

SUPREME COURT OF LOUISIANA

NUMBERS 2013-CA-0120 C/W 2013-CA-0232 C/W 2013-CA-____

LOUISIANA FEDERATION OF TEACHERS ET AL,
PLAINTIFFS/APPELLEES

, ET AL,
PLAINTIFFS/APPELLEES/APPELLANTS

VERSUS

STATE OF LOUISIANA, ET AL,
DEFENDANTS/APPELLANTS/APPELLEES

CONSOLIDATED WITH

LOUISIANA SCHOOL BOARDSö ASSOCIATION, ET AL,
PLAINTIFFS/APPELLEES/APPELLANTS

VERSUS

STATE OF LOUISIANA, ET AL,
DEFENDANTS/APPELLANTS/APPELLEES

A CIVIL PROCEEDING ON DIRECT APPEAL FROM A JUDGMENT OF THE
19TH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE,
STATE OF LOUISIANA, NUMBERS 612,733, 613,142, AND 613,320 OF SECTION 22
THE HONORABLE TIMOTHY E. KELLEY, PRESIDING

**ORIGINAL AMICUS CURIAE BRIEF
OF THE NATIONAL SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF PLAINTIFFS/APPELLANTS AND URGING AFFIRMANCE**

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INTEREST OF THE AMICUS

The National School Boards Association ("NSBA") is a nonprofit organization representing state associations of school boards, including the Louisiana School Boards Association, and the Board of Education of the U.S. Virgin Islands. Through its member state associations, NSBA represents over 90,000 school board members who govern approximately 13,800 local school districts serving nearly 50 million public school students. NSBA regularly appears before state and federal and state courts and has participated as *amicus curiae* in many cases involving the use of public funds to pay for private education. See, e.g., *Niehaus v. Huppenthal*, No. 1 CA-CV 12-0242 (pending Ariz. App. Ct., Div. One) (amicus brief filed Oct. 31, 2012); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Locke v. Davey*, 540 U.S. 712 (2004); *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011).

NSBA is concerned about the Louisiana Voucher Program, LA. REV. STAT. § 17:4011 *et seq.*, because it undermines public education, depriving it of already scarce resources, with few accountability requirements imposed on the recipient private schools. It imposes these harms without an important educational purpose. Instead, it is part of a nationwide campaign by special interest groups to divert tax dollars away from public education and into private hands under the guise of parental choice. NSBA urges this Court to avoid a ruling that would strengthen these

STATEMENT OF THE CASE

Amicus NSBA adopts the Statement of the Case of the Louisiana School Boards Association.

STATEMENT OF FACTS

Amicus NSBA adopts the Statement of the Facts of the Louisiana School Boards Association.

STATEMENT OF ISSUE

Whether Act 2 of the 2012 Regular Session of the Louisiana Legislature and Senate Concurrent Resolution 99 of the Regular Session of the Louisiana Legislature (officially known as the Student Scholarship for Educational Excellence Program¹ and Course Provider Program, but herein referred to as _____ ionally divert Minimum Foundation Program funds, which are explicitly mandated to be allocated to public elementary and secondary schools, to nonpublic entities in violation of Article VIII, § 13(B) of the Louisiana Constitution of 1974.

¹

than a euphemism that suggests an intent to benefit needy children by providing them the choice to receive a quality education not otherwise available to them and disguises the true intent behind these schemes to dismantle public education and to benefit private entities.

ARGUMENT AND LAW

I. The Louisiana Voucher Program Harms Public Education.

A. The Louisiana Voucher Program conflicts with the judiciary's longstanding commitment to public education as an inherent American value.

Like the American people, American courts have always recognized the critical role that expressed by the United States Supreme Court in *Brown v. Board of Education* has resonated through the last fifty years of education law:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

Brown v. Board of Educ.

Brown was not on education in general, regardless of source, but on education as a *function of state and local government, i.e.,* as a public responsibility serving the public good.

These same themes are echoed throughout the jurisprudence of school law. For instance, regarded as performing a task

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values in themselves conducive to happiness and as indispensable to the practice of self-

Plyler v. Doe, 457 U.S. 202, 221 (1982)

San Antonio

Indep. Sch. Dist. v. Rodriguez

detracts from our historic dedication to public education

to public schools, the Program constitutes a severe threat to the quality of public education programs. The impact of this diversion in funding is amplified in Louisiana where public schools have been experiencing budget shortfalls for an extended period of time. According to

When combined with a diminishing public education budget, the diversion of public dollars into private hands means those students remaining in either by choice or because there is no voucher available to them face the strong likelihood of an intentionally under-resourced education. Ironically, the under-resourced schools must nonetheless perform even when the financial framework that supports them is severely diminished or risk being labeled or remaining a failing school subject to vouchers. The Louisiana voucher scheme, therefore, strategically perpetuates its own survival, ensuring that public schools are set up for failure by draining away the essential lifeblood of scarce resources. Rather than providing additional funding to assist in the improvement of the Louisiana Voucher Program aggravates rather than ameliorates the condition of these schools by depriving them of funds for voucher students enrolled in a private school on October 1, the date official counts of students take place for state funding purposes.

