

SUPREME COURT OF LOUISIANA

DOCKET NOS. 2013-CA-0120, 2013-CA-232 (CONSOLIDATED)

**LOUISIANA FEDERATION OF TEACHERS, ET AL.,
Plaintiffs-Respondents,**

VERSUS

**STATE OF LOUISIANA, ET AL.,
Defendants-Petitioners.**

On Writ of Certiorari
To Review a Judgment of the 19th Judicial District Court,
Parish of East Baton Rouge, Louisiana,
The Honorable Timothy E. Kelley, District Judge

Trial Court Docket No. 612,733, Consolidated with Docket Nos. 613,142 and 613,320

**ORIGINAL *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANTS-PETITIONERS
ON BEHALF OF *AMICI CURIAE*, LOUISIANA FAMILY FORUM, FAMILY
RESEARCH COUNCIL, THE AMERICAN SOCIETY FOR THE DEFENSE OF
TRADITION, FAMILY AND PROPERTY, EVANGEL CHRISTIAN ACADEMY,
FAITH CHRISTIAN ACADEMY, LAFAYETTE CHRISTIAN ACADEMY, AND
HOSANNA CHRISTIAN ACADEMY
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INTEREST OF AMICI

Amici Louisiana Family Forum, Family Research Council, and The American Society for the Defense of Tradition, Family and Property are non-profit organizations committed to defending the freedom of families to live, work, and learn according to the dictates of their religious beliefs. *Amici* Evangel Christian Academy, Faith Christian Academy, Lafayette Christian Academy, and Hosanna Christian Academy are private, Christian schools in Louisiana that would be permitted to serve students who receive vouchers under the Louisiana School Choice Program. *Amici* represent thousands of families throughout Louisiana and the country who desire the opportunity to participate in school choice programs that enable children to escape failing schools and learn in an environment that encourages and respects the religious beliefs of their families. Although the Louisiana School Choice Program is relatively new, the low-income families who have been given an opportunity to participate have already become an integral part of the educational communities represented by *Amici*. These churches and religious schools greatly value these students' and parents' unique contribution to the life of their schools. Because of the threat Plaintiff's lawsuit poses to the parental and religious liberty interests of its constituents, *Amici* provide this brief to show the harm that would befall private, religious schools, parents, and—most importantly—the students of Louisiana if the School Choice Program is struck down.

INTRODUCTION

“The fundamental goal of our society in America is that each individual citizen should have the opportunity to develop to his fullest potential.” Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts, Volume 8, p. 2237 (November 9, 1973). These words, spoken in support of the preamble to Article VIII of the Louisiana Constitution, affirmed that the purpose of every word thereafter in Article VIII is intended to fulfill this important goal.

But what happens when that goal is not met? What should be done when every student is not “afforded an equal opportunity to develop to his full potential”? La. Const. Preamble to Art. VIII. What must the state do when a child is stuck in a consistently failing school? Many families lack the means to provide these children with an education at one of the state's many better-performing private schools?

In far too many schools across our nation, economically disadvantaged students have no hope. Their friends from wealthier families are whisked away to private schools where they are afforded numerous opportunities—including the opportunity to be taught according to the dictates of their faith and conscience. But the students trapped at those failing public schools have no Superman to fly them away.¹ They sit, languishing in schools with plummeting graduation rates, condemned to a future fraught with the risk of closed doors, unemployment, and poverty.

Act No. 2 and Senate Concurrent Resolution 99 of the 2012 Regular Session of the Louisiana Legislature (hereinafter the “Louisiana School Choice Program”) sought to provide these students with the superhero they so desperately need. Believing that the goal of providing every student an equal educational opportunity was best accomplished by using the Minimum Foundation Program (“MFP”) funds to give these students the education they deserve, the Legislature created a voucher program where MFP funds follow the student rather than the school.

