

NAVIS HILL, ET AL : NUMBER 632,170 SECTION 27
VS. : 19TH JUDICIAL DISTRICT COURT
BOBBY JINDAL, ET AL : PARISH OF EAST BATON ROUGE
: STATE OF LOUISIANA

**RULING ON PLAINTIFF'S PETITION
FOR PRELIMINARY INJUNCTION**

This matter came before this court on August 18, 2014, for hearing on the plaintiffs, Navis Hill, Michael Stendon, Amanda Stenson, Illumani Johnson, Erin Comeaux, Latricia Bowers, Carrie Adams, Courtney Durnas, Catherine Golden, Choice Foundation and the State of Louisiana Board of Elementary and Secondary Education's Petition for Injunction. After the hearing, the court took the matter under advisement for further review of the law and the evidence submitted to the court during the hearing.

The plaintiff's petition seeks to enjoin the defendants, Bobby Jindal, in his official capacity as Governor for the State of Louisiana, The State of Louisiana through the Division of Administration, The State of Louisiana through the Division of Administration Office of Contractual Review, Kristy Nichols, in her official capacity as Commissioner of the Division of Administration, and Pamela Bartfay Rice, in her official capacity as Interim Director of the Office of Contractual Review's, unlawful and unconstitutional actions. Specifically, the plaintiffs seek to enjoin the defendants from enforcing, applying, and/or implementing in whole or in part, Governor Bobby Jindal's Executive Orders Nos. BJ 2014-6 and BJ 2014-7, and the Office of Contractual Review's June 18, 2014 retraction of state issued contract relating to the implementation of state educational assessments.

The defendants have responded to the plaintiff's claims, asserting that the plaintiffs have failed to follow the law governing state issued contracts and that the relief they seek amounts to a court ordered exemption of the state Board of Elementary and Secondary Education's from state procurement laws and the Office of Contractual Review's legislative authority over state issued contracts. They further deny violating any law or committing any unlawful act in the exercise of their legislative authority.

The court, after consideration of the law and evidence finds as follows:

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The evidence shows that in 2010, the plaintiffs and defendants chartered a crusade to raise the expectations and standards of education in the State of Louisiana. On January 12, 2010, the Louisiana State Board of Elementary and Secondary Education approved Louisiana's participation in the Council of Chief State School Officers common core standards consortium of states to develop common academic standards that are internationally benchmarked and further approved the state's participation in any assessment consortium of states to implement and develop common, high quality assessments aligned with the common core standards as requested by the State of Louisiana Department of Education. This same board later affirmed its commitment to adopting common core standards by issuing a resolution on May 20, 2010.

On June 8, 2010 the Governor of the State of Louisiana, Bobby Jindal, in his official capacity as such, along with the State Superintendent of Education, Paul G. Pastorek, signed a Memorandum of Understanding between the State of Louisiana and other member states of the Partnership For Assessment of Readiness for College and Careers (aka "PARCC") again committing the State of Louisiana to the implementation of common core standards in Louisiana. Thereafter, the Louisiana Legislature in Act 275 of the 2012 Regular Session amended and re-enacted LSA - R.S. 17:24, et. seq. relative to the Louisiana Competency-Based Education Program and the Louisiana Educational Assessment Program; to provide relative standards; to provide relative testing;..... specifically directing, among other things, that the Department of Education, with the approval of the State Board of Elementary and Secondary Education, to develop and establish statewide content standards for required subjects to be taught in the public elementary and secondary schools of this state and that beginning with the 2014-2015 school year, standards-based assessments implemented by the State Board of Elementary and Secondary Education in English language arts and mathematics, shall be based on nationally recognized content standards that represents the knowledge and skills needed for students to successfully transition to postsecondary education and the workforce. This law requires that the Department of Education and BESE implement nationally recognized assessment testing in Louisiana.

Again, beginning in 2010, all of the parties to this proceeding, along with the Louisiana Legislature, began a collaborative crusade to raise the standards and expectations of education in Louisiana. Accordingly, the evidence shows that the public body charged with the legal duty to adopt education policy in this state (Legislature) and the public body charged with the legal duty to implement that policy (BESE) began working to implement common core beginning in the

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2014-2015 school year. This activity included engaging the defendants, Division of Administration and the Office of Contractual Review's involvement in the procurement of state contracts to secure the vendors necessary to implement the legislative directive or common core. Evidence presented proves there was much discussion among these parties relating to the contract with Data Recognition Corporation (DRC) and its status as a "Sole Source" vendor for the implementation of common core. This evidence indicates this activity took place as far back as December, 2010. The contract with DRC was eventually approved as a "Single Source" contract with a contract term that ran through 2015. However, on June 18, 2014, the Interim Director of the Office of Contractual Review notified John White, the Superintendent of the Louisiana Department of Education that "upon close review" of the contract with DRC and the approval of amendments the contract with DRC would be temporarily retracted. This decision and the effects as a result thereof lie at the root of plaintiff's claims.

