Miss. 2011) (quoting ***Tricon Metals & Servs., Inc. v. Topp***, 516 So. 2d 236, 239 (Miss. 1987)) ("This Court repeatedly has held that we cannot and will not rule upon issues not decided by the trial court below. 'Logic is strained at the thought of an appellate court affirming or reversing a decision never made.'"); ***Hemba v. Mississippi Dep't of Corr.***, 998 So. 2d 1003, 1008-09 (Miss. 2009) ("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."); ***Larson v. State***, 957 So. 2d 1005, 1018 (Miss. Ct. App. 2007) (citing ***Billiot v. State***, 454 So. 2d 445, 455 (Miss. 1984)) ("Trial courts should not be reversed based on issues never presented to them."); ***In re V.R.***, 725 So. 2d at 245; ***Patterson***, 594 So. 2d at 609; ***Methodist Hosp. of Memphis v. Marsh***, 518 So. 2d 1227, 1228 (Miss. 1988); ***Estate of Myers v. Myers***, 498 So. 2d 376, 379 (Miss. 1986); ***Ponder v. State***, 335 So. 2d 885, 886 (Miss. 1976).

¶40. In the case *sub judice*, the issue of whether Section 19-9-171 violated Section 206 was neither asserted nor offered by the plaintiffs, nor was it "instituted in" or "acted upon" by the chancery court. ***Dodd***, 61 So. at 743-44. A putative violation of Section 206 never surfaced until the plaintiffs' "Motion for Stay Pending Appeal," which was filed 697 days after filing their petition, 113 days after the entry of "Final Judgment," and more than 90 days after filing their "Notice of Appeal." The "Motion for Stay Pending Appeal" sought only to stay "distribution of contested tax revenues to preserve the status quo pending appeal." Regarding Section 206, the motion first informed the chancery court that the plaintiffs intended to argue this new issue on appeal. The motion did not request the chancery court to reopen the record and reconsider its ruling in light of their new claim.[19] The constitutionality of Section 19-9-171 *vis-a-vis* a Section 206 violation was never pleaded before, or "tried and passed upon" by the chancery court. ***Patterson***, 594 So. 2d at 609 (quoting ***Leverett***, 197 So. 2d at 890); ***Smith v. Fluor Corp.***, 514 So. 2d 1227, 1232 (Miss.

[19]Assuming the motion had included such a request, it would have been untimely by 103 days. *See* Miss. R. Civ. P. 59 (motion for new trial or motion to alter or amend judgment "shall be filed not later than ten days after the entry of judgment.").

1987) ("[T]he constitutionality of a statute will not be considered unless the point is *specifically* pleaded.") (emphasis added). *See also* Munford, *Mississippi Appellate Practice* § 3.1 at 3-1 (2010) ("The pleadings frame the issues in the lawsuit. They create the structure the Supreme Court reviews. With the exceptions discussed in 3.7, infra,[20] a party can not assert on appeal claims and defenses not raised in the pleadings or by a proper motion."). Therefore, there is no "judicial decision" regarding a claimed Section 206 violation for this Court to "revis[e]." ***Dodd***, 61 So. at 743-44. Despite these obvious deficiencies, the plaintiffs plowed under our precedents, hoping this Court would not enforce the constitution, caselaw, and rules prescribed for all, and accept their dubitable invitation. This issue was raised for the first time on appeal, and a trial court cannot be placed in error on a matter not presented to it. We should not reverse for a decision never made.[21] (Maj. Op. at ¶¶ 11-12, 22-23).

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[20]Section 3.7 of *Mississippi Appellate Practice* addresses "plain error." *See* Munford, *Mississippi Appellate Practice* § 3.7 at 3-27 (2010). The plaintiffs do not contend that this is a "plain error" case.

[21]The contention that the defendants "assert no prejudice from the plaintiffs' failure to raise this issue in their initial pleadings[,]" provides no citation for the proposition that prejudice is a consideration with respect to an issue raised for the first time on appeal. (Maj. Op. at ¶ 11). The absence of any such citation militates against its consideration, i.e., the fundamental issue is jurisdictional. For this Court to address such an issue plainly violates the constitutional requirement that we act as a "court of appeals." Miss. Const. art. 6, § 146. Prejudice, *vel non*, is a *non sequitur*. Although the majority references supplemental briefing, I am compelled to point out that, throughout that process, the defendants consistently maintained that the plaintiffs' Section 206 argument was barred, and no argument was included in the plaintiff's supplemental brief to defeat the bar. (Maj. Op. at ¶ 11). Opening Pandora's Box by undoing the long-established precedents outlined in ¶¶ 37-39 *supra*, is the wrong approach. (Maj. Op. at ¶ 12). If a proper analysis requires consideration of Section 206, then this case should be remanded for full development of the record and a ruling thereon in the chancery court.

