LOUISIANA FEDERATION OF TEACHERS, ET AL	*	NO: 612,733 SECTION: 22
	*	
	*	19TH JUDICIAL DISTRICT COURT
VERSUS	*	
	*	PARISH OF EAST BATON ROUGE
	*	
STATE OF LOUISIANA, ET AL	*	STATE OF LOUISIANA

CONSOLIDATED WITH DOCKET NUMBERS: 613,142 AND 613,320

WRITTEN REASONS FOR JUDGMENT

I.

A.

Introduction

These consolidated cases before the Court today are regarding Plaintiffs' Petition for Declaratory Judgment directed against the Board of Elementary and Secondary Education (hereinafter "BESE"), and the Department of Education (hereinafter collectively as "State"). These proceedings arise from three separate lawsuits challenging the constitutionality of Act No. 2 of the 2012 Regular Session of the Louisiana Legislature (hereinafter "Act 2") and Senate Concurrent Resolution 99 of the 2012 Regular Session of the Louisiana Legislature (hereinafter "SCR 99").

Act 2 creates a "Course Choice Program" and substantially amends the "Student Scholarships for Excellence Program" by amendment of the "Student Scholarships for Excellence Act." (***See*** Act 2, pp.26-47; SCR 99, pp. 19-23).

The "Course Choice Program" requires the payment of Minimum Foundation Program (hereinafter "MFP") funds by the Louisiana Department of Education to online education providers, virtual education providers, postsecondary education institutions and entities that offer vocational or technical course work. **LSA-R.S. 17:4002.6 and 4002.3(1)**. The "Course Choice Program" also recognizes that students enrolled in "home study" programs are "eligible participating student[s]." **LSA-R.S. 17:4002.3(3)(c)**. The "Student Scholarships for Excellence Program" is commonly referred to as the "Voucher Program".

B.

Procedural History

On June 7, 2012, the Louisiana Federation of Teachers Plaintiffs (hereinafter collectively referred to as "LFT Plaintiffs") instituted Suit No. 612,733. On June 22, 2012, the Louisiana Association of Educators Plaintiffs (hereinafter collectively referred to as "LAE Plaintiffs") instituted Suit No. 613,142. On June 28, 2012, the Louisiana School Boards Association Plaintiffs (hereinafter collectively referred to as "LSBA Plaintiffs") instituted Suit No. 613,320. The three lawsuits were consolidated by Orders dated June 22, 2012 and June 28, 2012.

On June 29, 2012, Defendants filed a Declinatory Exception of Lack of Subject Matter Jurisdiction and Peremptory Exception of No Cause of Action and supporting memorandum. On July 2, 2012, Defendants filed a Declinatory Exception of Lack of Subject Matter Jurisdiction, Peremptory Exception of No Cause of Action, and Incorporated Memorandum in Support.

By order dated July 9, 2012, Valerie Evans, Kendra Palmer, the Black Alliance for Educational Options and the Alliance for School Choice were permitted to intervene (hereinafter "Defendant-Interveners").[1] On July 10, 2012, this Court held a hearing on the exceptions filed by the Defendants. At the conclusion of the hearing, this Court granted the Declinatory Exception of Subject Matter Jurisdiction "on the basis of LSA-R.S. 13:4062 and La. C.C.P. art. 3601" and dismissed Plaintiffs' requests for injunctive relief. This Court found that the disposition of the Declinatory Exception of Subject Matter Jurisdiction rendered Defendant's Peremptory Exception of No Cause of Action moot. A formal Judgment was signed on July 17, 2012. Plaintiffs requested review of this Court's ruling on the Declinatory Exception of Subject Matter Jurisdiction by applications for supervisory writs. Plaintiffs' applications were denied by the First Circuit Court of Appeal on July 25, 2012 and the Louisiana Supreme Court on August 15, 2012.

Subsequently, the Lafourche Parish School Board was also permitted to intervene.

[1] The intervention on behalf of the Alliance for School Choice was subsequently "withdrawn."

C.

Background and Claims

The "Student Scholarships for Excellence Act" requires the payment of MFP funds by the Louisiana Department of Education to nonpublic schools and further requires the Louisiana Department of Education to "transfer scholarship payments to each participating school on behalf of the responsible city or parish school district." **LSA-R.S. 17:4015(5), 17:4016**, and **17:1417(A)**.

SCR 99 is the vehicle by which the Legislature "approved" the 2012-2013 MFP formula adopted by BESE as required by Article VIII, §13 of the Louisiana Constitution of 1974. The Louisiana Constitution mandates that BESE "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...." **LSA-Const. Art VIII, §13(B)**. MFP program funds are appropriated as a separate and distinct line item in the budget. As a result, SCR 99 approves the formula adopted by BESE for funding for implementation of the programs created in Act 2, including a provision that provides that:

> 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. (***See*** SCR 99, p. 22)

Plaintiffs and Intervenor contend that Act 2 was not properly enacted and SCR 99 was not properly adopted by the Legislature and that, as a result, those instruments are unconstitutional and/or without legal effect.

Before this Court are the arguments by the Plaintiffs that Act 2 and SCR 99 are unconstitutional on the following legal theories:

1. SCR 99 was not properly adopted by the Legislature
    a. SCR 99 was untimely introduced pursuant to Article III, §2(A)(3)(a) of the Louisiana Constitution of 1974, was never properly enacted and is, therefore, null, void and of no legal effect;
    b. SCR 99 was untimely considered and did not receive the vote required pursuant to Article III, §2(A)(3)(a) of the Louisiana Constitution of 1974,

was never properly enacted and is, therefore, null, void and of no legal effect;

c. SCR 99 did not receive a majority vote, as required by Article III §15(G) of the Louisiana Constitution of 1974, was never properly enacted and is, therefore, null, void and of no legal effect;

2. Act 2 is unconstitutional because it violates the "one object" requirement of Article III, §15(A) of the Louisiana Constitution of 1974;

3. Act 2 and SCR 99 unconstitutionally divert MFP funds that are constitutionally 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;

4. Act 2 and SCR 99 unconstitutionally divert local funds included in the MFP that are constitutionally mandated to be allocated to public elementary and secondary schools to nonpublic entities in violation of Article VIII, §13(C) of the Louisiana Constitution of 1974 and Article VI, §29(A) of the Louisiana Constitution of 1974 (as implemented by LSA-R.S. 47:338.84).

II.

Law and Argument

A.

Declaratory Judgments

Louisiana Code of Civil Procedure Articles 1871 and 1872 provide:

> Article 1871
>
> Courts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for; and the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The declaration shall have the force and effect of a final judgment or decree.
>
> Article 1872
>
> A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity

> arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

Louisiana jurisprudence has limited the availability of declaratory judgments to "cases of a present, justiciable controversy and will not render merely advisory opinions." ***Church Point Wholesale Beverage Co., Inc. v. Tarver***, 614 So.2d 697, 701 (La. 1993). A justiciable controversy is a real and substantial controversy admitting of specific relief through a decree of conclusive character. ***Am. Waste & Pollution Control Co. v. St. Martin Parish Police Jury***, 627 So.2d 158, 161 (La. 1993). A "justiciable controversy" has been generally defined as a dispute between "adverse parties with opposing claims ripe for judicial determination," involving "specific adversarial questions asserted by interested parties based on existing facts." ***Prator v. Caddo Parish***, 2004-0794, p. 6 (La. 12/01/2004), 888 So.2d 812, 816.

In the context of declaratory judgment, a justiciable controversy must involve uncertain or disputed rights in an immediate and genuine situation, and must be a substantial and actual dispute as to the legal relations of parties having real, adverse interests. ***Steiner v. Reed***, 2010-1465, p. 6 (La. App. 1 Cir. 02/11/2011), 57 So.3d 1188, 1192. Such a justiciable controversy must be distinguished from one that is merely hypothetical or abstract, or one presenting an issue that is academic, theoretical, or based on a contingency that may or may not arise. ***Id.***

It is the opinion of the Court that the present case clearly involves disputed rights in an immediate and genuine situation and is a substantial and actual dispute as to the legal relations of parties having real, adverse interests.

B.

Constitutional Interpretation

Determining a statute's constitutionality is strictly a function of the courts. ***Red River Coors, Inc. v. McNamara***, 577 So.2d 187 (La. App. 1 Cir. 1991).

Emanating from the people of Louisiana, the Constitution is our most fundamental law. ***Albright v. Southern Trace Country Club of Shreveport, Inc.***, No. 2003-C-3413 (La. 07/06/2004), 879 So.2d 121, 126. The starting point in the interpretation of constitutional provisions is the language of the constitution itself.

Louisiana Municipal Association v. State, 00-0374, p. 5 (La. 10/06/2000), 773 So.2d 663, 667. When a constitutional provision is plain and unambiguous, and its application does not lead to absurd consequences, its language must be given effect. ***Id.*** at 667.