In doing so, the Legislature not only took much needed steps toward allowing students to achieve their fullest educational potential, they also affirmed the important religious liberty interest of parents to ensure that their child receives an education in an environment that respects and reinforces the religious beliefs of their family. This right of parents to raise and educate their children according to their religious faith is one that the U.S. Supreme Court and Louisiana state courts have repeatedly recognized and affirmed as fundamental. And the Louisiana School Choice Program satisfies the Constitutional Convention delegates’ insistence that Louisiana maintain a neutrality towards religious education by allowing the parents and students to decide what type of school—whether secular or religious—will provide each student with the education needed to reach his or her fullest potential.

Finally, the Louisiana School Choice Program follows in the footsteps of numerous states that have adopted similar voucher programs. These states have found that their programs

¹ The reference comes from the 2010 documentary “Waiting for Superman” which tells the stories of several children trapped in failing schools who are fighting to be accepted into better programs. The point of the movie is that we can no longer wait for Superman to save our children in failing schools; rather, it is up to parents, teachers, legislators, and the community to join together and be the superheroes needed to save them. *See* www.waitingforsuperman.com.

increase graduation rates and improve the performance of students at both public and private schools. These are outcomes that can be expected in Louisiana's public schools as well.

For these reasons, *Amici* respectfully requests that the November 30, 2012, Judgment by the 19th Judicial Court, Parish of East Baton Rouge be overturned and that the constitutionality of the Louisiana School Choice Program be affirmed.

LAW AND ARGUMENT

I. The Louisiana School Choice Program Recognizes the Fundamental Right of Parents to Direct the Education of Their Children.

The Louisiana School Choice Program moves the State of Louisiana closer to providing a truly equal educational opportunity to every child. And it does so in a manner that respects and affirms the fundamental right of parents to educate their children according to the dictates of their own religious beliefs. In the current debate of what to do about failing schools and how to ensure that students are not "left behind," the important role of parents in guiding the education of their children is often lost. Sadly, too few families have a real choice available to them. In these difficult economic times, most families lack the financial resources needed to forego one parent's salary and homeschool a child (an option that is also clearly unavailable to single parents). And under the current system, families that wish to send their children to private school are loaded with a double burden: paying not only their children's private school tuition but also the local taxes levied upon all citizens to support public schools.

For most lower and middle class families, public schools are the only feasible option. But in sending their children to public schools, many parents are forced to forego their fundamental right to have their child receive an education that reinforces their family's values and beliefs (whether secular or religious). The forced secularism thrust upon children in public schools is often inimical to the religious beliefs that parents desire to instill in their children.

The consensus among courts is that parents have a fundamental right to raise their child according to their own philosophical beliefs. Ninety years ago, the United States Supreme Court recognized that "[t]he American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted....Corresponding to the right of control, it is the natural duty of the parent to give his

children education suitable to their station in life.” *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Just two years later, the Court again affirmed “the liberty of parents and guardians to direct the upbringing and education of children under their control,” *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534-35 (1925), a right that the United States Supreme Court recognized trumps the power of the state:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Id. at 535.

The United States Supreme Court has repeatedly returned to this fundamental principle of the authority of parents over their children’s upbringing and education. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (recognizing “[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child”); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (“In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the ‘liberty’ specially protected by the Due Process Clause includes the rights...to direct the education and upbringing of one’s children”); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding that the Constitution “protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children”).

The State of Louisiana has likewise consistently recognized this freedom of parents “to marry, establish a home and bring up children [and] to worship God according to the dictates of [their] own conscience.” *Denham Springs Econ. Dev. Dist. v. All Taxpayers, Prop. Owners & Citizens of Denham Springs Econ. Dev. Dist.*, 05-2274, p. 25 (La. 10/17/06); 945 So. 2d 665, 682. *See, e.g., Jones v. Coleman*, 44,543-CA, p. 7 (La. App. 2 Cir. 7/15/09); 18 So. 3d 153, 158 (“This liberty interest includes the right of parents to establish a home and bring up children and to control the education of their own.”); *Rankins v. Louisiana State Bd. of Elementary & Secondary Educ.*, 93-1879 (La. App. 1 Cir. 3/17/94) 637 So. 2d 548, 553 (“The right of parents

to choose the means and methods whereby their children may be educated free from unreasonable or excessive government interference is a liberty protected by the Fourteenth Amendment.”).