Judge Kelley explicitly recognized that this situation is untenable under Louisiana law:

The MFP was set up to equitably allocate funds to public and secondary schools. This gives public school systems in poore49 T cl.02 27 LiFP8 27 st3-89(w)b9(fa)7(tFP8 27 57.81 Tm/-88(th

C. The Louisiana Voucher Program's lack of accountability harms Louisiana taxpayers.

This lack of accountability effectively negates any argument that the Louisiana Voucher Program or other similar voucher initiatives provide real, meaningful choice on the ground level where the families of voucher students are selecting a private school for their children based on few, if any, objective measures of educational quality. Because the vast majority of voucher schools are not subject to the same accountability standards as public schools, parents have no

synthesis of research on the efficacy of voucher programs, the Center on Education Policy recently [a]chievement gains for voucher students are similar to those of their public school peers. . . While some studies have found limited test score gains for voucher students in certain subject areas or grade levels, these findings are inconsistent among studies, and the gains are either not statistically significant, not clearly caused by vouchers, or not

⁹ As to the assertion that voucher programs spur public schools to improve, the CEP report stated that no clear conclusions about cause and effect can be drawn.

variety of reforms are underway to boost public school achievement, ranging from the strict accountability requirements of the No Child Left Behind Act to the expansion of charter schools. Often the public schools most affected by vouchers are the same ones targeted for intensive interventions due to consistently

¹⁰ characterization of the research were an accurate portrayal of the aggregate effect of voucher programs in general, it reveals little about the likelihood that the Louisiana Voucher Program will produce a similar positive outcome and even less about the educational benefits that any particular private school in Louisiana will provide to a child who enrolls there using public tax dollars.

D. The Louisiana Voucher Program threatens the ability of school districts to comply with mandatory desegregation plans.

desegregate.¹¹ These orders require Louisiana school districts to take specific actions related to student assignment, facilities, staff assignment, and transportation to remedy the effects of past school segregation and create equal educational opportunities for all students in public schools. Compliance with these orders remains for many Louisiana districts a long, arduous, expensive and complex process impeded by many factors, some of which are beyond the power of school districts to control. One federal district court held in November 2012 that the Louisiana Voucher Program interfered with the ability of the Tangipahoa Parish to comply with a 1965 desegregation order by diverting funding from the public schools, and enjoined the State of Louisiana from implementing the voucher program in that parish. Concerns that the

student assignment remedies also surfaced.¹² The U.S. Court of Appeals for the Fifth Circuit in a 2-

constitutionality of the Louisiana Voucher Program. *Moore v. Tangipahoa Parish Sch. Bd.*, No. 12-31218 (5th Cir. Jan. 14, 2013), available at <http://www.ca5.uscourts.gov/opinions/unpub/>

¹¹ Cowen Institute, Parish Desegregation Status Matrix (Tulane University, 2010), available at <http://www.coweninstitute.com/wp-cont>

12/12-31218.0.wpd.pdf. Were this Court to find the voucher scheme constitutional, it could undermine the vital constitutional and public imperative of the desegregation orders extant in 40 Louisiana school districts.

II. The Court Should Not Be Part of a Troubling Wave of a Nationwide Effort by Special Interest Groups To Undermine Public Education by Diverting Scarce Public Tax Dollars to Private Entities.

A. Private hands are, in fact, the true beneficiaries of the Louisiana Voucher Program.

The Louisiana Voucher Program allows parents of kindergartners to use the vouchers

¹³ These students can

continue to receive vouchers for the remainder of their elementary and secondary schooling. This means the Louisiana Program could be used to subsidize a private education for children whose parents never intended to enroll them in public school at all regardless of the quality of the education available there. This provision belies the argument that the law is intended to allow students to escape failing public schools and is in large part the Louisiana reprise of the experience in other states, where between one-third and one-half of students participating in voucher programs were already enrolled in private schools.¹⁴ Even some voucher school administrators have acknowledged this facade -up of our student body has stayed the

¹³ In the first year of the Louisiana Voucher Program, 22% of voucher students were kindergartners, although kindergartners only comprise 7.7 % of school aged children in Louisiana private schools. See Louisiana Private School Statistics, <http://louisiana.educationbug.org/private-schools/>.

¹⁴ See Zach Schiller, *Cleveland School Vouchers: Where the Students Come From* (Policy Matters Ohio, Sept. 2001); WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, *Milwaukee Parental Choice Program Facts and Figures for 1998-99*, and *Number of Choice Students Enrolled by School in 1998-99* (March 2003), available at www.dpi.state.wi.us/sms/geninfo.html.

¹⁵ In May 2012, the

New York Times

pitched as a way to provide poor students with the same education choices as their more affluent counterparts, donations to state-designated scholarship programs are benefitting students already in those private schools. According to the *Times* a 2011 report by the Southern Education Foundation found that from 2007, the year before the program was enacted, through 2009, private school enrollment increased by only one-third of one percent in the metropolitan counties that included most of the private schools in the scholarship program. The logical conclusion was that most of the students receiving the scholarships had not come from pu

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B. This Court should not lend credence to the national voucher movement.

divert public funds to private schools,¹⁷ most of which have been challenged in court. This Court should eschew a ruling that further enhances the ability of special interest groups to promote the financing of a private school education with public tax dollars in even more states. Among the proponents of voucher initiatives, the American Legislative Exchange Cou53.73 49(vouc)4()-9()-h(A4(ti)-

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CONCLUSION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Brief of Amicus Curiae National School Boards Association in Support of Plaintiffs-Appellants has been served on the following parties and counsel of record by depositing a copy of same in the United States mail with sufficient postage affixed thereon to:

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