When the constitutional language is subject to more than one reasonable interpretation, however, the determination of the intent of the provision becomes necessary. ***Id.*** In seeking to ascertain constitutional intent, the same general rules used in interpreting laws and written instruments are followed. ***Caddo-Shreveport Sales & Use Tax Commission v. Office of Motor Vehicles***, 97-2233, p. 6 (La. 04/14/1998), 710 So.2d 776, 780. The function of a court in construing constitutional provisions is to ascertain and give effect to the intent of the people who adopted it. ***Id.*** In some cases, the Louisiana Supreme Court has held that constitutional provisions should be interpreted based upon the understanding that can reasonably be ascribed to the voting population as a whole. ***Id.*** In other cases, however, the Louisiana Supreme Court has stated that in construing constitutional provisions, a court should ascertain and give effect to the intent of both the framers of the provision and of the people who adopted it. ***Board of Commissioners of Orleans Levee District v. Department of Natural Resources***, 496 So.2d 281, 298 (La. 1986)(*on rehearing*). The Louisiana Supreme Court has harmonized the jurisprudence by holding that courts should ascertain and give effect to the intent of both the framers of the provision and of the people who adopted it; however, in the case of an apparent conflict, it is the intent of the voting population that controls. ***Arata v. Louisiana Stadium & Exposition District***, 254 La. 579, 225 So.2d 362, 372 (1969).

As a general rule, statutes are presumed to be constitutional; therefore, the party challenging the validity of a statute has the burden of proving it unconstitutional. ***State v. Citizen***, 04-1841, p. 11 (La. 04/01/2005), 898 So.2d 326, 334. Because the provisions of the Louisiana Constitution are not grants of power but instead are limitations on the otherwise plenary power of the people, exercised through the Legislature, the Legislature may enact any legislation that the constitution does not prohibit. ***Louisiana Municipal Association***, p. 45, 893 So.2d at 842-843. As a result, a party challenging the constitutionality of a statute must point to a particular provision of the constitution that would prohibit the enactment of the statute, and must demonstrate clearly and convincingly that it was the constitutional aim of that provision to deny the Legislature

the power to enact the statute in question. ***World Trade Center Taxing District v. All Taxpayers, Property Owners***, 05-0374, p. 12 (La. 06/29/2005), 908 So.2d 623, 632. A constitutional limitation on the legislative power may be either express or implied. ***Id.***

Because it is presumed that the legislative acts within its constitutional authority in enacting legislation, a court must construe a statute so as to preserve its constitutionality when it is reasonable to do so. ***State v. Fleury***, 01-0871, p. 5 (La. 10/16/2001), 799 So.2d 468, 472. In other words, if a statute is susceptible of two constructions, one of which would render it unconstitutional, or raise grave constitutional questions, the court will adopt the interpretation of the statute which, without doing violence to its language, will maintain its constitutionality. ***Hondroulis v. Schuhmacher***, 553 So.2d 398, 416-417 (La. 1988). Nevertheless, the constitution is the supreme law of this state, to which all legislative acts must yield. ***World Trade Center Taxing District***, p. 12, 908 So.2d at 632. Thus, when a statute conflicts with a constitutional provision, the statute must fall. ***Caddo-Shreveport***, p. 6, 710 So.2d at 780.

This Court must determine if Act 2 and SCR 99 conflict with any provisions of the Louisiana Constitution of 1974, and if so, whether they do so in whole or in part.

C.

Legislative Instruments

Article III of the Louisiana Constitution and the rules of both the Louisiana House of Representatives and the Louisiana Senate recognize only three types of legislative instruments (1) a bill, including a joint resolution, (2) a concurrent resolution, and (3) a resolution. *See* LSA- Const. Art. III, §15(A), §17(B); Senate Rule 7.1 and House Rule 7.1.

Black's Law Dictionary defines a "resolution as a:

> formal expression of the opinion of an official body or a public assembly, adopted by vote; as a legislative resolution. Such may be either a simple, joint or concurrent resolution. BLACK'S LAW DICTIONARY, p. 1178 (5th Ed. 1979).

There is no Louisiana jurisprudence addressing the nature of a concurrent resolution. However, Justice Stevens, in his concurring opinion in ***Bowsher v. Synar***, 478 U.S. 714, 106 S.Ct. 3181, 92 L.Ed.2d 583 (1986), noted:

> a ***concurrent resolution***, …, makes not binding policy; it is a means of expressing fact, principles, opinions, and purposes of the two Houses," and thus does not need to be presented to the President. **It is settled, however, that if a resolution is intended to make policy that will bind the Nation and thus is "legislative in its character and effect," – then the full Article I requirements must be observed**. For "the nature or substance of the resolution, and not its form, controls the question of its disposition." (citations omitted).

"A concurrent resolution can no more change a statute than a statute may change a constitution. ***Quintana v. Holland***, 255 F.2d 161, 165 (3rd Cir 1959).

Therefore, it is the issue before this Court that it must be determined if SCR 99 was intended to make policy that will bind the State of Louisiana, and if it was intended so, then it is legislative in nature and must be passed in the manner of legislation. Plaintiffs' contend SCR 99 was meant to carry the weight of law. Defendants argue that SCR 99 was nothing but an accounting vehicle to be used provide money for Act 2.

D.

Was SCR 99 properly adopted by the Legislature?

Plaintiffs first two contentions, that (1) SCR 99 was untimely introduced pursuant to Article III, §2(A)(3)(a) of the Louisiana Constitution of 1974, and thus, was never properly enacted, and (2) SCR 99 was untimely considered and did not receive the vote required pursuant to Article III, §2(A)(3)(a) of the Louisiana Constitution of 1974, and thus, was never properly enacted, both contain the issue that SCR 99 must be "intended to have the effect of law" for these two arguments to survive. The Court will first address the issue of whether SCR99 was "intended to have the effect of law." If SCR 99 was not "intended to have the effect of law," it renders the other issues in plaintiffs' two contentions, listed above, moot.

Before discussing this issue, the Court must first address the statement made by Plaintiffs that "[t]he issue of whether SCR 99 is "statute" or a "law" was previously resolved by this Court in the disposition of Defendants exception of lack of subject matter jurisdiction. In disposing of that exception, Plaintiffs contend that the Court implicitly held that SCR 99 was a "statute" or "law" and applied the limitation on its jurisdiction set forth in LSA-C.C.P. article 3601(A) and LSA-R.S. 13:4062." On the contrary, this Court made it clear that it was not deciding the issue of whether SCR 99 was a statute or a law

and found that "on the basis of LSA-R.S. 13:4062 and La. C.C.P. art. 3601" Plaintiffs' requests for injunctive relief were required to be dismissed. The Court did not rule on the issue of whether SCR 99 had the legal effect of a statute or law.

1.

SCR 99 is not a matter intended to have the effect of law

Article III, §2(A)(3)(a) of the Louisiana Constitution of 1974 provides:

> All regular sessions convening in even-numbered years shall be general in nature and shall convene at noon on the second Monday in March. The Legislature shall meet in such a session for not more than sixty legislative days during a period of eighty-five calendar days. No such session shall continue beyond six o'clock in the evening of the eighty-fifth calendar day after convening. **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. **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 six o'clock 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. [Emphasis added]

The action of the Legislature granting its approval of the MFP is not law. Moreover, SCR 99 was never intended to have the effect of law because it does not unilaterally impose the legislative will and does not permanently apply to persons and things in general. While the Legislature's "approval" of the MFP formula is a constitutionally significant action, it does not have the same consequences as ordinary legislation and therefore need not comply with the requirements of Article III, §2(A)(3)(a). In all respects, SCR 99 was intended to be precisely what it appears to be – a concurrent resolution declaring the Legislature's "approval" of the proposed MFP. Because the Constitution does not provide for the form or manner of legislative approval of a proposed MFP, the process to enact SCR 99 was governed exclusively by the rules of the Legislature as interpreted by the Legislature.

As a starting point, Plaintiffs' argument disregards the plenary authority of the Legislature. "A general principle of judicial interpretation of a state constitution is that, unlike the federal constitution, the provisions of our state constitution are not grants of power, but instead are limitations on the otherwise plenary power of the people of a state

exercised through its Legislature." ***Hainkel v. Henry***, 313 So.2d 577, 579 (La. 1975). Article III, §13(B) does not dictate the form or procedure for legislative approval of a proposed MFP formula. Lacking such limitation on its plenary authority, the Legislature has consistently used concurrent resolutions for prior MFP approvals, and the process for passage has varied through the years.

