Not Reported in F.Supp., 1997 WL 35283 (E.D.La.)
(Cite as: 1997 WL 35283 (E.D.La.))

United States District Court, E.D. Louisiana.
Mary L. HELMS, et al.
v.
Wilmer CODY, et al.
Mary L. HELMS, individually and as next friend of AMY T. HELMS, a minor; et al., Plaintiffs,
v.
Cecil PICARD, as Louisiana State Superintendent of Instruction; et al., Defendants,
Guy Mitchell, et al., Intervenors.

CIV.A. No. 85-5533.
Jan. 28, 1997.

ORDER AND REASONS

LIVAUDAIS, District Judge.

***1** This cause came on for hearing on various days on post-judgment motions including:

1. Motion of the Federal Defendants, Richard W. Riley as Secretary of the United States Department of Education, and the United States Department of Education, for Reconsideration of this Court's Ruling on the Chapter 2 Program as Administered in Jefferson Parish, Louisiana (Doc. 353);

2. Motion of Intervenors, Guy Mitchell, Jan Mitchell, Earline Castillon, Eugene Cerise, and Kathy Cerise, for Reconsideration of the Court's March 1990 Summary Judgment Order on the Chapter 2 Program and the Louisiana State School Books and Materials Program, as Applied in Jefferson Parish, Louisiana (Doc. 367);

3. Motion of Federal Defendants, Richard W. Riley as Secretary of the United States Department of Education, and the United States Department of Education, to Alter or Amend this Court's Judgment of July 25, 1994, in which this Court declared unconstitutional and enjoined portions of the federal Chapter 2 program as administered in Jefferson Parish, Louisiana (Doc. 379);

4. Motion of Intervenors, Guy Mitchell, Jan Mitchell, Earline Castillon, Eugene Cerise, and Kathy Cerise, to Alter or Amend the Court's Judgment of July 25, 1994, with respect to Chapter 2 and the Louisiana state books and materials program (Doc. 380);

5. Motion of Federal Defendants, Richard W. Riley as Secretary of the United States Department of Education, and the United States Department of Education, to Stay the Judgment Entered by this Court on July 25, 1994 (Doc. 381);

6. Motion of State Defendants, Cecil J. Picard as Louisiana Superintendent of Public Instruction, Kenneth Duncan as Louisiana State Treasurer, and the Louisiana State Board of Elementary and Secondary Education, to Partially Stay the Judgment Entered on July 25, 1994, with respect to the unconstitutionality of the Chapter 2 program in Jefferson Parish (Doc. 384);

7. Amended Motion of State Defendants, Cecil J. Picard as Louisiana Superintendent of Public Instruction, Kenneth Duncan as Louisiana State Treasurer, and the Louisiana State Board of Elementary and Secondary Education, for Partial Stay of the Judgment Entered on July 25, 1994, with respect to the unconstitutionality of the Chapter 2 program and La.R.S. 17:351-52 in Jefferson Parish (Doc. 392);

8. Motion of Intervenors, Guy Mitchell, Jan Mitchell, Earline Castillon, Eugene Cerise, and Kathy Cerise, for Partial Stay of the Implementation of the Court's July 25, 1994 Judgment with Respect to Chapter 2, the Louisiana State Books and Materials Program (Doc. 394);

9. Motion of Plaintiffs, Mary L. Helms, individually and on behalf of her daughter, Amy T. Helms; Marie Louise Schneider; and Esperanza Tizol, to Alter or Amend the Judgment regarding the School Bus Transportation Program (Doc. 388);

and

10. Motion of the State Defendants, Cecil J. Picard as Louisiana Superintendent of Public Instruction, Kenneth Duncan as Louisiana State Treasurer, and the Louisiana State Board of Elementary and Secondary Education, for Leave of Court to Adopt Amendment to the Regulations Governing Reimbursement for Required Services (Doc. 455).

***2** This civil action was assigned to Judge Frederick J. R. Heebe, who entered summary judgment rulings, conducted the non-jury trial, issued Findings and Conclusions and Judgment on all issues presented in the complaint, and took under submission the various post-trial motions. Upon Judge Heebe's retirement, this action was re-allotted to this section of the Court for consideration. The Court, having heard the arguments of counsel and having studied the legal memoranda submitted by the parties, is now fully advised in the premises and ready to rule.

R E A S O N S

Motions relating to Chapter 2 and Louisiana School Books Programs

On March 27, 1990, the previous court granted the motion of plaintiffs, Mary L. Helms, individually and on behalf of her daughter, Amy T. Helms; Marie Louise Schneider; and Esperanza Tizol, for summary judgment, holding that Chapter 2 of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §§ 2701-3341[FN1], and the Louisiana equipment and materials statute, La.Rev.Stat. §§ 17:351-54, are unconstitutional. Doc. 220. The previous court applied the three part test set forth in *Lemon v. Kurtzman,* 403 U.S. 602, 612-13 (1976), to determine whether government aid to private schools is constitutional. It found (1) that the primary beneficiaries of the aid are nonpublic schools; (2) that the majority of the schools receiving the aid are pervasively sectarian; and (3) that the aid has the impermissible effect of advancing religion. Doc. 220.

FN1. This Act was amended, renumbered, reorganized, and expanded by Public Law 103-382, October 20, 1994. It has now been moved to 20 U.S.C. §§ 7301-7373.

The parties have now requested several remedies concerning the Chapter 2 ruling:

1. Both federal defendants and intervenors have filed motions asking that the court reconsider its 1990 summary judgment order.

2. Both federal defendants and intervenors have filed motions to alter or amend the Judgment of July 25, 1994 with respect to Chapter 2 and the Louisiana State Books and Materials Program.

3. The federal defendants, the state defendants, and the intervenors ask for a stay pending final disposition of any appeals to the Fifth Circuit Court of Appeals. Plaintiffs oppose all of the motions for a stay of the July 25, 1994 judgment as it concerns the Chapter 2 program.

"Chapter 2" refers to Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965. On October 20, 1994, Congress enacted the Improving America's Schools Act of 1994, Pub.L. 103-382, 108 Stat. 3518. Former Chapter 2 is now labelled "Subchapter VI - Innovative Education Program Strategies" and is codified at 20 U.S.C. §§ 7301-7373. However, for ease of reference, this Court will continue to refer to the new Subchapter VI as "Chapter 2."

Chapter 2 provides financial assistance to state educational agencies ("SEAs") and local educational agencies ("LEAs") to implement eight "innovative assistance" programs. 20 U.S.C. §§ 7351(a) & (b). The innovative assistance programs are:

(1) technology related to the implementation of school-based reform programs, including professional development to assist teachers and other school officials regarding how to use effectively such equipment and software;

***3** (2) programs for the acquisition and use of instructional and educational materials, including library services and materials (including media materials), assessments, reference materials, computer software and hardware for instructional use, and other curricular materials which are tied to high academic standards and which will be used to improve student achievement and which are part of an overall education reform program;

(3) promising education reform projects, including effective schools and magnet schools;

(4) programs to improve the higher order thinking skills of disadvantaged elementary and secondary school students and to prevent students from dropping out of school;

(5) programs to combat illiteracy in the student and adult population, including parent illiteracy;

(6) programs to provide for the educational needs of gifted and talented children;

(7) school reform activities that are consistent with the Goals 2000: Educate America Act; and

(8) school improvement programs or activities under sections 6317 and 6318 of this title.