Given this fundamental parental right to train their children, it should be unsurprising that many parents desire to have their children educated according to their belief system. As the U.S. Supreme Court recognized, “[w]e are a religious people.” *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups.

Id. at 313-14. Yet that is precisely what the Plaintiffs-Respondents seek to do by opposing the Louisiana School Choice Program. They would prefer to see children trapped in failing schools and parents deprived of the resources needed to exercise their fundamental right to raise their children.

Indeed, the Plaintiffs-Respondents in this case raise many of the same arguments made by the opponents of Ohio’s voucher program. See *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). There, Cleveland City School District’s schools were in a state similar to the schools of Louisiana. Schools were failing to meet state standards for minimal acceptable performance, less than 10% of 9th graders could pass a basic proficiency exam, and the vast majority of students did not graduate from high school. *Id.* at 644. Yet “[f]ew of these families enjoy[ed] the means to send their children to any school other than an inner-city public school.” *Id.* Rather than embrace a program designed to rescue children from these circumstances, opponents challenged it under various procedural grounds and under the federal Establishment Clause. Fortunately for the students, all of these arguments eventually failed. To the Supreme Court, the broad authority that parents have to choose what school to send their child to—whether public or private, secular or religious—was the determinative factor in favor of the constitutionality of the voucher program. “We believe that the program challenged here is a program of true private choice...and [is] thus constitutional.” *Id.* at 653. “[T]he Ohio program is neutral in all respects toward religion. It is

part of a general and multifaceted undertaking by the State of Ohio to provide educational opportunities to the children of a failed school district.” *Id.*

Justice Thomas emphasized how the Ohio voucher program respected the fundamental interest of parents in raising their children:

The wisdom of allowing States greater latitude in dealing with matters of religion and education can be easily appreciated in this context....Faced with a severe educational crisis, the State of Ohio enacted wide-ranging educational reform that allows voluntary participation of private and religious schools in educating poor urban children otherwise condemned to failing public schools. The program does not force any individual to submit to religious indoctrination or education. *It simply gives parents a greater choice as to where and in what manner to educate their children.*

Id. at 680 (2002) (Thomas, J., concurring) (emphasis added).

In approving the Louisiana School Choice Program, it is clear that the Louisiana Legislature was focused upon ensuring that parents were given choice—the choice to decide where their child would be best afforded an educational opportunity to succeed. As described in Section XII of SCR 99, “[t]he ultimate goal of the Choice System is to improve student outcomes by providing opportunities for parental choice regarding the delivery of educational services to students.” By giving this choice to parents, the Louisiana Legislature followed our nation’s well-established history of respecting the fundamental religious liberty interest of parents to direct the upbringing and education of their children.

II. The Louisiana School Choice Program Is Part of a Growing Trend of School Choice Initiatives Across the Country That Are Positively Impacting Education for All Children.

Dozens of states across the country are embracing school choice as a solution to the problem of failing schools and high dropout rates. In creating the Louisiana School Choice Program, the Louisiana Legislature is merely joining this growing trend of states searching for new and innovative methods to fulfill the promise of equal educational opportunity for all children in the State.