The Constitution vests the Legislature with limited discretion to approve or decline to approve the MFP formula. There is nothing to indicate that the Framers of the 1974 Constitution intended to graft all the formalities necessary for enacting ordinary laws onto this unique process. The Legislature's "approval" is a unique, *sui generis* action distinct from the passage of bills into law. As opposed to the procedures for the passage of bills set out in Article III, §15, the form and procedures for legislative approval of an MFP formula are set out entirely in Article VIII, §13(B):

> Minimum Foundation Program. The State Board of Elementary and Secondary Education, or its successor, shall 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 as well as to equitably allocate the funds to parish and city school systems. Such formula shall provide for a contribution by every city and parish school system. Prior to approval of the formula by the legislature, the legislature may return the formula adopted by the board to the board and may recommend to the board an amended formula for consideration by the board and submission to the legislature for approval. The legislature shall annually appropriate funds sufficient to fully fund the current cost to the state of such a program as determined by applying the approved formula in order to insure a minimum foundation of education in all public elementary and secondary schools. Neither the governor nor the legislature may reduce such appropriation, except that the governor may reduce such appropriation using means provided in the act containing the appropriation provided that any such reduction is consented to in writing by two-thirds of the elected members of each house of the legislature. The funds appropriated shall be equitably allocated to parish and city school systems according to the formula as adopted by the State Board of Elementary and Secondary Education, or its successor, and approved by the legislature prior to making the appropriation. Whenever the legislature fails to approve the formula most recently adopted by the board, or its successor, the last formula adopted by the board, 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.

This process is considerably different, in both substance and effect, from ordinary legislation. First, Section 13(B) commands BESE to annually adopt an MFP program

and equitable allocation formula that it must submit to the Legislature. In contrast, bills are introduced in the Legislature during the legislative session and originate from a member or a committee of the Legislature. Second, unlike a bill or traditional resolution, the Legislature may not change the content of the MFP formula because the Constitution forecloses amendment. If the Legislature does not approve the proposed formula (for whatever reason), appropriations are based on the last approved formula. It is BESE, not the Legislature, that is required to "adopt" the formula.

Finally, unlike a bill passed by the Legislature, there is no requirement that the Legislature present the approval to the Governor for signing. **La. Const. art. VIII, §13(B)**, states "Prior to approval of the formula by the Legislature, the Legislature may return the formula adopted by the board to the board and may recommend the board an amended formula for consideration by the board and submission to the Legislature for approval."

The process for "approval" of the MFP is thus significantly different from the process for legislation. It has long been the continuous practice of the Legislature to signify its approval or disapproval of the BESE formula by concurrent resolution. In such situations, it would be improper for the courts to graft the requirements for approval of ordinary legislation onto a process that the Framers set apart and designated with the unique appellation of "approval." For the reasons set forth above, this Court finds that SCR 99 was not "intended to have the effect of law."

During the hearing, Plaintiffs drew attention to Joint Rule 20(A)(1)(a)(iii), (Ex. P-26), to suggest that the resolution to approve the formula to fund the MFP, in this case SCR99, is intended to have the effect of law. In pertinent part, that Rule states:

> (1)(a) During any regular session convening in an odd-numbered year, no matter intended to have the effect of law...shall be introduced, considered, or adopted unless it meets one of the following criteria:
>
> ...
>
> (iii) The resolution to approve the formula to fund the Minimum Foundation Program.

However, the Clerk of the House, Albert "Butch" Speer, one of the drafters of the Joint Rule, testified that Rule 20(A)(1)(a)(iii) was not intended to suggest that the

resolution to approve the MFP was considered by the Legislature to have the effect of law, but that it was placed in the Rule to insure that such a resolution would not have to be considered within the limitation on filing of bills placed upon the legislators in those particular years. The limitation of allowing only five pre-filed bills per legislator in the odd-numbered years makes each such bill extremely valuable to each legislator, and to have to utilize one of them to file the annually needed resolution would be unfair to any one legislator. As such, this carves this particular resolution out to allow for its filing in addition to the five bill per legislator limitation. Thus, it is clear that Joint Rule 20(A)(1)(a)(iii) does not provide support for the suggestion that SCR99 was intended to have the effect of law.

Similarly, Plaintiffs pointed to the action of the Clerk of the House in sending SSCR99 to the Legislative Bureau, in conformance with House Rule 2.10(A)(5), as evidence that SCR99 was intended to have the effect of law. House Rule 2.10(A)(5), (Ex. P-22),states:

> A. The duties of the Clerk while the legislature is in session shall include the following:
>
> ...
>
> (5) To refer to the Legislative Bureau all legislative matter intended to have the effect of law, originating in the Senate, prior to the third reading in the House, as provided in House Rule 8.19.

House Clerk Speer testified that his referral of SCR99 to the Legislative Bureau was not meant to indicate that SCR99 was intended to have the effect of law, but that he is always conservative in his handling of all legislative instruments so as to not interfere in the legal status of a particular legislative instrument. Thus, he referred SCR99 to the Legislative Bureau without making a finding or determination as to whether or not SCR99 was intended to have the effect of law. As such, the Clerk's forwarding of SCR99 to the Legislative Bureau does not provide any positive proof that SCR99 was intended to have the effect of law.

Further, while Plaintiffs took great pains to show that SCR99 followed the procedural path required of all legislative matters intended to have the effect of law, House Clerk Speer testified that, in at least eight of the last ten legislative sessions, the resolution to approve the formula to fund the MFP has failed to meet the procedural

requirements for passage of a legislative matter intended to have the effect of law. The treatment of such resolutions from year to year varies. The fact that SCR99 happened to have followed the procedural path required of legislative instruments intended to have the effect of law is, in this particular instance, mere happenstance. This further solidifies this Court's opinion that SCR99 was not intended to have the effect of law.

2.

Compliance with Article III, §15(G) of the Louisiana Constitution of 1974

Finally, because this Court finds that SCR 99 was not "intended to have the effect of law," Plaintiffs' third contention, that "SCR 99 was not enacted in compliance with Article III, §15(G) of the Louisiana Constitution of 1974," must also fail. But for the sake of thoroughness, it will be discussed below.

Article III, §15(G) of the Louisiana Constitution of 1974 provides, in pertinent part, that:

> No bill shall become law without the favorable vote of at least a majority of the members elected to each house.

As this Court previously held that SCR 99 was not "intended to have the effect of law," it will not apply to Article III, §15(G) which presupposes that the legislative vehicle discussed is a "bill." However, for the sake of fully adjudicating the Plaintiffs' claims, the Court will explore this contention.

Plaintiffs claim that SCR 99 never received the vote of at least a majority of the members elected to the Louisiana House of Representatives. The Louisiana House of Representatives is composed as one hundred five (105) representatives, fifty-three (53) of whom constitute a majority. As Plaintiffs point out, the House vote on SCR 99 was 51 yeas, 49 nays and 5 absent. Plaintiffs argue this is two votes short of the majority required for passage under Article III, §15(G) of the Louisiana Constitution. Based on

this presumption, Plaintiffs contend that SCR 99 was not properly adopted by the Louisiana House of Representatives.

Plaintiffs contend that there are no House rules that outline voting requirements; however, they point out that the Senate does have such a rule. Senate Rule 12.10 states that concurrent resolutions can only be approved by a majority vote of the full membership of the Senate. Plaintiffs contends that since the Senate has such a rule, they can see no reason why the House rule would be any different from the Senate rule on the same matter.

Defendants argue that SCR 99 was properly passed in the House on June 4, 2012 on a vote of 51-49, after the Speaker consulted with House clerk and parliamentarian, Alfred "Butch" Speer, to determine the rule. Based on lack of an express constitutional directive and the lack of a clear custom on the House, Mr. Speer correctly advised the Speaker to apply the standard rule of parliamentary procedure, a vote of majority members present. House Rule 13.3 provides: "On any question of legislative procedure, when these rules are silent or inexplicit, custom, usage, and practice shall be followed. If custom, usage, and practice are inexplicit, then Mason's Manual of Legislative Procedure shall be considered as authority." According to Mason's Manual, a majority is determined by members present and voting:

> Mason's Sec. 43(8) Indispensable Requirements for Making Valid Group Decisions
>
> To make a decision or carry a proposition, there must be a vote in the affirmative of at least a majority of the votes cast. The constitution or statutes sometimes require more than a majority vote for certain purposes. Parliamentary law requires only a majority vote, but organizations may require by their rules more than a majority vote for certain purposes, as amendment or suspension of their rules.
>
> Mason's Sec. 50(1) Majority Control
>
> A fundamental and seemingly universal principle is that at least a majority of the vote cast is required to make decisions for the group.
>
> Mason's Sec. 510 Majority of Legal Votes Required
>
> 1. A majority of legal votes cast, a quorum being present, is sufficient to carry a proposition unless a larger vote is required by a constitution or controlling provision of law. Members present but not voting are disregarded in determining whether an action carried.

2. Where a majority or other proportion of votes is required without specifying whether the votes refer to the entire membership or to the members present, or to the members present and voting, the general rule is that the proportion refers to the number present and voting.

3. In the absence of an express rule or constitutional provision, a proposition is carried in legislative assemblies by a majority of the votes cast, and exercise of law making power is not stopped by mere silence and inaction of some who are present but do not vote.

4. In the conduct of the business of a legislative body, the principle of majority rule is of the very essence. Parliamentary law is based firmly upon it. It is, in fact, the basis upon which popular self-government largely resets.

