

013320

LOUISIANA SCHOOL BOARDS' ASSOCIATION, ET AL.

DOCKET NO.:

DIV.:

VS.

19TH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA, LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, and LOUISIANA DEPARTMENT OF EDUCATION

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF CONCERNING THE CONSTITUTIONALITY AND/OR LEGALITY OF ACT 2 AND SENATE CONCURRENT RESOLUTION 99 OF THE 2012 REGULAR SESSION OF THE LOUISIANA LEGISLATURE

The Petition of the Louisiana School Boards' Association, Ascension Parish School Board, Assumption Parish School Board, Avoyelles Parish School Board, Baker City School Board, Bogalusa City School Board, Bossier Parish School Board, Calcasieu Parish School Board, Claiborne Parish School Board, Concordia Parish School Board, Evangeline Parish School Board, Franklin Parish School Board, Iberia Parish School Board, Iberville Parish School Board, Jackson Parish School Board, Jefferson Davis Parish School Board, Lafayette Parish School Board, Lincoln Parish School Board, Livingston Parish School Board, Monroe City School Board, Plaquemines Parish School Board, Pointe Coupee Parish School Board, St. Bernard Parish School Board, St. Charles Parish School Board, St. John the Baptist Parish School Board, St. Martin Parish School Board, St. Mary Parish School Board, St. Tammany Parish School Board, Tangipahoa Parish School Board, Tensas Parish School Board, Vermillion Parish School Board, Washington Parish School Board, Webster Parish School Board, and Zachary Community School Board (collectively referred

hereinafter "plaintiffs") respectfully represents as follows:

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1.

Plaintiffs are:

- (A) Louisiana School Boards' Association ("LSBA"), a federation of public school systems with its domicile and principal place of business in the Parish of East Baton Rouge, State of Louisiana, whose membership consists of public school districts throughout the State of Louisiana; and
(B) Ascension Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Ascension, State of Louisiana;
(C) Assumption Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Assumption, State of Louisiana;
(D) Avoyelles Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Avoyelles, State of Louisiana;

- (E) Baker City School Board, a political subdivision of the State of Louisiana domiciled in the Parish of East Baton Rouge, State of Louisiana;
- (F) Bogalusa City School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Washington, State of Louisiana;
- (G) Bossier City School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Bossier; State of Louisiana;
- (H) Calcasieu Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Calcasieu, State of Louisiana;
- (I) Claiborne Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Claiborne, State of Louisiana;
- (J) Concordia Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Concordia, State of Louisiana;
- (K) Evangeline Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Evangeline, State of Louisiana;
- (L) Franklin Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Franklin, State of Louisiana;
- (M) Iberia Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Iberia, State of Louisiana;
- (N) Iberville Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Iberville, State of Louisiana;
- (O) Jackson Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Jackson, State of Louisiana;
- (P) Jefferson Davis Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Jefferson Davis, State of Louisiana;
- (Q) Lafayette Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Lafayette, State of Louisiana;
- (R) Lincoln Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Lincoln, State of Louisiana;
- (S) Livingston Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Livingston, State of Louisiana;
- (T) Monroe City School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Ouachita, State of Louisiana;
- (U) Plaquemines Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Plaquemines, State of Louisiana;
- (V) Pointe Coupee Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Pointe Coupee, State of Louisiana;
- (W) St. Bernard Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of St. Bernard, State of Louisiana;
- (X) St. Charles Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of St. Charles, State of Louisiana;

- (Y) St. John the Baptist Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of St. John the Baptist, State of Louisiana;
- (Z) St. Martin Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of St. Martin, State of Louisiana;
- (AA) St. Mary Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of St. Mary, State of Louisiana;
- (BB) St. Tammany Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of St. Tammany, State of Louisiana;
- (CC) Tangipahoa Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Tangipahoa, State of Louisiana;
- (DD) Tensas Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Tensas, State of Louisiana;
- (EE) Vermillion Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Vermillion, State of Louisiana;
- (FF) Washington Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Washington, State of Louisiana;
- (GG) Webster Parish School Board, a political subdivision of the State of Louisiana domiciled in the Parish of Webster, State of Louisiana; and
- (HH) Zachary Community School Board, a political subdivision of the State of Louisiana domiciled in the Parish of East Baton Rouge, State of Louisiana.

2.

Plaintiffs are charged by law with the operation of their respective public school systems.

