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COURT IMPOSED UNFUNDED MANDATES  
HOW TO FIGHT BACK

# Overview

- ▶ • Counties are facing increasing court-ordered spending demands.
- ▶ • Mississippi's Constitution and statutes give boards the tools to push back.
- ▶ • This presentation outlines how to exercise that authority responsibly.



# Does Anyone Remember What the Mood of the Country was Back in 1995?

- ▶ President = Bill Clinton
- ▶ Political Issue = Newt Gingrich Advances “Contract with America”
- ▶ US House Passes a Balanced Budget Amendment (never ratified)
- ▶ Oklahoma City Bombing
- ▶ Unabomber is on the Loose
- ▶ Dow Tops 5,000 for the First Time
- ▶ Federal Government Shuts down in November and December
- ▶ The Unfunded Mandates Reform Act of 1995 (UMRA)

# Do You Remember What Was Going On in Mississippi in 1995?

- ▶ Kirk Fordice ran for re-election versus Dick Molpus winning re-election by 55%
- ▶ Mississippi Ratified the 13<sup>th</sup> Amendment Abolishing Slavery
- ▶ Consistent with the national mood against unfunded mandates, Mississippi took action to secure Constitutional protection from judicially mandated taxation
- ▶ This Proposed Amendment to the Mississippi Constitution was on the Ballot that Fall
- ▶ Section 172A of Article 6 of the Mississippi Constitution was proposed by Laws 1995, ch. 635, House Concurrent Resolution No. 40, and upon ratification by the electorate on November 7, 1995, with over 70% approval, was inserted by proclamation of the Secretary of State on December 5, 1995

# What is an Unfunded Mandate ?

- ▶ An unfunded mandate is a statute or regulation imposed by a higher level of government that requires any entity to perform certain actions or satisfy certain obligations without providing that entity any money to fulfill the requirements.
- ▶ This can be imposed on state or local government, as well as private individuals or organizations.
- ▶ The key distinction is that the statute or regulation is not accompanied by funding to fulfill the requirement.

# MS Constitution Article 6, §172A

## **Court order for tax levy or tax increase prohibited**

**Neither the Supreme Court nor any inferior court of this State shall have the power to instruct or order the State or any political subdivision thereof, or an official of the State or a political subdivision, to levy or increase taxes.**

# Section 172A – Constitutional Protection

- ▶ Section 172A of the Mississippi Constitution prohibits any court from ordering a Board of Supervisors to levy or increase taxes.
- ▶ This ensures fiscal control remains with elected county officials.
- ▶ Even if a school district or agency disagrees with funding decisions, courts cannot compel new taxes.
- ▶ In sum, if a school district's request is partially denied, there is no judicial override

# Section 172A Protects Separation of Powers

- ▶ Article 1, Section 1 of the MS Constitution Separates the Powers of Government.
- ▶ Article 4 is the Legislative Branch in Mississippi
  - ▶ Legislative bodies hold the exclusive power of taxation
- ▶ Article 5 is the Executive Branch in Mississippi
  - ▶ Agencies cannot control taxes and can only administer their portion of funds afterwards.
- ▶ Article 6 is the Judicial Branch in Mississippi
  - ▶ Courts can't encroach on legislative taxing authority.

# Section 2 of Article 1

## Prohibits Encroachment of Power

**No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others.**

- ▶ The power to tax is a legislative power.
- ▶ A county board of supervisors acts as a legislative body when it levies property taxes and when it exempts certain land-owners from paying the tax for a certain period of years.
- ▶ A local school board is in the executive branch. A school board can only administer their portion of the funds received from the tax levies, not control their own tax levies
  - ▶ Miss. Code Ann. § 37-7-301.1 states: “this section shall not authorize a school board to: (a) levy taxes of any kind or increase the levy of any authorized tax.”

# Steps of Taxation – Ad Valorem Taxes

## 1. Valuation

- ▶ The process begins with the county Tax Assessor determining the "true value" of a property based on its market value.
- ▶ The tax assessor is required to appraise all taxable property annually and record the true value on the assessment roll

## 2. Assessment

- ▶ The assessed value of a property is determined by multiplying its true value by a state-mandated assessment ratio based on the property's classification.
- ▶ The Tax Assessor then files the roll or rolls with the clerk of the board of supervisors on or before the first Monday in July of each year.
- ▶ "The board of supervisors shall immediately at the July meeting proceed to **equalize** such rolls. . ." Miss. Code Ann. § 27-35-83
  - ▶ Tax exemptions are applied
- ▶ Assessments must be approved by an order of the board of supervisors entered on the minutes. Miss. Code Ann. § 27-35-105

# Steps of Taxation – Ad Valorem Taxes

## 3. Levy

- ▶ Local taxing authorities determine the millage rate, or tax rate, needed to fund their budgets based on the total assessed value within their jurisdiction
  - ▶ Local school boards must submit their request for an ad valorem tax effort in dollars to the board of supervisors by August 15th
  - ▶ The board must “determine” the millage rate needed to fund the school district’s budget request. Miss. Code Ann. §37-57-1, §37-57-104, & §37-57-105
- ▶ The board **shall** then levy a tax of no less than 28 mills and no more than 55 mills for school maintenance, must levy a separate amount to cover **debt obligations, and** the net amount of money to be produced by such levy must satisfy the school district’s minimum local ad valorem tax effort
- ▶ This is the only step where the Board of Supervisors has true **discretion**, and this is likely the **only step where Section 172A of the Constitution applies**

# Steps of Taxation – Ad Valorem Taxes

4. The County Tax Collector is responsible for sending tax bills and collecting payments.

- ▶ Valuation, Assessment and Collection afford very little or no discretion.
- ▶ Levy above the statutory floor and below the statutory ceiling is where the Board may exercise discretion.

# Application – Simpson County Example

- ▶ For FY 2024-2025, the Simpson School Board requested a total ad valorem tax effort from the Board of Supervisors in the amount of **\$743,785.29** for “Debt Service” and in the amount of **\$13,408,771.95** for “School Maintenance” which included:
  - Base Ad Valorem Request of **\$11,466,835.53**
  - Plus Request for 4% Increase of **\$458,673.22**
  - Plus Requested Increase of **\$1,483,263.00** for “**New Programs**”
- ▶ School Board could not justify the “New Programs” request
- ▶ The Board of Supervisors, after a public hearing, approved a *reduced* tax levy, rejecting the requested increases for New Programs and the 4% increase and levying an amount to cover only the school board’s justified and approved requests
- ▶ The School Board appealed and asked the Circuit Court to enter an order requiring the Board of Supervisors re-establish the millage rate and set a new levy that would generate the exact same dollar amount requested by the School District

# Simpson County Example

- ▶ In the Simpson County case, the Circuit Court dismissed the school district's appeal, citing §172A as barring court intervention in tax levies.
- ▶ The Circuit Court Held:
  - ▶ Section 172A of the Mississippi Constitution prohibits courts from ordering tax levies or increases.
    - ▶ The Board of Supervisors exclusively holds the power of taxation for the county under multiple statutes and under the Constitution.
    - ▶ School districts do not have authority to levy taxes.
  - ▶ The School District's requested 16.9% increase (12.9% for the unqualified New Programs plus 4% increase) exceeded statutory limitations without a referendum.
  - ▶ The Board properly exercised its discretion in determining the millage rate within statutory floor and ceiling limits.
  - ▶ The School Shortfall Note statute, Miss. Code Ann. §37-57-108, provides the School District's sole avenue of relief if it wishes for remaining portions of its budget to be funded.
- ▶ The Simpson case is now on Appeal to the MS Supreme Court / Court of Appeals

# Discretion Within Reason

- ▶ Must levy to cover debt services
- ▶ Discretion in setting the levy so it only covers portions of the Operations Request that satisfied all statutory prerequisites and limitations
  - *Examples: published notice, millage caps, and percentage limits on increases*
- ▶ “New Programs” are defined by statute, Miss. Code Ann. 37-57-107
  - *First year of a program mandated by the Legislature*
  - *Additional millage required to meet the minimum local contribution set by MDE*
  - *There's no additional millage if the prior year's levy is enough to meet the new year's increased minimum local contribution*
- ▶ If it isn't a “New Program”, that Request counts towards the total percentage limit on increases.

# Board Discretion in Tax Levies

- ▶ Boards have broad discretion in setting tax levies.
- ▶ Actions must be reasonable and based on statutory guidance.
- ▶ Courts defer to boards that make evidence-based decisions.

# Budget Requests from School Districts

- ▶ Boards can approve requests in full or in part.
- ▶ Requests must meet all statutory prerequisites.
- ▶ Key statutes: MCA §§37-57-107, 37-57-1, 37-57-104, 37-61-9.
- ▶ Do not 'rubber stamp' incomplete or unsupported requests.

# Required Documentation

- ▶ Require districts to submit supporting documentation with their requests:
  - ▶ Escrow and operating account statements.
  - ▶ Superintendent's signed explanation of any 'New Program'
  - ▶ Documentation of any debt obligations and shortfall notes
- ▶ This ensures compliance and transparency.

# Why Escrow Balances Matter

- ▶ Districts must subtract any funds already in escrow from their requests.
- ▶ Simpson County case has since revealed undisclosed escrow funds.
- ▶ Boards should verify all balances before approving tax levies.

# When the Board Denies Full Requests

- ▶ If a school district's ad valorem request is not fully approved, its only recourse is a shortfall note.
- ▶ Courts cannot compel additional levies under Section 172A.

# Shortfall Notes – MCA §37-57-108

- ▶ Allows a school district to issue promissory notes for actual revenue shortfalls.
- ▶ Limited to 25% of its local tax budget.
- ▶ Must be issued by June 30 of the fiscal year.
- ▶ Must be reported as proceeds in the following year's request.

# Key Limitations of Shortfall Notes

- ▶ Cannot be used as a routine funding tool.
- ▶ Districts must use escrowed funds first.
- ▶ Any unspent shortfall funds must reduce next year's request.
- ▶ Prevents compounding budget inflation.

# Practical Steps for Boards

- ▶ Require detailed financial documentation with each request.
- ▶ Verify statutory compliance before approving levies.
- ▶ Document board decisions carefully to show reasonableness.
- ▶ Cite Section 172A and statutory authority in minutes.

# Legal Takeaways

- ▶ Courts cannot order counties to levy new or increased taxes.
- ▶ Boards have constitutional and statutory protection.
- ▶ The Simpson Order reinforces board independence.
- ▶ Vigilance and documentation protect taxpayers.

# Key References

- ▶ Mississippi Constitution §172A
- ▶ MCA §§37-57-107, 37-57-108, 37-61-9, 27-39-207
- ▶ Simpson County Circuit Court Order (2025)
- ▶ Mississippi Attorney General Opinions (relevant)

# Conclusion – Fighting Back the Right Way

- ▶ Use the law, not emotion, to defend fiscal integrity.
- ▶ Require transparency and accountability from districts.
- ▶ Mississippi's Constitution is on your side.
- ▶ Supervisors can uphold their duty to taxpayers.