20 U.S.C. § 7351(b).

Plaintiffs' challenge in this case is limited to the innovative assistance program under 20 U.S.C. § 7351(b)(2) in Jefferson Parish, Louisiana.

Chapter 2 services are to be provided to children enrolled in both public and private nonprofit schools. 20 U.S.C. §§ 7312, 7372. 20 U.S.C. § 7372 provides for the participation of children enrolled in private nonprofit elementary and secondary schools. § 7372(a)(1) states:

To the extent consistent with the number of children in the school district of a local educational agency which is eligible to receive funds under this subchapter or which serves the area in which a program or project assisted under this subchapter is located who are enrolled in private nonprofit elementary and secondary schools, or with respect to instructional or personnel training programs funded by the State educational agency from funds made available for State use, such agency, after consultation with appropriate private school officials, shall provide for the benefit of such children in such schools *secular, neutral, and nonideological services, materials, and equipment,* including the participation of the teachers of such children (and other educational personnel serving such children) in training programs, and the repair, minor remodeling, or construction of public facilities as may be necessary for their provision ... , or, if such services, materials, and equipment are not feasible or necessary in one or more such private schools as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other arrangements as will assure equitable participation of such children in the purposes and benefits of this subchapter.

(Emphasis added).

Chapter 2 funds for the innovative assistance programs must supplement, and in no case supplant, the level of funds that, in the absence of Chapter 2 funds, would be made available for those programs from "non-Federal sources." 20 U.S.C. § 7371(b).

***4** Chapter 2 also requires that the control of all Chapter 2 funds "and title to materials, equipment, and property ... shall be in a public agency ... and a public agency shall administer such funds and property." 20 U.S.C. § 7372(c)(1). In addition, any services provided for the benefit of private school students must be provided by "a public agency" or by a contractor who "is independent of such private school and of any religious organizations." 20 U.S.C. § 7372(c)(2).

Pursuant to Louisiana law, the Louisiana Su-

perintendent of Public Instruction, defendant, Cecil J. Picard, is the designated SEA for Louisiana. *See* State of Louisiana Chapter 2 Guidelines, June 1989 at 1 [Fed. Ex. D-4]. The State Bureau of Consolidated Educational Programs, which was headed by Dan K. Lewis, Ph.D. at the time of trial, administers the Louisiana Chapter 2 Program. Once Louisiana receives its Chapter 2 funds from the federal government, the SEA allocates 80 percent of the funds to LEAs. *Id.* at 2-3. Eighty-five percent of those funds are earmarked for LEAs based on the number of participating elementary and secondary school students in both public and nonprofit, private schools and 15% based on the number of children from low-income families. *Id.* at 3.

Dr. Lewis stated in his deposition that about 25% of the Chapter 2 funds are allocated to the nonpublic school sector. Lewis Dep., p. 15. For the fiscal year 1984-85, Jefferson Parish received $655,671 in Chapter 2 funds. Lewis Ex. 2, pp. 99-100. Of this $655,671, $456,097 went to the public schools and $199,574 went to the nonpublic schools. *Id.* This amounts to 70% of the Chapter 2 funds being allotted to the public schools and 30% being allotted to the nonpublic schools, including both private and religious schools.

Dr. Lewis stated that the LEAs are told that "for every dollar you spend for the public school student, you spend the same dollar for the nonpublic school student." Lewis Dep., p. 77. He declared that the Louisiana Department of Education "never transmit[s] dollars to the non-public school." *Id.* at 87.

Dr. Lewis testified that any equipment bought for the nonpublic schools with Chapter 2 funds is on loan to the nonpublic schools. *Id.* at 99. Because the nonpublic schools do not own the equipment, the ultimate authority always rests with the public school system, not the nonpublic schools. *Id.* at 99-100.

In 1984, the State instituted a monitoring process to insure that the Chapter 2 books and equipment were not being used for religious purposes. Lewis Dep., pp. 102 & 142. Dr. Lewis stated that the LEAs are encouraged to get the nonpublic schools to sign a set of assurances that they won't use the equipment for religious purposes, but the nonpublic schools are not required to sign. *Id.* at 102-03. In addition, the LEAs make monitoring visits to the nonpublic schools, and the state makes monitoring visits to the LEAs and to some of the nonpublic schools. *Id.* at 103.

***5** The United States Department of Education conducted an on-site visit to review the Louisiana Chapter 2 program on September 25-26, 1984. In their "Summary of Findings and Recommendations" as a result of their on-site assessment, the United States Department of Education stated as follows concerning "Monitoring LEAs":

> Section 564(a)(1) of the statute provides that the State agency is responsible for the administration and supervision of programs assisted under this Chapter. Congress, in enacting the technical amendments to Chapter 2, identified technical and advisory assistance and monitoring compliance as functions of an SEA's administrative and supervisory responsibilities.
>
> We understand that there are 75 LEAs and that the SEA has developed a schedule for monitoring one third of the LEAs in each of the next three years. We suggest, if at all possible, the State increase the number of visits each year. This will lessen the possibility of audit findings of noncompliance and enable the SEA to provide technical assistance to correct problems on a timely basis.
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> Lewis Ex. 11.

In response to the on-site assessment by the United States Department of Education, the Louisiana Department of Education made changes in monitoring the LEAs. They increased the number of on-site visits by the Chapter 2 staff to the LEAs from once every three years to once every two

years. This increase in visits was to "enable more thorough, technical assistance, and the ability to correct any problems in a timely fashion." Lewis Ex. 11. In addition, in regards to private school participation in LEA Chapter 2 programs:

> [t]he State has implemented a monitoring process that includes monitoring of the private sector. The monitoring process also includes a review of the LEA's monitoring process of the private schools. These two processes will enhance the compliance area to ensure that all equipment is used for secular, neutral, and nonideological purposes.
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> Lewis Ex. 11

In Louisiana, LEAs have the primary responsibility for monitoring the Chapter 2 program for compliance with federal statutory and regulatory requirements and for compliance with state guidelines.

A report entitled "Louisiana Chapter 2 Evaluation Summative Evaluation Report 1985," (Lewis Ex. 2) was written by the Bureau of Evaluation, and was submitted to Dr. Lewis in March of 1985. This report provides under the heading "Nonpublic School Participation in Chapter 2":

> Although the LEAs handle most of the administrative matters related to Chapter 2, the nonpublic schools make the decisions about how to spend their Chapter 2 allocations, and they do so independently of one another. Among Catholic parochial schools, however, some dioceses appoint coordinators to centralize planning and management efforts. This collective activity is more of a confederation than a school system.
>
> Funds used by nonpublic schools are almost entirely for non-recurring expenses, usually materials and equipment, and only occasionally are for such purposes as participating in LEA-sponsored staff development activities and securing consultants. Virtually all of the Chapter 2 funds used by nonpublic schools are expended under Subchapter B, the "school improvement" section of Chapter 2. Except that funds cannot be spent for support of religious or ideological instruction, flexibility in the use of Chapter 2 funds puts a minimum of limitations on the kinds of expenditures allowed.
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> ***6** Lewis Ex. 2, p. 28.