Based on the above facts, this Court finds that SCR 99 was properly passed in the Louisiana House of Representatives on June 4, 2012 by a majority of the voting members present.

E.

"One object" requirement of Article III, §15 of the Louisiana Constitution of 1974

Article III, §15 of the Louisiana Constitution of 1974 provides:

> The Legislature shall enact no law except by a bill introduced during that session, and propose no constitutional amendment except by a joint resolution introduced during that session, which shall be processed as a bill. 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. Every bill shall contain a brief title indicative of its object. Action on any matter intended to have the effect of law shall be taken only in open, public meeting. [Emphasis added]

For Act 2 to comply with Article III, §15 of the Louisiana Constitution of 1974, all parts of Act 2 must be reasonably related to and have a natural connection with the stated single object of HB 976. The entire title to HB 976 provides: "SCHOOLS/CHOICE: Provides relative to the Student Scholarships for Educational Excellence Program, parent petitions for certain schools to be transferred to the RSD, charter school authorizers, and course providers."

The Louisiana Supreme Court has defined the object of a law as "the aim or purpose of the enactment" and "the matter or thing forming the groundwork of the act." ***Airy v. Tugwell***, 3 So.2d 99, 102 (La. 1941). The purpose of the "one object" requirement is to "prevent a legislator from having to consider two or more unrelated matters when deciding on how to vote on a bill." ***Doherty v. Calcasieu Parish School Board***, 93-3017 (La. 04/11/1994); 634 So.2d 1172, 1175-76. A bill is regarded as having one object if the components are "reasonably related and have a natural connection to the general subject matter of the legislation." ***State v. O'Dell***, 218 So.2d 318, 319 (La. 1969). Therefore, in order to determine whether a bill contains a single object required by the constitution, it is necessary to examine the body of the bill to ascertain its purposes. ***Id.***

Plaintiffs show that Act 2 amends or re-enacts twenty-six (26) separate statutes. It enacts nineteen (19) new statutes and repeals three (3) statutes, specifically:

First, Act 2 begins by enacting a new section of law, LSA-R.S. 17:10.5(F). The existing portions of LSA-R.S. 17:10.5 define failed schools and provide the basis a procedure for transferring them to the Recovery School District. Section F simply provided more procedures and conditions. All parties admit that this is an appropriate amendment.

Second, Act 2 amends LSA-R.S. 17:22, which pertains to the function and duties of a Superintendent of Schools. Act 2 adds a requirement that the Superintendent make an annual report on the implementation of the total system of choice. It is the Court's opinion that this additional requirement deals with school choice, and is necessary to appropriately implement and carry out the school choice law.

Third, Act 2 amends LSA-R.S. 17:158, entitled "School buses for transportation of students; employment of bus operators; alternate means of transportation; improvement of school bus turnarounds." This revision exempts public schools from providing free transportation for students enrolled in non-public schools. Plaintiffs contend that this amendment is a completely different object than the above two amendments; however, the test is not whether it has a different object than the other amendments in the act, the test is to whether this amendment is "reasonably related and

have a natural connection to the general subject matter of the legislation." ***State v. O'Dell***, 218 So.2d at 319. While the object of Act 2 does not specifically relate to transportation, amendment of the school transportation statute was necessary to exempt local districts from having to fund transportation for students enrolled in the Act 2 scholarship program. Without this amendment, the local school systems may have been required to bus students to non-public schools, potentially rendering the passage of Act 2 unconstitutional. The Court finds that this amendment is "reasonably related" and has a "natural connection to the general subject matter" of Act 2, and therefore, must deny Plaintiffs' arguments that it violates the "one object" rule of Article III, §15.

Fourth, Act 2 then amends ten (10) and adds two (2) new sections of the Charter School Law, found in Chapter 43 of Title 17, as follows:

1. Act 2 amends LSA-R.S. 17:3973 by creating an entirely new type of Charter School, consisting of a new school or a pre-existing public school operated under a charter between a nonprofit corporation and a local charter authorizer.

2. Act 2 amends LSA-R.S. 17:3974 which states that if certain persons associated with a charter authorizer has been convicted of a felony then BESE shall not certify the local charter authorizer. This amendment also allows chartering groups to propose several charter schools through a single application, and states that the Department of Education shall actively recruit chartering groups that offer courses that address regional workforce needs.

3. Act 2 adds two entirely new sections of law:

    a. LSA-R.S. 17:3981.1, which establishes a process for certifying entities as local charter school authorizers;

    b. LSA-R.S. 17:3981.2, which provides for the powers and duties of local charter authorizers;

4. Act 2 amends LSA-R.S. 17:3982 by changing the timelines to evaluate charter school applications;

5. Act 2 amends LSA-R.S. 17:3983 by further providing for the new "Type 1B" Charter schools;

6. Act 2 amends LSA-R.S. 17:3983 relative to the requirements of Charter schools;

7. Act 2 amends LSA-R.S. 17:3992 relative to Charter revision and renewal;

8. Act 2 amends LSA-R.S. 17:3995 relative to Charter school funding;

9. Act 2 amends LSA-R.S. 17:3996 relative to Charter school exemptions

10. Act 2 amends LSA-R.S. 17:3998 relative to Charter school reports; and

11. Act 2 amends LSA-R.S. 17:4001 relative to the Charter school startup loan.

The Court finds that these ten amendments and two new sections are "reasonably related" and have a "natural connection to the general subject matter" of Act 2, and therefore, must deny Plaintiffs' arguments that it violates the "one object" rule of Article III, §15.

Fifth, Act 2 then enacts an entirely new section of laws found in Part 7 of Chapter 42, Charter School Demonstrations Program Law, comprising LSA-R.S. 17:4002.1 through 4002.6, entitled "Course Providers." The Act states that this Part shall be known as the "Course Choice Program." It allows – for the first time - post-secondary institutions, online and virtual course providers, and business and industry to provide courses for students enrolled in public schools, certain non-public schools, or in a home study program. This section of the Act defines the duties of BESE relative to the entities authorized to offer courses, and funding through the MFP. The Court finds that this new section of laws is "reasonably related" and has a "natural connection to the general

subject matter" of Act 2, and therefore, must deny Plaintiffs' arguments that it violates the "one object" rule of Article III, §15.

Lastly, Act 2 amends Chapter 43, School Choice Scholarships, LSA-R.S. 17:4011 through 17:4025 School Choice Scholarships, Part 1, Student Scholarships for Educational Excellence Program, to allow scholarships for students enrolled in non-public schools. This includes a provision that allocates money from the MFP as described above. The Court finds that this amendment is "reasonably related" and has a "natural connection to the general subject matter" of Act 2, and therefore, must deny Plaintiffs' arguments that it violates the "one object" rule of Article III, §15.

Plaintiffs argue that from the foregoing, it is evident that Act 2 has a multitude of objects; however, the Court points out that it is not the number of objects, but whether as a whole, the objects are "reasonably related and have a natural connection to the general subject matter of the legislation." ***State v. O'Dell***, 218 So.2d at 319.

Plaintiffs first cite ***Matter of Rubicon, Inc.***, 95-CA-0108 (La. App. 1 Cir. 02/14/1996); 670 So.2d 475, 479, in which the First Circuit Court of Appeal explained the rationale and purpose of the "single object" provision found in Article III, §15 of the Louisiana Constitution:

> Article III, §15(A) of the Louisiana Constitution provides in pertinent part that "[e]very bill ... shall be confined to one object." The purpose behind the one object requirement is to restrict the content of a legislative bill so as to prevent a legislator from having to consider two or more unrelated matters when deciding how to vote on a single bill.
>
> A bill is considered to have one object if the parts of the bill are reasonably related and have a natural connection to the general subject matter of the legislation. The object of a bill has been defined as the aim or purpose of the enactment; its general purpose; or the matter or thing forming the groundwork of the bill. To determine whether a bill is confined to one object, it is necessary to first examine the body of the bill to ascertain its purpose.

In ***Rubicon***, the First Circuit found that a bill which included an object of providing for witness fees in connection with proceedings by various state agencies and also included a provision eliminating appellate jurisdiction while transferring it to another court was "an example of the type of bill the constitution sought to eliminate: because

even though the two provisions had something to do with the same agency, they forced legislators to consider unrelated objects and then vote on them both at one time.

Plaintiffs argue that Act 2 compelled legislators to do the same. Their contention is that it forced legislators to consider unrelated objects and then to vote on all of them at one time. Plaintiffs specifically argue that ***Rubicon*** declared an Act unconstitutional because it has two objects that were "separate and distinct," and likewise, Act 2 has a multitude of objects that are separate and distinct, and as such, Act 2 should be declared unconstitutional in that it violates the "one object" requirement of Article III, §15(A) of the Louisiana Constitution. Plaintiffs contend that the only relationship the multitude of objects of Act 2 to each other is that they are all founded in Title 17, which comprises the Education Code.