The plaintiffs Mickey Landry, Executive Director of Choice Foundation, Erin Comeaux, a parent of three children in public schools, Courtney Dumas, a fourth grade teacher in the public school system, and John White, the State Superintendent of Education for Louisiana all testified at the hearing and each testified to, among other facts, that the defendant's actions have caused them to experience loss of investment of time and money, that they have detrimentally relied upon the positions and actions taken by education officials in preparing students, teachers, administrators and schools for the future of assessment testing in Louisiana; and that the action has created a state of chaos among parents, teachers and administrators of schools and basically that they lack any assurance that may give them some idea as to the standards that all of them will be held accountable to in the near future. No persons more affected by the decision of the defendants are those parents, teachers and students of the fourth grade in Louisiana. In the fourth grade, a student is required to pass an exam in order to be promoted to the next grade. At this moment in time, as a result of the defendant's action, these individuals and schools have no idea of what the testing may consist of causing the probability of success among teachers, schools and students to suffer. Meanwhile, each within this class is also being assessed as to their success as teachers, schools and students as a result of the outcome of these unknown tests and assessments. In fact, the evidence even indicates a teachers pay and/or entitlement to bonus income is predicated upon these assessment tests upon which, at the present time, are none as a result of the defendant's actions.

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The defendants did not present any witnesses at the hearing but did introduce documents during the examination of witnesses and the defendant, Bobby Jindal, Governor of the State of Louisiana, through counsel did enter a stipulation during the hearing that he intended to use the authority vested in him as Governor to remove the State of Louisiana from common core. There was no evidence presented at the hearing attempting to establish or prove any reason or reasons for any of the actions taken by the defendants in "retracting" or "suspending" the contract with DRC except what was testified to by plaintiff's witnesses on cross examination and from what the court was able to read and review. The defendants further failed to produce any evidence that the plaintiffs have violated any law concerning the procurement of state contracts.

The evidence does prove that the contract with DRC, which was the contract that was originally approved in accordance with state procurement laws but now retracted, and the court must only assume it was done so under the same laws, was the contract that was intended by all to be used in implementation of the legal requirement for nationally recognized assessment testing in Louisiana, the education policy established by the Legislature. Further, the evidence is undisputed that this contract has in fact been retracted after "close review" by the Division of Administration through the Office of Contractual Review. While the Office of Contractual Review may have the statutory authority to review, approve and audit state contracts, the collective action of the defendants have caused considerable harm to the public education system in Louisiana.

As it stands in Louisiana today, according to the law, students in the fourth grade in Louisiana will take some form of high-stakes leap test at the end of the 2014-2015 fourth grade school year and each of these students must perform to a certain standard in order to be promoted to the next grade. However, the evidence presented at the hearing of this matter proves that the content of these assessment test to be issued to these students as well as the materials needed for teachers to prepare these students for these test are unknown; therefore, the evidence is clear that this state of the unknown has caused anxiety and other harm to the parents, teachers, administrators and students in Louisiana. Plaintiff's harm is time and the loss thereof. The loss of time is irreparable. With each passing day teachers and parents lose time preparing students for high stake testing, and there is a lot riding on the student's successful performance on these tests.

The court has fully reviewed and instructed itself on the law governing the issuance of injunctions against these defendants. The Louisiana Constitution is clear. The Louisiana


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Legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system and BESE is a constitutionally created entity with a mandate to supervise and control the public elementary and secondary schools and special schools in the state. La. Const. art. VIII, Sect. 1. While the judicial branch should rarely, if ever, enjoin the executive branch of government claiming to be acting within its statutory authority, the court does in fact have the authority and should exercise such authority to enjoin the executive branch of government when the evidence submitted to the court supports the finding by a preponderance of the evidence that the conduct sought to be enjoined causes irreparable harm and the plaintiff's likelihood of prevailing at the trial of the merits on their case. While the plaintiffs are not required to prove irreparable harm when the conduct sought to be enjoined is unconstitutional or unlawful, the court finds that the plaintiffs have satisfied this burden along with the burden of proving that they are entitled to the relief they seek and the likelihood of prevailing on the merits.

The plaintiff's Petition for Injunction seeking to enjoin the defendants from enforcing, applying, and/or implementing in whole or in part, Governor Bobby Jindal's Executive Orders Nos. BJ 2014-6 and BJ 2014-7, and the Office of Contractual Review's June 18, 2014 retraction of sate issued contract relating to the implementation of state educational assessments is hereby granted.

The court orders that the parties submit a judgment consistent with this ruling in accordance with Uniform District Court Rule 9.5.

Signed this 19th day of August, 2014.


TODD W. HERNANDEZ, JUDGE
19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana