

NUMBER: _____

033874

SECTION

SEC. 25

LOUISIANA ASSOCIATION OF EDUCATORS, CADDO ASSOCIATION OF EDUCATORS, CALCASIEU ASSOCIATION OF EDUCATORS, INC., CONCORDIA ASSOCIATION OF EDUCATORS, THE EAST BATON ROUGE ASSOCIATION OF EDUCATORS, LAFAYETTE PARISH ASSOCIATION OF EDUCATORS, MADISON ASSOCIATION OF EDUCATORS, MONROE ASSOCIATION OF EDUCATORS, ST. LANDRY ASSOCIATION OF EDUCATORS, ST. MARY ASSOCIATION OF EDUCATORS, ANN BURRUSS, REV. OSCAR HAMILTON, DEBORAH HARGRAVE, MELINDA WALLER MANGHAM AND THOMAS TATE

VERSUS

STATE OF LOUISIANA,
THE LOUISIANA STATE BOARD OF ELEMENTARY
AND SECONDARY EDUCATION AND THE
STATE OF LOUISIANA THROUGH THE
DEPARTMENT OF EDUCATION

DATE FILED: _____

DEPUTY CLERK

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

The *Petition for Declaratory and Injunctive Relief* of the Louisiana Association of Educators, Caddo Association of Educators, Calcasieu Association of Educators, Inc., Concordia Association of Educators, The East Baton Rouge Association of Educators, Lafayette Parish Association of Educators, Madison Association of Educators, Monroe Association of Educators, St. Landry Association of Educators, St. Mary Association of Educators, Ann Burruss, Rev. Oscar Hamilton, Deborah Hargrave, Melinda Waller Mangham and Thomas Tate (collectively referred to hereinafter as "Plaintiffs") respectfully represents that:

THE PARTIES

1.

The Plaintiffs are:

A the Louisiana Association of Educators, a domestic non-profit corporation domiciled in Baton Rouge, Louisiana (hereinafter referred to simply as the "LAE");

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DEPUTY CLERK OF COURT

- B. the Caddo Association of Educators is an unincorporated association of school employees employed by the Caddo Parish School Board who appears herein through its President, Elizabeth Sullivan;
- C. the Calcasieu Association of Educators, Inc. is a domestic non-profit corporation domiciled in Lake Charles, Louisiana;
- D. the Concordia Association of Educators is an unincorporated association of school employees employed by the Concordia Parish School Board who appears herein through its President, Sharon Davis;
- E. The East Baton Rouge Association of Educators is a domestic non-profit corporation domiciled in Baton Rouge, Louisiana;
- F. the Lafayette Parish Association of Educators is an unincorporated association of school employees employed by the Lafayette Parish School Board who appears herein through its President, Rodolfo Espinoza;
- G. the Madison Association of Educators is an unincorporated association of school employees employed by the Madison Parish School Board who appears herein through its President, Dr. Sandra Cannon Scott;
- H. the Monroe Association of Educators is an unincorporated association of school employees employed by the City of Monroe School Board who appears herein through its President, Nancy Farley;
- I. the St. Landry Association of Educators is an unincorporated association of school employees employed by the St. Landry Parish School Board who appears herein through its President, Melissa Sikes;
- J. the St. Mary Association of Educators is an unincorporated association of school employees employed by the St. Mary Parish School Board who appears herein through its President, Sherry Thompson;

- K. Ann Burruss, a person of the full age of majority domiciled and residing in the Parish of Lafayette, State of Louisiana;
- L. Rev. Oscar Hamilton, a person of the full age of majority domiciled and residing in the Parish of Madison, State of Louisiana;
- M. Deborah Hargrave, a person of the full age of majority domiciled and residing in the Parish of Lafayette, State of Louisiana;
- N. Melinda Waller Mangham, a person of the full age of majority domiciled and residing in the Parish of Lafayette, State of Louisiana; and
- O. Thomas Tate, a person of the full age of majority domiciled and residing in the Parish of East Baton Rouge, State of Louisiana.

Plaintiffs B through J are referred to hereinafter simply as the "Local Associations".

Plaintiffs K through O are referred to hereinafter simply as the "Individual Plaintiffs".

2.

The LAE is a statewide organization that was organized to protect the interests of students, parents, public school administrators, public school teachers and public school educational support personnel in, among other issues, the preservation of adequate funding of public elementary and secondary schools operated by city and parish school systems throughout the State of Louisiana.

