

STATE CONSTITUTIONAL LAW—EDUCATION—HEY
TEACHER, LEAVE THOSE KIDS ALONE: LOUISIANA
STUDENTS LOSE THEIR RIGHTS TO EDUCATIONAL
FREEDOM. *LOUISIANA FEDERATION OF TEACHERS v.*
STATE, 118 SO. 3D 1033 (LA. 2013).

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I. INTRODUCTION

In *Louisiana Federation of Teachers v. State*,¹ the Louisiana Supreme Court ruled that the interplay between 2012 La. Acts 2 (“Act 2”) and Louisiana Senate Concurrent Resolution 99 (“SCR 99”) unconstitutionally redirected public funds to nonpublic schools in breach of article VIII, section 13(B) of the Louisiana Constitution.² At the Louisiana Constitutional Convention of 1973, the delegates in attendance created the Board of Elementary and Secondary Education (“BESE”), which would serve as an administrative body for elementary and secondary schools in the state.³ The BESE is composed of eleven members, each of whom serves a four-year term concurrent with the governor of the state.⁴ Eight of the eleven BESE members are elected

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1. 118 So. 3d 1033 (La. 2013).

2. *Id.* at 1037. The article states in part that the Board of Elementary and Secondary Education is intended to “annually develop and adopt a formula which shall be used to determine the cost of a minimum foundation program of education in all public elementary and secondary schools.” LA. CONST. art. VIII, § 13(B).

3. The 1974 Louisiana Constitution formally established the BESE. *See About BESE*, LA. BOARD OF ELEMENTARY & SECONDARY EDUC., <http://bese.louisiana.gov/about-bese> (last visited Jan. 30, 2014).

4. *Id.*

from each of the state's BESE districts and the governor appoints the remaining three board members.⁵

The BESE is entrusted with the responsibility of preparing the Minimum Foundation Program ("MFP"), which allocates local and state funds to the various school systems across the state.⁶ The BESE then presents this formula to the legislature for approval.⁷ If the legislature rejects the proposal, the BESE must adjust the formula and reintroduce it to the legislature until the legislature finally approves.⁸

This Comment proposes that passage of the MFP formula, which distributes funds to non-public schools, is constitutionally permissible and explores the ominous implications of this case's decision. Namely, the decision will limit families' options as to how to educate their children. Once the BESE attains the minimum threshold needed to educate its students in the public school system, it has the freedom to distribute any excess funds as it sees fit, including allocating funds to non-public educational institutions. Further, recently enacted laws in the state call into question the role of state government vis-à-vis funding of non-public schools. This inconsistency will demonstrate that SCR 99 and Act 2 are indeed in harmony with the Louisiana Constitution.

II. HISTORICAL BACKGROUND

Before delving into the case itself, it may be instructive to describe the complex three-layered formula set out by SCR 99.⁹ Level One, known as "Cost Determination and Equitable Distribution of State and Local Funds," consists of the number of students in the state of Louisiana multiplied by \$3855, the "State and Local Base Per Pupil Amount."¹⁰ This figure, which consists of the total amount of funds devoted to education, is then split between the state and local district, 65% from the former and 35% from the latter.¹¹ No matter how fiscally self-sufficient a given

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. SCR 99, section XII(B)(6) reads in pertinent part:

The amount for which the city or parish school district is responsible will be funded with a transfer from the MFP allocation for the city or parish school district in which the participating student resides to the participating nonpublic or public school on behalf of each student awarded a scholarship.

S. Con. Res. 99, 2012 Leg., Reg. Sess. § XII(B)(6) (La. 2012).

10. La. Fed'n of Teachers v. State, 118 So. 3d 1033, 1045 (La. 2013).

11. *Id.*

parish may be, the state will contribute no less than 25% of the Level One costs to any parish.¹²

Level Two, known as “Incentive for Local Effort,” is meant to compensate the local districts that raise more than their required share of revenue as stipulated by their Level One target.¹³ Finally, Level Three or “Unequalized Funding” constitutes funding for teacher compensation increases, funding for foreign language instructors, as well as a provision known as “hold harmless funding.” The latter provision helps districts that were negatively impacted by these changes enacted before the 1992–93 fiscal year.¹⁴ Since local contributions reduce the amount of funds provided by the state, Levels Two and Three are intended to ease the burden on districts that disproportionately contribute more than the Level One target threshold.¹⁵

III. STATEMENT OF THE CASE

In 2012, the Louisiana legislature enacted two regulations that, in concert, drastically altered the state’s existing voucher program, known as the “Student Scholarships for Educational Excellence Program” or SSEEP.¹⁶ The first component of this change, known as Act 2, mandated that the Louisiana Department of Education allocate MFP funds to non-public schools.¹⁷ Block grants are based on a per-pupil allocation and schools receive the grants according to enrollment figures from the previous year.¹⁸ Such non-public schools include online and virtual

12. *Id.*

13. *Id.*

14. *Id.* at 1046.