In 2011 alone, 41 states introduced over 120 different pieces of school choice legislation. Alliance for School Choice, “School Choice Yearbook 2011-12” at 29 (*available at* http://s3.amazonaws.com/assets.allianceforschoolchoice.com/admin_assets/uploads/67/scy2012.pdf). By 2012, sixteen states plus the District of Columbia and Douglas County, Colorado, have

implemented one or more school choice options. Alliance for School Choice, “School Choice Yearbook 2012-13” at 11 (*available at* http://s3.amazonaws.com/assets.allianceforschoolchoice.com/admin_assets/uploads/167/School%20Choice%20Yearbook%202012-13.pdf). Nearly 250,000 students participate in these programs. *Id.* at 15.

Southern states in particular have embraced the need for school choice, with Louisiana, Mississippi, Georgia, Florida, North Carolina, Oklahoma, and Virginia all adopting one or more types of school choice options. The predominate school choice options used are voucher programs and tax credit scholarship programs, both of which are incorporated into the Louisiana School Choice Program. These programs have been upheld as constitutional by the United States Supreme Court. *See Zelman*, 536 U.S. at 662-63 (holding that Ohio’s voucher program “provides benefits directly to a wide spectrum of individuals, defined only by financial need and residence in a particular school district” and “permits such individuals to exercise genuine choice among options public and private, secular and religious”); *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1448 (2011) (preserving Arizona’s tax credit program and rejecting claims that it diverts state funds to private, religious schools after finding that “[l]ike contributions that lead to charitable tax deductions, contributions yielding STO tax credits are not owed to the State and, in fact, pass directly from taxpayers to private organizations. Respondents’ contrary position assumes that income should be treated as if it were government property even if it has not come into the tax collector’s hands”). Thus, any argument that such programs violate the Establishment Clause cannot succeed.

More importantly, school choice programs have been proven to create a real and tangible difference in the lives of students because they give students a new opportunity to forge a bright and productive future for themselves. First, students who participate in school choice programs—and in voucher programs in particular—graduate at an almost 20% higher rate than their peers who are unable to participate in such programs. In Washington, D.C., students who participated in the district’s voucher program experienced a 91% graduation rate as compared to the 70% graduation rate for students who did not receive vouchers. Jason Richwine, The Heritage Foundation, *D.C. Voucher Students: Higher Graduation Rates and Other Positive Outcomes* (July 2010) (*available at* <http://www.heritage.org/research/reports/2010/07/dc->

voucher-students-higher-graduation-rates-and-other-positive-outcomes). Likewise in the Milwaukee area, students in the Milwaukee Parental Choice Program graduated at a rate of 94%, while their peers outside of the program had a 75% graduation rate. Rachel Sheffield, The Foundry, *Morning Bell: It's School Choice Week* (January 28, 2013) (available at <http://blog.heritage.org/2013/01/28/morning-bell-national-school-choice-week/>).

Second, empirical evidence consistently indicates that voucher programs like the Louisiana School Choice Program improve students' academic performance. Researchers have conducted ten empirical studies to gauge voucher programs' effects on participating students using random assignment, the most accurate research method available in the field of social science. See Greg Forster, The Foundation for Educational Choice, *A Win-Win Solution: The Empirical Evidence on School Vouchers* at 1 (March 2011) (available at <http://www.edchoice.org/CMSModules/EdChoice/FileLibrary/656/A-Win-Win-Solution---The-Empirical-Evidence-on-School-Vouchers.pdf>) (hereinafter "FEC Report"). Nine of these studies determined that students enrolled in voucher programs exhibit improved academic performance. *Id.* Of these nine, six concluded that all voucher participants benefited from the program, while three found that some students experienced progress and others were unaffected. *Id.* Only one analysis concluded that vouchers did not demonstrably benefit participating students. *Id.* The overwhelming majority of reliable data thus clearly indicates that low-income students enrolled in voucher programs reap tangible academic benefit.