¶41. Section 206 ought not be considered by this Court at this time. To act otherwise, allegedly because "compelling" matters of "grave importance to every school district in the county" are implicated, is no different than the claims of great public importance advanced by the plaintiffs in ***Hughes*** and ***Speed v. Hosemann***, 68 So. 3d 1278 (Miss. 2011). (Maj. Op. at ¶¶ 11-12). Yet, in those cases, this Court concluded that ripeness concerns outweighed the importance of the questions presented. *See* ***Hughes***, 68 So. 3d at 1266; ***Speed***, 68 So. 3d at 1281. The majority contends that "delay[ing] our answer for another day" is untenable "while the revenue distributed according to that statute potentially is lost." (Maj. Op. at ¶ 12). But Section 19-9-171 simply codified an uncontested distribution of revenues which had been ongoing for more than thirty years. There is no great public ill in maintaining the status quo until the lower court has the opportunity to consider and rule upon Section 206.

¶42. No one can dispute that "on matters of law, it is our job to get it right."[22] (Maj. Op. at ¶ 12) (quoting ***UHS-Qualicare***, 525 So. 2d at 754). But our job begins when an appeal is properly presented to us. There are numerous recent examples where this Court has ruled that it would not address important constitutional issues which had not been first presented to the trial court.[23] *See*, *e.g.*, ***Mississippi State Fed. of Colored Women's Club Housing v.***

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[22]However, I must note that the quoted portion of ***UHS-Qualicare*** pertained to our de novo review on questions of law. In that case, this Court simply stated that, as to questions of law, we do not defer to the trial court and "[t]hat the trial judge may have come close is not good enough." ***UHS-Qualicare, Inc. v. Gulf Coast Cmty. Hosp., Inc.***, 525 So. 2d 746, 754 (Miss. 1987). In no way does that case stand for the proposition that we will review issues raised for the first time on appeal.

[23]I feel quite certain that litigants in those cases would characterize their constitutional claims as deeply "compelling" and the underlying circumstances as being "unique" and/or "unusual."

L.R., 62 So. 3d 351, 363 (Miss. 2010) ("L.R. also argues, for the first time on appeal, that it would be unconstitutional for this Court to deny her those damages [on economic cost of raising a child], given that pain and suffering damages have a statutory cap. This Court declines to consider the constitutional argument, as it comes too late and is not properly before the Court."); ***Williams v. Skelton***, 6 So. 3d 428, 430 (Miss. 2009) ("This Court finds that Williams's assertion that [the sixty-day-notice requirement in] [S]ection 15-1-36(15) is unconstitutional is procedurally barred because she raises the issue for the first time on appeal, and she did not give the trial court the opportunity to rule on this issue."); ***Powers v. Tiebauer***, 939 So. 2d 749, 754-55 (Miss. 2005) (holding constitutional challenge to Section 93-9-9(1), raised for the first time on appeal, was barred); ***Cockrell***, 865 So. 2d at 360 (declining to address constitutionality of MTCA provision that MTCA claims are to be determined without a jury). This Court ought not rush to prematurely consider an issue that was not fully vetted before the chancery court and is not properly before this Court.[24] In 2007, following a vote of 50-2 in the Senate and 120-1 in the House,[25] Section 19-9-171 was signed into law by then-Governor Haley Barbour. Given that this Court will enforce Section 19-9-171 "unless it appears beyond all reasonable doubt to violate the Constitution[,]" we should first be presented with a trial-court record and a judicial decision regarding the

[24]In stating that a de novo standard of review applies, are we not acknowledging that the plaintiffs' Section 206 argument should not be considered? (Maj. Op. at ¶ 8). "De novo" is defined as "[a]new; afresh; a second time." *Black's Law Dictionary* 483 (4th ed. 1968). How can we conduct a second review of that which was never reviewed by the trial court in the first place?

[25]Each of those members of the Mississippi Legislature took an oath "to support the Constitution . . . ." ***Mississippi Tax Comm'n v. Brown***, 188 Miss. 483, 193 So. 794, 796 (1940).

statute's constitutionality *vis-a-vis* Section 206 before addressing that issue. ***State v. Bd. of Levee Comm'rs***, 932 So. 2d 12, 19 (Miss. 2006).

CONCLUSION

¶43. Based upon this analysis, I conclude that this Court should reject consideration of the plaintiffs' Article 8, Section 206, argument, as it is improperly raised for the first time on appeal. I would remand for full development of the record and a chancellor's ruling on the constitutionality, *vel non*, of Section 19-9-171. Only after each party has been accorded a fair and just opportunity to be heard on that issue before a trial court should this Court rule thereon.

WALLER, C.J., AND CHANDLER, J., JOIN THIS OPINION.