Rubicon involved Act 1208 of the Regular Session of 1995, which amended both Title 13 and Title 30. Defendants point to the following statement by the court to explain why the holding was compelled:

> Upon examining the body of Act 1208, it is clear that it contains two distinct objects. Section one of the act provides for witness fees for law enforcement officers subpoenaed by the Department of Public Safety and Corrections or by the DEQ. The provisions of section one are related and accomplish one object, namely the providing of witness fees in connection with proceedings by various state agencies. In contrast, section two of the act is in no way related to witness fees. This section eliminates the jurisdiction of the First Circuit Court of Appeal to review final decisions of the DEQ and transfers that jurisdiction to the Nineteenth Judicial District Court. The object of this section, which is to change appellate jurisdiction of DEQ decisions, is unrelated to the object of section one.

Defendants argue that by contrast, Act 2 solely involves Title 17 and each of its parts have a natural connection to the general subject matter of school choice; therefore, Act 2 conforms with the "one object" requirement of Article III, §15.

Next, Plaintiffs argue that this case is distinguishable from other contemporary Supreme Court cases finding, under a much broader reading of the Louisiana Constitution, that legislation need only demonstrate "a single plan and that every provision therein is germane to that plan. ***Forum for Equality, PAC v. McKeithen***,

2004-2477 (La. 01/19/2005); 893 So.2d 715. The Louisiana Supreme Court in ***Forum for Equality, PAC v. McKeithen***, adopted this generalized "plan" analysis relying on germaneness rather than the presence of a single clearly identifiable object of the legislation, which was in that case, the Defense of Marriage constitutional amendment. Simultaneously, that Court recognized that the single object requirement is not meant to rely on an unspoken, over-arching plan, but rather is meant to limit legislation so that "if any one of the propositions, although not directly contradicting the others, does not refer to such matters, or if it is not such that the voter supporting it would reasonably be expected to support the principle of the others, then there are in reality two or more amendments to be submitted, and the proposed amendment falls within the constitutional prohibition." ***Id.*** at 730 *quoting*, ***Graham v. Jones***, 198 La. 507, 3 So.2d 761 (1941). Here, Plaintiffs contend, there is no clearly uniting "general subject matter of the legislation." ***Doherty***, 634 So.2d at 1176.

However, this Court agrees with the position pointed out by Defendants that Plaintiffs' reliance on ***Forum for Equality, PAC v. McKeithen***, is misplaced in that it involved a challenge to the single object requirement for a constitutional amendment under Article XIII, §1(B), which protects public voters, not legislators, from having to vote on unrelated objects.

For the reasons set forth above, this Court finds that Act 2 did not violate the "one object" requirement of Article III, §15 of the Louisiana Constitution of 1974. Act 2 was reasonably related to and had a natural connection with the stated single object of HB 976, and as such, this Court must deny the declaratory judgment as it relates to this claim of Plaintiffs.

F.

Article VIII, §13(B) of the Louisiana Constitution of 1974

Article VIII, §13(B) of the Louisiana Constitution of 1974 addresses the Minimum Foundation Program.

Plaintiffs argue that SCR 99 and Act 2 unconstitutionally diverts MFP funds that are constitutionally mandated to be allocated to public elementary and secondary schools to nonpublic entities in violation of Article VIII, §14(B) of the

Louisiana Constitution of 1974. Defendants' argument, in essence, is that SCR 99 and Act 2 do not divert MFP funds guaranteed to public schools because their share of per pupil funds from the MFP will not change.

Further, Plaintiffs argue that SCR 99 and Act 2 unconstitutionally divert local funds included in the MFP that are constitutionally mandated to be allocated to public elementary and secondary schools to nonpublic entities in violation of Article VIII, §13(C) of the Louisiana Constitution of 1974 and Article VI, §29(A) of the Louisiana Constitution of 1974 (as implemented by LSA-R.S. 47:338.84). Defendants argue that SCR 99 and Act 2 have no bearing on local funds and therefore, Plaintiffs' argument is without merit.

1.

Do SCR99 and Act 2 unconstitutionally divert MFP funds that are constitutionally 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?

When a constitutional challenge is made, the question is whether the constitution limits the legislature, either expressly or impliedly, from enacting the statute at issue. ***Fransen v. City of New Orleans***, 2008-CA-0076, 2008-CA-0087 (La. 07/01/2008); 988 So.2d 225, 235. As with any challenge that alleges a constitutional violation, the starting point of the Court's analysis must be the constitutional provision itself. ***Louisiana Municipal Association v. State***, 00-0374, p. 5 (La. 10/6/2000); 773 So.2d 663, 667. When a constitutional provision is plain and unambiguous and its application does not lead to absurd consequences, its language must be given effect. ***East Baton Rouge Parish School Board v. Foster***, 02-2799, p. 15 (La. 6/6/03); 851 So.2d 985, 996.

Article VIII, §1 provides that "the legislature shall provide for education of the people of the state and shall maintain a public educational system." This constitutional mandate, in addition to the plenary authority of the Legislature, permits the Legislature to

enact any law that is not expressly prohibited by the constitution. ***City of New Orleans v. Louisiana Assessor's Ret.***, 2005-2548 (La. 10/1/07); 986 So.2d 1, 15.

BESE's authority derives from both the constitution and the Legislature. Article VIII, §3 provides in part:

> (A) Creation; Functions. The State Board of Elementary and Secondary Education is created as a body corporate. It shall supervise and control the public elementary and secondary schools and special schools under its jurisdiction and shall have budgetary responsibility for all funds appropriated or allocated by the state for those schools, all as provided by law. The board shall have other powers, duties, and responsibilities as provided by this constitution **or by law**, but shall have no control over the business affairs of a city, parish, or other local public school board or the selection or removal of its officers and employees; however, the board shall have the power to supervise, manage, and operate or provide for the supervision, management, and operation of a public elementary or secondary school which has been determined to be failing, including the power to receive, control, and expend state funds appropriated and allocated pursuant to Section 13(B) of this Article, any local contribution required by Section 13 of this Article, and any other local revenue available to a school board with responsibility for a school determined to be failing in amounts that are calculated based on the number of students in attendance in such a school, all in the manner provided by and in accordance with law.

Thus, the constitution expressly contemplates that BESE may be granted additional authority by the Legislature.

Further, with regard to the scope of BESE's authority over the MFP, the First Circuit has stated: "According to the plain language of Article VIII, §3(B), BESE is only required to annually develop and adopt a formula. 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." ***Jones v. State Board of Elementary and Secondary Education***, 2005-0668 (La. App. 1 Cir. 11/4/05); 927 So.2d 426, 431 (internal citations omitted).

In ***Aguillard v. Treen***, 440 So.2d 704, 709 (La. 1983), the Louisiana Supreme Court described the unique relationship between the plenary authority of the Legislature and the authority of BESE as "a symbiotic relationship in which neither the Legislature nor BESE has exclusive authority over public education." Although the relationship of that authority has evolved since ***Aguillard***, the central point remains: the Legislature and BESE share broad authority to fulfill a constitutional mandate of providing for a public

educational system. The MFP mandate of Article VIII, §13(B) must be interpreted against this authority structure.

As stated in Article VIII, §3, BESE has been granted power to supervise and control public elementary and secondary schools in addition to special schools that have been legislatively placed under its jurisdiction. Second, BESE has been given budgetary responsibility for all funds appropriated or allocated by the state for those schools. The only restriction to BESE's power over public schools, according to Article VIII, §3, is that it "shall have no control over the business affairs of a city, parish, or other local public school board or the selection or removal of its officers and employees." Other powers granted by law as stated in Article VIII §3 are contained in Title 17 of the Louisiana Revised Statutes. Specifically, Louisiana Revised Statute 17:6 which defines such powers, to name just a few, as the right to sue and be sued, to enter into contracts, purchase equipment for improvements, and perform such other functions as are necessary to the supervision and control of those phases of education under its supervision and control. Further, Article VIII, §4 of the Louisiana Constitution of 1974 grants BESE the power to approve private schools upon a showing that the private school provides a sustained curriculum or specialized course of study of quality at least equal to that prescribed for similar public schools. That power was further expanded by Louisiana Revised Statute 17:7 which in part recites Article VIII, §4 and adds the authority to ensure private schools are maintaining such quality and if not, shall discontinue approval of the school. It is clear from reading Article VIII, §3 and §4 and Louisiana Revised Statutes 17:6 and 17:7, that BESE has a vast amount of power in controlling the public education system in Louisiana but very little control over private schools.

Read alone, Article VIII, §3 would support defendants notion that once the MFP was created, BESE could do whatever they wanted in regards to the funds that were placed into the MFP. However, BESE's authority is constrained by Article VIII, § 13(B) in its handling of the MFP.