Pursuant to LSA-R.S. 17:51, they have the power to sue and be sued.

3.

Plaintiffs herein appear for the purpose of fulfilling their respective duties to secure for the schools of their districts all funds destined for the support of the public schools, including the state funds apportioned thereto and all other funds, as mandated by LSA-R.S. 17:81(E)(1) and other lawful authorities.

4.

Made defendants herein are:

- (A) State of Louisiana;
- (B) Louisiana Board of Elementary and Secondary Education (hereinafter "BESE"), a body corporate with its domicile and principal place of business in the Parish of East Baton Rouge, State of Louisiana, created by Article 8, Section 3 of the Louisiana Constitution of 1974; and
- (C) Louisiana Department of Education, an agency of the State of Louisiana with its domicile and principal place of business in the Parish of East Baton Rouge, State of

Louisiana, created by La. R.S. 17:24.

5.

During the 2012 Regular Session, the Louisiana Legislature enacted Act 2, which either amended and reenacted statutes or enacted entirely new statutes in Chapters 1, 42, and 43 of Title 17 of the Revised Statutes of 1950.

6.

Plaintiffs seek and are entitled to a judgment declaring that Act 2 of the 2012 Regular Session of the Louisiana Legislature (hereinafter "Act 2") is unconstitutional and/or null and void in whole or in part, and that a preliminary and ultimately permanent injunction should issue enjoining defendants from applying, enforcing, and/or implementing the provisions of Act 2 for the reasons detailed hereinbelow.

7.

During the 2012 Regular Session of the Louisiana Legislature, the Legislature voted on Senate Concurrent Resolution 99 ("SCR 99") as the vehicle to approve the minimum foundation program (MFP) formula adopted by defendant BESE.

8.

Plaintiffs seek and are entitled to a judgment declaring that SCR 99 is unconstitutional and/or null and void because (a) the Legislature did not pass SCR 99 in compliance with the Louisiana Constitution and/or (b) because SCR 99 authorizes the use of MFP funds in violation of the Louisiana Constitution. Plaintiffs seek and are entitled to a preliminary and ultimately permanent injunction enjoining defendants from applying, enforcing, and/or implementing the provisions of SCR 99 for the reasons detailed hereinbelow.

BACKGROUND FACTS

9.

Funding of public education in the State of Louisiana is accomplished through the minimum foundation program (hereinafter "MFP") and an MFP formula.

10.

Pursuant to Article 8, Section 13(B) of the Louisiana Constitution of 1974 and La. R.S. 17:7(2), BESE is responsible for annually developing and adopting the MFP formula.

11.

Pursuant to La. R.S. 17:22(2)(d), the Louisiana Department of Education, through the State Superintendent of Education, is required to submit the MFP and its formula to each member of the Joint Legislative Committee on the budget and to each member of the House Committee on education and the Senate Committee on education for review by later than the 15th day of March in each year.

12.

Pursuant to Article 8, Section 13(B) of the Louisiana Constitution of 1974, the State of Louisiana, acting through the Louisiana Legislature, is responsible for annually approving the MFP formula.

13.

Pursuant to La. R.S. 17:25(A)(1), the State Superintendent of Education is required to prepare and transmit to each parish and city school board, during the current calendar or fiscal year, monthly warrants, payable to the treasurer of the school board, that cover the amount of the funds due each school board based upon the total funds appropriated for all schools boards in accordance with the MFP.

14.

At all times relevant hereto, the Louisiana Senate was composed of thirty-nine (39) senators, twenty (20) of whom constituted a majority and twenty-six (26) of whom constituted a two-thirds majority.

15.

At all times relevant hereto, the Louisiana House of Representatives was composed of one hundred and five (105) representatives, fifty-three (53) of whom constituted a majority and seventy (70) of whom constituted a two-thirds majority.

16.

House Bill 976 of the 2012 Regular Session of the Louisiana Legislature was filed prior to the beginning of that session and ultimately received the favorable vote of at least the majority of the members elected to each House.

17.

On April 18, 2012, House Bill 976 was signed by the Governor and became Act 2 of the 2012 Regular Session of the Louisiana Legislature.

COUNT 1

**SCR 99 IS NULL AND VOID AND WITHOUT LEGAL EFFECT
BECAUSE IT WAS INTRODUCED UNTIMELY**

18.