During the 1986-87 fiscal year, the total amount of Chapter 2 funds budgeted for nonpublic schools was $214,080.49, and the total amount budgeted for public schools was $447,067.45. Of the total of $214,080.49 in Chapter 2 funds budgeted for nonpublic schools, $94,758.15 was spent to provide library/media materials; $102,862.00 was spent for instructional equipment; and $16,460.34 was spent for local improvement programs.

Dan K. Lewis, who administers the Chapter 2 program for the state, was questioned extensively at his deposition about how the nonpublic schools' use of Chapter 2 instructional material and equipment was monitored. Lewis Dep. I. Dr. Lewis testified that he, along with Mr. Charles R. Jarreau and Mr. Ed Griffin, conducted a "monitoring visit" to Jefferson Parish on April 18, 1985. Lewis Ex. 6. An ECIA Chapter 2 Monitoring Form I was submitted to the Superintendent of the Jefferson Parish Public School System based on the visit by the monitors, Dr. Lewis, Mr. Jarreau, and Mr. Griffin. *Id.* The monitors found that "the services, materials, equipment, or other benefits provided to nonpublic schools" were not "secular, neutral and non-ideological." *Id.* They also commented that "[i]n the future, caution should be taken to ensure that books and materials purchased are secular, neutral and non-ideological." *Id.*

Ruth Woodward, the Coordinator of the Chapter 2 program in Jefferson Parish, advised Dr. Carolyn C. Weddle, Assistant Superintendent for Instructional Programs, about the monitoring visit conducted by the Louisiana Department of Educa-

tion. She explained an incident which resulted in the negative finding by Dr. Lewis and his team concerning "secular, neutral, and non-ideological" assistance provided to the nonpublic schools as follows:

> St. Rosalie's library print-out showed [that] a copy of [the book] *Biography of the Saints* was purchased with Chapter II funds. However, St. Rosalie contacted my office Friday to correct that entry on their library print-out. No Chapter II funds were used to purchase above, and my official response to Dr. Lewis will state same.
>
> Lewis Ex. 11.

According to Ruth Woodward, library books are only ordered for nonpublic schools, not public schools. Woodward Dep., p. 73. The library books are stamped with "ECIA, Chapter 2." *Id.* at 75. After reviewing the book orders from 1982, Ms. Woodward discovered approximately 191 books were in violation of the Chapter 2 guidelines. *Id.* at 74. Those books were recalled and were donated to the Jefferson Parish Public Library. *Id.* at 75.

Ms. Woodward reviews each of the titles of the books and other materials that are received by her office from the nonpublic schools. *Id.* at 88. If she finds a title to be inappropriate, she deletes the title from the list and selects a title from the substitute list. *Id.* at 90.

In addition to library books, computers, slide and movie projectors, and overhead projectors are purchased through the program. *Id.* at 92. During her monitoring visits to the schools, she has "normally" found that the materials and equipment are used in accordance with Chapter 2 guidelines. *Id.* at 101. Ms. Woodward stated in her deposition that she normally has "a single visit" to a nonpublic school during the school year. *Id.* at 118.

***7** Ms. Woodward stated that none of the Chapter 2 money is given directly to either the public or nonpublic schools in the form of cash or a check. *Id.* at 207. The funds are retained and administered by her office. *Id.*

On March 27, 1990, the prior court granted partial summary judgment and struck down portions of the federal Chapter 2 program and the Louisiana state books and materials program authorized pursuant to La.Rev.Stat. §§ 17:351-52, as administered in Jefferson Parish, Louisiana. (Doc. 220). The use of federal funds to provide instructional equipment (including computer and audio-visual equipment), educational materials, library books, and supplies to pervasively sectarian schools under Chapter 2 was held unconstitutional and lending of such items enjoined. *Id.*

Attention was specifically focused on 20 U.S.C. § 7372(a)(1)[FN2] which permits the furnishing of Chapter 2 materials and equipment to nonpublic schools. The "services, materials, and equipment" provided under Chapter 2 for the benefit of the nonpublic schools must be "secular, neutral, and nonideological." 20 U.S.C. § 7372(a)(1). It was noted that "[t]he nonpublic schools in Jefferson Parish have participated primarily in the instructional resources program whereby large quantities of instructional equipment (such as slide projectors, movie projectors, overhead projectors, television sets, tape recorders, projection screens, maps, globes, filmstrips, cassettes, computers, as well as library books and resource materials) are purchased with Chapter 2 funds and transferred to nonpublic school sites."

> FN2. At the time of the Court's 1990 ruling, this section was codified at 20 U.S.C. § 2972(a)(1). For ease of reference, the Court will now cite to the new United States Code sections.

The Jefferson Parish Chapter 2 program was held unconstitutional on three grounds:

> First, the primary beneficiaries of the aid are nonpublic schools; second, the majority of the schools receiving the aid are pervasively sectari-

an; and third, the aid has the impermissible effect of advancing religion.

Order and Reasons, (Doc. 220, p. 15).

Federal defendants and intervenors argue that the holding should be reconsidered for two main reasons. First, they claim that a major premise of the decision, *i.e.*, that "the primary beneficiaries" of Chapter 2 "are nonpublic schools," is simply incorrect. Benefits are provided under this program for use by all schoolchildren in Jefferson Parish, both public and nonpublic, and the majority of the beneficiaries are public school children.

Second, federal defendants state that the other primary basis of the 1990 Chapter 2 Order - that the Jefferson Parish Chapter 2 program is automatically unconstitutional when Chapter 2 benefits are used at schools deemed to be "pervasively sectarian" - has been specifically and repeatedly rejected by the Supreme Court.

Federal defendants argue that the Supreme Court has never held that an educational aid program impermissibly advanced religion when the program was a neutral, general program designed to apply equally to both public and nonpublic school children, with the primary beneficiaries being public school children, as is Chapter 2. Federal defendants contend that the Supreme Court has only found improper "advancement" of religion in some of the cases when the program singled out school children in nonpublic or pervasively sectarian schools as its "primary beneficiaries." Federal defendants maintain that the Chapter 2 program does not so single out nonpublic school children and is constitutionally valid.

***8** Federal defendants argue that this decision was the first to invalidate any aspect or application of the nationwide Chapter 2 program, which has been in place, in its present form or in various predecessor statutes, for nearly 30 years. In an opinion issued after the 1990 Chapter 2 Order, the Ninth Circuit Court of Appeals addressed the constitutionality of Chapter 2, and upheld the Chapter 2 program. *Walker v. San Francisco Unified School District*, 46 F.3d 1449 (9th Cir. 1995), *reh'g and reh'g en banc denied*, 62 F.3d 300 (9th Cir. 1995). No petition for certiorari was filed in *Walker*.