Studies have also been conducted on voucher programs' effect on students remaining in public schools. *Id.* Out of the nineteen empirical studies on this topic, eighteen determined that private school vouchers resulted in scholastic changes that improved public school students' academic performance. *Id.* The remaining study concluded that the availability of school vouchers had no measurable effect—positive or negative—for students remaining in public schools. *Id.* Thus, contrary to the claims that allowing MFP funds to follow the students will harm public schools and the students remaining at those schools, the evidence shows that using MFP funds to support the Louisiana School Choice Program will likely increase academic performance for students at public schools due to the increased competition created by affording parents and students with realistic choices for pursuing the best available education.

Indeed, the mere threat of voucher availability has been effective in improving public school students' academic performance. *See id.* at 18. A voucher program that previously operated in Florida aptly demonstrates this trend. Under the Florida voucher scheme, schools received annual grades based primarily on students' performance on state standardized tests. *Id.* Students at schools with failing grades had the opportunity to receive vouchers. A study found that public schools receiving failing grades made significantly greater academic gains on a year-to-year basis than those receiving a grade of D. *Id.*; *see also* Alexandra Usher & Nancy Kober, *Keeping Informed about School Vouchers: A Review of Major Developments and Research* at 35 (July 2011) (hereinafter "CEP Report") (noting that "public schools whose students were offered vouchers outperformed other Florida public schools").

Multiple studies confirmed that this educational progress was attributable to the voucher threat. Indeed, voucher-eligible schools experienced the most significant academic gains (15 points higher), followed by voucher-threatened schools (9 points higher), schools that consistently ranked in the D range (4 points higher), and schools that occasionally received a grade of D (2 points higher). *FEC Report* at 19; *see also* *CEP Report* at 36 (recognizing Florida's public schools "improv[ed] in direct proportion to the challenge they face[d] from voucher competition").

Accordingly, vouchers have "a positive correlation with test score improvements in the worst-performing public schools." *CEP Report* at 35. This trend does not continue when the threat of vouchers is removed. *FEC Report* at 19-20; *see also* *CEP Report* at 37 ("Schools that had experienced the stigma of an 'F' grade in 1998-99 but no longer faced the competition from vouchers due to improved ratings in subsequent years did not show test score gains like those attained by failing schools that did face voucher competition.").

Studies of the Milwaukee voucher program yielded comparable results. Public schools that faced the most competition from private school vouchers saw a dramatic improvement in test scores. *See* *CEP Report* at 30. And these gains were properly attributable to the voucher program because they were measured against three stringent criteria: comparison schools that did not face a voucher threat, the subject schools' own prior levels of performance, and the trend in the subject schools' previous academic development. *Id.* Notably, Milwaukee's successful

voucher program only achieved widespread appeal after religious schools were allowed to participate, ostensibly due to the small number of secular, private schools available. *See* FEC Report at 17.

Research on the effects of private school vouchers thus reveals important benefits to participating students and no harm whatsoever to students remaining in public schools. Failing public schools, on the other hand, appear to respond to even the potential loss of voucher students by “chang[ing] their instructional practices in meaningful ways, such as increasing instructional time and teacher resources, reorganizing the learning environment, and targeting high-needs students” for additional assistance. CEP Report at 36. With nothing to lose and everything to gain, the Louisiana Legislature undoubtedly possessed sufficient justification to conclude that a state-wide voucher program would be of great academic benefit to Louisiana’s students.

CONCLUSION


The Louisiana Legislature, using the tools afforded it by the Louisiana Constitution, took bold steps in implementing the Louisiana School Choice Program—steps designed to save children trapped in failing schools. The Louisiana School Choice Program respects the fundamental right of parents to direct the upbringing of their children—including the preference to have their children taught at private, religious schools. Finally, the Louisiana School Choice Program is one among a growing national trend of school choice initiatives. And studies of these programs have consistently shown that they increase graduation rates, increase student learning, and even help raise standards at public schools.

For these reasons, *Amici* respectfully request that the November 30, 2012, Judgment by the 19th Judicial Court, Parish of East Baton Rouge be overturned and that the constitutionality of the Louisiana School Choice Program be affirmed.

Respectfully submitted,

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