

Louisiana Federation of Teachers v Louisiana (Supreme Court of Louisiana; 2013)

Case at a glance

Full citation

[Louisiana Federation of Teachers v State of Louisiana, 118 So. 3d 1033 \(LA 2013\)](#)

Forum

Supreme Court of Louisiana

Date of decision

7 May 2013

Summary of decision

The Supreme Court of Louisiana held that Louisiana's 'Minimum Foundation Program', which allocates educational funding to schools, could not be used to provide funding to private schools by way of a voucher programme. It ruled that to do so violated article VIII, section 13 of the [Louisiana Constitution](#), which establishes how monies are to be allocated to public schools based on a formula adopted by the state board of education.

Significance to the right to education

The Court recognised that public resources constitutionally reserved for public schools cannot be allocated to private school, either directly or indirectly through a voucher programme. The Court avoided addressing the issue of whether the school voucher programme itself violated the right to education provisions of the Louisiana Constitution.

Issues and keywords

Education financing; Voucher programme; Regulation of private education providers; For-profit education providers; Religious schools; Civil & political rights

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Context

In 2012, the Louisiana State legislature passed [Act 2](#) and [State Concurrent Resolution No. 99](#) (SCR 99). These laws extended a New Orleans voucher programme called the Student Scholarships for Educational Excellence Program (SSEEP) to all schools state-wide.

Under the SSEEP, students attending public schools that performed poorly on state assessments, and which failed to meet certain income requirements, could elect to use state funds to transfer to another school, either public or non-public.

Participating students (via their parents or guardians) were provided with a 'voucher' from the state to cover the cost of private tuition. The vouchers were to be funded through the state's Minimum Foundation Program (MFP) – a fund established by article VIII, section 13 of the [Louisiana Constitution](#) from which monies are allocated to public schools based on a per-pupil formula adopted by the state board of education.

In effect, the laws allowed the relevant authorities to transfer monies from the education fund directly to non-public schools. In turn, the programme allowed non-public schools to offer vouchers or scholarships to students.

Facts

The Louisiana Federation of Teachers, East Baton Rouge Federation of Teachers, Jefferson Federation of Teachers, one parent and one teacher (the petitioners) filed a petition in district court against the State of Louisiana and the Board of Elementary and Secondary Education, challenging the constitutionality of Act 2 and the vouchers programme.

The petitioners argued that Act 2 inappropriately diverted to private schools funds that were constitutionally reserved for public schools. These private schools included religious schools, for-profit schools, post-secondary institutions and private tuition schools.

The district court ruled in favour of the petitioners and declared Act 2 to be unconstitutional, reasoning that the diversion of funds from the MFP to non-public entities is contrary to article VIII, section 14 of the Constitution, which requires that MFP funds be allocated to public schools. The state appealed the case to the Supreme Court of Louisiana.

Issue

The Supreme Court avoided determining the issue of the effectiveness of the school voucher programme. Rather, the Court limited the issue to whether the education funding mechanisms of Act 2 and SCR 99 violate Article VII, section 13 of the Louisiana Constitution, which establishes the fund from which monies are allocated to public schools based on a formula adopted by the state board of education.

Article VIII, section 13 of the [Louisiana Constitution](#)

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.

Decision

The Court held that the diversion of MFP funds to non-public entities violated article VIII, section 13 of the Louisiana Constitution.

Relevant Legal Provisions

Article VII, section 13, [Constitution of the State of Louisiana House Bill No. 976; Act No. 2 \(2012\)](#)
[State Concurrent Resolution No. 99 \(2012\)](#)

In addition, the court struck down SCR 99 on a technicality, on the basis that the legislators had not followed proper constitutional procedures when it was enacted.

In looking at the constitution the Court found that state funds approved through the MFP could not be diverted to private schools or other non-public educational providers according to the language of the constitution. The Court stressed that it would not rule on the merits of the school voucher programme, but that it would merely decide whether the process by which the voucher programme system was funded, as enacted by Act 2 and SCR 99, was constitutional.

“... the clear, specific and unambiguous language of the constitution does not allow the state government to divert state funds earmarked for public schools in the state's Minimum Foundation Program to pay for private or parochial tuition”.

Commentary

The significance of this decision to the right to education lies in the Court's recognition that resources specifically reserved for public schools cannot be allocated inappropriately to private entities. The ruling was based on specific constitutional provisions, which allowed the Court to avoid addressing the issue of whether the school voucher programme itself violated a constitutional right to education.

According to the National Education Access Network, the decision resulted in [\\$200 million more in school funding](#) to all of the states' 69 school boards through the MFP for the school year. However, it remains an option available to the state to fund the school voucher programme through alternative means.

The Court also did not address the argument raised by *amici curiae* (friends of the court), which included the Americans United for Separation of Church and State, American Civil Liberties Union and the Interfaith Alliance Foundation. A [brief submitted by these groups](#) argued that the school voucher programme should be found unconstitutional for violating the freedom of religion and separation of church and state.

Related Cases

[Bush v Holmes, 919 So. 2d 392, 412-13 \(Fla. 2006\)](#)

In this case, the Florida Supreme Court held that a voucher programme, which provided public funds to students at 'failing' public schools to obtain private education failed to comply with article IX, section 1(a) of the Florida Constitution. This provision stipulates that the state government is to make adequate provision for education through a system of free public schools.

Zelman v Simmons-Harris 536 U.S. 639 (2002)

In this case, the US Supreme Court ruled that an Ohio school voucher programme did not violate the freedom of religion clause of the First Amendment to the US Constitution. Under the 'private choice test' developed by the court, a voucher programme is constitutional if it has a valid non-religious purpose; aid goes directly to parents and not to schools; a broad class of benefiting students is covered; the programme is religiously neutral; and there are adequate non-religious options available to students.

Additional Resources

Rebekka C. Veith (2013). [*Comment: Misspending for Youth: School Vouchers in Louisiana Are a Legally Tenuous, Short-Term Fix for a State in Need of Public Education Reform*](#). Tulane Law Review (Vol. 88, Issue 2).

Institute for Justice (7 May 2013). [*Louisiana Supreme Court Strikes Down School Choice Funding Mechanism: Ruling Affects Only the Method of Funding Choice Program; Legislature May Reenact Program with Separate Appropriation*](#).

Washington Post (7 May 2013). [*Louisiana Supreme Court rules school voucher funding unconstitutional*](#).

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