15. *Id.*

16. See Rebekka C. Veith, *Misspending for Youth: School Vouchers in Louisiana Are a Legally Tenuous, Short-Term Fix for a State in Need of Public Education Reform*, 88 TUL. L. REV. 369, 371 (2013). SSEEP, a creation of the Louisiana legislature, expanded a scholarship program formerly offered only to select students in the New Orleans public schools. Under this arrangement, students whose families did not exceed a certain income threshold and who attended a public school that earned a “C,” “D,” or “F” grade based on a statewide assessment could choose to utilize state funds to transfer to another school, public or private. *Id.* at 369.

17. The MFP is charged with implementing a formula that equitably distributes educational funding to school districts across Louisiana in the form of a block grant. See *Minimum Foundation Program*, LA. BOARD OF ELEMENTARY & SECONDARY EDUC., <http://bese.louisiana.gov/current-initiatives/minimum-foundation-program> (last visited Jan. 30, 2014).

18. See *Funding Guidelines and Methods*, LA. BOARD OF ELEMENTARY & SECONDARY EDUC., [http://bese.louisiana.gov/8\(g\)-grants/funding-guidelines-and-methods](http://bese.louisiana.gov/8(g)-grants/funding-guidelines-and-methods) (last visited Jan. 30, 2014).

educational programs, vocational or technical schools, and home study arrangements.¹⁹

The second component, SCR 99, serves as the means by which the legislature sanctioned the MFP formula for the 2012–13 school year.²⁰ Essentially, SCR 99 approves the formula adopted by the BESE so that the objective of Act 2 is made possible.²¹ For example, when a student decides to attend a non-public institution, the amount his or her home city or parish school district would ordinarily receive is instead allocated to that non-public school.²²

Additionally, SCR 99 features an early high school graduation incentive, whereby the state provides a scholarship to students who graduate earlier than anticipated from public schools to encourage such students to attend an institution of higher education in the State of Louisiana.²³

Plaintiffs in the case, the Louisiana Federation of Teachers, the East Baton Rouge Federation of Teachers, and the Jefferson Federation of Teachers, contended that SCR 99 and Act 2 are unconstitutional and sought injunctive relief.²⁴ In terms of the substance of the legislation, Plaintiffs asserted the two provisions contravene article VIII, section 13(B) of the Louisiana Constitution, which mandates that the state establish a formula that reflects the cost of the MFP for all public schools and equitably allocates the funds to parish and city school systems.²⁵ Further, Plaintiffs claimed that the Acts distribute funds to organizations that the legislature did not intend to provide for, namely non-public educational institutions.²⁶ Finally, Plaintiffs claimed that Act 2 and SCR 99 unconstitutionally redirect the local portion of the per-pupil amount set out in the MFP, violating article VIII, sections 13(C) and (D) of the Louisiana Constitution.²⁷

Additionally, Plaintiffs argued that SCR 99 should be invalidated on procedural grounds because it was passed on the eighty-fifth day of the legislative session, in violation of article III, section 2(A)(3)(a) of the

19. *La. Fed'n of Teachers*, 118 So. 3d at 1038.

20. *Id.*

21. *Id.*

22. *Id.*

23. S. Con. Res. 99, 2012 Leg., Reg. Sess. § XII(C) (La. 2012).

24. *La. Fed'n of Teachers*, 118 So. 3d at 1038–39.

25. *Id.* at 1039.