The *Walker* court noted that "approximately seventy-four percent of the Chapter 2 benefits went to public schools and twenty-six percent went to private schools." 46 F.3d at 1464.

Federal defendants and intervenors claim that the *Walker* court's analysis is consistent with the prior court's analysis in its post-trial opinion, in which it found that public school students are the primary beneficiaries of funding under Chapter 1. Federal defendants and intervenors argue that the post-trial analysis on this issue is correct and should be applied to Chapter 2.

Federal defendants and intervenors claim that in its post-trial opinion, the previous court rejected Establishment Clause challenges to Chapter 1 and the school bus transportation program, on the grounds that the primary beneficiaries of those programs are not nonpublic schools. Rather the "primary beneficiaries" are either students at public schools, who constitute the majority of students receiving Chapter 1 benefits, or all school children or their parents who receive the benefits of the school bus transportation program. Federal defendants and intervenors argue that the federal Chapter 2 program, as well as the state school books and materials program, are also neutral, general benefit programs, and so the earlier ruling on Chapter 2 should be vacated.

Plaintiffs oppose the motions of federal defendants and intervenors and cite to the relevant Supreme Court cases.

In *Meek v. Pittenger*, 421 U.S. 349, 364 (1975), the Supreme Court invalidated a materials and equipment program which was specifically and intentionally directed *only* to nonpublic schools, the majority of which were found to be religious.

In *Wolman v. Walter*, 433 U.S. 229, 248-51 (1977), the Supreme Court invalidated a program authorizing the loan of instructional equipment and materials to the parents of nonpublic school students only.

In *Mueller v. Allen*, 463 U.S. 388 (1983), the Supreme Court upheld a Minnesota statute that allowed a tax deduction for all state taxpayers, including parents of children attending religiously-affiliated private schools, for education-related expenses such as tuition, textbooks, and transportation.

However, in *Mueller*, the Court found significant the fact that the "public funds ... become available only as a result of numerous private choices of individual parents of school-aged children." *Id.* at399.

***9** In *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481 (1986), the Supreme Court held that provision of aid under a state vocational rehabilitation program to a student attending a private Christian college for the purpose of pursuing a religiously-based career would not, in violation of the Establishment Clause, have the primary effect of advancing religion.

Plaintiffs point out that in *Witters* it was the individual blind student who made the decision completely independent from any sectarian institution with regard to where his grant money would be spent. The sectarian institution, therefore, had no part in the planning of the program or the decision concerning who would receive the benefit. The Court in *Witters* noted that "the State may not grant aid to a religious school, whether cash or in kind, where the effect of the aid is 'that of a direct subsidy to the religious school' from the state," citing *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 394 (1985).

The primary argument of the federal defendants is that aid to nonpublic schools in the form of loans of educational equipment, such as computers, overhead projectors, videos, duplicating machines, and the like, is constitutional as long as the authorizing legislation provides for such loans and grants to *both* public and nonpublic schools. According to defendants, the constitutionality of such a program is dependent on a single factor - the breadth of the class of recipients.

Plaintiffs rely on *Bowen v. Kendrick*, 487 U.S. 589 (1988), in which the Court observed that "even when the challenged statute appears to be neutral on its face, we have always been careful to ensure that direct government aid to religiously affiliated institutions does not have the primary effect of advancing religion." *Id.* at 609. The Court stated that "[o]ne way in which direct government aid might have that effect is if the aid flows to institutions that are 'pervasively sectarian."' *Id.* at 610. The Court, however, concluded that "nothing on the face of the AFLA indicates that a significant proportion of the federal funds will be disbursed to 'pervasively sectarian' institutions." *Id.* The Court did not suggest all or most, but only a "significant proportion" need flow to pervasively sectarian institutions for the program to be constitutionally flawed.

Plaintiffs contend that Chapter 2 is unconstitutional as applied in Jefferson Parish for two main reasons: 1) Much of the Chapter 2 equipment and materials provided to sectarian schools in Louisiana is easily divertible to religious activities; and 2) Like the Ohio statute in *Wolman*, it provides equipment directly for the sectarian schools, not the individuals.

Plaintiffs contend that *Wolman* "trashed" the argument that *Meek* and *Wolman* stand for the proposition that gifts magically take on a constitutional character if a single neutral statutory provision includes both public and nonpublic elementary and secondary schools as recipients.

***10** Both defendants and plaintiffs rely on *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1, 113 S.Ct. 2462 (1993). In *Zobrest*, the Supreme

Court held that the Establishment Clause did not prohibit a public school district from providing a sign language interpreter at state expense in a Catholic school. The Court noted that "[d]isabled children, not sectarian schools, are the primary beneficiaries" of the program. *Id.* at 12, 113 S.Ct. at 2469.

The *Zobrest* Court noted that "we have consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge just because sectarian institutions may also receive an attenuated financial benefit." *Id.* at 8, 113 S.Ct. at 2466.

The *Zobrest* court made a sharp distinction between direct and indirect aid to pervasively sectarian institutions. The Court found that the aid provided to James Zobrest was indirect, as distinguished from the direct subsidy through the providing of teaching material and equipment in *Meek* and the providing of teachers and instructional equipment and materials in *Ball*. *Id.* at 12, 113 S.Ct. at 2468-69.

The *Zobrest* Court quoted from *Witters* and *Ball:* "[T]he State may not grant aid to a religious school, whether cash or in kind, where the effect of the aid is 'that of a direct subsidy to the religious school' from the State." *Id.* at 12, 113 S.Ct. at 2468.

Plaintiffs argue that to determine whether the program of furnishing instructional equipment, materials, and supplies to parochial schools in Jefferson Parish more closely resembles the programs struck down in *Meek* and *Ball* or the programs upheld in *Mueller* and *Witters,* this Court needs to determine the substantive impact of the aid, that is, whether the aid is truly to the individual student or rather directly to the school. If the aid is truly to the individual student, plaintiffs argue that the aid should be upheld. However, if the aid is directly to the nonpublic school, then the aid should be ruled unconstitutional.

Federal defendants contend that the rulings on the Chapter 2 summary judgment motion and the Chapter 1 post-trial findings and conclusions have not been consistent. Federal defendants state that there is no difference between the Chapter 1 and the Chapter 2 programs as to who are the primary beneficiaries. Thus, federal defendants argue that since Chapter 1 was found constitutional on its face, then Chapter 2 should also be upheld.

Plaintiffs disagree and argue that the rulings have been consistent. The Chapter 2 program struck down by the previous court concerned "nonpublic schools receiv[ing] an allotment [of funds] which allows them to order instructional materials and equipment, including library books." (Doc. 220, p. 4). Thus plaintiffs contend that it was found that the aid flowed directly to the nonpublic schools.

***11** The ruling as to the Chapter 1 capital expense statute related to "funds to pay the costs of maintaining Chapter 1 services off of the premises of parochial schools at 'neutral sites."' (Doc. 337, p. 142). The decision provides that "[u]nder § 2727(d)(A), the Secretary distributes the appropriate [[[Chapter 1 capital expense] funds to each state according to a statutory formula. Local Educational Agencies (LEAs) apply to the State Educational Agencies (SEAs) to receive the funds, and the SEAs distribute the funds to LEAs on the basis of need, according to criteria the SEAs have established." *Id.* at 144.

Plaintiffs contend that there is no conflict between the summary judgment ruling on Chapter 2 and the post-trial findings and conclusions regarding the Chapter 1 capital expense provision. Plaintiffs argue that the decision concluded that Chapter 2 directly benefitted pervasively sectarian schools, while under the Chapter 1 capital expense statute, no tax-derived funds ever reached nonpublic schools. Chapter 1 only benefitted students who received remedial services rendered by public employees outside of parochial school facilities.

In fact, plaintiffs maintain that the findings and

conclusions suggested that the Chapter 1 capital expense statute had only the *indirect effect* of aiding sectarian schools and concluded "that [this] indirect effect does not render the government aid [provided by Chapter 1] unconstitutional." (Doc. 337, p. 154).

Plaintiffs argue that *Walker v. San Francisco Unified School Dist.*, 46 F.3d 1449 (9th Cir. 1995), which ruled that Chapter 2 is constitutional, is distinguishable from the instant case. Plaintiffs state that there are significant differences in the Chapter 2 program as administered in Jefferson Parish and the Chapter 2 program administered in the San Francisco Unified School District.

Plaintiffs contend that the items provided in Louisiana under the Chapter 2 program are easily diverted to religious purposes. The items provided in Louisiana include maps, globes, laboratory equipment, tape recorders, projectors, and other audio-visual equipment. In San Francisco, the Chapter 2 materials were confined to prescreened textbooks, instructional materials, and "locked" computer hardware and software that could not be diverted to religious use.

Plaintiffs submit that because the instructional equipment and materials are so easily divertible, there is basically no constitutionally permissible monitoring scheme available to prevent constitutional violations. Plaintiffs argue that the evidence in this case demonstrates that audio-visual equipment, such as overhead projectors, VCRs, etc., which are usable equally in religion and science classes and are thus easily divertible, cannot be effectively monitored. In the case of Jefferson Parish, unlike *Walker*, plaintiffs claim that the evidence shows that such equipment has actually been used in classes teaching religion. Thus, plaintiffs state that the effectiveness of any so-called monitoring conducted by the officials charged with such responsibilities has proven to be ineffective.

***12** The prior court observed in its March 27, 1990 Order that the program found unconstitutional in *Meek* involved just under $12 million of direct aid to predominantly church-related nonpublic schools in Pennsylvania through the loan of instructional materials and equipment. It concluded that this amounted to approximately $9,090 per school and that the *Meek* court firmly determined that this aid was "neither indirect nor incidental." (Doc. 220, p. 13). The evidence in this case indicates that for fiscal year 1985, a total of $207,648 was allocated under Chapter 2 for the 41 participating nonpublic schools in Jefferson Parish. This comes to $5,064 for each participating school. In addition, another $649,344 was allocated to the 56 participating nonpublic schools in Jefferson Parish under the state program providing free books, materials, and supplies. This comes to another $11,595 per participating school. Plaintiffs maintain that the Chapter 2 program administered in Jefferson Parish involves a significant number of pervasively sectarian schools and provides substantial direct aid to pervasively sectarian elementary and secondary schools and thus is violative of the Establishment Clause.

In its 1990 Chapter 2 Order, the prior court focused on the Chapter 2 program and did not undertake a detailed analysis of the Louisiana statutes, La.Rev.Stat.Ann. §§ 17:351-352, which authorize the provision of school books and instructional materials to students at public and nonpublic schools, or the implementation of that program in Jefferson Parish. Plaintiffs have not challenged the provision of textbooks pursuant to the statute. An overwhelming portion of the funds are used to purchase textbooks.

Intervenors note that library reference books purchased pursuant to La.Rev.Stat.Ann. § 17:351 are ordered from lists approved by the Louisiana Board of Elementary and Secondary Education. *Fine* deposition at 186 and Ex. 57. Books and instructional materials may only be ordered from state-approved lists and sources. *Fine* deposition at 129 and Ex. 25. Intervenors argue that these safeguards are more than adequate to assure that the funds are not used for religious purposes.

In June of 1995, the United States Supreme

Court most recently examined the Establishment Clause in *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515U.S.819, 115 S.Ct. 2510 (1995). In *Rosenberger*, the University of Virginia withheld authorization for payments from its Student Activities Fund to cover the printing costs of a religious newspaper issued by a student group. The University found that the student newspaper "primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality," as prohibited by the University's guidelines. *Id.* at 2513. The Supreme Court found no Establishment Clause violation in the University's honoring its duties under the Free Speech Clause. *Id.* at 2525.

The *Rosenberger* court stated "[a] central lesson of our decisions is that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion." *Id.* at 2521. The Supreme Court found that the Student Activities Fund (SAF) was neutral toward religion and that there was no suggestion that the SAF had been created to advance religion or to aid a religious cause. *Id.* at 2522.

***13** The *Rosenberger* Court reaffirmed the principle that there are "special Establishment Clause dangers where the government makes direct money payments to sectarian institutions ...." *Id.* at 2523. The Supreme Court was careful to point out the following:

> We do not confront a case where, even under a neutral program that includes nonsectarian recipients, the government is making direct money payments to an institution or group that is engaged in religious activity. Neither the Court of Appeals nor the dissent, we believe, takes sufficient cognizance of the undisputed fact that no public funds flow directly to WAP's coffers.
>
> *Id.*

Before *Rosenberger* was decided, in January 1995, the Ninth Circuit Court of Appeals addressed the constitutionality of Chapter 2 in *Walker*. The Ninth Circuit Court of Appeals held "that under Chapter 2, the loaning of neutral, secular equipment and instructional materials to parochial schools does not have the primary or principal effect of advancing religion." 46 F.3d at 1465. In *Walker*, the San Francisco Unified School District (the District) received the Chapter 2 funds from the State and then the District directly purchased the materials for the private schools. *Id.* at 1464. Title to all of the materials and equipment purchased remained with the District. *Id.* There were no funds directly provided to the private schools. *Id.* The materials and equipment purchased for the private schools included "library books, textbooks, videos, overhead projectors, movie and slide projectors and projection stands, television sets, record players, cassette recorders, VCR's, video cameras, 'listening centers,' globes and maps, microscopes and other lab equipment, computer equipment, musical equipment, stereo systems, and desks and tables." *Id.*

The *Walker* court applied the three part test set forth in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1976). The three part *Lemon* test requires that for a state aid program to be constitutional, 1) it must have a secular legislative purpose; 2) it must not have as its principal or primary effect the advancement or inhibition of religion; and 3) it must not foster excessive government entanglement with religion. 46 F.3d at 1455. In *Walker*, the Ninth Circuit found that Chapter 2 funding passes all three prongs of the *Lemon* test. 46 F.3d at 1469.

The *Walker* court found that "[t]he purpose of Chapter 2 is to improve resources available to schools to increase the quality of education." *Id.* at 1464. This was found to be a valid secular purpose.

As to the second prong, the Ninth Circuit held that "under Chapter 2, the loaning of neutral, secular equipment and instructional materials to parochial schools does not have the primary or principal effect of advancing religion." *Id.* at 1465. The *Walker* court chose not to rely on *Meek* and *Wolman* which had struck down programs which loaned neutral and secular instructional materials

and equipment to parochial schools. Rather the court in *Walker* relied on recent Supreme Court cases which have focused on government neutrality toward religion. *Id.* at 1466.

***14** The *Walker* court stated:

> Government neutrality becomes suspect when, in practical effect, the governmental aid is targeted at or disproportionately benefits religious institutions, or when, in symbolic effect, the governmental aid creates a symbolic union between church and state. We therefore must analyze (1) whether the Chapter 2 benefit at issue is a general welfare benefit neutrally available to a broad class of people without reference to religion, *Zobrest,* 509U.S. at ____, 113 S.Ct. at 2466, and (2) whether the benefit, even though generally available, creates a symbolic union of church and state. *Ball,* 473 U.S. at 389, 105 S.Ct. at 3226.
>
> 46 F.3d at 1467.

Applying the first part of the test, the *Walker* court found that Chapter 2 benefits are neutrally available without reference to religion. *Id.* The court found that 74% of the benefits went to public schools with the remaining 26% divided between nonreligious and religious private schools. *Id.* Thus the court held that "the overwhelming percentage of beneficiaries are nonparochial schools and their students." *Id.*

In addition, the court found that controls were in place to prevent Chapter 2 benefits from being "diverted" to religious instruction, such as, (a) prescreening the textbooks and other materials; (b) title to the books and materials remains in the public agency; (c) parochial schools pledge not to use the Chapter 2 materials for religious purposes; (d) the School District made yearly monitoring visits; and (e) all Chapter 2 services must be provided by persons independent of the private school and of any religious organizations. *Id.*

As to the second part of the test, the *Walker* court found that the loaning of instructional materials and equipment to parochial schools pursuant to Chapter 2 did not create a symbolic union between church and state. Applying *Zobrest,* the court found that if having a public employee present in a parochial school classroom does not create a symbolic union between church and state, then providing religiously neutral instructional materials and equipment to parochial schools does not create a symbolic union either. 46 F.3d at 1468.

The *Walker* court distinguished the statutes struck down in *Meek* and *Wolman* from Chapter 2, finding that the statutes in *Meek* and *Wolman* were not neutral. In *Meek* and *Wolman,* most of the aid was targeted at private schools, the majority of which were church-related. 46 F.3d at 1468. In *Walker,* 74% of the Chapter 2 benefits went to public schools, and of the remaining 26%, less than 70% of the 26% went to religious private schools. *Id.* Thus the court found that "Chapter 2 is a neutral, generally applicable statute that provides benefits to all schools, of which the overwhelming beneficiaries are nonparochial schools." *Id.* Thus Chapter 2 was found not to have as its principal or primary effect the advancement or inhibition of religion. *Id.* at 1469.

***15** Finally, the *Walker* court analyzed whether all of the controls in place to prevent Chapter 2 benefits from being diverted to religious instruction resulted in excessive entanglement between church and state. 46 F.3d at 1469. The court noted that the Supreme Court in *Zobrest* did not even mention the third prong of *Lemon* when it allowed an interpreter to be present in a pervasively sectarian parochial school classroom. *Id.* Since the *Zobrest* Court did not find excessive governmental entanglement, the *Walker* court followed the lead in *Zobrest* and found that the Chapter 2 controls did not result in excessive entanglement between church and state. *Id.*

Based on *Rosenberger* and *Walker,* this Court finds that the Chapter 2 funding passes all three prongs of the *Lemon* test. It is clear that the neither

the state nor the federal government makes any direct money payments to the nonpublic schools, which was the "special Establishment Clause danger[[[]" set forth in *Rosenberger*. 115 S.Ct. at 2523. No public funds were received by the nonpublic schools in Jefferson Parish.

Applying the first prong of the *Lemon* test, as the court found in *Walker*, Chapter 2 passes the first part of the *Lemon* test. Increasing the quality of education is clearly a valid secular purpose. 46 F.3d at 1464.

As to the second prong, this Court will follow the finding of the Ninth Circuit that the loaning of neutral, secular equipment and instructional materials to parochial schools pursuant to Chapter 2 does not have the primary or principal effect of advancing religion. *Id.* at 1465. The facts in the instant case are virtually indistinguishable from those present in *Walker*.

This Court finds that Chapter 2 benefits are neutrally available without reference to religion. Between 70 and 75% of Chapter 2 benefits are allocated to public schools each year, and between 25 and 30% are allocated to the nonpublic schools, including both private and religious schools. Thus as in *Walker*, it is clear that the overwhelming percentage of Chapter 2 benefits is provided to the public schools.

In addition, all of the monitoring controls in effect in *Walker* are present in this case. The library books and other instructional equipment are prescreened and title remains with the public agency. Most parochial schools sign a pledge agreeing not to use the Chapter 2 materials for religious purposes and the Chapter 2 coordinator makes yearly monitoring visits to the nonpublic schools. In addition, the State makes monitoring visits every two years to the nonpublic schools. Finally, employees of a public agency provide the Chapter 2 services and no money is directly paid to the parochial schools. The Court follows *Walker* and finds that these controls are sufficient to prevent Chapter 2 benefits from being diverted to religious instruction.

This Court will also follow the holding of *Walker* that the loaning of instructional materials and equipment to parochial schools pursuant to Chapter 2 did not create a symbolic union between church and state. For all of these reasons, this Court finds that Chapter 2 does not have as its principal or primary effect the advancement or inhibition of religion.

***16** Finally this Court finds that the controls in place to prevent Chapter 2 benefits from being diverted to religious use did not result in excessive entanglement between church and state, relying on *Walker* and *Zobrest*. Thus Chapter 2 complies with the third prong of *Lemon*.

Based on the Ninth Circuit's 1995 decision in *Walker* and recent United States Supreme Court decisions, in particular, *Zobrest* and *Rosenberger*, this Court will now set aside the prior court's March 27, 1990 ruling. This Court finds that Chapter 2, now known as Subchapter VI of the Improving America's Schools Act of 1994, 20 U.S.C. §§ 7301-7373, and the Louisiana Equipment and Materials Statute, La.Rev.Stat. §§ 17:351-54, do not violate the Establishment Clause, facially and/or as applied in Jefferson Parish, Louisiana. This Court will vacate the Order and Reasons of March 27, 1990, and deny plaintiffs' motion for partial summary judgment on Chapter 2 and the Louisiana Equipment and Materials Statute and will grant the motions of the federal defendants, the state defendants, and the intervenors for summary judgment on Chapter 2 and the Louisiana Equipment and Materials Statute.

Motion of plaintiffs to alter or amend the judgment on the school bus transportation program

La. Rev. Stat. 17:158 requires that each parish or school board provide free transportation for any student attending a school within its jurisdictional boundaries if the student resides more than one mile from the school, and allows that parish or school board to contract out the transportation ser-

vices. The statute applies to all eligible public and non-public school students.

The JPPS provided transportation to over 41,000 students by school bus in 1988-1989 (coinciding with the trial), of which 85.6 % were public school students, 12.4 % were Catholic in-district school students, and 1.4 % were Catholic out-of-district students, and .5 % were Lutheran school students. Catholic out-of-district students are Catholic school students who attend Catholic school at schools which are not within their church parishes, sometimes because their church parishes do not have schools.

The Supreme Court has held that the Establishment Clause of the First Amendment does not prohibit the state from paying for the transportation of schools children to parochial as well as public schools, so long has the school has no control over the expenditure of the fund and the effect of the expenditure is unrelated to the content of the education provided. *Wolman v. Walter*, 433 U.S. 229, 253, 97 S.Ct. 2593, 2608 (1977). The provision of such transportation to the parochial school student is constitutional if the school does not determine how often the child is transported, i.e., the child must make one-round trip to and from school every day and the travel is unrelated to any aspect of the curriculum. *Wolman*, 433 U.S. at 253, 97 S.Ct. at 2608.

At issue in this particular motion is the decision of Judge Heebe that it is constitutional for the JPPS and the State of Louisiana to provide funds to the Jefferson Parish Nonpublic School Transportation Corporation for the purpose of contracting bus services to students who attend non-public schools in JP, but that it is unconstitutional to send the money directly to the schools, i.e., Westbank Cathedral Academy and Faith Lutheran School, because there is no limitation on the way those schools could use the money.

***17** The Jefferson Parish Nonpublic School Transportation Corporation ("the corporation") is a corporation established by parents of children who attend nonpublic schools. The purpose of the corporation was to provide transportation to these children to and from school. The reason the corporation was established was that there was a significant funding cut to the JPPS for transportation in the 1988-1989 school year, and thus no funds were allocated for transportation services to children attending non-public schools outside of their district. The JPPS hired bus drivers and set up bus routes for both public school children and non-public school children attending school in their districts.

After the routes were set, more funds were allocated to provide transportation to non-public school children attending school outside of their districts. In order to obtain the transportation, the corporation, which is non-religious and was set up exclusively to hire bus drivers to drive these children to and from school, was created and contracted with the JPPS to provide purely secular transportation services. JPPS also contracted directly with two religious schools to provide their own transportation services and paid them directly.

Judge Heebe found that providing funding to the private corporation to supply purely secular transportation services to nonpublic school students was not unconstitutional in design, or in practice, except that sending the funding directly to two pervasively sectarian schools, i.e., Westbank Cathedral Academy and Faith Lutheran School, was unconstitutional as it was direct money to the schools which they could divert to religious purposes.

The plaintiffs disagree with this holding, but the decisions of *Rosenberger*, 115 S.Ct. 2510 (1995), and *Walker*, 46 F.3d 1449 (9th Cir. 1995) both support it. As previously noted in the Chapter 2 discussion, *Rosenberger* holds that there are "special Establishment Clause dangers where the government makes direct money payments to sectarian institutions," but that when the services or funds supplied are neutral, routine, and secular, then any benefit to religion is incidental to the government's provision of the services and does not of-

fend the Constitution. 115 S.Ct. at 2523-2524. Judge Heebe found that the funds were used by the corporation solely for transportation services, which is a secular, neutral, and routine service, and that a variety of schools with children of all different religions use the transportation services.

Upon review of the entire matter, Judge Heebe's decision should be upheld and thus, the plaintiffs' motion to alter or amend the judgment on the school bus transportation program should be denied.[FN3]

> FN3. This Court is somewhat troubled by the apparent lack of monitoring of the corporation's use of the funds, but considering the limited nature of the corporation's functions, does not find the program unconstitutional.

Motion of state defendants for leave of court to adopt amendment to the regulations governing reimbursement for required services

In the judgment entered on July 25, 1994, Judge Heebe enjoined further administration of the Reimbursement of Required Costs Program "until such time as it has been satisfactorily demonstrated to this Court that the Louisiana Superintendent of Education and the Board of Elementary and Secondary Education (BESE) will properly administer the reimbursement program as prescribed by La. Rev. Stat. 17:361-365." In 1996, BESE adopted a motion to amend the regulations governing the program to allow for alternative documentation for missing time sheets for the school years 1993-94, 1994-95, and 1995-96 only. In exchange for allowing alternative documentation, which BESE determined to be necessary due to the past laxity in the administration of the program, only 70 % of the claimed amount would be considered for payment.

***18** The plaintiffs oppose the motion because the statute requires that actual time records be kept and that estimates or "parameters" were not sufficient documentation for payment. They further note that unless "actual cost" to the school is used as a basis for determining what funds are due, there is the possibility that the nonpublic schools can greatly inflate the claim. By way of example, one school which requested 705 hours for performing a particular service for the 1984-1985 school year sought reimbursement for 3,860 hours for performing the same service for the 1992-1993 school year.

Apparently, there are only 5 schools which will be affected by the change in the regulations and only three school years are included. The nature of the relief requested is minimal and the schools' requests will, at a minimum, be subject to a 30 % reduction. At the present time, payment of funds under the Required Services Reimbursement program is enjoined due the inadequacy of the auditing procedure. Considering the totality of the circumstances, the Court finds that the request is reasonable and does not infringe on the plaintiff's constitutional rights and thus will provide this limited relief to the state defendants.

Accordingly,

IT IS ORDERED that the Motion of the Federal Defendants, Richard W. Riley as Secretary of the United States Department of Education, and the United States Department of Education, for Reconsideration of this Court's Ruling on the Chapter 2 Program as Administered in Jefferson Parish, Louisiana, be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the Motion of Intervenors, Guy Mitchell, Jan Mitchell, Earline Castillon, Eugene Cerise, and Kathy Cerise, for Reconsideration of the Court's March 1990 Summary Judgment Order on the Chapter 2 Program and the Louisiana State School Books and Materials Program, as Applied in Jefferson Parish, Louisiana (Doc. 367), be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the Order and Reasons entered on March 27, 1990 (Doc. 220), be, and the same is hereby VACATED, except to the extent that such Order and Reasons found that those nonpublic schools in Jefferson Par-

ish, Louisiana, which are operated under the auspices of the Archdiocese of New Orleans, are "pervasively sectarian." (Doc. 220, p. 11)

IT IS FURTHER ORDERED that the Motion of Plaintiffs, Mary L. Helms, individually and on behalf of her daughter, Amy T. Helms; Marie Louise Schneider; and Esperanza Tizol, for Partial Summary Judgment on the Chapter 2 Program and the Louisiana State School Books and Materials Program (Doc. 165), be, and the same is hereby DENIED.