Article VIII, §13(B) of the Louisiana Constitution of 1974 provides:

> Minimum Foundation Program. The State Board of Elementary and Secondary Education, or its successor, shall 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 as well as **to equitably allocate the funds to parish and city school systems**. Such formula shall provide for a contribution by every city and parish school system. Prior to approval of the formula by the legislature, the legislature may return the formula adopted by the board to the board and may recommend to the board an amended formula for consideration by the board and submission to the legislature for approval. The legislature shall annually appropriate funds sufficient to fully fund the current cost to the state of such a program as determined by applying the approved formula in order to insure a minimum foundation of education **in all public elementary and secondary schools**. Neither the governor nor the legislature may reduce such appropriation, except that the governor may reduce such appropriation using means provided in the act containing the appropriation provided that any such reduction is consented to in writing by two-thirds of the elected members of each house of the legislature. The funds appropriated shall be equitably allocated to parish and city school systems according to the formula as adopted by the State Board of Elementary and Secondary Education, or its successor, and approved by the legislature prior to making the appropriation. Whenever the legislature fails to approve the formula most recently adopted by the board, or its successor, the last formula adopted by the board, 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. [Emphasis added]

Unequivocal constitutional provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning. ***Cajun Electric Power Co-op. v. Louisiana Public Service Commission***, 544 So.2d 362, 363 (La. 1989)(on rehearing).

The terms "public elementary and secondary schools" and "parish and city school systems" as used in Article VIII, §13(B) of the Louisiana Constitution, are plain and unambiguous. The phrase "public elementary and secondary schools" is generally understood to mean schools funded with tax revenue and administered by a governmental body that offers instruction in kindergarten through 12th grade. The phrase "parish and city school systems" is generally understood to mean those school systems either created pursuant to Article VIII, §9(A) of the Louisiana Constitution or recognized pursuant to Article VIII, §10 of the Louisiana Constitution. *See e.g.* **LSA-R.S. 17:51** (creating "a parish school board for each of the parishes"), **LSA-R.S. 17:64** (creating the Zachary

Community School Board), **LSA-R.S. 17:66** (creating the Central Community School Board) and **LSA-R.S. 17:72** (creating the city of Baker School Board).

Several considerations justify this interpretation in addition to the generally understood meaning of those phrases.

First, the delegates to the Constitutional Convention recognized that while Article VIII, §13(A) would require the Legislature to appropriate funds to supply free school books to "the children of the state," Article VIII, §13(B) "takes care of the public schools." **Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts** , Volume 9, p. 2443 (November 16, 1973). This clearly shows that the delegates to the convention knew the distinctions they were making between public schools and private schools. Furthermore, this also makes it clear to this Court that the delegates to the convention unequivocally made a distinction as to how Article VIII, §13(B) was to be applied. Had they intended to for MFP funds to be used for any other purpose than funding public schools, they would have made that distinction.

Second, the delegates at the Constitutional Convention stripped from the final version of Article VIII, §13 a floor amendment that would have "siphoned off [money] in the direction of private schools" for fear that such a provision "opens the door for the very thing we are talking about trying to keep out of the constitution." **Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts,** Volume 9, p. 2445 (November 16, 1973).

Third, the delegates at the Constitutional Convention recognized that the purpose of Article VIII, §13(B) was "to insure that there are certain minimum standards in public education, met in all of the school systems across the state and that the [poor] parishes do not suffer a lack of adequate public education." **Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts,** Volume 9, p. 2442 (November 16, 1973).

At this point, defendants argue that it is clear the Constitutional Convention of 1973 contemplated and approved the use of state funds by nonpublic schools. The problem with defendants' argument is that point is not being argued. It is this Court's

opinion that it is clear that Article VIII, §13(A) and §13(D) contemplate entities other than public schools receiving state funding; however, it is equally clear that §13(B), sandwiched between the two above stated sections specifically singles out funding (i.e. the MFP) to public schools.

Finally, even BESE recognizes a distinction between "public" and "nonpublic" elementary and secondary schools in the regulations that it promulgates. For example, compare BESE Bulletin 741 entitled "Louisiana Handbook for School Administrators" with BESE Nonpublic Bulletin 741 entitled "Louisiana Handbook for Nonpublic School Administrators."

The phrases "public elementary and secondary schools" and "parish and city school systems" in Article VIII, §13(B) of the Louisiana Constitution are plain and unambiguous and must be applied as written.

Further, Plaintiffs contend that SCR 99 itself supports the conclusions that the MFP was designed to fund public elementary and secondary schools only and was designed to be equitably allocated between public city and parish school systems only by pointing to the wording of SCR 99. That concurrent resolution begins as follows:

A CONCURRENT RESOLUTION

> To provide for legislative approval of the formula 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 city, parish, and other local public school systems as developed by the State Board of Elementary and Secondary Educations and adopted by the board on February 27, 2012.
>
> WHEREAS, Article VIII, Section XIII(B) of the Constitution of Louisiana requires the State Board of Elementary and Secondary Education to develop and adopt annually a 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...."[Emphasis added]

Plaintiffs also point out that on page 3 of SCR 99, there is further language supporting the conclusion that MFP funds are to be used for public education only:

> WHEREAS, the Constitution of Louisiana requires the legislature to fully fund the current cost to the State of the minimum foundation program as determined by applying the legislatively approved formula; and

> WHEREAS, this minimum foundation program is designed to provide greater equity and adequacy in both state and local funding of local school systems; and
>
> WHEREAS, the Constitution of Louisiana requires the appropriated funds to be allocated equitably to parish and city school systems according to the formula as adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation.
>
> THEREFORE, BE IT RESOLVED, by the Legislature of Louisiana, that the formula to determine the cost of a minimum foundation program of education in all public elementary and secondary schools as well as to allocate equitably the funds to city, parish, and other local school systems developed by the State Board of Elementary and Secondary Education and adopted by the Board on February 27, 2012, is hereby approved to read as follows...
>
> [Emphasis added]

Again, this language is identical (except for date) with that found in HCR 103 of 2011.

Plaintiffs argue that the State of Louisiana, through the Louisiana Legislature, has recognized the fact that the MFP formula and the funding provided thereunder are for the benefit for public elementary and secondary schools and that MFP allocations are to be made to public city and parish school systems and that the statutory references and others make it clear that MFP funds are to be spent on public education and are to be equitably allocated to public school systems only.

The extent to which public aid to private education should be authorized by the Constitution was the subject of much debate by the Constitutional Convention during the consideration of articles on education. As originally drafted, Article VIII, §13(A) included an authorization for the Legislature to appropriate funds to assist students in private schools in addition to free textbooks, bus transportation, lunch programs, and other similar types of aid available to private schools at that time. Upon the urging of delegates who felt that the Constitution should be neither for nor against state aid to private schools beyond what was then provided by the Legislature, this Section was ultimately amended to state as quoted above. Noticeably absent from the discussion on the issue of private aid, however, was any mention of MFP funds being used to assist nonpublic schools. *See* Debates of the Constitutional Convention of 1973, Vol. XXVIII, November 16, 1973, pp. 108-109.

By its clear terms, Article VIII, §13 requires that BESE "develop and adopt a formula which shall be used [1] to determine the cost of a minimum foundation of education in all public elementary and secondary schools as well as [2] to equitably allocate the funds to parish and city school systems." The amount of MFP funds appropriated by the state are determined by "applying the formula" and the funds are then distributed "according to the formula."

Defendants maintain the MFP formula is nothing more than a budgeting tool. It does not appropriate or distribute any funds. Rather, it represents the product of BESE's budgetary responsibility under Article VIII, §3(A) and its mandate to formulate the MFP under Article VIII, §13(B). Further, the local "contribution" requirement of Article VIII, §13(B) is merely a required factor – the only required factor – in the formula. They further contend that the Constitution provides BESE no other instructions or requirements for determining the extent of the local contribution or how it should be factored into the equation.

In ***Charlet v. Legislature of State of La.***, 97-0212 (La. App. 1 Cir. 6/29/98); 713 So.2d 1199, 1207, the First Circuit interpreted the meaning of the term "minimum" in Article VIII, §13(B). Noting the "conceptual problem" posed by interpreting the term literally, the court held:

> Despite this conceptual problem in the plaintiffs' phrasing of the issue in this case, this court has no difficulty agreeing with them that if the constitutional provisions were literally interpreted as establishing no inherent limits on the legislative power, the legislature could appropriate and allocate any pittance, which would lead to an absurd result. However, the constitutional provision is not meaningless, simply because of the choice of the word "minimum." As a practical matter, when BESE sets up the MFP formula each year, BESE essentially defines what the least admissible amount shall be for that particular year. By then approving and funding the MFP in accordance with that formula, the legislature "insures" that minimum. This process allows the State the flexibility it needs to fund the public education system, while still accommodating the many other demands on state funds.

Thus, in simple terms, defendants argue, BESE is required to adopt a formula that calculates the minimum funding for public elementary and secondary education. The

formula must include a local contribution and it must equitably allocate funds to the local school districts based on the formula.