26. *Id.*

27. *Id.*

Louisiana Constitution.²⁸ In this instance, as Plaintiffs pointed out, fifty-one members of the Louisiana House of Representatives voted in favor of the measure and forty-nine voted against, failing to meet the two-thirds threshold.²⁹ Lastly, Plaintiffs alleged that the passage of Act 2 violated article III, sections 15(A) and (C) of the Louisiana Constitution, which limit the bill to one object and only those changes germane to the object of the bill.³⁰

Proceeding on the merits in district court, the court found that Act 2 and SCR 99 did not unconstitutionally violate article III, section 2(A)(3)(a), reasoning that only matters intended to have the effect of law are subject to this provision.³¹ The court concluded that SCR 99 did not have the effect of law because the constitution grants the legislature limited power to approve or reject the formula; it cannot itself determine the formula.³² This up or down measure was not considered the equivalent to the passage of a bill by the court, namely because this act of the legislature did not require the governor's approval, unlike the passage of a bill.³³

Next, the district court determined that Act 2 did not violate article III, section 15 of the Louisiana Constitution, which constrains the bill to only one object and any issues germane to that object.³⁴ Citing prior case law, the court concluded that a bill features one object if its elements are "reasonably related and have a natural connection to the general subject matter of the legislation."³⁵ After evaluating Act 2, the court determined the amendments and recently added components included in Act 2 conformed to that definition, having related to the expansion of school choice.³⁶

Most importantly, however, the lower court determined that Act 2 and SCR 99 unconstitutionally redirected MFP funds intended for public elementary and secondary schools to non-public institutions, breaching

28. *Id.* at 1040. Specifically, the provision provides that any passage of law after the eighty-second day of the session requires a two-thirds vote of the elected members of each house of the legislature. LA. CONST. art. III, § 2(A)(3)(a).

29. *La. Fed'n of Teachers*, 118 So. 3d at 1040.

30. *Id.* at 1039–40. Article III, section 15(A) provides in pertinent part: "Every bill, except the general appropriation bill and bills for the enactment, rearrangement, codification, or revision of a system of laws, shall be confined to one object." LA. CONST. art. III, § 15(A).

31. *La. Fed'n of Teachers*, 118 So. 3d at 1040.

32. *Id.* at 1041.

33. *Id.*

34. *Id.*

35. *Id.* at 1041–42 (quoting *State v. O'Dell*, 218 So. 2d 318, 319 (La. 1969)).

36. *Id.* at 1042.

article VIII, section 13(B) of the Louisiana Constitution.³⁷ In support of its ruling, the court emphasized the latter clause of the constitution, that the BESE is required to “equitably allocate the funds to parish and city school systems.”³⁸ Further, the court determined that the provision dictated that the legislature appropriate funds on a yearly basis by using the approved formula to safeguard a minimum foundation of education in all public elementary and secondary schools.³⁹ The court keyed in on what it termed a clear and unambiguous phrase, “all public elementary and secondary schools,” which it interpreted to mean a school system financially supported with tax revenue and run by a governmental entity that educates children from kindergarten through twelfth grade pursuant to article VIII, section 9(A) of the Louisiana Constitution.⁴⁰

To bolster its holding, the court looked to the legislative intent of the Act as articulated during the Louisiana Constitutional Convention of 1973. According to the court, the delegates distinguished article VIII, section 13(B) as concerning strictly public schools.⁴¹ Reinforcing this belief, the court referenced a proposed amendment calling for the redirection of funds in support of private schools, which the delegates in attendance ultimately dismissed.⁴²

In the end, the majority of delegates decided to omit the provision because they feared that it could lead to a slippery slope in terms of further financing of private schools.⁴³ The court concluded that this excluded provision made clear that the delegates recognized that section 13(B) applied only to public schools.⁴⁴

Further, because article VIII, section 13(A) provides limited resources—such as textbooks and other instructive material—to private schools as compared to their public counterparts, the court drew the

37. *La. Fed'n of Teachers*, 118 So. 3d at 1042.

38. *Id.* (quoting LA. CONST. art. VIII, § 13(B)).

39. *Id.*

40. *Id.* (quoting LA. CONST. art. VIII, § 13(B)). The provision stipulates: “The legislature shall create parish school boards and provide for the election of their members.” LA. CONST. art. VIII, § 9(A). The court noted this language ostensibly to show the clear demarcation between taxpayer-supported public schools and those schools not supported by taxpayers. *La. Fed'n of Teachers*, 118 So. 3d at 1042.

41. *La. Fed'n of Teachers*, 118 So. 3d at 1042.

42. *Id.*

43. *Id.* The delegates had already agreed to support private schools by providing cost-free textbooks. They did not want to extend further assistance beyond those provisions that were absolutely necessary to operate a school.