IT IS FURTHER ORDERED that the Cross-Motion of Intervenors, Guy Mitchell, Jan Mitchell, Earline Castillon, Eugene Cerise, and Kathy Cerise, for Summary Judgment on Plaintiffs' Chapter 2 claims (Doc. 178), be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the Cross-Motion of Federal Defendants, Richard W. Riley as Secretary of the United States Department of Education, and the United States Department of Education, for Summary Judgment on Chapter 2 (Doc. 180), be, and the same is hereby GRANTED.

***19** IT IS FURTHER ORDERED that the Motion of the State Defendants, Cecil J. Picard as Louisiana Superintendent of Public Instruction, Kenneth Duncan as Louisiana State Treasurer, and the Louisiana State Board of Elementary and Secondary Education, for partial summary judgment on Chapter 2 and the Louisiana State School Books and Materials Program (Doc. 166), be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the Motion of Federal Defendants, Richard W. Riley as Secretary of the United States Department of Education, and the United States Department of Education, to Alter or Amend this Court's Judgment of July 25, 1994, in which this Court declared unconstitutional and enjoined portions of the federal Chapter 2 program as administered in Jefferson Parish, Louisiana (Doc. 379), be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the Motion of Intervenors, Guy Mitchell, Jan Mitchell, Earline Castillon, Eugene Cerise, and Kathy Cerise, to Alter or Amend the Court's Judgment of July 25, 1994, with respect to Chapter 2 and the Louisiana state books and materials program (Doc. 380), be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the Motion of Federal Defendants, Richard W. Riley as Secretary of the United States Department of Education, and the United States Department of Education, to Stay the Judgment Entered by this Court on July 25, 1994 (Doc. 381), be, and the same is hereby MOOT.

IT IS FURTHER ORDERED that the Motion of State Defendants, Cecil J. Picard as Louisiana Superintendent of Public Instruction, Kenneth Duncan as Louisiana State Treasurer, and the Louisiana State Board of Elementary and Secondary Education, to Partially Stay the Judgment Entered on July 25, 1994, with respect to the unconstitutionality of the Chapter 2 program in Jefferson Parish (Doc. 384), be, and the same is hereby MOOT.

IT IS FURTHER ORDERED that the Amended Motion of State Defendants, Cecil J. Picard as Louisiana Superintendent of Public Instruction, Kenneth Duncan as Louisiana State Treasurer, and the Louisiana State Board of Elementary and Secondary Education, for Partial Stay of the Judgment Entered on July 25, 1994, with respect to the unconstitutionality of the Chapter 2 program and La.R.S 17:351-52 in Jefferson Parish (Doc. 392), be, and the same is hereby MOOT.

IT IS FURTHER ORDERED that the Motion of Intervenors, Guy Mitchell, Jan Mitchell, Earline Castillon, Eugene Cerise, and Kathy Cerise, for Partial Stay of the Implementation of the Court's July 25, 1994 Judgment with Respect to Chapter 2, the Louisiana State Books and Materials Program (Doc. 394), be, and the same is hereby MOOT.

IT IS FURTHER ORDERED that the Motion of Plaintiffs Mary L. Helms, individually and on behalf of her daughter, Amy T. Helms; Marie Louise Schneider; and Esperanza Tizol, to Alter or Amend the Judgment regarding the School Bus Transportation Program (Doc. 388) be, and the same is hereby DENIED.

IT IS FURTHER ORDERED that the Motion of the State Defendants, Cecil J. Picard as Louisiana Superintendent of Public Instruction, Kenneth Duncan as Louisiana State Treasurer, and the Louisiana State Board of Elementary and Secondary Education (Doc. 455) for Leave of Court to Adopt Amendments to the Regulations Governing Reimbursement for Required Services be, and the same is hereby GRANTED.

AMENDED *JUDGMENT*

***20** Considering the record, this Court's ruling on the motions of intervenors and the state defendants to lift the injunction, the Order and Reasons entered this date on all outstanding motions, and the law, the Final Judgment entered by Judge Frederick J.R. Heebe on July 25, 1994 (Doc. No. 374) is hereby AMENDED in the following respects:

IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of defendants, Cecil J. Picard as the Louisiana Superintendent of Public Instruction; Kenneth Duncan as Louisiana State Treasurer; Louisiana State Board of Elementary and Secondary Education (BESE); Richard W. Riley as Secretary of the United States Department of Education; United States Department of Education; Jefferson Parish School Board (JPSB); Elton Lagasse as Superintendent of the Jefferson Parish Public School System; Laurie Rolling, as President and member of the Jefferson Parish School Board; Libby Moran, as Vice President and member of the Jefferson Parish School Board; Robert Wolfe, Barry Bordelon, O.H. Guidry, Cedric Floyd, Dr. Polly Thomas, Gene Katsanis, and Martin Marino, as members of the Jefferson Parish School Board; and in favor of intervenors, Guy and Jan Mitchell; Earline Castillon; and Edward and JacLynn Welsch; and against plaintiffs, Mary L. Helms, individually and on behalf of her daughter, Amy T. Helms; Marie Louise Schneider; and Esperanza Tizol; DECLARING that the provision of instructional equipment (including computer and audio-visual equipment), educational materials (other than textbooks), library books, and supplies to pervasively sectarian schools in Jefferson Parish, Louisiana under Chapter 2 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. §§ 2911-76, or as reauthorized by Congress, and under La.Rev.Stat. §§ 17:351-52, or as reauthorized by the Louisiana state legislature, is constitutional under the Establishment Clause of the First Amendment to the United States Constitution as made applicable to the states by the Fourteenth Amendment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the permanent injunction previously entered against defendants, Cecil J. Picard as the Louisiana Superintendent of Public Instruction; Kenneth Duncan as Louisiana State Treasurer; Louisiana State Board of Elementary and Secondary Education (BESE); Richard W. Riley as Secretary of the United States Department of Education; United States Department of Education; Jefferson Parish School Board (JPSB); Elton Lagasse as Superintendent of the Jefferson Parish Public School System; Laurie Rolling, as President and member of the Jefferson Parish School Board; Libby Moran, as Vice President and member of the Jefferson Parish School Board; Robert Wolfe, Barry Bordelon, O.H. Guidry, Cedric Floyd, Dr. Polly Thomas, Gene Katsanis, and Martin Marino, as members of the Jefferson Parish School Board enjoining them from furnishing instructional equipment (including computer and audio-visual equipment), educational materials (other than textbooks), library books, and supplies to pervasively sectarian schools under Chapter 2 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. §§ 2911-76, or as reauthorized by Congress, and under La.Rev.Stat. §§ 17:351-52, or as reauthorized by the Louisiana legislature, be and is hereby LIFTED

AND VACATED.

***21** In all other respects, the Judgment remains as entered.

E.D.La.,1997.
Helms v. Cody
Not Reported in F.Supp., 1997 WL 35283 (E.D.La.)

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