3.

The LAE has been a named Plaintiff in lawsuits seeking to preserve adequate funding under the Minimum Foundation Program since the 1980's. See e.g. *Louisiana Association of Educators v. Edwards*, 521 So.2d 390 (La. 1988).

4.

Most recently, the LAE successfully challenged the constitutionality of funding private school vouchers through the Minimum Foundation Program. See *Louisiana Federation of Teachers v. State of Louisiana c/w Louisiana Association of Educators v. State of Louisiana c/w Louisiana School Boards Association v. State of Louisiana*, Nos.

5.

The Local Associations were organized to protect the interests of students, parents, public school administrators, public school teachers and public school educational support personnel in, among other issues, the preservation of adequate funding of public elementary and secondary schools operated by the city or parish school system by whom its members are employed.

6.

The interests that the LAE and Local Associations seek to protect in this suit are consistent with purposes for which the LAE and Local Associations were organized.

7.

The individual members of the LAE and Local Associations would otherwise have standing to assert the claims asserted in this suit in their own right.

8.

Neither the claims asserted nor the relief requested requires participation of the individual members of the LAE or Local Associations in this suit.

9.

The Individual Plaintiffs are all citizens of the State of Louisiana, are all registered voters in the parish of their domicile and all pay ad valorem taxes and sales taxes in the parish of their domicile.

10.

Made defendants herein are:

- A. The State of Louisiana;
- B. The Louisiana State Board of Elementary and Secondary Education a body corporate with the capacity to sue and be sued (hereinafter "BESE"); and
- C. The State of Louisiana through the Department of Education.

These Defendants are referred to hereinafter collectively simply as "Defendants."

BACKGROUND FACTS

11.

Funding of public education in the State of Louisiana is accomplished through the Minimum Foundation Program (hereinafter "MFP") and an MFP formula.

12.

Pursuant to Article VIII, §13(B) of the Louisiana Constitution of 1974 and LSA-R.S. 17:7(2), BESE is responsible for annually developing and adopting an MFP formula.

13.

Article VIII, §13(B) and (C) of the Louisiana Constitution of 1974 provide:

(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.

(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.

(emphasis added).

14.

Pursuant to LSA-R.S. 17:21(B)(1), the State Superintendent of Education is required to administer and implement policies and programs adopted by BESE and serves as the administrative head of the Louisiana Department of Education.

15.

Pursuant to LSA-R.S. 17:22(2)(d), the State Superintendent of Education is required to prepare the minimum foundation program and a formula for the equitable allocation of minimum foundation funds to "parish and city school systems" and submit the minimum foundation program and formula to each member of the Joint Legislative Committee on the Budget and to each member of the House Committee on Education and the Senate Committee on Education for review not later than the fifteenth day of March in each year.

16.

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

17.

Each year BESE and the State Superintendent of Education certify to the Louisiana Legislature that the MFP formula adopted by BESE has taken into consideration all statutory requirements.

THE CHARTER SCHOOL DEMONSTRATION PROGRAMS LAW
(LSA-R.S. 17:3971 - 17:4002.6)

18.

Chapter 42 of Title 17 (comprising LSA-R.S. 17:3971 through LSA-R.S. 17:4002.6) of the Louisiana Revised Statutes of 1950 is known as the "Charter School Demonstration Programs Law."

19.

LSA-R.S. 17:3972(A) states:

It is the intention of the legislature in enacting this Chapter **to authorize experimentation by city and parish school boards** by authorizing the creation of innovative kinds of independent public schools for pupils. Further, it is the intention of the legislature to provide a framework for such experimentation by the creation of such schools, a means for all persons with valid ideas and motivation to participate in the experiment, and a mechanism by which experiment results can be analyzed, the positive results repeated or replicated, if appropriate, and the negative results identified and eliminated. Finally, it is the intention of the legislature that the best interests of at-risk pupils shall be the overriding consideration in implementing the provisions of this Chapter.

(emphasis added).

20.

LSA-R.S. 17:3973(2)(a) defines a "charter school" as "an independent public school

that provides a program of elementary or secondary education, or both, established pursuant to and in accordance with the provisions of this Chapter to provide a learning environment that will improve pupil achievement.”

21.

While charter schools are defined by statute as “public schools,” charter schools lack many of the attributes of “public schools” and, in Louisiana, are specifically exempted from many of the statutory and regulatory requirements applicable to the public schools that are operated by parish and city school boards.

22.

LSA-R.S. 17:3973(2)(b)(vi) defines a “Type 1B” charter school as “a new school or a preexisting public school operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and a local charter authorizer.”

23.

LSA-R.S. 17:3973(2)(b)(ii) defines a “Type 2” charter school as “a new school or a preexisting public school converted and operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and the State Board of Elementary and Secondary Education.”

24.

Despite the fact that the Charter School Demonstration Programs Law was enacted “to authorize experimentation by city and parish school boards,” parish and city school systems have no control whatsoever over Type 1B and/or Type 2 charter schools.

25.

Moreover, LSA-R.S. 17:3995 requires the payment of MFP funds to Type 1B and Type 2 charter schools.

26.

Defendant, State of Louisiana, pays MFP funds to Type 1B and Type 2 charter schools through the Defendant, Louisiana Department of Education.

**ADOPTION OF SENATE CONCURRENT RESOLUTION 55 OF 2014
BY THE LOUISIANA LEGISLATURE**

27.

Senate Concurrent Resolution 55 of the 2014 Regular Session of the Louisiana Legislature (hereinafter "SCR 55") was introduced by Senator Appel on April 1, 2014.

28.

SCR 55 was a "matter intended to have the effect of law" as those terms are used in Article III, §2(A)(3)(a) of the Louisiana Constitution of 1974.

29.

SCR 55 was adopted by the Louisiana Senate on May 20, 2014 by a vote of 38 yeas and 1 nay and ordered sent to the Louisiana House of Representatives.

30.

SCR 55 was concurred in by the Louisiana House of Representatives on May 30, 2014 by a vote of 95 yeas and 0 nays.

**THE CHARTER SCHOOL DEMONSTRATION PROGRAMS LAW
AND SENATE CONCURRENT RESOLUTION 55 OF 2014
ARE UNCONSTITUTIONAL BECAUSE THEY DIVERT MFP FUNDS
TO ENTITIES OTHER THAN "PARISH AND CITY SCHOOL SYSTEMS"**

31.

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

The State Board of Elementary and Secondary Education, or its successor, shall annually develop and adopt 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).

32.

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

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).

33.

Article VIII, § 13(B), clearly and unambiguously restricts the use of MFP funds and mandates that all MFP funds appropriated by the Legislature “shall be equitably allocated to parish and city school systems.”

34.

The phrase “parish and city school systems” as used in Article VIII, §13(B) of the Louisiana Constitution is plain and unambiguous.

35.

At the time of the Article VIII, § 13(B) of the Louisiana Constitution of 1974 was adopted by the People “charter schools” were unknown to Louisiana law.

36.

Louisiana’s “Charter School Demonstration Programs Law” was originally enacted by the Louisiana legislature by Act 192 of the 1995 Regular Session and has been amended and reenacted on several occasions.

37.

Article VIII, § 13(B) of the Louisiana Constitution of 1974 has been amended on four occasions since Louisiana’s “Charter School Demonstration Programs Law” was enacted in 1995; however, none of those amendments permit payment of MFP funds to Type 1B and

Type 2 charter schools.

38.

No provision of the Louisiana Constitution permits payment of MFP funds to Type 1B and Type 2 charter schools.

39.

The phrase "parish and city school systems" means only 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).

40.

The Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55 require the payment of MFP funds to Type 1B and Type 2 charter schools.

41.

Type 1B and Type 2 charter schools are not "parish and city school systems" as that term is used in Article VIII, §13(B) of the Louisiana Constitution.

42.

In the absence of the Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55, the MFP funds that are paid to Type 1B and Type 2 charter schools would have been paid to the parish and city school systems employing members of the LAE and Local Associations.

43.

The payment of MFP funds to Type 1B and Type 2 charter schools has caused financial exigencies in the parish and city school systems employing members of the LAE and Local Associations which include, but are not limited to, budgetary shortfalls, elimination of programs and layoffs of administrators, teachers and educational support personnel.

44.

To the extent that the Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55 allocate MFP funds to Type 1B and Type 2 charter schools that are constitutionally mandated to be allocated to "parish and city school systems," the Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55 violate Article VIII, §13(B) of the Louisiana Constitution of 1974 and are, therefore, unconstitutional.

**THE CHARTER SCHOOL DEMONSTRATION PROGRAMS LAW
AND SENATE CONCURRENT RESOLUTION 55 OF 2014
ARE UNCONSTITUTIONAL BECAUSE THEY DIVERT LOCAL FUNDS
THROUGH THE MFP TO ENTITIES OTHER
THAN "PARISH AND CITY SCHOOL SYSTEMS"**

45.

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

46.

Local funds under level one of the MFP are derived from three sources:

- a. ad valorem taxes constitutionally mandated by Article VIII, §13(C) of the Louisiana Constitution of 1974 and ad valorem taxes constitutionally permitted by Article VIII, §13(C) of the Louisiana Constitution of 1974;
- b. sales and use taxes permitted by Article VI, §29(A) and (B) of the Louisiana Constitution of 1974 and LSA-R.S. 47:338.84 (formerly LSA-R.S. 33:2737); and
- c. "other" revenue generated by city and parish school boards.

47.

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.

(emphasis added):

48.

Article VI, §29(A) and (B) of the Louisiana Constitution of 1974 provide:

(A) Sales Tax Authorized. Except as otherwise authorized in a home rule charter as provided for in Section 4 of this Article, the governing authority of any local governmental subdivision or school board may levy and collect a tax upon the sale at retail, the use, the lease or rental, the consumption, and the storage for use or consumption, of tangible personal property and on sales of services as defined by law, if approved by a majority of the electors voting thereon in an election held for that purpose. The rate thereof, when combined with the rate of all other sales and use taxes, exclusive of state sales and use taxes, levied and collected within any local governmental subdivision, shall not exceed three percent.

(B) Additional Sales Tax Authorized. However, the legislature, by general or by local or special law, may authorize the imposition of additional sales and use taxes by local governmental subdivisions or school boards, if approved by a majority of the electors voting thereon in an election held for that purpose.

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.

50.

Each parish and city school system employing members of the LAE and Local Associations has adopted ad valorem tax propositions pursuant to Article VIII, §13(C) of the Louisiana Constitution of 1974 and sales tax propositions pursuant to Article VI, §29(A) and (B) of the Louisiana Constitution of 1974 and LSA-R.S. 47:338.84 (formerly LSA-R.S. 33:2737).

51.

No provision of any ad valorem tax proposition adopted by any parish and city school system employing members of the LAE and Local Associations pursuant to Article VIII, §13(C) of the Louisiana Constitution of 1974 permits the proceeds of such taxes to be spent on (a) the construction and/or maintenance of facilities in which the parish or city school system adopting the tax does not have a beneficial ownership interest, (b) the purchase of equipment and supplies in which the parish or city school system adopting the tax does not have a beneficial ownership interest and/or (c) the payment of salaries and benefits of personnel not employed by the parish or city school system adopting the tax.

52.

No provision of any sales tax proposition adopted by any parish and city school system employing members of the LAE and Local Associations pursuant to Article VI, §29(A) and (B) of the Louisiana Constitution of 1974 and LSA-R.S. 47:338.84 (formerly LSA-R.S. 33:2737) permits the proceeds of such taxes to be spent on (a) the construction and/or maintenance of facilities in which the parish or city school system adopting the tax does not have a beneficial ownership interest, (b) the purchase of equipment and supplies in which the parish or city school system adopting the tax does not have a beneficial ownership

interest and/or (c) the payment of salaries and benefits of personnel not employed by the parish or city school system adopting the tax.

53.

LSA-R.S. 17:3973(2)(b)(vi) defines a "Type 1B" charter school as "a new school or a preexisting public school operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and a local charter authorizer."

54.

LSA-R.S. 17:3973(2)(b)(ii) defines a "Type 2" charter school as "a new school or a preexisting public school converted and operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and the State Board of Elementary and Secondary Education."

55.

Pursuant to LSA-R.S. 17:3995(A)(1), "Type 1B" and "Type 2" charter schools "shall receive a per pupil amount each year authorized by the state board each year as provided in the minimum foundation program approved formula" and the per pupil amount provided to a "Type 1B" and "Type 2" charter schools "shall be computed annually and shall be equal to no less than the per pupil amount received by the school district in which the charter school is located from the following sources" which include the "state-funded per pupil allocation received by the district pursuant to the most recent legislatively approved minimum foundation program formula resolution" and "local revenues received during the prior year by the school district from the following sources" which include "sales and use taxes," "ad valorem taxes," and "earnings from sixteenth section lands owned by the school district."

56.

SCR 55 requires that "Legacy Type 2" charter schools and "New Type 2" charter schools be allocated funds described as a "local cost allocation" as determined "by applying the formula contained in R.S. 17:3995." SCR 55, pp. 17, 24.

57.

SCR 55 requires that the "local cost allocation" "be funded with a transfer of the MFP monthly amount representing the Local Cost Allocation from the city or parish school system in which the attending students reside."

58.

Through the application of the MFP formula, the Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55 divert local ad valorem taxes constitutionally mandated by Article VIII, §13(C) of the Louisiana Constitution of 1974, local ad valorem taxes constitutionally permitted by Article VIII, §13(C) of the Louisiana Constitution of 1974 and local sales and use taxes authorized by Article VI, §29(A) of the Louisiana Constitution of 1974 and LSA-R.S. 47:338.84 (formerly LSA-R.S. 33:2737) to "Type 1B" and "Type 2" charter schools.

59.

To the extent that the Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55 divert local ad valorem taxes constitutionally mandated by Article VIII, §13(C) of the Louisiana Constitution of 1974, local ad valorem taxes constitutionally permitted by Article VIII, §13(C) of the Louisiana Constitution of 1974 and local sales and use taxes authorized by Article VI, §29(A) of the Louisiana Constitution of 1974 and LSA-R.S. 47:338.84 (formerly LSA-R.S. 33:2737) to "Type 1B" and "Type 2" charter schools, the Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55 violate Article VIII, §13(B) of the Louisiana Constitution of 1974 and are, therefore, unconstitutional.

60.

To the extent that the Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55 divert local ad valorem taxes constitutionally mandated by Article VIII, §13(C) of the Louisiana Constitution of 1974, local ad valorem taxes constitutionally permitted by Article VIII, §13(C) of the Louisiana Constitution of 1974 and local sales and use taxes authorized by Article VI, §29(A) of the Louisiana Constitution of

1974 and LSA-R.S. 47:338.84 (formerly LSA-R.S. 33:2737) to "Type 1B" and "Type 2" charter schools, the Charter School Demonstration Programs Law (specifically LSA-R.S. 17:3995) and SCR 55 also violate 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, and the tax propositions approved by the voters for the parish and city school systems employing members of the LAE and Local Associations.

LSA-R.S. 13:4062 AND LSA-C.C.P. ART. 3601
ARE UNCONSTITUTIONAL BECAUSE THEY SEEK TO
LIMIT THE ORIGINAL JURISDICTION OF VARIOUS COURTS BY STATUTE

61.

Louisiana's Constitution divides the state's governmental powers among three distinct branches: legislative, executive and judicial. LSA-Const. Art. II, §1.

62.

The Louisiana Constitution further provides that, "[e]xcept as otherwise provided by this Constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others." LSA-Const. Art. II, §2.

63.

Article V, Section 1 of the Louisiana Constitution provides that "judicial power is vested in a supreme court, court of appeal, and other courts authorized by this article."

64.

Article 1 of the Louisiana Code of Civil Procedure defines jurisdiction as "the legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled."

65.

Article 2 of the Louisiana Code of Civil Procedure elaborates upon the definition contained in Article 1 as follows:

Jurisdiction over the subject matter is the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted.

Article V, Section 16 of the Louisiana Constitution of 1974 grants district courts of this State original jurisdiction over the following classes of actions or proceedings:

(1) Except as otherwise authorized by this constitution or except as heretofore or hereafter provided by law for administrative agency determinations in worker's compensation matters, a district court shall have original jurisdiction of all civil and criminal matters.

(2) It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property, except as provided in (3) below; the right to office or other public position; civil or political right; probate and succession matters; except for administrative agency determination provided for in (1) above, the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

(3) The legislature may provide by law that a family court has jurisdiction of cases involving title to movable and immovable property when those cases relate to the partition of community property and the settlement of claims arising from matrimonial regimes when such action arises as a result of divorce or annulment of marriage.

(emphasis added).

Article V, Section 2 of the Louisiana Constitution of 1974 provides, in pertinent part, that:

A judge may issue writs of habeas corpus and all other needful writs, orders, and process in aid of the jurisdiction of his court.

Thus, under the Louisiana Constitution of 1974, a trial court in Louisiana has *original* jurisdiction over all civil matters and *exclusive original* jurisdiction over cases and controversies in which the state, a political corporation, or a political subdivision is a defendant as well as the authority to issue all other "needful writs, orders, and process" in aid of its constitutional grant of jurisdiction.