Article 3, Section 2(A)(3)(a) of the Louisiana Constitution of 1974 provides, in part, as follows:

“No new matter intended to have the effect of law shall be introduced or received by either house after 6:00 in the evening of the 23rd calendar day.”

19.

SCR 99 was a “matter intended to have the effect of law”, as those terms are used in Article 3, Section 2(A)(3)(a) of the Louisiana Constitution of 1974.

20.

SCR 99 of the 2012 Regular Session of the Louisiana Legislature was introduced by Senator Appel on May 7, 2012, the fifty-seventh (57th) calendar day of the 2012 Regular Legislative Session.

21.

SCR 99 was not, therefore, properly before the Louisiana Legislature and is null and void and of no legal effect.

COUNT 1-A

**SCR 99 IS NULL AND VOID AND WITHOUT LEGAL EFFECT
BECAUSE IT WAS NOT CONSIDERED TIMELY**

22.

Article 3, Section 2(A)(3)(a) of the Louisiana Constitution of 1974 also provides, in pertinent part, as follows:

“No matter intended to have the effect of law, except a measure proposing a suspension of law, shall be considered on third reading and final passage in either house after 6:00 in the evening of the fifty-seventh legislative day or the eighty-second calendar day, whichever occurs first, except by a favorable record vote of two-thirds of the elected members of each house.”

23.

SCR 99 was considered by the Louisiana House of Representatives on the final day of the 2012 Regular Legislative Session, which was the eighty-fifth (85th) calendar day of such session. The record vote on SCR 99 taken by the Louisiana House of Representatives on the final day of the legislative session was fifty-one (51) in favor and forty-nine (49) against.

24.

Because only fifty-one (51) members of the Louisiana House of Representatives voted in favor of SCR 99 out of a total of one hundred and five (105) members, SCR 99 did not receive a favorable vote of two-thirds (70) of the elected members of the House and thus should not have been considered on the eighty-fifth (85th) calendar day of the legislative session.

25.

SCR 99, therefore, is null and void and of no legal effect.

COUNT 1-B

SCR 99 IS NULL AND VOID AND WITHOUT LEGAL EFFECT BECAUSE IT DID NOT RECEIVE FAVORABLE VOTE OF HOUSE MAJORITY

26.

Article 3, Section 15(G) of the Louisiana Constitution of 1974 also provides as follows:

“Majority vote; record vote. No bill shall become law without the favorable vote of at least the majority of the members elected to each house.”

27.

The Attorney General for the State of Louisiana has previously opined that the concurrent resolution approving the MFP is a legislative enactment with the force and effect of law. Cf. A.G. Op. Nos. 92-862; 92-661.

28.

Because only fifty-one (51) members of the Louisiana House of Representatives voted in favor of SCR 99 out of a total of one hundred and five (105) members, SCR 99 did not receive a favorable vote of the majority (53) of the elected members of the House of Representatives and cannot become law pursuant to the provisions of Article 3, Section 15(G) of the Louisiana Constitution of 1974.

29.

In the absence of legislative approval of SCR 99, Article 8, Section 13(B) of the Louisiana Constitution of 1974 requires that “the last formula adopted by the board [BESE], or its successor, and approved by the legislature shall be used for the determination of the cost of the minimum foundation program and for the allocation of funds appropriated”.

30.

The last MFP adopted by BESE and approved by the Legislature was the 2011-12 MFP, which was adopted by BESE on February 17, 2011 and approved by the Legislature in HCR 130 of the 2011 Regular Session, and that formula should be used to allocate funding for public education until there is a new MFP formula adopted by BESE and properly approved by the Legislature.

COUNT 2

UNCONSTITUTIONAL DIVERSION OF MFP FUNDS

31.

Article 8, Section 1 of the Louisiana Constitution of 1974 provides:

“The Legislature shall provide for the education of the people of the State and shall establish and maintain a public educational system.”

32.

Article 8, Section 13(B) of the Louisiana Constitution of 1974 provides, in pertinent part, that:

“The State Board of Elementary and Secondary Education, or its successor, shall annually develop and adopt the formula which shall be used to determine the cost of a minimum foundation program of education in all public elementary and secondary schools as well as to equitably allocate the funds to parish and city school systems.”

33.

Act 2 and SCR 99 violate Article 8, Section 13(B) of the Louisiana Constitution of 1974 because they divert funds that are constitutionally mandated to be allocated to public elementary and secondary schools in order to ensure a minimum foundation of education in those schools from those schools to, among others, the following:

- “(A) Private individuals and entities that offer individual courses in person or online, including online or virtual education providers, post-secondary education institutions, and corporations that offer vocational or technical course work in their field;
- (B) Private individuals who school their children at home;

- (C) Non-public schools, including secular and religious schools;
- (D) Charter schools approved by private charter organizers that will exist independently of the public parish and city school systems; and
- (E) Post-secondary education institutions as payment for instruction to students who have previously earned a state-approved high school diploma and who are no longer enrolled in any parish or city system of elementary or secondary education.”

34.

In the alternative, and, only in the event that the provisions of Act 2 and SCR 99 be deemed severable and Act 2 and SCR 99 be determined to be otherwise constitutional (which is at all times denied), then those provisions of Act 2 and SCR 99 that call for the diversion of MFP funds away from the parish and city school systems of the State, including the plaintiffs, and to schools, entities, individuals, and programs not operated or controlled by such school systems are unconstitutional and should be enjoined.

COUNT 3

UNCONSTITUTIONAL DIVERSION OF LOCAL FUNDS MANDATED FOR PUBLIC SCHOOLS

35.

Level 1 of the MFP formula uses State funds and local funds to determine the costs of providing a minimum financial foundation for education in the State of Louisiana.

36.

Local funds under Level 1 of the MFP are derived from three (3) sources: (a) ad valorem taxes constitutionally mandated by Article 8, Section 13(C) of the Louisiana Constitution of 1974; (b) ad valorem taxes constitutionally permitted by Article 8, Section 13(C) of the Louisiana Constitution of 1974; and (c) sales and use taxes permitted by Article, Section 29(A) and (B) of the Louisiana Constitution of 1974 and La. R.S. 47:338.84 (formerly La. R.S. 33:2737).

37.

Pursuant to the authority of Article 6, Section 29(A) and (B) of the Louisiana Constitution of 1974 and La. R.S. 47:338.84, sales tax propositions have been approved by a majority of the electors voting in virtually every parish and city school system in the State of Louisiana, including those operated by plaintiffs.

38.

Those sales tax propositions have traditionally provided that, if approved by the voters, the funds generated thereby would be used for the benefit of the students and employees of the public school system putting forth the sales tax proposition.

39.

In direct contravention to those sales tax propositions as approved by the voters, Act 2 and SCR 99 divert local sales and use taxes authorized by Article 6, Section 29(A) of the Louisiana Constitution of 1974 and La. R.S. 47:338.84 to non-public schools and other non-public entities.

40.

Through application of the MFP formula, under which “the money follows the child”, Act 2 and SCR 99 also divert local ad valorem taxes constitutionally mandated by Article 8, Section 13(C) of the Louisiana Constitution of 1974 and local ad valorem taxes constitutionally permitted by Article 8, Section 13(C) of the Louisiana Constitution of 1974 to non-public schools and other non-public entities.

41.

Act 2 and SCR 99 are unconstitutional in whole or in part, because they violate Article 8, Section 13(C) of the Louisiana Constitution of 1974 and Article 6, Section 29(A) of the Louisiana Constitution of 1974, as implemented by La. R.S. 47:338.84, by diverting to non-public schools and other non-public entities local tax dollars that are constitutionally mandated to be allocated to public elementary and secondary schools to ensure a minimum foundation of education in those public elementary and secondary schools.

COUNT 4

ACT 2 IS UNCONSTITUTIONAL BECAUSE IT HAS MULTIPLE OBJECTS

42.

Article 3, Section 15(A) of the Louisiana Constitution of 1974 provides, in part, as follows:

“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.”

43.

The purpose behind the “one object” requirement contained in Article 3, Section 15(A) of the Louisiana Constitution is to restrict the content of a legislative bill so as to prevent a legislator

from having to consider two (2) or more unrelated matters when deciding how to vote on a single bill.

44.

Act 2 contains a multitude of unrelated objects including, but not limited to, the following:

- “(a) providing for the repeal of various provisions relative to school choice;
- (b) providing for the creation of a ‘Student Scholarships for Educational Excellence Program’;
- (c) providing for petitions by parents for schools to be transferred to the Recovery School District;
- (d) providing for the conversion of charter schools from one type to another;
- (e) providing for the qualifications of teachers in charter schools;
- (f) providing for the ‘Course Choice Program’;
- (g) providing for private charter school authorizers;
- (h) providing for the funding of a ‘Student Scholarships for Educational Excellence Program’; and
- (i) providing for preferential docketing, expedited judicial review, and suspension of all applicable rules of court should a legal challenge be filed with respect to the constitutionality of Act 2.”

45.

Because Act 2 is not confined to one object, it violates Article 3, Section 15(A) of the Louisiana Constitution of 1974 and should be declared unconstitutional.

RELIEF REQUESTED

46.

Unless Act 2 and SCR 99 are declared unconstitutional and their provisions are enjoined, parish and city school systems such as plaintiffs will be deprived of funds that they are constitutionally mandated to receive, and the amount of money available for the instruction of school aged children enrolled in public elementary and secondary schools will be reduced, as will the amount of money available to provide for other operating costs of the public school districts.

47.

Plaintiffs are entitled to judgment, in the form of a preliminary injunction, and, in due course, a permanent injunction, restraining, enjoining and prohibiting defendants, their officers, agents, employees, and counsel, and those persons in active concert or participation with them from enforcing, applying and/or implementing any of the provisions of Act 2 or SCR 99 of the 2012 Regular Session of the Louisiana Legislature.

In the alternative, and, only in the event that the provisions of Act 2 and SCR 99 be deemed severable and Act 2 and SCR 99 be determined to be otherwise constitutional (which is at all times denied), then those provisions of Act 2 and SCR 99 that call for the diversion of MFP funds away from the parish and city school systems of the State, including the plaintiffs, and to schools, entities, individuals, and programs not operated or controlled by such school systems are unconstitutional and should be enjoined.

Plaintiffs seek and are entitled to attorney's fees and costs for bringing this action.

WHEREFORE, plaintiffs, Louisiana School Boards' Association, Ascension Parish School Board, Assumption Parish School Board, Avoyelles Parish School Board, Baker City School Board, Bogalusa City School Board, Bossier Parish School Board, Calcasieu Parish School Board, Claiborne Parish School Board, Concordia Parish School Board, Evangeline Parish School Board, Franklin Parish School Board, Iberia Parish School Board, Iberville Parish School Board, Jackson Parish School Board, Jefferson Davis Parish School Board, Lafayette Parish School Board, Lincoln Parish School Board, Livingston Parish School Board, Monroe City School Board, Plaquemines Parish School Board, Pointe Coupee Parish School Board, St. Bernard Parish School Board, St. Charles Parish School Board, St. John the Baptist Parish School Board, St. Martin Parish School Board, St. Mary Parish School Board, St. Tammany Parish School Board, Tangipahoa Parish School Board, Tensas Parish School Board, Vermillion Parish School Board, Washington Parish School Board, Webster Parish School Board, and Zachary Community School Board respectfully pray that, after due proceedings be had, there be judgment in favor of plaintiffs and against defendants State of Louisiana, Louisiana State Board of Elementary and Secondary Education, and Louisiana Department of Education:

- (A) Declaring Act 2 of the 2012 Regular Session of the Louisiana Legislature to be unconstitutional, null, void, and of no legal effect whatsoever;
- (B) Declaring SCR 99 of the 2012 Regular Session of the Louisiana Legislature to be unconstitutional, null, void, and of no legal effect whatsoever;
- (C) Issuing a preliminary injunction, restraining, enjoining, and prohibiting defendants, their officers, agents, employees, and counsel, and those persons in active concert or participation with them from enforcing, applying and/or implementing any of the

provisions of Act 2 of the 2012 Regular Session of the Louisiana Legislature;

- (D) Issuing a preliminary injunction, restraining, enjoining, and prohibiting defendants, their officers, agents, employees, and counsel, and those persons in active concert or participation with them from enforcing, applying and/or implementing any of the provisions of SCR 99 of the 2012 Regular Session of the Louisiana Legislature;
- (E) In due course, issuing a permanent injunction in the form and substance of the preliminary injunctions prayed for herein;
- (F) Awarding plaintiffs reasonable attorney's fees and costs; and
- (G) For all other general equitable relief that may be appropriate under the circumstances.

Respectfully submitted,

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