44. *Id.*

conclusion that the delegates did not see the two on equal footing, as evidenced by the delegates' later decision to limit private aid.⁴⁵

Finally, the district court determined that Act 2 and SCR 99 unconstitutionally rerouted local funds specifically allocated to public schools to non-public entities in violation of article VIII, section 13(C), which sets forth that each school board impose an ad valorem tax to raise revenue for elementary and secondary schools at the local level.⁴⁶ The district court reasoned that, although Defendants did not have access to local accounts, they circuitously reduced MFP allocations.⁴⁷ Despite the roundabout path, the court determined that state law did not allow for such an end run.⁴⁸ Defendants then appealed.

IV. THE COURT'S REASONING

A. *Diversion of MFP Funds*

Reviewing the judgment de novo, the Supreme Court of Louisiana found that SCR 99 and Act 2 unconstitutionally redirected state MFP monies from public to non-public entities.⁴⁹ The court noted that under the SSEEP program, an eligible pupil is tallied when finalizing the MFP funds, but the per-pupil amount of the funds for that student is paid directly from the state to the non-public school.⁵⁰ In support of their case, Defendants emphasized the initial sentences of article VIII, section 13(B), which state that the Louisiana Constitution only compels the BESE formula to deliver "the cost of a minimum foundation program of education"⁵¹ for all Louisiana public schools.⁵² Once that minimum threshold has been satisfied, the BESE and legislature have flexibility in the way they may allocate remaining funds.⁵³

45. *Id.* at 1042. "The legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education to the children of the state at the elementary and secondary levels." LA. CONST. art. VIII, § 13(A).

46. *La. Fed'n of Teachers*, 118 So. 3d at 1043.

47. *Id.*

48. *Id.*

49. *Id.* at 1055.

50. *Id.* at 1049.

51. LA. CONST. art. VIII, § 13(B).

52. *La. Fed'n of Teachers*, 118 So. 3d at 1050; *see Jones v. State Bd. of Elementary and Secondary Educ.*, 927 So. 2d 426, 431 (La. 2005) ("The Louisiana Constitution does not require that any particular items be included in the formula nor does it require that the formula be based on actual costs.").

53. *La. Fed'n of Teachers*, 118 So. 3d at 1050.

In response, the court found that this contention misconstrued the argument.⁵⁴ As structured, the Louisiana Constitution sets out restrictions of power and, as such, the court embarked on its inquiry by determining in what way the language of article VIII, section 13(B) restricted the allocation of MFP funds.⁵⁵ As its initial step, the court looked to the plain language of the statute.⁵⁶ More specifically, it highlighted a specific sentence: “The funds appropriated shall be equitably allocated to parish and city school systems.”⁵⁷ The court keyed in on the word “shall,” interpreting the provision to denote a requirement.⁵⁸ Such a strong affirmative qualifier moved the court to find that even if, as Defendants argued, the statute gave the BESE and legislature discretion as to how it allocated funds after the minimum threshold had been satisfied, the MFP funds must still be distributed equitably among parish and city school systems.⁵⁹

Next, Defendants argued that when a student elects to attend an Act 2 program, that student’s home district is not required to spend the funds it otherwise would to educate that child.⁶⁰ To buttress the argument, Defendants pointed to the text of the Louisiana Constitution⁶¹: “The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.”⁶² Essentially, Defendants argued that providing an education for the people of Louisiana, including those not attending public schools, made it acceptable for the state to subsidize private entities.⁶³

Citing past case law, the court determined that when two provisions relate to the same circumstance, the more specific provision triumphs over the comparatively general one.⁶⁴ Applying this rule in this constitutional context, the court determined that the limitation of the MFP funds in article VIII, section 13(B) was unaffected by the more general objective of delivering an adequate education to the citizens of Louisiana pursuant to article VIII, section 1.⁶⁵ However, the court took

54. *Id.*

55. *Id.*

56. *Id.* at 1049–50.

57. *Id.* at 1050 (quoting LA. CONST. art. VIII, § 13(B)).

58. *Id.* at 1050–51.

59. *La. Fed’n of Teachers*, 118 So. 3d at 1051.

60. *Id.*

61. *Id.*

62. LA. CONST. art. VIII, § 1.

63. *La. Fed’n of Teachers*, 118 So. 3d at 1051.

64. *Id.* at 1052; *see also* *City of New Orleans v. La. Assessors’ Ret. & Relief Fund*, 986 So. 2d 1, 15 (La. 2007).

65. *La. Fed’n of Teachers*, 118 So. 3d at 1052.

pains to make clear that the two provisions, though related, did not necessarily oppose one another.⁶⁶ Specifically, the court reasoned that section 13(A), which furnishes textbooks free of charge to non-public schools, illustrated an example of the state fulfilling its duty to its students by providing an essential component of a quality education.⁶⁷

Based on legislative intent, Defendants further argued that the delegates of the Constitutional Convention supported assistance to non-public entities.⁶⁸ Defendants particularly pointed to a convention proposal that would have attached a provision that would have delivered additional aid to non-public schools.⁶⁹ In evaluating this piece of legislative history, the court emphasized its significance in two ways.⁷⁰

First, the court reasoned that if the delegates felt compelled to allocate MFP funds to private entities to the same extent as their public counterparts, there would not have been an outcry for the proposal in the first place, which was ultimately rejected by the convention delegates.⁷¹ Based on the record, while delegates felt obligated to support private schools by providing basic supplies such as textbooks, transportation, and lunch, they did not want to extend this courtesy to funding more costly components of running a school to these private entities.⁷²

Second, Defendants claimed that the BESE and legislature held immense flexibility in shaping the state's education program by custom through the passage of time.⁷³ Taking advantage of this discretion, Defendants contended, many of the mechanisms in place are not constitutionally mandated, such as Levels Two and Three of SCR 99.⁷⁴

The court found Defendants' logic to be askew, holding that despite the autonomy granted to the BESE, the affirmative and certain language used in article VIII, section 13(B) remained well-defined, as evidenced by the word "shall."⁷⁵ The court maintained that the growth in influence of the BESE did not impact the indisputable words of the Louisiana Constitution.⁷⁶

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 1053.

71. *La. Fed'n of Teachers*, 118 So. 3d at 1053.

72. *Id.*

73. *Id.* at 1054.

74. *Id.* Therefore, the BESE has the freedom to deviate from the state constitutional framework, which may include paying non-public school tuition using excess MFP funds, Defendants maintained.

75. *Id.* The provision states: "The funds allocated shall be equitably allocated to parish and city school systems . . ." LA. CONST. art. VIII, § 13(B).

76. *La. Fed'n of Teachers*, 118 So. 3d at 1054.

As a fallback, Defendants relied on the idea that students receiving scholarship through the SSEE program were considered members of the local school system, as they would have attended public school in the year the scholarship was granted.⁷⁷ The court quickly dismissed this argument, maintaining that despite the timing of the scholarships, the students would actually be placed within the confines of a non-public institution.⁷⁸ The court held that such institutions are not part of the parish and city school systems, and the technical procedures of awarding scholarships should not impact the meaning of the provision.⁷⁹

B. Effect of Law

Putting aside the substantive question of diverting MFP funds to non-public schools, the issue of whether SCR 99 and Act 2 have the effect of law could have rendered the diversion analysis moot. If these proposed pieces of legislation were found to have the effect of law, it would require the legislature to go through certain procedures of the law-making process. Plaintiffs argued that the passage of SCR 99 breached article III, section 2(A)(3)(a) of the Louisiana Constitution.⁸⁰

Defendants requested the court evaluate only the first three of twenty-eight pages that constitute SCR 99.⁸¹ The court declined Defendants' invitation, instead choosing the commonsense approach of evaluating the entire text.⁸² In evaluating the remaining twenty-five pages, the court reiterated its belief that the mandatory language contained in SCR 99 compelled action without option.⁸³ Though instructive, the court needed to expand its search to determine whether it had the effect of law. Accordingly, the court looked to article III, section 16 regarding appropriations.⁸⁴ Essentially, the text demonstrated that

77. *Id.* Thus, at the time they are awarded the scholarships, the recipients would be public school pupils within the school district even though they would attend a non-public school in the subsequent school year.

78. *Id.* at 1055.

79. *Id.*

80. *Id.* at 1056. "No new matter intended to have the effect of law shall be introduced or received by either house after six o'clock in the evening of the twenty-third calendar day." LA. CONST. art. III, § 2(A)(3)(a).

81. *La. Fed'n of Teachers*, 118 So. 3d at 1057.

82. *Id.* at 1057–58.

83. *Id.* at 1059. ("In reproducing both of the excerpts about the early graduation program, we emphasize the words 'will' and 'shall' because these are indicators not of aspiration, not of option, but of requirement.")

84. *Id.* at 1059–60. The provision provides: "Except as otherwise provided by this constitution, no money shall be withdrawn from the state treasury except through specific

determining appropriations represents a particular function of the legislature. As part of SCR 99, funds are appropriated for students eligible for the early graduation program.⁸⁵ Thus, the court held, SCR 99 was intended to have the effect of law.⁸⁶

Reinforcing its determination, the court noted that, while not dispositive, the road taken by SCR 99 mirrored that of other pieces of legislation that came before it.⁸⁷ Since SCR 99 was not formally labeled a bill within its four corners, the court felt it necessary to take note of this part of SCR 99's legislative history by charting its course.⁸⁸ Taken together, the compulsory language, the appropriations, and the path of the proposal indicated that SCR 99 had the effect of law in the eyes of the court.⁸⁹

The significance of this finding weighed in favor of Plaintiffs. Since SCR 99 was found to have the effect of law, it had to conform to certain legislative procedures. For example, the court noted that article III, section 2(A)(3)(a) mandated that any matter with the intent of effect of law shall be considered on third reading and final passage in either legislative house at six o'clock at night on the fifty-seventh legislative day or eighty-second calendar day, whichever came first, unless two-thirds of the elected membership of the house voted in favor.⁹⁰ Since SCR 99 was put before the House on June 4, 2012, the eighty-fifth calendar day, its passage was dependent on a two-thirds vote.⁹¹ No two-thirds vote was taken and thus SCR 99 was not properly considered.⁹²

C. *The One-Object Rule*

Plaintiffs also claimed that Act 2 violated the One-Object Rule.⁹³ The One-Object Rule was enacted to prevent legislators from attaching otherwise unappealing and unrelated matters to the core concept of a piece of legislation.⁹⁴ Legislators often employ this tactic to enact measures that would not otherwise pass on their own merit. The rule

appropriation, and no appropriation shall be made under the heading of contingencies or for longer than one year." LA. CONST. art. III, § 16(A).

85. *La. Fed'n of Teachers*, 118 So. 3d at 1060.

86. *Id.*

87. *Id.* at 1061.

88. *Id.*

89. *Id.*

90. *Id.* at 1062 (citing LA. CONST. art. III, § 2(A)(3)(a)).

91. *La. Fed'n of Teachers*, 118 So. 3d at 1062.

92. *Id.*

93. *Id.* at 1063.

94. *Id.* at 1063–64.

limits any and all riders to ones that are germane to the subject of the legislation.⁹⁵

The term “object” is admittedly defined very broadly, as it must “have a natural connection and reasonably relate, directly or indirectly, to one general and legitimate subject of legislation”⁹⁶

After examining the title and contents of Act 2, the court determined that the purpose of this bill was to offer more educational choices for the people of Louisiana.⁹⁷ The court quickly brushed aside Plaintiffs’ notion that an amendment redefining what comprises a failing school sufficiently deviated from the overall purpose of Act 2, expanding educational opportunity.⁹⁸

The court similarly rejected one-object protests as to provisions defining the job description of a superintendent of schools, transportation, and the creation of a Type 1B charter school.⁹⁹ The court reasoned that the superintendent’s job description was related, albeit tangentially, to providing educational choice to the people of Louisiana.¹⁰⁰ The court also found that the transportation provision was “necessary to exempt local districts from having to fund transportation for students enrolled in the Act 2 scholarship program.”¹⁰¹

V. AUTHOR’S ANALYSIS

A. *Diversion of Public Funds*

The Supreme Court of Louisiana took an extremely broad reading of article VIII, section 13(B).¹⁰² Specifically, the court zeroed in on the

95. *Id.* “The Constitution of 1879 restored the one-object requirement.” *Id.* at 1063 n.35; *see also* LA. CONST. of 1879, art. XXIX.