69.

When the original jurisdiction allocated to the various courts is circumscribed by the Louisiana Constitution, the Legislature may not alter such jurisdiction by statute. *Moore v. Roemer*, 567 So.2d 75, 79 (La. 1990); *State v. Seals*, 254 La. 904, 228 So.2d 310 (1969); *Succession of Dyer*, 184 La. 251, 166 So. 68 (1936).

70.

As noted by the Louisiana Supreme Court in *Moore v. Roemer*:

During the Constitutional Convention of 1973 there was a proposal to institute a change which would allow the Legislature to fix the jurisdiction of the district courts, but that proposal was defeated. The history of Section 16 of Article V indicates a clear intent by the Constitutional Convention to prohibit the Legislature from changing the jurisdiction of district courts by majority vote.

567 So.2d at 79 (emphasis added)(footnotes omitted).

71.

The Louisiana Supreme Court further noted in *Moore* that:

The committee's working draft, following the lead of the Law Institute Project, would have vested the jurisdiction [of the district courts] 'unless otherwise provided in this constitution or by law.' That approach allowed the legislature to divest the district court of any jurisdiction the constitution did not state was exclusive in the district court. The committee, however, did not recommend such broad authority in the legislature, and its initial proposal would have qualified the grant of jurisdiction with language, '[u]nless otherwise provided or authorized in this constitution ...' The later committee proposal condensed the provision to '[u]nless otherwise authorized by this constitution....' It is clear, then, that the legislature can divest the district courts of jurisdiction only if the constitution contains an *authorization* for it to do so.

567 So.2d at 79, n. 5 citing Hargrave, *The Judiciary Article of the Louisiana Constitution of 1974*, 37 LA.L.REV. 765, 809 (1977)(emphasis in original, footnotes omitted).

72.

LSA-R.S. 13:4062 and LSA-C.C.P. article 3601 were both enacted by Act 34 of the 1969 Regular Session of the Louisiana legislature and provide, in pertinent part, as follows:

LSA-R.S. 13:4062

No court shall have jurisdiction to issue, or cause to be issued, any temporary restraining order, preliminary injunction, or permanent injunction against any state department, board or agency, or any officer, administrator or head thereof or any officer of the state of Louisiana in any suit involving the expenditure of public funds under any statute or law of this state to compel the expenditure of state funds when the director of such department, board or agency, or the governor shall certify that the expenditure of such funds would have the effect of creating a deficit in the funds of said agency or be in violation of the requirements placed upon the expenditure of such funds by the legislature.

LSA-C.C.P. art. 3601

(A) An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law; provided, however, that **no court shall have jurisdiction** to issue, or cause to be issued, any temporary restraining order, preliminary injunction, or permanent injunction against any state department, board, or agency, or any officer, administrator, or head thereof, or any officer of the state of Louisiana in any suit involving the expenditure of public funds under any statute or law of this state to compel the expenditure of state funds when the director of such department, board, or agency or the governor shall certify that the expenditure of such funds would have the effect of creating a deficit in the funds of said agency or be in violation of the requirements placed upon the expenditure of such funds by the legislature.

(emphasis added).

73.

These two separate statutory provisions directly conflict with Article II, §2, Article V, §§ 1, 2 and 16 of the Louisiana Constitution of 1974.

74.

LSA-R.S. 13:4062 and LSA-C.C.P. art. 3601 are unconstitutional because they seek to divest the district courts of this state of their constitutionally granted jurisdiction over the subject matter of proceedings involving the expenditure of state funds without constitutional authorization to do so, in violation of Article II, §2 of the Louisiana Constitution of 1974, Article V, § 1 of the Louisiana Constitution of 1974, Article V, § 2 of the Louisiana Constitution of 1974 and Article V, § 16 of the Louisiana Constitution of 1974.

RELIEF REQUESTED

75.

In light of the constitutional deficiencies of the Charter School Demonstration Programs Law and SCR 55 detailed in this Petition, Plaintiffs are entitled to judgment, pursuant to Article 1871, *et seq.* of the Louisiana Code of Civil Procedure, declaring the Charter School Demonstration Programs Law and SCR 55 unconstitutional to the extent that the Charter School Demonstration Programs Law and SCR 55 allocate MFP funds to Type 1B and Type 2 charter schools.

76.

In light of the constitutional deficiencies of the Charter School Demonstration Programs Law and SCR 55 detailed in this Petition, Plaintiffs are entitled to judgment, pursuant to Article 1871, *et seq.* of the Louisiana Code of Civil Procedure, declaring the Charter School Demonstration Programs Law and SCR 55 unconstitutional to the extent that the Charter School Demonstration Programs Law and SCR 55 divert local funds to Type 1B and Type 2 charter schools.

77.

In light of the constitutional deficiencies of LSA-R.S. 13:4062 and LSA-C.C.P. art. 3601 detailed in this Petition, Plaintiffs are entitled to judgment, pursuant to Article 1871, *et seq.* of the Louisiana Code of Civil Procedure, declaring LSA-R.S. 13:4062 and LSA-C.C.P. art. 3601 unconstitutional to the extent that they attempt to divest the judicial branch of its constitutionally granted jurisdiction over the subject matter of proceedings and to divest judges of their authority to issue all needful writs, orders, and process in aid of the jurisdiction of their courts.

78.

Plaintiffs are entitled to judgment, in the form of a preliminary injunction, and in due course a permanent injunction, restraining, enjoining and prohibiting Defendants, their officers, agents, employees, and counsel, and those persons in active concert or participation with them from enforcing, applying and/or implementing any of the

provisions of the Charter School Demonstration Programs Law and/or Senate Concurrent Resolution 55 of the 2014 Regular Session of the Louisiana Legislature that requires or permits the use of Minimum Foundation Program funds to fund Type 1B and/or Type 2 charter schools.

79.

Plaintiffs are entitled to judgment, in the form of a preliminary injunction, and in due course a permanent injunction, restraining, enjoining and prohibiting Defendants, their officers, agents, employees, and counsel, and those persons in active concert or participation with them from enforcing, applying and/or implementing any of the provisions of the Charter School Demonstration Programs Law and/or Senate Concurrent Resolution 55 of the 2014 Regular Session of the Louisiana Legislature that requires or permits the use of local funds to fund Type 1B and/or Type 2 charter schools.

80.

Plaintiffs are entitled to judgment, in the form of a preliminary injunction, and in due course a permanent injunction, restraining, enjoining and prohibiting Defendants, their officers, agents, employees, and counsel, and those persons in active concert or participation with them from seeking enforcement, application and/or implementation of any of the provisions of LSA-R.S. 13:4062 and LSA-C.C.P. art. 3601 that attempt to divest the judicial branch of its constitutionally granted jurisdiction over the subject matter of proceedings and to divest judges of their authority to issue all needful writs, orders, and process in aid of the jurisdiction of their courts.

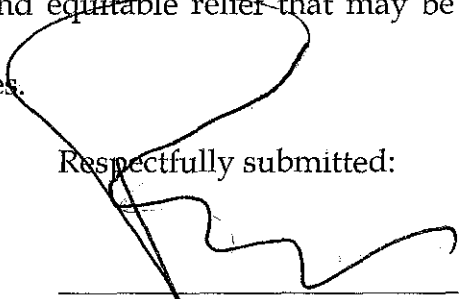
WHEREFORE, Plaintiffs, Louisiana Association of Educators, Caddo Association of Educators, Calcasieu Association of Educators, Inc., Concordia Association of Educators, The East Baton Rouge Association of Educators, Lafayette Parish Association of Educators, Madison Association of Educators, Monroe Association of Educators, St. Landry Association of Educators, St. Mary Association of Educators, Ann Burruss, Rev. Oscar Hamilton, Deborah Hargrave, Melinda Waller Mangham and Thomas Tate pray that after due proceedings are had herein that there be judgment in their favor and against the

defendants, State of Louisiana, The Louisiana State Board of Elementary and Secondary Education and the State of Louisiana through the Department of Education as follows:

- I. declaring the Charter School Demonstration Programs Law and SCR 55 unconstitutional to the extent that they allocate Minimum Foundation Program funds to Type 1B and Type 2 charter schools;
- II. declaring the Charter School Demonstration Programs Law and SCR 55 unconstitutional to the extent that they divert local funds to Type 1B and Type 2 charter schools;
- III. declaring LSA-R.S. 13:4062 and LSA-C.C.P. art. 3601 unconstitutional to the extent that attempt to divest the judicial branch of its constitutionally granted jurisdiction over the subject matter of proceedings and to divest judges of their authority to issue all needful writs, orders, and process in aid of the jurisdiction of their courts;
- IV. issuing a preliminary injunction, restraining, enjoining and prohibiting Defendants their officers, agents, employees, and counsel, and those persons in active concert or participation with them from enforcing, applying and/or implementing any of the provisions of Charter School Demonstration Programs Law and/or SCR 55 that requires or permits the use of Minimum Foundation Program funds to fund Type 1B and/or Type 2 charter schools;
- V. issuing a preliminary injunction, restraining, enjoining and prohibiting Defendants their officers, agents, employees, and counsel, and those persons in active concert or participation with them from enforcing, applying and/or implementing any of the provisions of the Charter School Demonstration Programs Law and/or Senate Concurrent Resolution 55 of the 2014 Regular Session of the Louisiana Legislature that requires or permits the use of local funds to fund Type 1B and/or Type 2 charter schools;

- VI. issuing a preliminary injunction, restraining, enjoining and prohibiting Defendants their officers, agents, employees, and counsel, and those persons in active concert or participation with them from seeking enforcement, application and/or implementation of any of the provisions of LSA-R.S. 13:4062 and LSA-C.C.P. art. 3601 that attempt to divest the judicial branch of its constitutionally granted jurisdiction over the subject matter of proceedings and to divest judges of their authority to issue all needful writs, orders, and process in aid of the jurisdiction of their courts;
- VII. in due course, issuing a permanent injunction in the form and substance of the preliminary injunctions prayed for herein;
- VIII. awarding Plaintiffs reasonable attorney's fees;
- IX. casting the defendants, State of Louisiana, The Louisiana State Board of Elementary and Secondary Education and the State of Louisiana through the Department of Education with all costs of these proceedings; and
- X. for all other general and equitable relief that may be appropriate under the circumstances.

Respectfully submitted:



Brian F. Blackwell (18119)
Charles L. Patin, Jr. (10338)
Robert B. Dunlap (01341)
BLACKWELL & ASSOCIATES
2600 CitiPlace Drive, Suite 525
Baton Rouge, Louisiana 70808
Telephone: (225) 769-2462
Facsimile: (225) 769-2463
E-mail: info@blackwell-associates.com

Attorneys for Plaintiffs

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NUMBER: _____

SECTION _____

LOUISIANA ASSOCIATION OF EDUCATORS, CADDO ASSOCIATION OF EDUCATORS, CALCASIEU ASSOCIATION OF EDUCATORS, INC., CONCORDIA ASSOCIATION OF EDUCATORS, THE EAST BATON ROUGE ASSOCIATION OF EDUCATORS, LAFAYETTE PARISH ASSOCIATION OF EDUCATORS, MADISON ASSOCIATION OF EDUCATORS, MONROE ASSOCIATION OF EDUCATORS, ST. LANDRY ASSOCIATION OF EDUCATORS, ST. MARY ASSOCIATION OF EDUCATORS, ANN BURRUSS, REV. OSCAR HAMILTON, DEBORAH HARGRAVE, MELINDA WALLER MANGHAM AND THOMAS TATE

VERSUS

STATE OF LOUISIANA,
THE LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION AND THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF EDUCATION

DATE FILED: _____

DEPUTY CLERK

ORDER

Considering the allegations of the foregoing *Petition for Declaratory and Injunctive Relief*:

IT IS HEREBY ORDERED that the State of Louisiana, The Louisiana State Board of Elementary and Secondary Education and the State of Louisiana through the Department of Education show cause on the ____ day of _____, 2014, at ____ o' clock __.M. why a preliminary injunction should not issue as prayed for in the foregoing *Petition for Declaratory and Injunctive Relief*.

Baton Rouge, Louisiana this ____ day of September, 2014.

JUDGE, 19TH JUDICIAL DISTRICT COURT

SERVICE INFORMATION ON FOLLOWING PAGE

PLEASE SERVE:

State of Louisiana

Through the Attorney General:

James D. "Buddy" Caldwell

1885 North Third Street

Baton Rouge, Louisiana 70802

The Louisiana State Board of Elementary and Secondary Education

Through its President:

Chas Roemer

1201 North Third Street, Suite 5-190

Baton Rouge, Louisiana 70802

State of Louisiana through the Department of Education

Through the Superintendent of Education and administrative head of the Louisiana
Department of Education:

John White

Louisiana Department of Education

1201 North Third Street, Suite 5-224

Baton Rouge, Louisiana 70802