Though defendants cite ***Charlet*** to bolster their argument that all BESE is required to do is to calculate a minimum funding for public elementary and secondary education, this Court also recognizes the First Circuit in ***Charlet*** clearly stated that MFP funds were for public use:

> "The purpose of this is to insure a minimum foundation of education in all public elementary and secondary schools; a minimum foundation is being provided. The funds are to be equitably allocated to parish and city school systems according to the formula adopted by BESE and approved by the legislature; this formulaic allocation is being done."

In essence, defendants argue that all BESE is required to do is calculate a minimum and once the requirements are met, they can do anything they want with the MFP. The problem with this argument is contained in Article VIII, §13(B) itself. Even if the BESE and the Legislature approve more funding than was calculated as the minimum, the statute itself states, "[t]he funds appropriated shall be equitably allocated to parish and city school systems according to the formula… ." This portion alone indicates any funds in the MFP are to be allocated to public school systems only.

While no case has addressed allocating through the MFP funds for students to attend private schools, several cases have dealt with constitutional challenges to the MFP formula and its allocation of funding. In ***Triplett v. Bd. of Elementary and Secondary Educ.***, 2009-0691 (La. App. 1 Cir. 7/13/09); 21 So.3d 401, 410, the First Circuit upheld BESE's use of MFP funds for charter schools managed by private companies under the supervision of the state-run Recovery School District. The challenger sought a declaration stating that allocating funds through the MFP that would otherwise go to the East Baton Rouge Parish school system to the Recovery School District, which had taken over eight schools in the parish, was a violation of Section 13's requirement of equitable funding. ***Id.*** at 409. The court held that, because BESE had authority under Article VIII, §3 to take over failing schools and control state funds allocated under §13(B), there was no violation. ***Id.*** at 410. The court also held that "once BESE has transferred a failing school to the RSD to supervise, manage, and operate there is no inequity in the RSD

receiving those funds for that purpose[,]" so the spending did not violate the equitable allocation provision. ***Id.***

Though defendants rely on this holding to show that MFP funds may be allocated as BESE sees fit after it has calculated the MFP, ***Triplett*** is distinguishable from what is being argued here. In ***Triplett*** the MFP funds were transferred to the state-run Recovery School District which is a public school system but which is managed by a private entity. Here, we have MFP funds being transferred from public funds into the hands of nonpublic entities.

Defendants next argue that funding is not being diverted from public school systems under the MFP approved in SCR 99 because it only diverts that which the system has lost by virtue of losing those students. This is not a clear recitation of the facts. Here there is a diversion of MFP funds because the student would be receiving a voucher which would authorize a student to use funds in the MFP to transfer to a nonpublic school. The student would not otherwise leave a public school for a nonpublic school if it were not for the promise that at least a portion of the cost of attending that nonpublic school will be covered. Under SCR99 and Act 2, that cost would be covered using funds from the MFP. Thus, the MFP funds are being diverted to nonpublic schools.

Further evidence of this argument can be found in the Early High School Graduation Scholarship Program (hereinafter "Early Graduation Program"). The Early Graduation Program is found in SCR 99 starting on page 23. This program is for the purpose of providing tuition assistance to students graduating early from a public high school to encourage them to attend college in any public or private institution of higher education in Louisiana. This program begins in Fiscal Year 2013-2014. It allows students graduating at the end of the eleventh grade year an about equal to one half of one year's MFP state and local share per pupil for the district in which the student resided at the time of graduation from which the student graduated. Likewise, it allows a student graduating at midterm their senior year an amount equal to one quarter of the MFP. Additionally, the Early Graduation Program includes these students in the MFP membership count in the district in which the student resided at the time of graduation to calculate the funding amount. It then places those funds, from the MFP, into a special

fund for the student's use. Not only does the Early Graduation Program divert MFP funds away from public elementary and secondary schools, it does so for the benefit of students who have already graduated and are no longer a part of the Louisiana education system, and also funnels these funds into entities who are not even in the business of educating elementary or secondary school students.

Defendants argue that there is no prohibiting language in the Article that would prohibit MFP funds being used for the purposes defined in SCR99 or Act 2. As argued extensively above, this Court disagrees. This Court finds that Article VIII, §13(B) of the Louisiana Constitution restricts MFP fund for the use of public elementary and secondary schools only.

Lastly, this Court considered the good of the individual student as opposed to the good of the public school systems. Even in this regard, it does not sway the Court's determination. The public elementary and secondary school systems were established for the education of all school age students in Louisiana for the good and betterment of each and every child. Nowhere was it mandated that funds from the MFP, meant for public elementary and secondary school systems, be provided for an alternative education beyond what the Louisiana education system was set up for. Defendants would put forth the argument that the diversion of MFP funds into private education providers are for the good of the student since it gives them the opportunity to leave schools deemed to be underperforming; however, their argument ignores the good of the individual students who are left behind in those schools deemed underperforming. The MFP was set up to equitably allocate funds to public elementary and secondary schools. This gives public school systems in poorer districts the ability to receive funds they would not otherwise have. This Court can find no argument that can be put forth that would show that diverting funds away from such a school would be for the good of the hundreds, and sometimes thousands, of students who are left behind in those underperforming school systems. The MFP was set up for students attending public elementary and secondary schools and was never meant to be diverted to private educational providers. Thus, this Court believes that the MFP is directly for the betterment of each individual student in

the state, and as such, should not be diverted away from what it was meant, that being the public elementary and secondary school systems of Louisiana.

When a law is clear and unambiguous, it should be applied as written. **LSA-C.C. art. 9; LSA-R.S. 1:3**. When the language of the law is susceptible of different meanings, however, "it must be interpreted as having the meaning that best conforms to the purpose of the law." **LSA-C.C. art. 10.** In this case, application of these principles of statutory interpretation to Article VIII, §13(B) of the Louisiana Constitution of 1974 lead to the same results:

(1) The MFP formula is to be used to determine the cost of a minimum foundation program of education in public schools; Article VIII, §13(B) does not address in any fashion the use of MFP funds for nonpublic educational programs

(2) The MFP formula is applicable to public elementary and secondary schools only; it is not applicable to programs or schools providing post-secondary educational services.

(3) The MFP formula calls for the equitable allocation of MFP funds to "parish and city school systems"; the article does not provide for distribution of MFP funds to any other individuals or entities.

(4) The MFP formula requires "a contribution by every city and parish school system"; accordingly, any expenses paid through the MFP or with MFP funds are by definition a combination of both state funds and local school board funds.

(5) The MFP formula adopted by BESE must be "approved by the Legislature prior to making the appropriation"; if the formula has not been "approved by the Legislature", the Legislature cannot appropriate the funds called for in that formula.

(6) If the Legislature fails to approve the formula most recently adopted by BESE, then the last formula adopted by BESE and approved by the Legislature shall be used to determine the cost of the minimum foundation program and to determine the allocation of funds appropriated.

(7) Public school systems are required to levy an ad valorem maintenance tax and may levy with voter approval other ad valorem taxes as their required contribution under the MFP formula; such contributions are for the purpose of "giving additional support to public elementary and secondary schools" and are not for the purpose of supporting nonpublic students, schools, or programs.

For the reasons set forth above, this Court finds that SCR99 and Act 2 unconstitutionally divert MFP funds that are constitutionally 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. As such, to the extent that the MFP adopted by BESE allows any such funds to be utilized for any nonpublic educational institutions or opportunities, BESE was acting outside of its authority with regard to the MFP as granted by the Constitution. Therefore, this Court must grant declaratory judgment as it relates to this claim. This Court is not suggesting that the State is prohibited from providing funding to nonpublic schools or nonpublic educational opportunities, but rather, that MFP funding cannot be constitutionally spent on nonpublic education or distributed to nonpublic school systems. The funding of nonpublic schools or nonpublic educational opportunities must come from some other portion of the general budget.

2.

Do Act 2 and SCR 99 unconstitutionally divert local funds included in the MFP that are constitutionally mandated to be allocated to public elementary and secondary schools to nonpublic entities in violation of Article VIII, §13(C) of the Louisiana Constitution of 1974 and Article VI, §29(A) of the Louisiana Constitution of 1974 (as implemented by LSA-R.S. 47:338.84).

Plaintiffs contend that the 2012-13 MFP includes payment of state and local funds to support educational programs of students in nonpublic school settings and calls for distribution of those funds to the entities and individuals operating such educational

programs rather than to the public school boards of the State. These nonpublic education programs were contained in Act 2 and were to be funded through SCR99. Plaintiffs specifically illustrate: The Course Choice Program, The Student Scholarships for Education Excellence Program (hereinafter "SSEEP"), and the Early High School Graduation Scholarship Program.

Defendants' entire opposition to Plaintiffs' arguments are simply the following:

First, Defendants maintain that the MFP is nothing more than an accounting exercise which inclusions of the local per-pupil share in the formulation of Act 2 funding through the MFP does not cause the actual diversion of any local funds.