96. *Baszley v. Tortorich*, 397 So. 2d 475, 485 (La. 1981). In *Wall v. Close*, the court also explained:

In deciding whether a statute of the Legislature violates a constitutional provision which prohibits an act from embracing more than one object, . . . [i]t matters not how comprehensive the act may be or how numerous its provisions; it does not violate such a constitutional provision if its language, reasonably construed, shows that it has but one main, general object or purpose

14 So. 2d 19, 26 (La. 1943).

97. *La. Fed’n of Teachers*, 118 So. 3d at 1067.

98. *Id.* at 1068.

99. *Id.* at 1068–69.

100. *Id.* at 1068.

101. *Id.*

102. Article VIII, section 13(B) reads in pertinent part: “The funds appropriated shall be equitably allocated to parish and city school systems according to the formula as

mandatory language “shall.” However, this portion of the law must be read in context. An important qualifier precedes this directive: “The legislature shall annually appropriate funds sufficient to fully fund the current cost to the state . . . as determined by applying the approved formula in order to insure a *minimum* foundation of education in all public elementary and secondary schools.”¹⁰³ This qualifier suggests that the BESE need only meet a bottom threshold of funding. Once that threshold is achieved, nothing in the statute instructs the BESE as to what it should do with any excess monies.¹⁰⁴

In post-Katrina New Orleans, public schools have struggled immensely to provide an adequate education for young people. In order to provide families with alternatives to these failing schools, Governor Bobby Jindal enacted a statewide policy that would result in a dramatic proliferation of the number of charter schools in Louisiana.¹⁰⁵ An increase in such schools would give families free reign to control the destiny of their children’s education. Oftentimes such transitions occur midyear, after the MFP formula has already been established, complicating the calculation. For example, if the per-pupil figure amounted to \$8537 in a given academic year and a student chose to attend a private school costing \$6311, that amount follows the student going to the private school.¹⁰⁶ That would leave a difference of \$2226, but because the state kicked in 65% of the MFP amount, the state would recoup \$1447 or 65% of the excess.¹⁰⁷

Having achieved the minimum threshold referred to in article VIII, section 13(B), the state has satisfied the requirement. Thus, the state has free reign to do with its share of the excess as it pleases,¹⁰⁸ including using it to subsidize charter schools. When taken in this narrower

adopted by the State Board of Elementary and Secondary Education . . . and approved by the legislature prior to making the appropriation.” LA. CONST. art. VIII, § 13(B).

103. *Id.* (emphasis added).

104. *See* Charlet v. Legislature of State, 713 So. 2d 1199, 1206–07 (La. Ct. App. 1998). In an equal protection challenge brought against the BESE, the court reaffirmed the BESE’s flexibility and discretion as an elected body to allocate resources so as to provide equal treatment and learning opportunities for *every* individual. *Id.*

105. *See* Matthew Cunningham-Cook, *Why Do Some of America’s Wealthiest Individuals Have Fingers in Louisiana’s Education System?*, NATION (Oct. 17, 2012), <http://www.thenation.com/article/170649/why-do-some-americas-wealthiest-individuals-have-fingers-louisianas-education-system>.

106. Tom Aswell, *BESE Takes Funding from Disabled Students with MFP Passage as Chas Roemer Tells Lottie Beebe to Pipe Down*, LA. VOICE (Mar. 8, 2013), <http://louisianavoice.com/2013/03/08/bese-takes-funding-from-disabled-students-with-mfp-passage-as-chas-roemer-tells-lottie-beebe-to-pipe-down>.

107. *Id.*

108. *See* Charlet, 713 So. 2d at 1206.

context, one can clearly see that spending the surplus of the per-pupil amount does not take away from the amount promised to public schools. Nothing in the statute explicitly compels the BESE to allocate the entirety of available funds for public school use. Accordingly, the notion that the BESE abused its power by enacting SCR 99 and Act 2 and thus diverted funds intended for public education alone does not hold merit.

B. Legislative Intent

In defending its reasoning, the court pointed to the legislative context of the Louisiana Constitutional Convention of 1974.¹⁰⁹ The Louisiana Constitution dictates that the legislature set aside funds for textbooks for all children of Louisiana.¹¹⁰ Implicit in this provision is the guarantee that such textbooks should be provided to children attending private school.¹¹¹ Some delegates in attendance suggested a separate provision in article VIII that would have delivered assistance to non-public schools.¹¹² The majority pointed to the significance of this development for several reasons. Principally, the delegates ultimately rejected the proposal, reinforcing the notion that, while the delegates were willing to provide funding for textbooks and other essentials, they did not wish to “open the door to other types of grants.”¹¹³

However, a specific provision in the Louisiana Revised Statutes counters this school of thought. Section 3982(B) of the Charter School Demonstration Programs Law compels local school boards in Louisiana to provide certain Type 2 charter schools, created as a result of conversion, access to soon-to-be vacant facilities.¹¹⁴ This regulation contravenes the spirit of the legislative history from which the court draws its argument. Essentially this provision enables the Louisiana government, by allowing it to provide facilities without charging rent to charter schools, to effectively fund the very institutions it ostensibly intended not to fund beyond essentials like textbooks and transportation according to the court’s interpretation of legislative history.

If the government can cover such a prohibitively expensive cost for charter schools, one wonders what would stop the government from

109. *La. Fed’n of Teachers v. State*, 118 So. 3d 1033, 1052–53 (La. 2013).

110. LA. CONST. art. VIII, § 13(A).

111. *La. Fed’n of Teachers*, 118 So. 3d at 1053.

112. *Id.*

113. *Id.*

114. See LA. REV. STAT. ANN. § 3982(B)(1) (2012). The relevant language stipulates that “[i]f such facilities were constructed at no cost to the local school board, then such facilities including all equipment, books, instructional materials, and furniture within such facilities shall be provided to the charter school at no cost.” *Id.*

floating other forms of funding to non-public schools. This regulation set an important precedent that allows government funds to be diverted to non-public institutions. Ultimately, no party objected to it on constitutional grounds. Thus Act 2 and SCR 99, which in tandem perform the identical function of funding a private school, cannot possibly be considered unconstitutional if section 3982(B) successfully passed.

C. *One-Object Rule*

Admittedly, the One-Object Rule issue in this case appears to be in the eye of the beholder. The rule is intended to preclude a legislator from supplementing a bill that is likely to pass by attaching a measure that would not have passed on its own merit. The court characterized the object of the bill as expanding school choice.¹¹⁵

While the majority of these bill provisions are naturally connected to the objective of expanding school choice, some provisions are further attenuated than others. For example, Plaintiffs contended that the removal of certain certifications for teachers is not naturally connected to the aim of expanding school choice.¹¹⁶

The court rejected Plaintiffs' reasoning by setting aside the wisdom of removing such a certification. In its view, the loosening of certification requirements constituted an operational policy, and that policy had a reasonable connection to the aforementioned aim of the bill.¹¹⁷ However, the court lacked precision in its dismissal of Plaintiffs' argument. The goal of the bill was to expand school choice. By easing the qualifications required to teach in a charter school, the quality of the school will suffer by employing fewer qualified teachers. With fewer capable teachers, students will likely fail to receive the same quality education they would have received had those requirements remained in place.

With the quality of education on the decline in charter schools, parents will likely opt for the seemingly more reliable environment of public schools. However, if those teacher certification standards had remained in place, the charter schools could better provide a superior alternative to Louisiana's failing school system. The easing of teacher certification requirements will hurt charter schools such that parents will not view these schools as a viable option for their children. Thus, this specific provision runs counter to the object of the rest of the statute. It limits, rather than expands, school choice.

115. *La. Fed'n of Teachers*, 118 So. 3d at 1069.

116. *Id.*

117. *Id.*

VI. CONCLUSION

While the court intended to preserve what remains of a crumbling educational infrastructure, it unwittingly impeded Louisiana parents' choice as to how to educate their children. There is no doubt that Louisiana public schools are failing. The Louisiana Constitution, read closely, allows the BESE to allocate funds as it sees fit once it meets a minimum threshold for funding public schools. If the BESE wants to redirect the remaining funds toward schools with the potential to better educate the children of Louisiana, nothing in the constitution stops them from doing so. Further, the legislative history of article VIII, section 13 indicates that the delegates agreed to provide certain resources to non-public schools, but the delegates did not clarify the limit of such resources. Though it appeared the delegates wished to provide only basic staples—such as textbooks, food, and bus transportation—the Charter School Demonstration Programs Law compels local governments to provide rent free facilities to charter schools. Such publicly funded assistance seems to go beyond the aforementioned basic necessities envisioned by the delegates. Given this development, it remains unclear at what point public funds cannot be allocated to charter schools. No constitutional objection was presented when this regulation was enacted, and given the perilous state of public education in Louisiana, no such objection should gain traction now.