Second, Defendants contend that Plaintiffs' argument that SCR 99 and Act 2 result in distribution of local funds outside of the school district or in nonpublic schools inside the district are incorrect. Defendants argue that any such diversion of local funds is prohibited. Act 2 states: "No locally levied school district tax revenues shall be transferred to any participating school located outside the school district where the tax is levied or any participating nonpublic school within the district." LSA-R.S. 17:4017. Quite simply, they point out that the public school systems will receive less funding from the state because they educate fewer children. Funding under the MFP is student-based, and how much state funding any district receives is a function of two primary factors: the number of students the district will educate and the amount of funds it can be expected to raise locally. Fluctuations in the student count do not affect the local share calculation but only serve to increase or decrease how much the state will provide the districts in the form of a block grant. Defendants argue that, at most, Act 2 programs may decrease the local district's receipt of its net funding from the state appropriation for MFP funding, but such a decrease will be directly related to the children the local district will no longer be educating. Thus, the loss of students may have been caused by Act 2, but it has not been caused by the inclusion of Act 2 in the MFP.

On the other hand, in support of their contention, Plaintiffs point to the wording of the statutes they base their arguments on. First, Article VIII, §13(C) of the Louisiana Constitution of 1974 provides:

> (C) Local Funds. Local funds for the support of elementary and secondary schools shall be derived from the following sources:

First: Each parish school board, Orleans Parish excepted, and each municipality or city school board actually operating, maintaining, or supporting a separate system of **public schools**, shall levy annually an ad valorem maintenance tax not to exceed five mills on the dollar of assessed valuation on property subject to such taxation within the parish or city, respectively.

Second: The **Orleans Parish School Board** shall levy annually a tax not to exceed thirteen mills on the dollar of the assessed valuation of property within the city of New Orleans assessed for city taxation, and shall certify the amount of the tax to the governing authority of the city. The governing authority shall have the tax entered on city tax rolls. The tax shall be collected in the manner, under the conditions, and with the interest and penalties prescribed by law for city taxes. The money thus collected shall be paid daily to the Orleans Parish School Board.

Third: For giving additional support **to public elementary and secondary schools**, any parish, school district, or subschool district, or any municipality or city school board which supports a separate city system of **public schools** may levy an ad valorem tax for a specific purpose, when authorized by a majority of the electors voting in the parish, municipality, district, or subdistrict in an election held for that purpose. The amount, duration, and purpose of the tax shall be in accord with any limitation imposed by the legislature.

(D)(1) Municipal and Other School Systems. For the effects and purposes of this Section, the Central community school system and the Zachary community school system in East Baton Rouge Parish, and the municipalities of Baker in East Baton Rouge Parish, Monroe in Ouachita Parish, and Bogalusa in Washington Parish, and no others, shall be regarded and treated as parishes and shall have the authority granted parishes. Consistent with Article VIII of this constitution, relevant to equal educational opportunities, no state dollars shall be used to discriminate or to have the effect of discriminating in providing equal educational opportunity for all students.

(2) Notwithstanding Article III, Sections 12 and 13 and any other provision of this Constitution, in any session of the legislature in which a school system is proposed to be removed from the provisions of this Paragraph including any such proposal effective at the same time as this Subparagraph, the legislature may by law, the effectiveness of which depends on the passage and adoption by the people of such proposition, eliminate any or all relevant statutory provisions without regard to the requirements of such Sections.

[Emphasis added]

LSA-R.S. 17:97.1 provides that:

No proceeds derived from the sale, lease, or other disposition or use of any sixteenth section lands by a parish or city school board, no allocation of severance taxes, if any, to a parish or city school board, or school system and **no portion of the proceeds derived from any sales tax levied and collected by a parish or city school board shall be used or taken into consideration in any formula adopted by the Louisiana State Board of Elementary and Secondary Education and submitted to the**

legislature for approval as required by Article VIII, Section 13(B) of the Constitution for the allocation of funds to insure a minimum foundation program of education in all public elementary and secondary schools.

Funds derived from the sale, lease, or use of sixteenth section lands heretofore charged against school systems in the minimum foundation program formula shall be replaced by equal amounts from revenues generated by lease or royalties of sixteenth section water bottoms claimed by the State; provided, however, that in the event such replacement revenues are insufficient for such purpose then, and in that event only, revenues generated by lease or royalties from other water bottoms claimed by the state shall be used as needed for the purposes of this Section. [Emphasis added]

LSA-R.S. 47:338.84 provides:

A. In order to provide additional funds for the payment of salaries of teachers employed **in the public elementary and secondary schools** of the respective parishes and cities of the state **and/or for the operation of the public elementary and secondary schools** of the parishes and cities of the state, any parish or city school board in the state is hereby authorized to levy and collect a sales tax not in excess of one per cent within the parish or city, as the case may be, as hereinafter set forth provided that where there are dual school boards in any parish, both must accept the imposition and means of collection and dispersion of the tax.

B. The sales tax so levied shall be imposed by an ordinance of the parish or city school board, as the case may be, and shall be levied upon the sale at retail, the use, the lease or rental, the consumption and storage for use or consumption of tangible personal property and on sales of services in the parish or city, as the case may be, all as presently defined in R.S. 47:301 et seq.; provided, however, that the ordinance imposing said tax shall be adopted by the school board only after the question of the imposition of the tax shall have been submitted to the qualified electors of the parish or city at an election conducted in accordance with the general election laws of the state of Louisiana, and the majority of those voting in said election shall have voted in favor of the adoption of such ordinance. All costs of conducting the election required by this Section shall be borne by the parish or city school board calling the election.

C. This tax shall be in addition to all other taxes and shall be collected at the same time and in the same manner and pursuant to the definitions, practices and procedures set forth in R.S. 47:301 et seq.

D. **The proceeds of the tax herein authorized shall be used exclusively to supplement other revenues available to the school board for the payment of salaries of teachers in the elementary and secondary schools of the parish or city, as the case may be, and/or for the expenses of operating said schools, and the ordinance imposing said tax and any amendments thereto shall**

state such purpose. None of the proceeds of this tax shall be used for capital improvements.

E. Nothing contained in this Section and particularly no provision of Subsection D hereof shall be construed to affect the purposes for which the proceeds of any sales tax authorized or levied prior to December 11, 1964 shall be used, and in all such cases the disposition of the proceeds of sales taxes heretofore authorized or levied by a parish school board shall be made in accordance with the authorization under which such tax was levied and is being collected.

F. Provided that **the funds raised by parishes and/or local school boards pursuant to the provisions of this act shall not be considered by the State Board of Education or the State Department of Education in the application of the state equalization formula or the distribution of proceeds of any other kind or nature by the State Board of Education and the State Department of Education**.

[Emphasis added]

The key point of Plaintiffs' argument is provided in the statutes above; specifically in the statutory language which forbids BESE from considering the local funds in determining the MFP. Plaintiffs have shown that Defendants are not using locally generated funds to pay for the school voucher program because Defendants have no access to the local accounts in which such funds are maintained. Rather, Defendants are reducing the MFP allocations to public schools by equivalent amounts thus violating the statutes cited above by considering the local funds when determining the MFP formula. Whether called a "diversion" or something else, the result is the same. The public school systems of the State of Louisiana will lose funding they would have received from the Defendants for the operation of their schools and for the benefit of their students. Neither the constitutional nor statutory provisions outlined hereinabove permit such reduction in funding.

Inasmuch as Act 2 is unconstitutional for its directing of public MFP funds from public schools, SCR 99 is also unconstitutional in that it creates the MFP to provide public funds to nonpublic entities. Specifically, this court finds that SCR 99 is unconstitutional to the extent that it expressly diverts public funds into "The Course Choice Program", "The Student Scholarships for Education Excellence Program", and "The Early High School Graduation Program", which are programs used to pass the MFP funds into nonpublic educational institutions.

III.

Conclusion

While the Court does not dispute the serious nature of these proceedings nor the impact and potential effects on Louisiana's educational systems, vital public dollars raised and allocated for public schools through the MFP cannot be lawfully diverted to nonpublic schools or entities. Again, this Court does not propose to foreclose the State from establishing educational programs that are funded outside the constitutional limitations of the Minimum Foundation Program, rather, because of those constitutional limitations, Defendants cannot spend public education dollars appropriated pursuant to the Minimum Foundation Program formula on nonpublic education programs.

It is this Court's opinion that Plaintiffs have clearly and convincingly proven the unconstitutionality of SCR99 and Act 2 so as to receive declaratory judgment as it pertains to the unconstitutional diversion of MFP funds to nonpublic entities in violation of Article VIII, §13(B) of the Louisiana Constitution of 1974 and for the unconstitutional diversion of local funds included in the MFP mandated to be allocated to public elementary and secondary schools to nonpublic entities in violation of Article VIII, §13(C) of the Louisiana Constitution of 1974 and Article VI, §29(A) of the Louisiana Constitution of 1974 (as implemented by LSA-R.S. 47:338.84).

THUS DONE AND SIGNED this 30th day of November, 2012, in the Parish of East Baton Rouge.

Judge Timothy E. Kelley
19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana