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# Political Culture and School Choice: The Influence of Constitutions, Case Law and Public Officials in Louisiana and Virginia

Karen M. Hiltz

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**Political Culture and School Choice: The Influence  
of Constitutions, Case Law and Public Officials  
in Louisiana and Virginia**

A Dissertation

Presented to

The Faculty of Lynchburg College

In Partial Fulfillment

of the Requirements for the Degree of

Doctor of Education (Ed.D)

By

Karen M.S. Hiltz, MBA

May 2016

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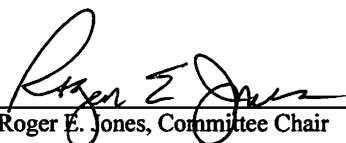
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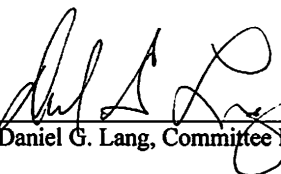
POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

Lynchburg College  
Lynchburg, Virginia

**APPROVAL OF THE DISSERTATION**

This dissertation, *Political Culture and School Choice: The Influence of Constitutions, Case Law, and Public Officials in Louisiana and Virginia* has been approved by the Ed.D. Faculty of Lynchburg College in partial fulfillment of the requirements for the Ed.D. degree.

  
Dr. Roger E. Jones, Committee Chair

  
Dr. Daniel G. Lang, Committee Member

  
Dr. Sally Selden, Committee Member

5/4/16 Date

## **DEDICATION**

I dedicate this to all parents searching for quality education for their children. May they find solutions that meet the unique qualities of their children, may they seek an environment that embraces creativity, may they not be limited by politics, and may they welcome opportunities to reach high and realize success.

## **ACKNOWLEDGEMENTS**

I would like to thank the Lord for giving me perseverance to get through this program. It has been a long road and I look forward to the next adventure.

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I would like to express my appreciation to my cohort colleagues for the education they provided me, allowing me to express my perspective, which in many cases was very different from theirs, and providing support throughout this process. The many discussions we had over the years have allowed me to see issues through various lenses.

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## **CHAPTER I: INTRODUCTION**

### **Background**

There are specific themes regarding school choice in literature as well as historical documents regarding education and the education of the people within an education system. As identified by Green & Moran (2010), an education system consists of public and private schools with various program options and is derived through state policy with direction filtering through federal and state constitutions and amendments, federal and state legislation, and federal and state case law. Chapter II will address the literature while the following identifies specifics to historical documents used by both advocates and opponents of school choice programs.

Beginning with the Constitution of the United States, ratified by the Constitutional Convention on September 17, 1787, there is no specific mention of education, educating the people or an education system. However, there are three amendments to the federal Constitution that speak to the rights of the people and the states. They are the 1<sup>st</sup> and 10<sup>th</sup> Amendments under the original Bill of Rights as ratified on December 15, 1791 and the 14<sup>th</sup> Amendment as ratified on July 9, 1868. The 1<sup>st</sup> Amendment, referred to as the Establishment Clause, stipulates that the federal government shall not establish a religion nor shall the federal government prohibit the people the free exercise thereof. The 10<sup>th</sup> Amendment states that powers not held by the federal government shall be reserved to the states or the people. The 14<sup>th</sup> Amendment, referred to as the Equal Protection Clause, recognizes that no state shall deprive its people of life, liberty or property without due process under the law.

A proposed but failed federal amendment introduced in Congress was the Blaine Amendment, which has made an impact on state constitutions and education. Representative James G. Blaine of Maine proposed this amendment in 1875 with the intent to prevent public

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funds from being used to educate people in religious schools. During the early 1800s, the majority of the population was Protestant, but when influxes of Irish Catholics began emigrating from Europe, a movement was started to prevent the use of public funds for religious education. This amendment was commonly referred to as the anti-Catholic amendment. However, this amendment did not end with the failure of Congress to pass the bill, but instead many states began to incorporate similar or like language into their state constitutions to ensure private religious schools would not receive public funds (Bauries, 2014).

The education system in the United States is a complex system and encompasses an array of components that factor into understanding political culture theory and school choice programs (Elazar, 1984; Friedman, 1980). With each state adopting its own constitution, states began to include a section in their constitutions providing the people of the state with the access, opportunity or right to an education. In addition, state legislatures began to construct language that addressed uniformity, use of public funding, as well as establishing local government control of provisions relevant to maintaining an education system for the state (Green & Moran, 2010).

With a federal constitution and several state constitutions, conflicting language and interpretations are inevitable. In order to remedy or minimize constitutional conflicts related to an education system, parties have relied on the judicial system and the developing of case law to provide direction that in turn provides fodder for future legislation and education policy. Understanding where constitutional authorities lie, interpreting these authorities, adjudicating conflicting interpretations of authorities and developing case law over time are all part and parcel of shaping an education system.

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## Statement of the Problem

The United States is comprised of one nation with fifty individual states, operating under a system of law that is governed by a federal constitution and fifty state constitutions. The state constitutions provide the foundation for understanding school choice programs and education policy within each state. State constitutions, legislative actions and federal and state case law adds to the quagmire for determining the legality and array of options regarding school choice programs and education policies. In addition, interpretations of applicable laws, policies, and regulations add to the misunderstanding of school choice programs and education policy.

It is extremely challenging and time consuming to consider a review of all fifty state constitutions, legislatures and case law for this dissertation. Therefore, two states were selected: Louisiana and Virginia. Through the political culture, as defined by Elazar's theory, these two states are identified as dominate *traditionalistic*. Other selection criteria identified included that Louisiana is a state and has a legal system predicated on French or Napoleonic Law, and Virginia is a Commonwealth and has a legal system predicated on English or Common Law. Other considerations for selecting these two states were based on the researcher being a resident of Virginia, access to public officials, and several founding fathers from Virginia having participated in the writing of the Constitution of the United States and the Virginia constitution, as well as their significant involvement in The Louisiana Purchase.

State constitutions differ in many respects, yet all states include an education article or section, providing structure and authority (ALEC, 2007). There are two primary areas or issues in K-12 education that have historically provided a basis for arguments regarding school choice programs and these relate to the appropriation of public funds and religion (Merrifield, 2002; ALEC, 2007; Green & Moran, 2010). For example, the Louisiana constitution under *Article VIII*

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– *Education* identifies five state school boards that control and manage education throughout the state. The following language addresses public funding for education as approved by the legislature:

### **§11. Appropriations; State Boards**

Section 11. The legislature shall appropriate funds for the operating and administrative expenses of the state boards created by or pursuant to this Article. (p. 74)

The State Board of Elementary and Secondary Education (BESE) is tasked to develop an annual funding formula to adequately fund the minimum foundation program (MFP) for K-12 education and ensure equitable allocation to parish and city school systems. Louisiana's constitution gives the legislature approval authority over the funding formula. There is no specific language regarding funding restrictions, but the constitution does identify "no state dollars shall be used to discriminate or to have the effect of discriminating in providing equal educational opportunity for all students" (pp. 74-75).

Whereas the Constitution of the Commonwealth of Virginia under *Article VIII – Education, Section 10* states:

### **Section 10. State appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the State or some subdivision thereof; exceptions to rule.**

No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, and the governing bodies of the several counties, cities and towns may, subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State or any such county, city or town; second, that the General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more States under a joint agreement to which this State is a party for the purpose of providing educational facilities for the citizens of the several States joining in such agreement; third, that counties, cities, towns, and districts may make

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appropriations to nonsectarian schools of manual, industrial, or technical training, and also to any school or institution of learning owned or exclusively controlled by such county, city, town, or school district.(p. 26)

In addition to constitutions there are other factors which include legislation and case law to further help identify and clarify the governing of an education system within the state (ALEC, 2007). While states govern their education system according to its constitutional authority, the interpretation of the authority poses challenges to the public officials, courts, and citizens, as well as entities and individuals that distinguish themselves as school choice advocates or opponents (Brasington & Hite, 2014; Slawson, 2003).

The education system in the majority of states is a compilation of public school, private school and school choice programs, and this is the case in Louisiana and Virginia (Merrifield, 2002; NCES, 2013). With any system that embraces multiple alternatives in order to provide a range of opportunity, decision makers and individuals need to determine what the critical or primary factors are in order to make informed decisions and the best choice. Choosing the best alternative is challenging under the best of circumstances, but trying to decipher whether adequate or sufficient information and resources are available to support decision making and allow individuals to benefit from opportunities afforded in the education system can be daunting. However, a primary challenge within a state education system to choosing alternatives that public officials will support and allow individuals to benefit from perceived opportunities can be mapped to language found in federal and state constitutions and amendments, actions and decisions of public officials, and impacts of federal and state case law related to K-12 education.

The array of legal documents and authorities presents challenges when defining and/or determining what is adequate or sufficient information and what the necessary resources would encompass when selecting K-12 education alternatives. In addition, it is important to understand



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how federal and state constitutions and amendments, public officials, and federal and state case law shape the array of school choice programs for its citizenry within the State of Louisiana and the Commonwealth of Virginia.

## **Purpose of the Study**

The purpose of this study is to review the Constitution of the United States, amendments and case law; review Louisiana and Virginia constitutions, the legislature, judiciary and education structures, political culture and case law in relation to authorities, constraints, and flexibilities to determine if there is a relationship between the constitutions, amendments, structures, political culture and case law that influence and/or shape K-12 school choice programs enacted in Louisiana and Virginia.

## **Research Questions**

In order to understand the constitutional, legislative, political culture, and case law implications and effects of proposing, passing and implementing K-12 school choice programs in Louisiana and Virginia, the following research questions were addressed:

1. In what way has the Constitution of the United States influenced and/or shaped K-12 school choice programs in Louisiana?
2. In what way has the Louisiana State Constitution influenced and/or shaped K-12 school choice programs in Louisiana?
3. Does the political culture of Louisiana influence and/or shape K-12 school choice programs in Louisiana?
4. In what way has federal and state case law and their interpretation influenced and/or shaped K-12 school choice programs in Louisiana?

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5. In what way has the Constitution of the United States influenced and/or shaped K-12 school choice programs in Virginia?
6. In what way has the Virginia State Constitution influenced and/or shaped K-12 school choice programs in Virginia?
7. Does the political culture of Virginia influence and/or shape K-12 school choice programs in Virginia?
8. In what way has federal and state case law and their interpretation influenced and/or shaped K-12 school choice programs in Virginia?

The above questions guided the researcher with developing a set of interview questions that were presented to elected public officials in the Louisiana and Virginia legislature and appointed officials in the Louisiana and Virginia Department of Education (see Appendix A). The elected officials selected in the legislature are ranking members on education committees in the Senate and House, and the appointed officials are the state superintendents in Louisiana and Virginia.

### **Significance of the Study**

The significance of this research study is to add to the body of literature through understanding how the Constitution of the United States, amendments, and federal case law along with state constitutions, the legislature, judicial and education structures, political culture and state case law may or may not have influenced and/or shaped the various component of a state's education system. The State of Louisiana and the Commonwealth of Virginia have constitutions predicated on differing legal principles (French versus English) with these documents presumably providing the nucleus for proposed and enacted school choice programs. Based on the assertion that education resides largely at the state level with state constitutional

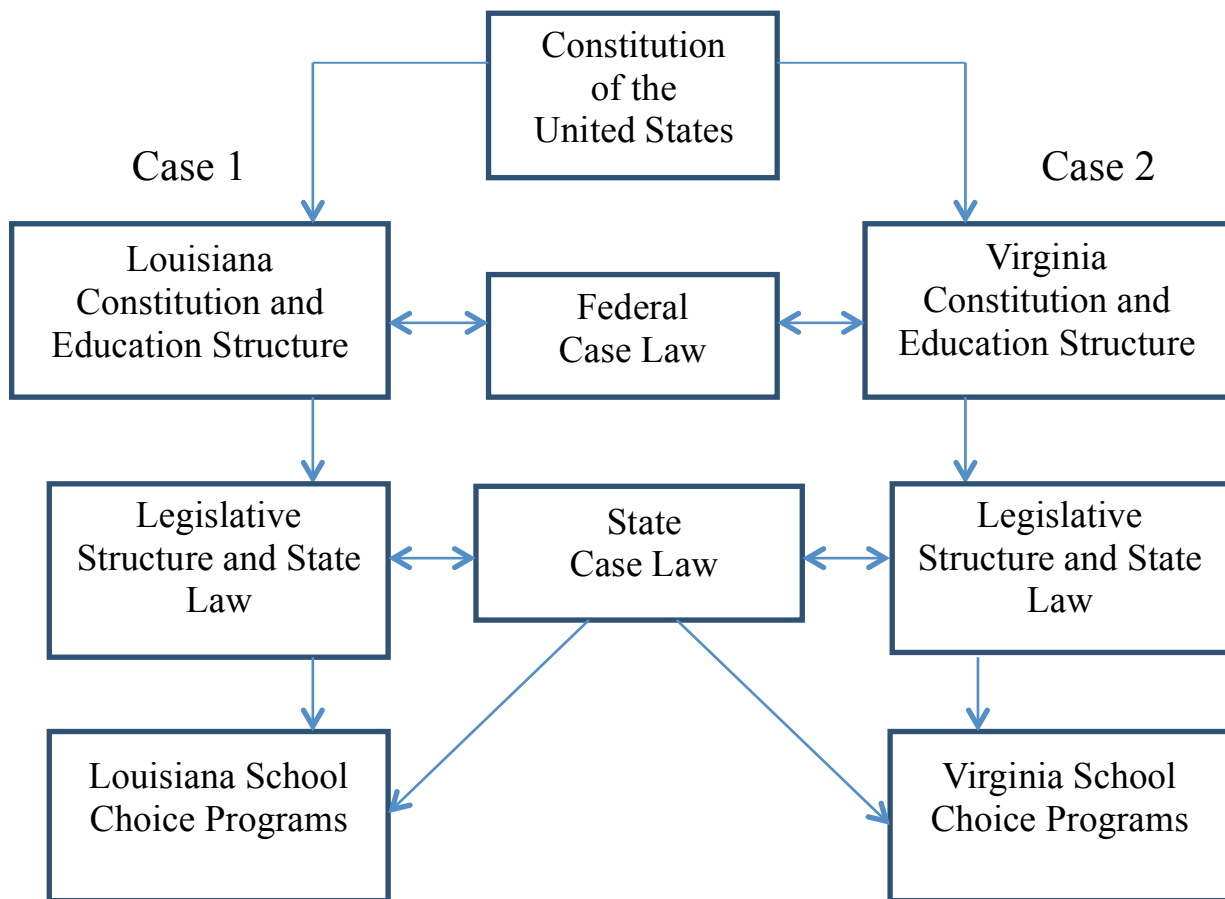
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authorities, this study seeks to offer insight as to how constitutions, public officials, political culture, and federal and state case law may or may not influence K-12 education legislation and the implementation of K-12 school choice programs in Louisiana and Virginia.

## Concept Framework

The following diagram represents the conceptual framework for this dissertation as it relates to the influence of the federal constitution and amendments, state constitutions, legislature, judicial and education structures in Louisiana and Virginia, and federal and state case law that contribute to the shaping of the K-12 education system and K-12 school choice programs.

**Figure 1.1: Conceptual Model**



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The researcher developed this model based on a design utilizing multiple embedded studies (Yin, 2014). This model provided the framework for how the researcher studied the constitutions, structures, and case law to ascertain what influences the education systems and the K-12 school choice programs that are currently in existence in the State of Louisiana and the Commonwealth of Virginia.

### **Summary of Design and Methodology**

The design and methodology for this dissertation uses qualitative research with history and case study methods, which included reviewing constitutional documents, state legislature, judicial and education authorities, case law as well as conducting interviews with selected public officials in the Louisiana and Virginia legislatures and education departments.

There are five public officials in each state that were selected for interview based on their positions. These public officials include four interviewees that hold leadership positions on Senate and House education committees in the Louisiana and Virginia legislatures and the state Superintendents appointed by the Governor or governing body in Louisiana and Virginia for a total of ten interviewees. There are twelve interview questions created by the researcher for the eight legislators being interviewed and eleven interview questions for the two state Superintendents (see Appendix A). Should individuals be identified during the interviews that may contribute relevant data for the study, the researcher may elect to conduct additional interviews. However, additional individuals were not selected for interview and the researcher did not conduct additional interviews. The total number of interviews remained five per state for a total of ten interviews.

A third party transcribed the recorded interviews and the researcher reviewed the transcriptions and used the qualitative tool MAXQDA to perform the analysis. The transcript

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data was coded in order for the researcher to determine if there are themes, associations, or recurring patterns existing in the data.

### **Limitations of the Study**

The first limitation is based on two levels of government, federal and state, and the governing authorities provided at each level of government. There are federal authorities and case law that covers all fifty states, but this study only discussed Louisiana and Virginia and how each of these do or do not address the federal authority.

The Constitution of the United States has stayed constant since 1787 and very few amendments have been ratified with no mention of education or an amendment addressing education. This differs from state constitutions in that Louisiana and Virginia have had their constitutions rewritten and/or amended over the years with both Louisiana and Virginia constitutions providing an *Article VIII* that specifically addresses education to include structure and authorities within the state for the education system.

As identified in the literature, state K-12 education systems and K-12 school choice programs are unique and driven in large part by constituents and special interest groups (Green & Moran, 2010; Holme et al., 2013; Merrifield, 2010). The legislatures of Louisiana and Virginia will propose and pass legislation for education and school choice programs based on the political party makeup of the legislature and the demands or lobbying efforts of constituents and special interest groups. Therefore, the political dynamics may be a limitation as it relates to the passage of school choice programs within Louisiana and Virginia.

Another limitation considers the interpretation and implementation of school choice policy. Though the state constitution identifies structure and authorities when it comes to the education system, there are other entities such as local governments that are given authority over

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interpreting and implementing K-12 school choice programs. This study does not discuss the role of local government and school districts or divisions other than to identify where authority lies (state or local level) and how many school districts or divisions are in each state.

## Definition of Terms

The current K-12 education system in America consists of public schools, private schools and school choice programs. The following definitions are provided for the terms that are used throughout this dissertation:

**Table 1.1: Terms and Definitions**

Term	Definition	Source
Charter School	Independent public schools exempt from many state and local rules and regulations in exchange for increased financial and academic accountability.	The ABCs of School Choice, 2014, p. 4
Common Law	The body of law developed in England primarily from judicial decisions based on custom and precedent, unwritten in statute or code, and constituting the basis of the English legal system and of the system in all of the United States except Louisiana.	<a href="http://www.merriam-webster.com/dictionary/common%20law">http://www.merriam-webster.com/dictionary/common%20law</a>
Commonwealth	A state in which the supreme power is vested in the people.	Hornbook of Virginia History, p. 88 ( <a href="http://www.lva.virginia.gov/faq/va.asp#six">http://www.lva.virginia.gov/faq/va.asp#six</a> )
Education Rights	As stipulated in the state constitution	State Constitutions
Education Savings Accounts	Parents withdraw their children from public district or charter schools and receive a deposit of public funds into government-authorized savings accounts with restricted, but multiple uses.	The ABCs of School Choice, 2014, p. 3
Homeschool	Alternative form of education for children outside of public or private schools, typically within their own homes.	The ABCs of School Choice, 2014, p. 4
Individual Tax Credits/Deductions	Allow parents to receive state income tax relief for approved educational expenses, which can	The ABCs of School Choice, 2014, p. 3

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	include private school tuition, books, supplies, computers, tutors, and transportation.	
Lockstepping	The practice in state courts of unreflectively adopting rights doctrines that the federal courts have developed over time and applying these doctrines to state constitutional provisions that appear to provide for similar rights.	Bauries, 2014, p. 975
Napoleonic Code	Served as the prototype for subsequent codes during the nineteenth century and the State of <b>Louisiana</b> derived a substantial portion of their laws from it.	<a href="http://legal-dictionary.thefreedictionary.com/Napoleonic+Code">http://legal-dictionary.thefreedictionary.com/Napoleonic+Code</a>
Online Learning	Allows students to work with their curriculum and teachers over the internet in combination with, or in place of, traditional classroom learning.	The ABCs of School Choice, 2014, p. 4
Open Enrollment (Interdistrict Transfer)	A policy that enables students to choose a school in another school district.	Holme et al., 2013
Open Enrollment (Intradistrict Transfer)	A policy that allows students to freely choose among public schools within a district.	Holme et al., 2013
Political Culture	The particular pattern of orientation to political action in which each political system is imbedded.	American Federalism: A View from the States, 1966, p. 79
Private School	Educational institutions run independently of the government.	The ABCs of School Choice, 2014, p. 4
Public Education System	As stipulated in the state constitution.	State Constitutions
Public School	A school that gets money from and is controlled by a local government.	<a href="http://www.merriam-webster.com/dictionary/public%20school">http://www.merriam-webster.com/dictionary/public%20school</a>
School Choice	Any policy designed to enable parents to choose the best educational opportunity for their children, including public school transfer options, charter and magnet schools, homeschooling, scholarships, vouchers and tax credits/deductions.	School Choice and State Constitutions, 2007, p. 2
Tax-Credit Scholarships	Allow taxpayers to receive a full or partial tax credits when they donate to nonprofits that provide private school scholarships.	The ABCs of School Choice, 2014, p. 3

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Vouchers	State-funded scholarships for K-12 students that enable them to select the school of their choice.	School Choice and State Constitutions, 2007, p. 2
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## Organization of the Study

The first chapter provides an introduction to this dissertation, which includes the purpose of the study, research questions, and the conceptual framework on which the structure is built. Chapter II provides an overview of political culture and relevant literature as it relates to school choice, types of K-12 school choice programs within states and the legal components surrounding school choice. The literature focuses on the Constitution of the United States, amendments and federal case law, Louisiana and Virginia Constitutions and state case law, Louisiana and Virginia legislation and policy issues, and concludes with a discussion on advocates and opponents of school choice programs. Chapter III addresses the study and specific design and methodology to include what data was gathered, the sources of the data, and the tools used for analysis. Chapters IV and V are the case studies with Chapter IV focusing on the State of Louisiana and Chapter V focusing on the Commonwealth of Virginia. There is a rendering of the structures and authorities of the legislature, judicial, and education systems in Louisiana and Virginia along with what school choice programs are currently enacted in Louisiana and Virginia. Chapter VI presents the interview data to include four primary federal case law decisions and additional state case law decisions relevant to the education systems and school choice programs in Louisiana and Virginia. The findings and recommendations are presented in Chapter VII and identify further study possibilities regarding influences and school choice programs.



## **CHAPTER II: LITERATURE REVEIW**

In the United States, the topic of education is discussed by the founding fathers during the forming of the republic. One of the founding fathers and a prominent historical figure from Virginia, Thomas Jefferson, was involved not only with the founding of the republic, but is credited as the author of the United States Declaration of Independence and is identified as a contributor to Virginia's first state constitution based on his writings (Axelrod, 2001). These two documents are recognized as providing language for the drafting of the Constitution of the United States, and history has connected Jefferson's writings that provide his thoughts on the Constitution of the United States. In addition, multiple sources cite Jefferson's clear framework was grounded in a strong educational system that in turn would maintain a strong republic (Benson, 1971; Gilreath, 1999). Though several of Jefferson's writings address public education, it is not clear as to whether Jefferson was addressing the need to ensure the public had access to education for the benefit of society, or if public equates to government control of an education system (Gilreath, 1999).

Since the founding of the United States, education has been a part of society. Many school systems began in small one-room buildings with one teacher to multiple children and grades or where children participated in a tutor-based arrangement for specific knowledge, training and skills (Friedman, 1980).

Fast forward to the 20<sup>th</sup> century where the education system has evolved from a singularly private school system to an education system that consists of private and public schools that encompass multiple buildings to accommodate thousands of students, teachers and administrators, schools that offer an expansive range of academic offerings and extracurricular activities as well as a range of school choice programs (Enlow & Ealy, 2006; Friedman, 1980).

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With the introduction of school choice programs, researchers have written about and debated the topic of school choice from different perspectives, for different purposes, and within a variety of academic disciplines including education, economics, and political science (Fleming, 2014; Friedman, 1962; Green & Moran, 2010; Jeynes, 2014; Merrifield, 2008; Vergari, 2007). Initially, school choice programs began with vouchers, associated with Milton Friedman (1962), and have expanded over the years through legislated programs labeled as charter schools, use of strategies such as tax credits, and open enrollment referred to as inter- and intra-district transfers. Currently, a school choice program that provides parents with even more educational options to consider and navigate is that of homeschooling (Ben-Porath, 2009; Boyd, 2007; Ford & Merrifield, 2013; Machin, 2014).

With the enacting of a variety of school choice programs, which were implemented in urban school districts where there are high socioeconomic and ethnically diverse populations, researchers began to analyze the impacts of implementing such programs. Based on the volume of published articles in numerous academic journals, the literature unquestionably identifies that the topic of school choice has developed a cross-discipline interest where research encompasses a wide range of significance and perspective (Ben-Porath, 2009; Bolick, 2008; Boyd, 2007; Ford & Merrifield, 2013; Machin, 2014).

The purpose of this literature review is to 1) determine constitutionality of school choice programs; 2) define legal authority for school choice programs outlined by the United States, Louisiana and Virginia constitutions; 3) distinguish the expanse of school choice programs related to passage of state legislation in Louisiana and Virginia; 4) identify whether political culture is a determining factor for the type of school choice programs enacted in Louisiana and

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Virginia; and 5) how public officials and the implementation of public policy determines school choice decisions related to K-12 education.

There were several search tools utilized that assisted in looking for relevant literature of research articles, writings, government and historical documents, surveys and data related to school choice programs, the constitutionality of school choice programs, and what school choice programs are available within the current educational system. For research articles related to school choice programs in the United States, several search engines via the Lynchburg College Library were utilized which include Business Source Complete, EBSCOhost, Education Research Complete, ERIC, JSTOR, LC OneSearch, Legal Collection, Lexis-Nexis, and ProQuest Dissertations & Theses Full Text. Specific websites searched include Louisiana Department of Education, Louisiana Legislative Branch, Louisiana Judicial Branch, Virginia Department of Education, Virginia Legislative Branch, Virginia Judicial Branch, United States Department of Education, and the United States Supreme Court. The key words used include school choice and various combinations using case law, constitution, economics, education, founding fathers, policy, programs, state law, and Thomas Jefferson. In addition, the reference content in many of the peer reviewed articles provided additional research sources, material, and data which are relevant and contained information useful to this review.

The literature for this review is organized into the following eight sections. The first section identifies Elazar's theory on political culture and provides definition to the three subcultures. The second section identifies school choice programs enacted in at least one of the fifty states, but not all programs are enacted in all fifty states. The role of the United States constitution in the school choice debate is discussed in section three as well as what the literature reveals regarding federal constitutional authority, related amendments and federal case law for

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legislating school choice programs. Section four identifies and discusses Louisiana and Virginia constitutions as they relate to school choice programs in each of these two states with section five discussing state case law decisions. Section six introduces what the literature identifies as state legislation and policy issues relevant to school choice programs, why the issues are important to understand, and how the issues vary by states. Section seven addresses the perceptions of advocates and opponents on school choice programs, background on the arguments for the positions taken, and briefly address why some perceptions change while other perceptions remain the same over time. The final section provides a summary discussion of the literature represented in this review that will eventually guide this study.

### **Political Culture**

The political culture theory developed by Daniel J. Elazar (1984) began in the 1960s with an understanding that “requires an appreciation of the way in which the states functioning as political systems influences the operations of the general government and the way in which the states, still functioning as political systems, adapt national programs to their own needs and interests” (p. 109). Elazar further identifies factors “important in shaping the individual states political structures, electoral behavior, and the modes of organization for political action” (p.109). The researcher includes political culture theory as it speaks to “the particular pattern of orientation of political action in which each political system is embedded” (p. 109).

The researcher reviewed literature based on a theory of regional subcultures written by Joel Lieske (2010). The theory consists of 2000 census data utilizing factor analysis and cluster analysis to understand “how the political identities of Americans are shaped by their social identities; how regional subcultures develop and continue to evolve; and how they shape society, influence social and political behavior, affect political process, government institutions and

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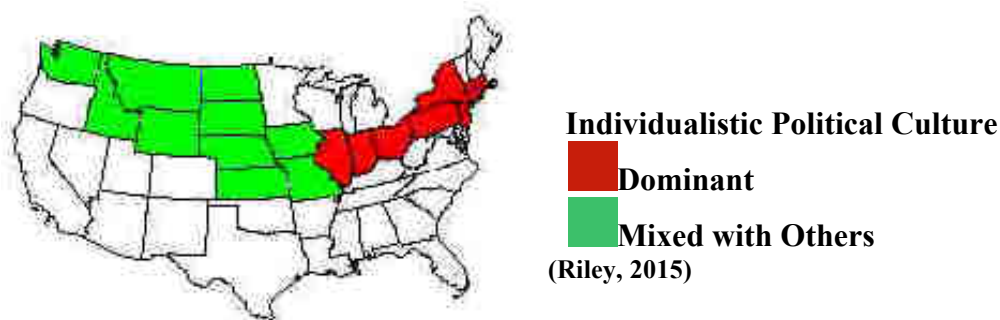
public policies” (p. 547). Though relevant to this dissertation, the researcher will focus on Elazar’s theory.

Elazar (1984) identifies that the national political culture is a synthesis of three major political subcultures, which are *individualistic*, *moralistic*, and *traditionalistic* (p. 115). The following categorizes Elazar’s political culture theory.

### Individualistic Political Culture

This culture is viewed as a marketplace as a means to respond efficiently to demands. The cultures sphere of activity is largely economic and encourages private initiative and access to the marketplace with economic development favored. New programs will not be initiated unless demanded by public opinion (Elazar, 1984).

**Figure 2.1: Elazar’s Individualistic Political Culture Map**

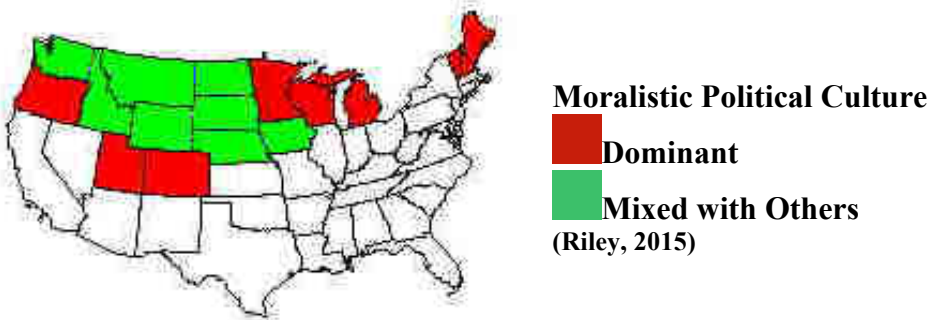


### Moralistic Political Culture

This culture is viewed as a commonwealth as a means to achieve the good community through positive action. The cultures sphere of activity is any area that will enhance the community, although nongovernmental action is preferred. Social as well as economic regulation is considered legitimate, and new programs will be initiated without public pressure if it is believed to be in the public interest (Elazar, 1984).

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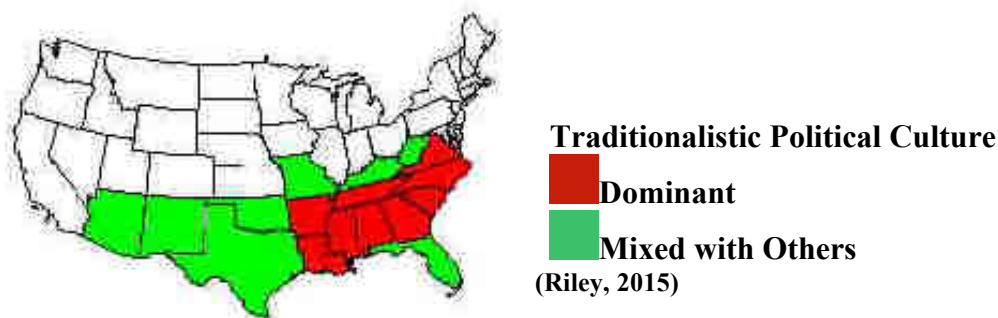
**Figure 2.2: Elazar's Moralistic Political Culture Map**



## Traditionalistic Political Culture

This culture is viewed as a means of maintaining the existing order. The culture's sphere of activity includes those that maintain traditional patterns, and new programs will be initiated if the program serves the interest of the governing elite (Elazar, 1984).

**Figure 2.3: Elazar's Traditionalistic Political Culture Map**



The researcher addresses additional characteristics in Chapter IV and Chapter V as they relate to the political culture in the State of Louisiana and the Commonwealth of Virginia.

## K-12 School Choice Programs

The current education system in the United States consists of public schools, private schools and school choice alternatives. Table 2.1 provides a compilation of what school choice programs are offered, whether they are a public or private school option, number of states that

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offer the program as not all programs exist in all fifty states, and whether the program exists in Louisiana and/or Virginia.

**Table 2.1: Types of K-12 School Choice Programs**

<b>Type of School Choice Program</b>	<b>Public or Private</b>	<b>Number of States that Offer</b>	<b>Louisiana</b>	<b>Virginia</b>
Charter Schools*	Public	42 plus District of Columbia	Yes	Yes
Education Savings Accounts*	Private	2	No	No
Homeschooling+	Private	50	Yes	Yes
Open Enrollment (Inter-district and Intra-district transfers)+	Public	50 (in some form to at least some students)	Yes	Yes
Tax Credits (Individual and Scholarship)*	Private	7 (Individual) 14 (Scholarship)	Yes	Yes
Vouchers*	Public and Private	13 plus District of Columbia	Yes	No

\*Numbers were obtained from the National Conference of State Legislatures (2014)

+ Numbers were obtained from the Council of Chief State School Officers (Davis, 2013)

The following information speaks to the types of school choice programs that exist in at least 1 or more states. The following discussion identifies some of the highlights for each school choice program as they relate to Louisiana and Virginia, with more detail provided in Chapter IV and Chapter V.

### **Charter Schools**

The largest and most rapidly growing school choice program in the United States educational system is charter schools. Forty-two states and the District of Columbia (DC) currently give authorization based on state legislation with school contracts or charters drafted and negotiated at the state and local level (Ford & Merrifield, 2013, Holme et. al., 2013; Merrifield, 2002; Vergari, 2007). Louisiana and Virginia have charter school authority.

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Charter schools are an extension of public schools and fall within the public education system because charters are typically approved by a public entity such as a local school board or governing boards of state universities, with a portion of charter school funding coming from the public education system budget. However, charter schools do differ from public schools in that charter schools are afforded the freedom to operate outside of some of the public education system regulations mandated and applicable to public schools. Any exemption or relief a charter school experiences from regulatory components is made possible through state legislation and the approved charter as it relates to school operations (Ford & Merrifield, 2013; King, 2005; Merrifield, 2002; Ni & Arsen, 2011; Sutton & King, 2013; Vergari, 2007).

Though charter school operations are authorized by a given state, research identifies the overwhelming rational given to start charter schools is primarily to establish school choice for students and families in failing urban public school districts or to obtain a focused or specialized type of education such as science and technology, the arts, or foreign language (Ford & Merrifield, 2013; McGinn & Ben-Porath, 2014; Merrifield, 2002; Vergari, 2007). Regardless of the purpose or rational for establishing a charter school, charter schools are afforded flexibility as it pertains to curriculum and instructional approaches. They may have legislated enrollment caps and have the capability to receive funding from private sources as they do not receive public funds for capital purposes (Merrifield, 2002; Vergari, 2007). In addition, the number of charter schools allowed or approved may be limited by the state and are prohibited from charging tuition. Funding is typically generated via a public voucher or in the form of a tax credit (this is identified and defined by state legislation) and when student applications exceed the allotted or approved number of seats, a lottery system is a common practice used for enrollment under the admissions process (Merrifield, 2002; Ni & Arsen, 2011; Vergari, 2007).



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### **Education Savings Accounts**

As identified in *The ABCs of School Choice* (2014), there are two states, Arizona and Florida, which offer this type of choice. The Arizona Empowerment Scholarship Accounts (ESA), enacted in 2011, allows parents to withdraw their children from public, district, or charter schools and receive a portion of their public funding deposited into an account with defined, but multiple uses including private school tuition, online education, private tutoring, or future educational expenses.

The Florida Personal Learning Scholarship Account (PLSA) Program, enacted in 2014, allows students with special needs an opportunity to receive an account funded by the state and administered by an approved Scholarship Funding Organization. Parents can use the funds to pay for a variety of educational services, including private school tuition, tutoring, online education, curriculum, therapy, postsecondary educational institutions in Florida, and other defined educational services.

### **Homeschooling**

According to Belfield (2004), the most novel but least used of school choice programs is homeschooling, though this choice is growing since it became a legal school choice program in the 1970s. All fifty states authorize homeschooling.

The National Center for Educational Statistics (NCES) published education data reflecting that in 2003 there were 1,096,000 or 2.2 percent of students ranging in ages five to seventeen who are homeschooled, whereas the 2012 data identifies 1,773,000 or 3.4 percent of students ranging in ages five to seventeen are homeschooled. This reflects an increase of 667,000 or 1.2 percent for homeschooled students (NCES, 2015).

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There are criteria for homeschooling through the Education Commission of the States (ECS), which include instructor qualifications, testing and evaluation requirements, state policy for assessing students, and state web pages for homeschooling. A recent component, as identified by Boyd (2007), is the use of technology in supporting advances in the number of families that choose to homeschool their child(ren).

### **Open Enrollment (Intra-district and Inter-district transfers)**

This school choice program allows a student to transfer from one public school to another public school based on identified criteria. States implement open enrollment programs either by voluntary or mandatory transfer, with some states using both voluntary and mandatory classification. Louisiana and Virginia have open enrollment authority.

According to the data reported by the Council of Chief State School Officers (Davis, 2013), thirty-one states have enacted intra-district open enrollment legislation and forty-two states have enacted inter-district open enrollment legislation. However, all fifty states utilize some practice of open enrollment. The open enrollment program is referred to as a school transfer program and allow families to move a child from one public school to another via an intra-district transfer (a public school within the same school district) or via an inter-district transfer (a public school in another school district) based on availability. Whether states use mandatory or voluntary transfers or both, some states may stipulate enrollment limitations with transportation typically not provided by the district (Holme et. al., 2011; King, 2005; Ni & Arsen, 2011).

### **Tax Credits (Individual and Scholarship)**

As reported in April 2014 by the National Conference of State Legislatures, state legislation in fourteen states currently allows for tax credit scholarship programs to fund

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education. Though these programs vary by state, common components include individual and/or corporation donations to a non-profit education institution as a scholarship, a percent of the donation to be used as a tax credit when filing state taxes. Recipients must qualify based on state income mandates and some states require citizenship standards. For example, Louisiana allows taxpayers to receive tax rebates while Virginia allows individual and business taxpayers to receive a tax credit.

The ABCs of School Choice (2014) identify seven states that offer some type of individual tax credit or deduction program with each state authoring and establishing its own program. Virginia does not provide this option, where the State of Louisiana allows individual tax deductions for educational expenses, including private school tuition and fees, uniforms, textbooks, curricular materials, and any supplies required by the school. The deductions also include tuition and fees at university-run *lab schools*. However, other states such as Wisconsin provides an income tax deduction for individuals who pay private school tuition for their dependents while the State of Indiana provides a tax deduction for individuals who make educational expenditures on behalf of their dependent children enrolled in private school or who are homeschooled.

### **Vouchers**

In the same vein as other school choice programs, voucher programs afford students and families another option. The school voucher program debate gained prominence in the 1960s when Milton Friedman published *Capitalism and Freedom* based on a series of lectures he and his wife delivered (Friedman, 1962). Since Friedman's published works, thirteen states and the District of Columbia have implemented voucher programs, but they vary in use. Some states allow vouchers to be used for students leaving public school to attend a private school, while

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other voucher programs allow students to leave one public school district to attend a public school in another district (Brasington & Hite, 2014). Louisiana authorizes the use of vouchers for public and private school, while Virginia has not authorized a voucher program.

Merrifield (2008) discusses the use of targeted tuition vouchers and universal tuition vouchers with targeted vouchers dominating most voucher programs. Several scholars indicate that voucher use is germane to urban areas with diverse ethnic populations and low socioeconomic status where the public education system is failing or used for students with disabilities and special needs (Clowes, 2008; Ford & Merrifield, 2013; King, 2005; Merrifield, 2002).

For example, the ABCs of School Choice (2014) identifies that the State of Louisiana has a statewide voucher program available for low-income students in low-performing public schools as well as a targeted voucher program applicable to students with certain exceptionalities based on parish eligibility and student needs. In contrast, the State of Wisconsin created a targeted voucher program titled the Milwaukee Parental Choice Program (MPCP) to be used only within the school districts of Milwaukee, while Florida implemented a universal voucher program that applies throughout the Florida education system (Clowes, 2008; Kenny, 2010; King, 2005; Merrifield, 2002; Vergari, 2007).

### **Summary**

The literature identifies several types of school choice programs, which vary between the fifty United States. Each state is given the authority to propose and pass school choice legislation based on the needs of the citizens within the state. Understanding the legislation and nuances of state school choice programs stems back to U.S. and state constitutions, legislative language and

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judicial interpretations through case law (Bauries, 2011; Bauries, 2014; Duncan, 2003; Freid, 1992; Green & Moran, 2010).

## **Constitution of the United States**

The Constitution of the United States was signed on September 17, 1787. Based on common law, this document provided the framework on which the United States of America established its form of government and the legal foundation for legal decisions. Existing literature stipulates that the Constitution of the United States does not specifically speak of education. However, it does address fundamental freedoms and rights and equal protection. There are three amendments discussed in the literature as they relate to K-12 school choice programs and litigation.

### **Amendments I, X, and XIV**

Any challenge or dispute related to a school choice program results in petitioners seeking resolution through state and federal court systems. The following amendments under the Constitution of the United States are identified in the literature as the basis for testimony and judicial opinions within the federal court system.

*Amendment I:* (Passed by Congress September 25, 1789; Ratified December 15, 1791)  
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

*Amendment X:* (Passed by Congress September 25, 1789; Ratified December 15, 1791)  
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

*Amendment XIV:* (Passed by Congress June 13, 1866; Ratified July 9, 1868)

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*Section 1:* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **The Blaine Amendment**

During the 1830s, the common-school movement provided “a curriculum whose theological content evidenced a ‘pan-Protestant compromise, a vague and inclusive Protestantism’ designed to tranquilize conflict among Protestant denominations” (Duncan, p. 503). The Catholic population in the United States increased in the 1800s from 3.3 percent to 12.9 percent by 1891. This Irish and German influx of Catholics seemed to threaten the education system with regards to curriculum, theology, and funding, thus spawning a major piece of legislation that has historical and lasting significance on school choice program litigation known as the Blaine Amendment (Duncan, 2003).

Congressman James G. Blaine of Maine proposed a bill (the Blaine Amendment) on December 14, 1875 with the purpose to prevent the use of public funds for sectarian schools and institutions. The bill failed in the Senate by four votes at the federal level but went on to be proposed and incorporated in some state constitutions (Bolick, 2008; Duncan, 2003; Green & Moran, 2010; Sutton & King, 2013).

### **Case Law**

The United States Supreme Court is the highest court that decides cases when there are challenges to the constitutionality of education legislation and school choice programs throughout the United States. In addition, the cases that make it to this court that address

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education legislation are challenges related to the 1<sup>st</sup> and 14<sup>th</sup> Amendments under the Constitution of the United States. Over decades of adjudicating petitions that challenge constitutional authority and responsibility over public education, there are landmark cases that have changed the course of legislation and history, and this holds true for the education system in the United States (Bauries, 2007).

The researcher selected the following four case law decisions based on the precedence that was established at the federal level and how the cases relate to the constitutionality of K-12 school choice programs, state legislation and education systems.

**Table 2.2: United States Supreme Court Cases**

<b>Court Case</b>	<b>Citation and Year</b>	<b>Issue</b>
Brown v. Board of Education	347 US 483, 493 (1954)	Desegregation of public schools; challenge to the Equal Protection Clause under the 14 <sup>th</sup> Amendment
Lemon v. Kurtzman	403 US 602 (1971)	Application of a three-prong test; challenge to the Establishment Clause under the 1 <sup>st</sup> Amendment
San Antonio Independent School District v. Rodriguez	411 US 1 (1973)	Disparity of public funding among school districts; challenge to the Equal Protection Clause under the 14 <sup>th</sup> Amendment
Zelman v. Simmons-Harris	536 US 639 (2002)	Uses of public funding for education; challenge to the Establishment Clause under the 1 <sup>st</sup> Amendment

Probably the most famous United States Supreme Court case dealing with education is *Brown v. Board of Education*, 347 US 483, 493 (1954) and is considered a *landmark case* as it changed the course of history. Though this case does not specifically speak directly to school choice, it addresses public education in relation to the 14<sup>th</sup> Amendment or Equal Protection Clause regarding quality education for all and constituting for the desegregation of public schools in the United States.

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The other three United States Supreme Court cases identified in this dissertation are specifically related to school choice programs at the state level. In *Lemon v. Kurtzman*, 403 US 602 (1971), public funds used for programs, salaries, textbooks, and instructional materials in non-public schools in Pennsylvania and Rhode Island was claimed to be unconstitutional. The court applied a three-prong test or the *Lemon test* which Chief Justice Warren Burger states as "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster excessive entanglement with religion" (p. 613). If the case meets these three conditions, there is no violation of the Establishment Clause (Slawson, 2003). The court ruled there was a violation of the Establishment Clause based on the third prong of entanglement between state and religion and therefore the programs were unconstitutional. The Lemon test has subsequently been a measure regarding cases brought before the courts that challenge the use of public funds for sectarian or religious purposes (Slawson, 2003).

A third case, *San Antonio Independent School District v. Rodriguez*, 411 US 1 (1973), presented the claim that students residing in one school district in the San Antonio area were not afforded equal protection regarding the allocation of public funding for education. The Edgewood School District argued that the neighboring Alamo Heights School District realized greater property wealth and therefore were provided a larger portion of public funding for education, which has a potential impact to voluntary open enrollment between neighboring school districts. The court ruled there was no violation of the Equal Protection Clause citing that education was not a federal fundamental right, wealth was not a suspect classification, which in effect moved this litigation back to the state level (Bauries, 2014).



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The last case, *Zelman v. Simmons-Harris*, 536 US 639 (2002), challenges the use of public funding for sectarian purposes. This case claims a violation of the 1<sup>st</sup> Amendment or Establishment Clause by questioning the constitutionality of an Ohio Scholarship Program or voucher program that provides public funding to students for use in an educational institution of their choice. This program was inclusive, not exclusive, in that all schools in the district were able to participate regardless of the sectarian/nonsectarian nature, which introduced *neutrality* into the equation. The court ruled the Scholarship Program did not establish a religion, therefore was *neutral* and did not violate the Establishment Clause. The court further stated the program is *neutrally designed and administered* in that the voucher is provided to individual students who are the beneficiaries of the funding, not the educational institution (Slawson, 2003).

The Constitution of the United States, as previously stated, does not explicitly speak of education or an education system, but these four cases establish precedence for subsequent challenges related to state constitutional language and legislation regarding school choice programs and an education system. These decisions by the United States Supreme Court appear to safeguard neutrality when dealing with the 1<sup>st</sup> Amendment citing the Establishment Clause and the use of public funds. However, the use of the 14<sup>th</sup> Amendment citing the Equal Protection Clause is not as distinct or delineated for decisions that are directly related to school choice programs.

Federal case law provides decisions on cases that challenge the rights and due process of the citizenry as afforded by constitutional amendments, even on issues related to education. Though each of the above cases were decisions decided at the federal level, each case continues to have an indirect and overarching impact on state legislation, school choice programs and the education systems throughout the fifty states. These cases represent landmark decisions that are

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based on a set of standards they established regarding educational opportunities for all children in the United States (Bauries, 2014; Freid, 1992).

### **State Constitutions**

The public education system is executed by each state within a legal construct based on legislation supported through state constitutions and case law. Each state's constitution is specific to the state and has the flexibility to allow or deny school choice programs. In states where school choice programs exist, they must align with the authority and language of the constitution for administering the education system within the state (Green & Moran, 2010; Ford & Merrifield, 2013).

#### **Louisiana**

Unlike the other forty-nine states in America, "Louisiana is unique in many ways. The state maintains a hybrid civil-law system" (Bauries, 2011). The Louisiana government website ascertains the following:

Early French and Spanish settlers influenced the legal system in Louisiana. Despite popular belief, it is incorrect to say that the Louisiana Civil Code is, or stems from, the Napoleonic Code. Although the developing Napoleonic Code influenced Louisiana law, the Napoleonic Code was not enacted until 1804, one year after the Louisiana Purchase. A main source of Louisiana jurisprudence may in fact be Spanish. The resulting system of "civil law" in Louisiana does differ from the "common-law" systems in the other 49 states. (Louisiana Government, para. 3)

Louisiana's first constitution was signed on January 22, 1812, and on April 30, 1812 the United States Congress admitted Louisiana as the eighteenth state. The state has had eleven constitutions including the first one, which was adopted in 1812 (Louisiana, 2015). However, the fifth constitution, which was adopted in 1864, was the first to include *Title XI – Public Education*, which authorized an elected superintendent of public education, a special tax on white property owners for public schools to educate white children, a special tax on colored

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persons and their property for public schools to educate colored children, the use of proceeds from land for education, and the establishment of a university in New Orleans. It also stated that the English language will be used and appropriations shall not be used to support any private school or institution of learning (Bennett, 1864).

Like other constitutions, “the Louisiana Constitution contains the familiar general mandate for the establishment of a public school system, now ubiquitous among state constitutions. But unlike the founding documents of any of the other states, Louisiana's constitution also provides for a very specific process-based allocation of the responsibilities for determining appropriation levels in education from year to year” (Bauries, 2011).

The current Louisiana Constitution signed in 1974, under *Article VIII: Education*, provides the following language regarding a public education system:

### **PREAMBLE**

The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential. (p. 69)

### **§1. Public Educational System**

Section 1. The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system. (p. 69)

The Louisiana constitution under the education article has sixteen sections, which speaks of an education system, a state superintendent, five state boards, appropriations, parish school boards and superintendents, and hospitals (La. Const. art. VIII.).

## **Virginia**

The foundation of the Virginia Constitution derives from Common Law with the original drafts written in 1776 by George Mason, James Madison and Thomas Jefferson. However, credit is given to George Mason as the main author (George Mason University, 2015). As stated, the

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original Virginia constitution was adopted in 1776 and there have been five rewrites for a total of six Virginia constitutions. The fifth constitution, adopted in 1870, established the *Article VIII: Education* provision (Wm. & Mary Law Review, 1968).

The current Virginia Constitution of 1971, under *Article VIII: Education*, addresses the following regarding a public education system:

### **Section 1. Public schools of high quality to be maintained.**

The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained. (p. 24)

Virginia's constitution consists of eleven sections under the education article and speaks of an education system, quality standards, compulsory education and textbooks, a state school board, state superintendent, local boards, literary fund, and appropriations (Va. Const. art. VIII.).

Though Louisiana and Virginia constitutions each have an *Article VIII – Education* and give definition for the education systems, the specifics vary and are addressed in Chapters IV and V.

## **State Case Law**

There are volumes of court cases that have been litigated over the years regarding education and school choice issues (Duncan, 2003; Belfield, 2004; Garnett & Pearsall, 2005; Bauries, 2011). Though there are cases dating back to the early 1990s, the Milwaukee Parental Choice Program (MPCP) of 1990 is a voucher program specific to Milwaukee, Wisconsin and is referred to in school choice literature as the oldest school choice program in the United States (Merrifield, 2008; Kenny, 2010). With the expansion and creation of school choice programs in many states come legal challenges not only to the MPCP, but also to the various school choice programs enacted over the past twenty plus years.

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The literature reveals limited cases as they relate to the State of Louisiana and the Commonwealth of Virginia. The researcher, whose focus is on Louisiana and Virginia, will highlight the cases identified in the literature that are specific to Louisiana and Virginia under Chapters IV and V regarding state case law.

### **State Legislation and Policy Issues**

School choice legislation defines, addresses, and outlines implementation plans for school choice programs, which are then enacted at the state level and/or managed at the local level (Merrifield, 2002, 2008). Each state has latitude to define relevant elements and the authority to endorse and support various types of school choice programs determined to be in the best interests for the citizenry of the state.

As King (2005) expounded, “Since the nation’s first charter school legislation was enacted in Minnesota in 1991, forty states and the District of Columbia have enacted legislation that provides for charter schools” (p. 359). More recent data shows an increase since 2005 as identified previously. State’s rights give legislators the ability to propose and pass school choice programs determined relevant and useful to the citizenry of the state, affording numerous implementation strategies used in a variety of ways regarding school choice programs. Subsequently, this leads to complex issues with emerging research addressing and comparing programs between states, reviewing outcomes of students and communities, and moving school choice in a direction that supports defining best practices to support new legislation and designing improvements to education systems (Brasington & Hite, 2014; Ford & Merrifield, 2014; Holme, et.al, 4013; King, 2005; Merrifield, 2008; Powers & Cookson, 1999; Vergari, 2007).

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Some of the elements or fundamental practices documented in state legislation and policy include authorities, types of programs, qualifying participants, and limitations related to enrollment and funding (Ford & Merrifield, 2013, Green & Moran, 2010; Ni & Arsen, 2011). Conversely, state constitutions must be considered and reviewed when drafting proposed legislation regarding school choice programs. Several states have constitutional provisions that require a uniform system of public schools, delegate authority to control public schools to local entities, and prohibit states from funding non-public schools (Duncan, 2003; Green & Moran, 2010; Merrifield, 2002; Merrifield, 2008).

The Institute for Justice and American Legislative Exchange Council (ALEC) co-published a guide in 2007 that identifies school choice legislation enacted within the fifty states. School choice legislation and policy takes into account the Establishment and Equal Protection Clauses under the Constitution of the United States, the Compelled Support Clause, and Blaine Amendments under State Constitutions in varying degrees. In addition, State Constitutions have Uniformity Clauses, which require all states to fund a “uniform system of free public education” (ALEC, 2007, p.5). The expenditure of public funds for public education is identified in State Constitution articles with a few explicitly reserving public funds only for public schools, while most articles allow for a provision creating a Common Schools Fund which is a federal funds repository (ALEC, 2007).

### **Perceptions of Advocates and Opponents**

The literature identifies that many voices participate in the school choice debate and these voices are referred to as advocates and opponents. Advocates support competitive market forces in order to realize overall improvement in the education system. The opponents continue to

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express their concern regarding the drain or depletion of resources school choice programs have on the public education system (Holme et. al., 2013).

According to Rome and Block (2006), the government is the problem with public education, and they state, “Public schools should not exist in America. Education is not a legitimate function of government” (p. 83). However, the reality is that government is involved in education. Though private entities are engaged and functioning within the education system, there are also multiple levels of government involved in legislating, establishing policy, and appropriating funds for public schools in America (Green & Moran, 2010; Merrifield, 2010).

### **Advocates of School Choice Programs**

The literature reveals that several issues are debated regarding the use of public funding for attendance in private schools reference the 1<sup>st</sup> and 14<sup>th</sup> Amendments under the Constitution of the United States. Advocates who view school choice from a constitutional perspective support the use of public funds for private school and other school choice programs. They declare the withholding of public funding as an infringement upon their rights as afforded under the 1<sup>st</sup> and 14<sup>th</sup> Amendments, which is interpreted as a parallel to denying individuals free speech, free exercise, and equal protection under the law (Bauries, 2014; Sutton & King, 2013).

Other scholars focus on the economic component whereby advocates view school choice as a competitive market force that in a capitalist society will generate a higher level of school performance and student achievement (Friedman, 1962; Holme, et. al., 2013; Jeynes, 2014). The authors in one study state “Choice advocates maintain that if choice policies offer parents expanded options and tie funding to enrollment, then educators in nearby traditional public schools will have an incentive to compete and increase their effectiveness and efficiency by working harder and implementing educational improvements” (Ni & Arsen, 2011, p. 3).

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The literature continues to support the concept that advocates are in favor of a variety of school choice programs illustrating support for publicly funded voucher programs for private schools based on parental higher satisfaction with the school, achievement gains in mathematics, and governmental savings for school districts and to taxpayers (Forster, 2008; Green & Moran, 2010).

### **Opponents of School Choice Programs**

Opponents of using public funds for private school believe this is a violation of the 1<sup>st</sup> Amendment indicating that the majority of private schools are established by or affiliated with a sectarian or religious purpose (Hoxby, 2002; Sutton & King, 2013). Case law has ruled favorably for opponents who have argued that public funding should not be appropriated to private religious schools based on the claim surrounding separation of church and state, as well as language within many state constitutions preventing an allocation of public funds to private schools or for any other purpose (Green & Moran, 2010; Sutton & King, 2013). Boyd (2007) notes that often lawsuits are used as a tactic with opponents citing the 1<sup>st</sup> Amendment. One example was the blocking of Cleveland's voucher plan in the 2002 decision in the case of *Zelman vs. Simmons-Harris*. The common denominator in the arguments by both advocates and opponents focuses on the use of public funding for school choice programs.

The literature identifies that the majority of opponents to school choice programs are those associated with education oversight and delivery such as teachers, superintendents, school boards, education associations, and education unions (Boyd, 2007; Jacoby, 2011; Sutton & King, 2013). These opponents are engaged in shaping the public education system at the federal and state level and are willing to take actions counter to school choice programs and tackling of educational system reforms (Bruno, 2007; Coulson, 2010; Jacoby, 2011).



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As an opponent to school choice programs, teacher unions were developed in the 1960s (Bruno, 2007; Coulson, 2010; Young, 2011). Unions rely on membership to sustain themselves and representing the underprivileged and underrepresented (Jacoby, 2011). Since unionizing, teacher wages have increased and benefits have expanded while teacher accountability has decreased and school budgets have continued to grow (Coulson, 2010; Lemke, 2004). While there may be disagreement from school choice program advocates, Jacoby (2011) argues unions are necessary, an agent for teachers who are better equipped and more knowledgeable when it comes to negotiating teacher contracts. However, many researchers pose the question of whether unions exist for the primary purpose of maintaining or retaining a monopoly in the public education system versus being an agent for teachers and striving for quality school choice programs and quality education (Coulson, 2010; Jacoby, 2011; Young, 2011).

The union organizations engaged in shaping the public education system include two primary entities known as the National Education Association (NEA) and the American Federation of Teachers (AFT) who provide support to teachers, teacher organizations, and legislation on education issues. By affiliation, the AFT is supported by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), which does not claim to be a union, but is an organization that promotes and supports unions and union activity.

The state-level education associations are organized depending on whether a state is a right-to-work state or not as identified by the National Right to Work Legal Defense Foundation, Inc. and will define the type of organizational structure of the association. Though unions and their affiliates may not have a physical presence in all states, right-to-work states have organized representatives to rally support at the state level.

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Because the public education system is controlled by state constitutions and federal, state and local governments, this leads to questioning the true motives of a union's use of membership dues allocated to fund campaigns and lobbying designed to persuade elected officials to vote on proposed legislation to support union goals and objectives. Often the primary platform for unions is to ensure public funds are prohibited for private and school choice use and should remain within the public education system, thereby limiting school choice programs (Coulson, 2010; Young, 2011).

Though it can be argued that union membership has value, the private sector is realizing a decrease in union membership while the public sector is realizing an increase in union membership (Coulson, 2010; Lemke, 2004; [www.census.gov](http://www.census.gov)). Public employees, including teachers, are part of the increased union membership and are credited with giving life support to unions (Coulson, 2010; Lemke, 2004). The sustainability of unions in the current environment brings into question whether school choice efforts, such as charter schools and vouchers, are having a negative impact on union membership (Young, 2011). With the rise of school choice programs enacted in states, opponents are learning to adapt and seek other opportunities in order to survive what research refers to as *inevitable changes* (Young, 2011).

### **Discussion**

Current literature emphasizes that constitutions, amendments, legislation, case law and related policies and theories must be considered for both the K-12 public education system and school choice programs. Whether it is allowing parents to choose between public school choices, private school, publicly funded vouchers, or allowing individuals and businesses the use of tax credits and deductions for educational purposes, the primary consideration remains that of providing children with a quality education.

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When asked to identify the authorities that make decisions regarding quality education in America, the waters become murky, and decision-making is unclear. There are many authorities or entities (public and private) that believe they should be providing the necessary direction for shaping the education system, but each entity arguably has its own interpretation as to what defines or equates to *quality education*.

## **CHAPTER III: DESIGN AND METHODOLOGY**

### **Introduction**

This dissertation examines K-12 school choice programs in Louisiana and Virginia and whether constitutions, case law and political culture influence the establishing of these programs. To ascertain influences, a review of historical legal documents, case law decisions, and Elazar's political culture theory was conducted along with interviews of public officials in Louisiana and Virginia.

### **Research Design**

The design is based on qualitative research using the history and case study methods and examines historical documents that include the Constitution of the United States and amendments, the Louisiana and Virginia constitutions, Elazar's political culture theory, and federal and state case law related to K-12 public education and school choice programs. In addition to the historical documents, the researcher incorporates interviews with five public officials from the State of Louisiana and five public officials from the Commonwealth of Virginia that are elected by the people or appointed by the Governor.

There are two case studies developed in order to examine the particular aspects and components related to school choice programs in Louisiana (Chapter IV) and Virginia (Chapter V). The first case looks at the Louisiana constitution, the germane articles identifying structure and authority of the legislature and education systems and structure and jurisdiction of the judicial system, relevant case law, political culture, and the school choice programs enacted within the state. The second case looks at the Virginia constitution, the germane articles identifying structure and authority of the legislature and education systems and structure and

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jurisdiction of the judicial system, relevant case law, political culture, and the school choice programs enacted within the commonwealth. The purpose of using a two case study design is to identify and delineate the particulars in each state more succinctly, thereby allowing for clear distinctions in comparisons.

## Research Sample

In order to assist with determining influences between school choice programs and constitutions, case law and political culture, the researcher conducted face-to-face interviews with public officials identified in the State of Louisiana and the Commonwealth of Virginia. The criteria for selecting the public officials was based on leadership positions held on education committees within the Senate and House and the senior official of the education system.

### Louisiana Public Officials

In the State of Louisiana, interviews were conducted with the Chairman and Vice-Chairman of the Education Committees in the Senate and House of Representatives and the state Superintendent of Education. The Senate and House members are elected positions, and the Board of Elementary and Secondary Education (BESE) of Louisiana appoints the Superintendent of Education.

These public officials are identified below in Table 3.1:

**Table 3.1: Louisiana Legislators and Superintendent**

<b>Title</b>	<b>Name</b>	<b>Position</b>	<b>Party</b>	<b>District</b>
Senator	Conrad Appel	Chairman, Education Committee	Republican	9 <sup>th</sup>
Senator	Eric LaFleur	Vice-Chairman, Education Committee	Democrat	28 <sup>th</sup>
Representative	Stephen F. Carter	Chairman, Education Committee	Republican	68 <sup>th</sup>
Representative	Patrick O. Jefferson	Vice-Chairman, Education Committee	Democrat	11 <sup>th</sup>
Superintendent	John White	Superintendent of Education		

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The researcher traveled to Louisiana in September 2015 and conducted interviews in person on September 3<sup>rd</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> in New Orleans, Baton Rouge and Shreveport. Each interview was audio recorded, lasted for approximately one hour and was conducted in a location specified by the public official.

### Virginia Public Officials

In Virginia the interviews were conducted with the Chairman of the Education and Health Committee and the Chairman of the Public Education Committee in the Senate, as there is no Vice-Chairman of the Education and Health Committee, the Chairman and Vice-Chairman of the Education Committee in the House of Delegates and the Superintendent of Public Instruction. The Senate and Delegate members are elected positions and the Governor of Virginia appoints the Superintendent of Public Instruction.

These public officials are identified in Table 3.2:

**Table 3.2: Virginia Legislators and Superintendent**

<b>Title</b>	<b>Name</b>	<b>Position</b>	<b>Party</b>	<b>District</b>
Senator	Stephen H. Martin	Chairman, Education and Health Committee	Republican	11 <sup>th</sup>
Senator	Charles W. Carrico, Sr.	Chairman, Public Education Committee	Republican	40 <sup>th</sup>
Delegate	R. Steven Landes	Chairman, Education Committee	Republican	25 <sup>th</sup>
Delegate	Brenda L. Pogge	Vice-Chairman, Education Committee	Republican	96 <sup>th</sup>
Superintendent	Steven R. Staples	Superintendent of Public Instruction		

The researcher traveled to Richmond, Williamsburg and Verona in July 2015 and conducted two interviews on July 22<sup>nd</sup> in Richmond, one interview on July 23<sup>rd</sup> in Williamsburg and one interview on July 31<sup>st</sup> in Verona. The last interview was conducted on September 14<sup>th</sup> in

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Roanoke. Each interview was audio recorded, lasted for approximately one hour and was conducted in a location specified by the public official.

The researcher stated that if additional persons were identified then additional interviews may be performed if other key positions were not previously identified, creation of new positions, replacement of identified persons, and/or level of significance to this dissertation. The individuals identified in Tables 3.1 and 3.2 above were available and all participated in the interviews with no other interviews being conducted.

### **Documents and Interviews**

The researcher, using the case study design intended to address and support how various documents and political culture as evidenced in interviews may or may not influence school choice programs as they relate to the State of Louisiana and the Commonwealth of Virginia. The research seeks to explain associations or influences identified over time rather than a quantity based on frequency or incidences (Yin, 2014).

This dissertation reviews a variety of historical and legal documents such as federal and state constitutions, researches articles specific to school choice programs, and conducts interviews with legislative members on Senate and House education committees and the superintendents in Louisiana and Virginia.

The historical documents identified include the Constitution of the United States and the Louisiana and Virginia constitutions, federal and state case law and were analyzed as to their applicability or influence towards school choice programs in Louisiana and Virginia. Other documented factors researched include the structure and authority of the legislatures in Louisiana and Virginia, the structure and authority for education in Louisiana and Virginia, and the structure and jurisdiction of the judiciary in Louisiana and Virginia. These structures and

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authorities were analyzed to determine whether they provide any influence in shaping K-12 education in Louisiana and Virginia.

The interviews consisted of a set of twelve questions and one follow up question asked of the Senate and House committee members and a set of eleven questions asked of the Superintendents in the State of Louisiana and the Commonwealth of Virginia. The interviews were scheduled for one hour in length, are audio recorded, and focused on the questions developed and provided as shown in Appendix A. However, the researcher did allow some flexibility to the interviewees to expand their responses based on relevant substance to the study. Interviews were conducted face-to-face in Louisiana and Virginia.

The researcher utilized these various documents and conducted the interviews with the elected and appointed public officials in an attempt to credit or discredit any associations or influences as they relate to the research questions regarding the shaping of K-12 school choice programs within the education systems of Louisiana and Virginia.

### **Data Collection**

The data collected for this dissertation comes from reviewing and cataloging legal documents that includes the Constitution of the United States and amendments, United States Supreme Court case rulings related to education in the United States and their relevance to school choice programs enacted in Louisiana and Virginia. Additional data collected includes the Louisiana and Virginia constitutions, the constitutional structure and authority of the legislature and education system in Louisiana and Virginia, the constitutional structure and jurisdiction of the judiciary in Louisiana and Virginia, and state case law applicable to school choice programs authorized in Louisiana and Virginia. Data reviewed and collected from the literature will be utilized based on relevance to this dissertation.



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The researcher developed the interview questions, scheduled the interviews and conducted the interviews in locations selected by the interviewees. All interviews were conducted in office environments or a designated location convenient to the interviewee.

A professional transcriber transcribed the audio-recorded interviews. The researcher then imported the transcribed interviews into MAXQDA, a qualitative research application. The use of MAXQDA allowed the researcher to ensure integrity of the transcription quality and helped maintain the validity of the interviews.

### **Data analysis**

To assist with the analysis of large amounts of data, the researcher elected to use computer-assisted qualitative data analysis software (CAQDAS) that supports text and video based data (Yin, 2014). The researcher selected MAXQDA as the tool to assist with coding and categorizing data. MAXQDA assisted the researcher through ease of coding the data embedded in the federal and state constitutions and amendments, federal and state case law applicable to Louisiana and Virginia, and existing K-12 school choice programs enacted in each state. Based on the coding system used for the data, the researcher was able to recognize and categorize emerging themes to support patterns or links woven within historical documents and interviews as they relate to K-12 school choice programs.

Upon completion of the interviews, the researcher imported the transcribed interviews into MAXQDA for coding and analysis. The researcher further categorized and organized the transcribed data in order to establish or support emerging themes, common and uncommon factors, and potential patterns of association between the interviewees and their position regarding K-12 school choice programs. Based on identified themes, common factors and patterns, the researcher may consider the use of an analytic technique mentioned by Yin (2014)

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known as *logic models*, which “stipulates and operationalizes a complex chain of occurrences or events over an extended period of time. The events are staged in repeated cause-effect-cause-effect patterns ...” (p. 155). This technique could aid in determining whether or not there are cause-effect patterns that may emerge and whether these patterns identify associations or links related to K-12 school choice programs.

### **Ethical Precautions**

It is the intent of this dissertation to provide research data that represents a reliable, valid and unbiased study as well as add to the body of literature relevant to school choice programs within an education system. However, the researcher recognizes bias are expected based on interpretation of historical documents and references, interviews of elected and appointed officials that are political party affiliated, and legal documents rendered through case law opinion. The researcher makes every effort to clarify and explain data elements that may appear to have bias.

The researcher recorded and conducted interviews based on the permission of the interviewee with a recording device identified prior to the interviews. After the interviews were conducted, clarification may be required during the transcription. Further contact with interviewees was performed via email so that all communications are documented.

The researcher identified, mapped and documented associations between the Constitution of the United States and amendments, the Louisiana and Virginia Constitutions, the structure of the Louisiana and Virginia legislature, judiciary and education systems, and related federal and state case law that is germane to K-12 school choice programs in Louisiana and Virginia.

The State of Louisiana has a constitution originating from French Law and the Commonwealth of Virginia has a constitution originating from Common Law. This may give

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rise to dissimilar state constitutional structure to include interpretations of various factors within Louisiana and Virginia. It is important for the researcher to identify relevant data and what the data is predicated upon such as French law, Common law or case law. Clear and direct associations of data were acknowledged while unclear and indirect associations were clarified or eliminated based on whether it did or did not relate to the research.

### **Summary**

Based on the breadth of the topic of school choice and the variety of programs enacted within state constitutional authorities, narrowing the field of research was important in order to meet the time constraints for completing this dissertation. The design and methodology for this dissertation is intended to provide a way to collect and analyze data relevant to understanding the constitutional foundations and subsequent legal decisions associated with K-12 school choice programs within the State of Louisiana and the Commonwealth of Virginia.

The researcher decided on a qualitative research design utilizing the history and case study methods to address the how and why of the research data (Yin, 2014). A variety of data to support the research includes historical documents, current literature as mentioned in Chapter II, legal decisions found in case law, and interviews of public officials in Louisiana and Virginia. MAXQDA, a computer tool selected to assist with the data analysis, categorized the data based on coding in order to support the researcher with identifying themes and patterns within the data collected. The analytic technique of logic models, should they be used, may support the conclusions and recommendations for this dissertation.

Lastly, the researcher is aware of the challenges for minimizing bias in this dissertation based on foundational constitutional differences between Louisiana and Virginia as well as potential differences in legislature, judicial, and education structures used in Louisiana and

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Virginia. In addition, the interviews are conducted with elected and appointed officials who hold their positions based on political affiliation and are perceived to present an element of bias in their positions related to K-12 school choice programs.

## CHAPTER IV: STATE OF LOUISIANA

### Introduction

The State of Louisiana is the result of territory carved out of land acquired from France in 1803 by President Thomas Jefferson and is known in U.S. history as the Louisiana Purchase. This territory encompassed 827,000 square miles and was purchased at a cost of \$15,000,000. The transaction was deemed to be one of Thomas Jefferson's greatest accomplishments during his presidency. Based on land boundaries established from that purchase, Congress admitted the State of Louisiana into the Union in 1812.

Over the years, Louisiana has retained much of its past as it relates to its earlier Spanish and French origins. In particular, Louisiana law continues as the only state in the union that practices what is known as French or Napoleonic law. Based on this legal foundation, it is important to identify the different components within the state constitution that may impact the education system and K-12 school choice programs. To help determine any plausible connection to K-12 school choice programs, it is necessary to identify and discuss the structure of the legislature, judicial, and education systems, the constitutional authorities and jurisdictions within these systems as well as the political culture, all of which potentially contribute to the understanding of the education system in Louisiana.

In addition, this dissertation identifies the Webster's New World Dictionary definition for *state* as "(4) [*sometimes*] a body of people politically organized under one government; nation, (5) [*usually*] any of the political units forming a federal government, as in the U.S., (6) civil government" (Agnes, 1996, p. 602).

## **Germane Constitution Articles**

Louisiana has had eleven constitutions since it was admitted as a state in 1812. However, the most current writing is the 1974 Constitution, which encompasses Articles I through XIV. The components germane to this study include *Article III* addressing the Legislative Branch, *Article V* addressing the Judicial Branch, and *Article VIII* addressing Education for the state. The 1974 Louisiana Constitution used in this dissertation includes amendments passed and enacted through calendar year 2013.

The purpose for providing specifics from *Articles III, V and VIII* is to offer clarity and understanding of these three distinct and separate entities regarding their structures and authorities and the role they play in K-12 education in Louisiana. To understand the constitutional nuances of these entities is to recognize the relationship these entities may have to K-12 school choice programs.

### **Article III. Legislative Branch: Structure and Authority**

The Louisiana Constitution, under *Article III. Legislative Branch* outlines the structure and authority of the legislature. The following identifies the relevant sections that pertain to the Senate and House and the authority afforded to the legislative members.

#### **§1. Legislative Power; Composition; Continuous Body**

Section 1.(A) Legislative Power of State. The legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives. The Senate shall be composed of one senator elected from each senatorial district. The House of Representatives shall be composed of one representative elected from each representative district. (p. 6)

The legislature serves in a part-time capacity during annual sessions. The sessions are identified in accordance with the constitution as annual regular, extraordinary, emergency, and organizational, which operate under differing rules depending on an odd-even year session. The

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following parameters are provided under §2. *Sessions* for conducting regular sessions in even-numbered years:

(3)(a) All regular sessions convening in even-numbered years shall be general in nature and shall convene at noon on the second Monday in March. The legislature shall meet in such a session for not more than sixty legislative days during a period of eighty-five calendar days. No such session shall continue beyond six o'clock in the evening of the eighty-fifth calendar day after convening. (p. 6)

Regarding odd-numbered years, the regular sessions are conducted as follows:

(4)(a) All regular sessions convening in odd- numbered years shall convene at noon on the second Monday in April. The legislature shall meet in such a session for not more than forty-five legislative days in a period of sixty calendar days. No such session shall continue beyond six o'clock in the evening of the sixtieth calendar day after convening. (p. 7)

The Governor may convene *extraordinary* sessions by issuing a proclamation at least seven days prior to the session and the only business to be conducted must be specific to the proclamation. The Governor in the event of a public emergency caused by epidemic, enemy attack, or public catastrophe may convene an *emergency* session. An *organizational* session shall be convened for the purpose of the legislature for judging qualifications and elections of members, taking the oath of office, organizing the two houses, and selecting officers.

The following table identifies the qualifications as stated in the Louisiana Constitution under *Article III. §4* as it relates to any person who seeks to hold legislative office.

**Table 4.1: Qualifications for Legislators**

Category	Qualifier
Minimum Age	18
Residence in Louisiana	2 years
Residence in District	1 year
Term	4 years
Term Limit	3 consecutive terms
Takes Office	Same day as other elected officials

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The legislature has two primary roles: passage of laws and appropriations. The Louisiana Constitution provides the following introduction to passage of bills:

### **§15. Passage of Bills**

Section 15.(A) Introduction; Title; Single Object; Public Meetings. The legislature shall enact no law except by a bill introduced during that session, and propose no constitutional amendment except by a joint resolution introduced during that session, which shall be processed as a bill. Every bill, except the general appropriation bill and bills for the enactment, rearrangement, codification, or revision of a system of laws, shall be confined to one object. Every bill shall contain a brief title indicative of its object. Action on any matter intended to have the effect of law shall be taken only in open, public meeting. (p. 10)

In addition, all bills shall have no general reference. Amendments must be germane to the bill, must allow for three readings on separate days in each house, and must follow procedure regarding rejected bills and concurrence in amendments. Bills shall not become law without the favorable vote of at least a majority of the members elected to each house.

Regarding *§16. Appropriations*, the Louisiana Constitution stipulates the authority is given to the legislative branch of the government. The authority provided in this section speaks to (A) Specific Appropriation for One Year, (B) Origin in the House of Representatives, (C) General Appropriation Bill; Limitations, (D) Specific Purpose and Amount, and (E) Extraordinary Session.

The Legislative Branch has the authority and responsibility for creating, proposing, debating and passing legislation to include education legislation. The legislature has a limited time period to perform these duties in any given year and must consider the likelihood that proposed legislation is introduced, passed and signed into law by the Governor. Passing legislation and providing appropriations for the K-12 education system can be performed annually in Louisiana. However, passing legislation for school choice programs can be a multi-year process. Therefore, knowledge of the Legislative Branch and its process is essential to



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ensuring an education system is available to all citizens in Louisiana.

### **Article V. Judicial Branch: Structure and Jurisdiction**

Like other court systems, both federal and state, there is a legal structure to the courts and Louisiana identifies a structure in its constitution under *Article V. Judicial Branch*. §1 that states, “The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article” (p. 17).

#### **Supreme Court**

*Article V. §3, 4, 5 and 6* in the constitution specifies that the Louisiana Supreme Court is composed of a chief justice, which is the oldest in point of service, and six associate justices. The state is divided into at least six Supreme Court districts, and at least one judge shall be elected from each district and will serve a term of ten years. The authority given to the Supreme Court under the constitution consists of:

1. General supervisory jurisdiction over all other courts;
2. Establish procedural and administrative rules not in conflict with law;
3. Assign sitting or retired judges to any court;
4. Sole authority to provide by rule for appointments of attorneys as temporary or ad hoc judges of city, municipal, traffic, parish, juvenile, or family courts;
5. Exclusive original jurisdiction of disciplinary proceedings against a member of the bar;
6. Jurisdiction in civil cases extends to both law and facts and in criminal matters its appellate jurisdiction extends only to questions of law; and
7. Cases shall be appealable if a law or ordinance has been declared unconstitutional, or the defendant has been convicted of a capital offense and a penalty of death actually has been imposed.

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### **Courts of Appeal**

*Article V.* §8 of the constitution states, “The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court” (p. 18). Additional information is provided in §8, 9, 10, 11 and 12 stipulating judges who are elected in their district. Each court of appeal will have a chief judge who will be the oldest in point of service, and will serve terms of ten years. The jurisdiction given to the Courts of Appeal consists of:

1. Appellate of all civil matters, including direct review of administrative agency determinations in workers’ compensation matters as heretofore or hereafter provided by law;
2. Appellate of all matters appealed from family and juvenile courts;
3. Appellate of all criminal cases triable by a jury, except death penalty cases;
4. Supervisory over cases which arise within its circuit;
5. Appellate of a court of appeal extends to law and facts;
6. Appellate extends only to question of law in criminal cases; and
7. Certifying any question of law before it to the Supreme Court.

### **District Courts**

Regarding courts organized at the district level, *Article V. §14, 15, 16 and 17* of the constitution discuss the particulars. District Court is located in judicial districts and composed of at least one parish and served by at least one district judge, who is elected for a term of six years. The number of judges is not specified, but the legislature may change the number of judges in any judicial district by a two-thirds vote in the house. The jurisdiction given to the District Courts is:

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1. Original over all civil and criminal matters;
2. Exclusive original of felony cases and of cases involving title to immovable property;
3. The right to office or other public position;
4. Civil or political right;
5. Probate and succession matters; and
6. The appointment of receivers or liquidators for corporations and partnerships.

### **Other Courts**

The Constitution identifies other courts such as juvenile courts, family courts, mayors' courts, and justice of the peace courts. These courts have jurisdiction that pertains to the limitations identified under the Constitution.

The Judicial Branch identifies a structure that includes the various levels and responsibilities of the courts, and therefore it is important to know which court to petition and in what district for the type of case to be litigated. Challenges to K-12 school choice programs are not determined to be criminal cases, therefore are rendered as civil cases and use civil law to adjudicate. In addition, the Judicial Branch decides the merits and the outcome of a case, which establishes precedence known as case law.

### **Article VIII. Education: Structure and Authority**

The Louisiana Constitution provides structure and authority for the education system within the state under *Article VIII. Education*, which states “The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential” (p. 69).

As written under *Article VIII. §1. Public Education System* of the constitution, “The

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legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system” (p. 69).

The Louisiana Constitution differentiates between elementary and secondary education and postsecondary education and has a two-prong structured education system that is tiered. The first prong consists of the legislature, Board of Regents and Boards of Supervisors for postsecondary education. The second prong consists of the legislature, State Board of Elementary and Secondary Education or BESE and a State Superintendent for K-12 education.

The first tier is the legislature, which has the authority to propose and pass bills and provide appropriations in support of an education system. The next tier consists of two boards: the Board of Regents and the State Board of Elementary and Secondary Education or BESE. The Board of Regents is a body corporate that has authority to plan, coordinate and manage the budget for public postsecondary education. Under the Board of Regents is a tier that consists of four Boards of Supervisors, which are body corporates and have the authority to supervise and manage postsecondary education within the powers vested by the Board of Regents.

Since the focus of this study is K-12 education, it is important to identify and understand the structure of the State Board of Elementary and Secondary Education or BESE, which has authority over K-12 public education. There is a tier under this board, which is a State Superintendent of Education.

The State Board of Elementary and Secondary Education or BESE consists of eleven members with eight members elected based on districts and three members appointed by the Governor. Each member, elected or appointed, shall serve four-year terms, which are concurrent with the term of the Governor. Members are limited to three terms; if a vacancy of more than one year occurs for an elected member, an election will be held to fill the vacancy while other

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vacancies shall be filled by appointment by the Governor.

The next tier under this board is the State Superintendent of Education and *Article VIII*.

§2 identifies the authority and selection of the individual as follows:

There shall be a superintendent of education for public elementary and secondary education who, subject to provisions for appointment in lieu of election set forth in Article IV, Section 20, of this constitution, shall be elected for a term of four years. If the office is made appointive, the State Board of Elementary and Secondary Education shall make the appointment. He shall be the administrative head of the Department of Education and shall implement the policies of the State Board of Elementary and Secondary Education and the laws affecting schools under its jurisdiction. The qualifications and other powers, functions, duties, and responsibilities of the superintendent shall be provided by law. (pp. 69-70)

The superintendent is currently an appointed position as authorized under *Article IV, §20*. The Board of Elementary and Secondary Education or BESE, based on a two-thirds vote, appoint the superintendent and shall be subject to confirmation by the Senate as stated under Title 17 of the Louisiana Code.

In Louisiana, there are multiple levels and boards that have authority and responsibility for the education system. The BESE is the board that has authority and responsibility for K-12 education and is tasked to ensure the Superintendent is implementing K-12 school choice programs in accordance with law and policy.

### **Case Law**

Case law is pertinent to understanding the education system and school choice programs when legislation or laws that are passed and implemented succumb to challenges at both the federal and state level. Entities that believe said legislation or laws are unconstitutional or discriminatory employ the judicial system to seek remedy where judges have authority and responsibility for ruling or deciding cases based on presented evidence, merits and interpretation.

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These judicial decisions are referred to or known as *case law* and establish precedence for future cases.

As with any system, there are flaws. The expectation in this case is that challenges may arise as to the legality of said laws when establishing school choice programs within the education system. To understand school choice programs in Louisiana, a state that constitutionally allows for a variety of choice, it is important to identify relevant case law as it relates to education and the school choice programs enacted within the state.

As previously stated, cases relevant to school choice programs are challenged based on a focus surrounding public funding and religion. The following cases are particular to the State of Louisiana and the challenges made to legislation related to school choice programs within the education system.

### **Cochran v. Louisiana State Board of Education**

This case, *281 U.S. 370 (1930)*, addresses the use of public funds to provide free schoolbooks to children of the state in primary and secondary education. This case charged that the State Board of Education and state officials violated the state constitution and the 14<sup>th</sup> Amendment of the federal constitution when the board provided schoolbooks to children in the State of Louisiana who attend private school. The court dismissed the due process claim under the 14<sup>th</sup> Amendment. Regarding the state constitution and the claim that providing schoolbooks to children that attend private school as a taking of private property for a private purpose, the court decided that providing schoolbooks are a benefit to the children and the state, not the school.

This case is identified as essentially laying the foundation for the *child benefit test* that has been used in subsequent cases regarding the use of appropriated funds and what entity is

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determined to be the beneficiary based on legislative action.

### **Brumfield v. Dodd**

In case *405 F. Supp. 338 (1975)*, the plaintiffs filed a civil action against the Louisiana State Department of Education, et al. addressing the use of public funds for books, school material, and transportation to all-white, segregated private schools in the State of Louisiana. The US District Court, Eastern District of LA stated in the decision under “Order: (1) the defendants and their agents are permanently enjoined from distributing or otherwise making available textbooks, library books, transportation, school supplies, equipment, and any other type of assistance, or funds for such assistance, to any racially discriminatory private school or to any racially segregated private school” (p. 349).

As ruled in the Cochran case, children can be afforded textbooks and other provisions for education in Louisiana when they attend private school, and the children are the beneficiaries. However, when it is determined that a private school is discriminatory in its enrollment, appropriations are ruled as unconstitutional.

### **Charlet v. Legislature of the State of Louisiana**

In case *713 So. 2d 1199 (1998)*, the Court of Appeal of Louisiana, First Circuit heard from plaintiffs alleging the state was negligent in fulfilling or meeting its responsibility to provide a minimum foundation of education to all children in the public schools. That funding is allocated inequitably, which violates the plaintiffs’ constitutional rights to equal educational opportunity. The Louisiana Constitution requires under the minimum foundation program (MFP) that appropriations are to be distributed based on a formula developed annually by the Board of Elementary and Secondary Education (BESE). The plaintiffs argued that the funding provided under the minimum foundation program (MFP) is not sufficient, therefore denying equal

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educational opportunity. The court speaks to the common usage of *minimum*, which the court does not believe necessary to redefine, and that the appropriate authorities allocated funding based on the MFP formula under the Louisiana Constitution. The decision resulted in the plaintiff's claim being dismissed.

This decision focused on the constitutional mandates that BESE develop an annual funding formula and the legislature is to allocate funds, which both entities demonstrated compliance as it relates to providing funding to school districts.

### **Mitchell v. Helms**

This case, *530 U.S. 793 (2000)*, U.S. Court of Appeals, 5<sup>th</sup> Circuit Court in New Orleans, addresses the use of public funding as provided under Chapter 2 of the Education Consolidation and Improvement Act of 1981 that distributes federal funds via the state to local educational agencies (LEA) that lends educational materials and equipment, including library and media materials and computer software and hardware. Elementary and secondary schools use these funds to implement various programs. The respondents alleged that Jefferson Parish violated the 1<sup>st</sup> Amendment or Establishment Clause under the U.S. Constitution when the parish allocated Chapter 2 funds to private religious schools. The court ruled that Chapter 2 is not a law establishing a religion, therefore, the use of Chapter 2 funds in itself does not establish a religion simply because funds are provided to private schools.

The Louisiana Constitution does provide for the allocation of public funds to be used by children attending private institutions. This ruling demonstrates the implication of the *child benefit test* under the Cochran case, which continues to be a test or consideration when deciding school choice cases in Louisiana.



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## **Louisiana Federation of Teachers v. State of Louisiana**

Case 118 So. 3d 1033 (2013) stipulates that the plaintiffs challenged Senate Concurrent Resolution or SCR 99 and the 2012 La. Acts 2, two Louisiana legislative instruments passed in the 2012 session as unconstitutional. Acts 2 created a Course Choice Program and amended the voucher program known as the Student Scholarships for Educational Excellence Program or SSEEP. The SCR 99 is the legislative vehicle used to approve the minimum foundation program (MFP) for 2012-2013. The plaintiffs claimed that under the Constitution, the MFP funds, which are allocated based on the formula approved by the state, are to be *allocated equitably to parish and city school systems* for public school education and not diverted to nonpublic schools by way of a voucher program. The opinion of the Supreme Court of Louisiana did not evaluate the merits of SCR 99 and La. Acts 2, but did determine that SCR 99 and La. Acts 2 violate the Constitution regarding the *diversion* of MFP funds.

This ruling stated that the Constitution is clear regarding the use of MFP funds for all public elementary and secondary schools. However, the Constitution is also clear that the legislature shall appropriate funds for textbooks and other instructional materials to the children of the state at elementary and secondary levels. The court opined that the Constitution is to provide all children of the state an education, regardless of public or nonpublic, but the MFP is to be annually developed by Board of Elementary and Secondary Education, fully funded by the legislature and allocated equitably to parish and city school systems (1974).

## **Political Culture**

Elazar's (1984) political culture theory is grounded in migration patterns based on religious and ethnicity identifiers that occurred over several decades. Beginning with the founding of the United States, immigrants from various cultures with differing religious

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backgrounds entered the country primarily in the east. Due to westward expansion, the diversity within the population sought various opportunities.

This dissertation recounts Elazar's (1984) political culture theory, which identifies Louisiana as a state that demonstrates a dominant *traditionalistic* subculture. As previously stated, this subculture reflects "an ambivalent attitude toward the marketplace coupled with a paternalistic and elitist conception of the commonwealth" (p. 118).

Political culture is an indicator that Elazar theorizes as a driver of legislative action to promote various social and societal programs within communities and states, such as school choice programs. Based on Louisiana's cultural beliefs of the community and state political leaders and their objectives, it is established that legislation is proposed, political votes are cast, and school choice programs that others determine to meet the needs of the constituents are passed and implemented.

### **School Choice Programs**

As identified in Chapter II, Louisiana has legislative authority for charter, homeschooling, open enrollment, tax credit and voucher programs. These programs support students that choose to attend institutions in both the public and private sectors within the 69 school districts.

A school choice program in Louisiana is charter schools with 144 approved charters in the state. As identified in *2006 Louisiana Laws, Title 17. Education*, charter school guidelines are provided in order to establish, categorize, and fund these non-profit, state-approved institutions. Louisiana allows 5 types of charter schools, which are publicly funded using vouchers and given flexibility to obtain private funding. In addition, open enrollment is utilized so that parents, during the application process, are given the opportunity to identify the school

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they choose for their child to attend. Based on the Louisiana Department of Education website, the majority of charter schools are located in Baton Rouge and New Orleans.

In the wake of Hurricane Katrina, Louisiana established the Recovery School District or RSD. The first RSD was created in New Orleans due to the devastation from the hurricane and data showing that public schools were consistently underperforming, thereby allowing an intervention by the Louisiana legislature and Department of Education. The state intervened by transforming public schools into charter schools as an RSD, a tool used by the state when public schools are low performing. The Louisiana Department of Education currently has ten years of data and are building their case to reflect that New Orleans schools are experiencing improved performance. Subsequently, Louisiana has identified additional RSDs in East Baton Rouge, Caddo, St. Helena and Point Coupee parishes (Louisiana Department of Education, 2016).

Louisiana allows parents to homeschool their children, but they must complete an application and be approved. The Board of Elementary and Secondary Education or BESE provides the approval through authorized home study programs, or families may apply with a registered nonpublic school. To meet state attendance laws, parents are required to apply and seek approval annually with BESE. Parents are responsible for deciding on the curriculum and providing instruction. Children participating in homeschooling are not required to take state assessments and may participate in interscholastic athletic activities.

Lastly, Louisiana offers another type of school choice known as tax credit programs and currently authorizes two such programs. The Tuition Donation Rebate Program provides private school scholarships up to 80 percent of the MFP for students in grades K-8 and 90 percent of the MFP for students in grades 9-12. The Elementary and Secondary School Tuition Deduction provides 100 percent of eligible education expenses to include expenses for private school. These

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two programs provide tax incentives for individuals donating funds for educational expenses to be used in public and private institutions (The ABCs, 2014).

### **Summary**

Louisiana, a *state*, is unique in its constitutional foundation as the only state in the union based on Napoleonic law. However, it does have constitutional components or articles that include a legislative branch, judicial branch and education system. These constitutional components or articles lay out the structure and authority or jurisdiction of each entity that plays a part, affording responsibility for providing and supporting school choice programs in the education system within the state.

Louisiana has a range of school choice programs that are provided to the citizenry of the state with the particulars of these programs being legislated over several years. Coupling the constitutional authority and responsibility factors with legal challenges to education legislation, the range of enacted school choice programs within the state, and the precedence derived from case law, school choice programs continue to remain a legal quagmire for the diverse population of Louisiana.

## **CHAPTER V: COMMONWEALTH OF VIRGINIA**

### **Introduction**

The Commonwealth of Virginia, one of the original thirteen colonies, was the tenth state to be admitted into the Union on June 25, 1788 and covers an area of approximately 42,700 square miles. George Mason, a landowner, businessman, justice, trustee, and member of the Virginia House of Burgesses is credited with drafting the original Virginia Bill of Rights or Virginia Constitution in 1776. This is the same year Thomas Jefferson wrote the United States Declaration of Independence, in addition to contributing to the Virginia Constitution through various writings.

Like the federal government, Virginia's government structure includes legislative, executive, and judicial branches with the Virginia General Assembly. It is recognized as the oldest legislative body in the union, its legal foundation deriving from England's system of common law. The first Virginia Constitution is credited to George Mason, but included representatives of the people of Virginia and was adopted as the original written document in June 1776 (Branson, 2016). Stemming from this legal foundation is the need to identify the different components within the state constitution that may impact the education system and K-12 school choice programs. To help determine any probable connection to K-12 school choice programs, it is necessary to identify and discuss the structure of the legislative, judicial, and education systems, the structural authorities and jurisdictions within these systems as provided under the constitution, as well as its political culture, all of which contribute to understanding the education system in Virginia.

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In addition, this dissertation identifies the Webster's New World Dictionary definition for *commonwealth* as "(1) the people of a nation or state, (2) a democracy or republic, (3) a federation of states" (Agnes, 1996, p. 118).

## Germane Constitution Articles

Virginia has had six major revisions of its constitution and many amendments since the original in 1776. However, the most current writing is the 1971 Constitution, which encompasses Articles I through XII. The components germane to this study include *Article IV* addressing the Legislature, *Article VI* addressing the Judiciary, and *Article VIII* addressing Education for the Commonwealth. The 1971 Virginia Constitution used in this dissertation include amendments passed and enacted through legislative session 2015.

The purpose for providing specifics from *Articles IV, VI and VIII* is to provide clarity of these three distinct and separate entities as well as an understanding of their structures and authorities and the role they play in K-12 education in Virginia. To recognize the constitutional nuances of these entities is to have an awareness of any relationship there may be to K-12 school choice programs.

### Article IV. Legislature: Structure and Authority

The Virginia Constitution under *Article IV. Legislature* outlines the structure and authority of the General Assembly. The following identifies the relevant sections that pertain to the Senate and House of Delegates and the authority afforded to the legislative members.

#### Section 1. Legislative power.

The legislative power of the Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates. (p. 8)

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The legislature serves in a part-time capacity during annual sessions. The sessions are identified in accordance with the constitution as regular or special, which operate under differing rules depending on an even-odd year session. The following provides the perimeters regarding regular sessions:

### **Section 6. Legislative sessions.**

The General Assembly shall meet once each year on the second Wednesday in January. Except as herein provided for reconvened sessions, no regular session of the General Assembly convened in an even-numbered year shall continue longer than sixty days; no regular session of the General Assembly convened in an odd-numbered year shall continue longer than thirty days; but with the concurrence of two-thirds of the members elected to each house, any regular session may be extended for a period not exceeding thirty days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days. (p. 9)

The Governor may convene *special* sessions based on the Governor's opinion that it is in the interest of the Commonwealth and shall convene based upon the application of two-thirds of the members of each house.

Regardless of the convening of a regular or special session, the following additional time frames are provided under *Section 6. Legislative sessions*:

The General Assembly shall reconvene on the sixth Wednesday after adjournment of each regular or special session for the purpose of considering bills which may have been returned by the Governor with recommendations for their amendment and bills and items of appropriation bills which may have been returned by the Governor with his objections. No other business shall be considered at a reconvened session. Such reconvened session shall not continue longer than three days unless the session be extended, for a period not exceeding seven additional days, upon the vote of the majority of the members elected to each house. The General Assembly may provide, by a joint resolution approved during a regular or special session by the vote of the majority of the members elected to each house, that it shall reconvene on a date after the sixth Wednesday after adjournment of the regular or special session but no later than the seventh Wednesday after adjournment. (p. 9)

The following table identifies the qualifications as stated in the Virginia Constitution under *Article IV. Section 4* as it relates to any person who seeks to hold legislative office (p. 8).

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**Table 5.1: Qualifications for Legislators**

Category	Senate	House of Delegates
Minimum Age	21	21
Residence in Virginia	1 year	1 year
Residence in District	Must reside in district seeking to represent	Must reside in district seeking to represent
Term	4 years	2 years
Election	Tuesday succeeding the first Monday in November	Tuesday succeeding the first Monday in November
Requirement	Qualified to vote	Qualified to vote
Employment	If elected, resign from salaried government position	If elected, resign from salaried government position

The legislature has the authority for enacting laws, some limited authority regarding the courts, and the appropriation of public funds. The Virginia Constitution provides the following introduction regarding the enactment of laws:

**Section 11. Enactment of laws.**

No law shall be enacted except by bill. A bill may originate in either house, may be approved or rejected by the other, or may be amended by either, with the concurrence of the other. No bill shall become a law unless, prior to its passage:

- (a) it has been referred to a committee of each house, considered by such committee in session, and reported;
- (b) it has been printed by the house in which it originated prior to its passage therein;
- (c) it has been read by its title, or its title has been printed in a daily calendar, on three different calendar days in each house; and
- (d) upon its final passage a vote has been taken thereon in each house, the name of each member voting for and against recorded in the journal, and a majority of those voting in each house, which majority shall include at least two-fifths of the members elected to that house, recorded in the affirmative. (p. 10)

In addition, the General Assembly is required to ensure that each house maintains journals for the purpose of recording legislative proceedings, that no law shall embrace more than one subject, and that the laws enacted in regular session become effective on the first day of July following the session.



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Pursuant to *Section 14. Powers of General Assembly; limitations.* the legislature “shall confer on the courts power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities” (p. 11) and “may regulate the exercise by courts of the right to punish for contempt” (p. 11). However, this section identifies twenty areas where the legislature does not have authority to enact any local, special or private law in cases regarding judicial action, local authority, taxation, elections, private business and duties and authorities assigned to other agencies.

The Virginia Constitution does not provide or stipulate specifics regarding the appropriation of public funding by the legislature, but it is clear that the legislature is the authority for allocating or providing appropriations. However, there is one specific, and that is to ensure no public funds are provided for any religious or sectarian purpose as stated in the following:

### **Section 16. Appropriations to religious or charitable bodies.**

The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution, which is not owned or controlled by the Commonwealth; the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youthful criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association. (p. 13)

Though there are not specifics regarding appropriations outside of *Section 16*, the legislature is the entity with the authority to appropriate public funding in order to support the needs of the citizens of Virginia.

The Legislature or General Assembly has the authority and responsibility to pass legislation and appropriate public funds for education in Virginia. Due to limitations and time

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constraints to perform these duties in any given year, the assembly must consider the probability that proposed legislation will be passed and signed into law by the Governor. Passing legislation as it relates to school choice programs and providing appropriations for K-12 education is an annual process. However, legislation may require multi-year action, as was the case in the 2016 session when the legislature attempted to pass a constitutional amendment regarding charter schools. Therefore, knowledge of the legislature and its processes are essential to providing an education system of high quality in Virginia.

### **Article VI. Judiciary: Structure and Jurisdiction**

Like other court systems, both federal and state, there is a legal structure to the courts, and Virginia identifies a structure in its constitution under *Article VI. Judiciary*. This structure encompasses twelve sections that address the courts, judges and authorities as they relate to the judiciary. The highest court in the Commonwealth is the Supreme Court with all judicial authority falling under the purview of the Supreme Court and the General Assembly.

#### **Supreme Court**

The Virginia Constitution identifies the Supreme Court as the court with overarching authority and jurisdiction for all other courts of record in the Commonwealth. The first paragraph under *Article VI. Section 1* states:

The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record. (p. 18)

The second paragraph in *Section 1* provides further clarification as to the structure of the Supreme Court and such other courts of original or appellate jurisdiction:

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The Supreme Court shall, by virtue of this Constitution, have original jurisdiction in cases of habeas corpus, mandamus, and prohibition; to consider claims of actual innocence presented by convicted felons in such cases and in such manner as may be provided by the General Assembly; in matters of judicial censure, retirement, and removal under Section 10 of this article, and to answer questions of state law certified by a court of the United States or the highest appellate court of any other state. All other jurisdiction of the Supreme Court shall be appellate. Subject to such reasonable rules as may be prescribed as to the course of appeals and other procedural matters, the Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any person. (p. 18)

In addition to Supreme Court authority under *Section 1*, paragraphs three and four stipulate that the General Assembly retains certain authority in judiciary matters as stated in the following:

The General Assembly may allow the Commonwealth the right to appeal in all cases, including those involving the life or liberty of a person, provided such appeal would not otherwise violate this Constitution or the Constitution of the United States.

Subject to the foregoing limitations, the General Assembly shall have the power to determine the original and appellate jurisdiction of the courts of the Commonwealth. (p. 18)

*Article VI. Sections 2 through 12* in the Virginia constitution provide additional specificities related to the Supreme Court and other courts of record (pp. 18-20). The following are highlights of the authorities and delineations within the judiciary:

1. The Supreme Court is composed of seven justices with one being selected as the chief justice.
2. The chief justice shall be the administrative head of the judicial system and may assign any judge to any court of record, except the Supreme Court.
3. The General Assembly has the authority to select Supreme Court justices by majority vote in both houses and will serve twelve-year terms.

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4. The judges of all other courts of record will be selected by the General Assembly based on majority vote in both houses for eight-year terms.
5. All justices and judges shall be residents of the Commonwealth and have been admitted to the Commonwealth bar prior to appointment or election.
6. All justices and judges shall be commissioned by the Governor.
7. The General Assembly may enact laws they deem necessary for the retirement of justices and judges.
8. The General Assembly shall create a Judicial Inquiry and Review Commission with vested powers to investigate charges, which would be the basis for retirement, censure or removal.
9. Any justice or judge is restricted from performing other activities incompatible with their judicial duties.
10. Judges have limitations regarding appointments based on local government official elections.

The Judiciary identifies a structure with overarching authority that falls on the Virginia Supreme Court with the Chief Justice as the administrative head and recognizes limited authority given to the General Assembly. Though there is a structure to the court system in Virginia, constitutionally there is the Supreme Court and courts of record. When challenging a K-12 school choice program in Virginia, it is not constitutionally clear where to file the case. Therefore, it is important to have familiarity and a rendering of the court structure for petition purposes. In addition, the Judiciary decides the merits and the outcome of a case, which establishes precedence known as case law.

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## **Article VIII. Education: Structure and Authority**

The Constitution of the Commonwealth of Virginia provides under *Article VIII. Education* eleven sections that give structure and identifies the authorities as they relate to the education system. The overall structure for educational authority is the General Assembly, Board of Education, Superintendent of Public Instruction, and Division School Boards. The following provides a brief overview of this structure and their constitutional authority.

The Commonwealth of Virginia constitutionally tasks the General Assembly to provide an education system that consists “of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained” as specified in *Article VIII. Education, Section 1. Public schools of high quality to be maintained* (p. 24). As stipulated in *Section 2*, the General Assembly, along with local government, has the responsibility to ensure funding is provided for “maintaining an educational program meeting the prescribed standards of quality” (p. 24). In addition, *Section 3* states “The General Assembly shall provide for the compulsory elementary and secondary education of every eligible child of appropriate age” and “shall ensure textbooks are provided at no cost to each child attending public school whose parent or guardian is financially unable to furnish them” (p. 24).

*Sections 4 and 5* speak to the Board of Education and their powers and duties (pp. 24-25). The board will consist of nine members, are appointed by the Governor and confirmed by the General Assembly, will serve four-year terms, and have the following powers and duties:

1. shall divide the Commonwealth into school divisions and promote the established standards of quality,

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2. shall report annually to the Governor and General Assembly the state of education in the Commonwealth and schools failing to meet the standards of quality,
3. shall certify to division school boards a list of qualified persons for division superintendent of schools to be selected by the division school board,
4. shall have authority to approve textbooks and instructional aids and materials in public schools,
5. shall have primary responsibility and authority for education policy, subject to the General Assembly, and other powers and duties prescribed by law.

The Superintendent of Public Instruction, under *Section 6*, shall be an experienced educator and is appointed by the Governor, serving for a term that coincides with the Governor that appointed the individual. The General Assembly is required to confirm the appointment and has the authority to alter the method of selection and term of office (p. 25).

The Commonwealth of Virginia provides constitutional authority to school boards under *Section 7* and tasks the local school board division to implement and manage education programs and standards of quality. The manner in which division school board members are selected, the term they serve, and member qualifications are provided by law, which are specific to each school division (p. 25).

The last component related to K-12 education is *Section 10*, which speaks to state appropriations and the use of public funding for education purposes. The Constitution specifically states, “No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof” (p. 26). The General Assembly is the authority regarding the appropriation of state funds for education.

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In Virginia, there are multiple entities that have responsibility for the education system. The General Assembly appropriates funding and the Board of Education and Superintendent of Instruction provide education policy and reports related to the education system. However, the local school boards have constitutional authority and responsibility for the K-12 education system and school choice programs within the school divisions.

### **Case Law**

Case law is relevant to the education system in that legislation is passed and becomes part of the law as the Virginia Department of Education implementing the law. Laws can be challenged at both the federal and state level by using the judicial system to seek remedy when entities believe that legislation or laws are perceived to be unconstitutional or discriminatory. Judges have authority and responsibility for ruling or deciding on a case based on presented evidence, merits and interpretation. These judicial decisions are known as *case law* and establish precedence for future cases.

As with any system there are flaws and challenges that surface and give cause for questioning the legality of said laws, which establish school choice programs within the education system. To understand school choice programs in Virginia, it is important to identify relevant case law as it relates to education and the school choice programs enacted within the commonwealth.

As previously stated, cases relevant to school choice programs are challenged based on the use of public funding and religious considerations. With Virginia having limited school choice programs, the following cases were identified and are particular to the Commonwealth of Virginia and the constitutional challenge of school choice within the education system.

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### **Schwartz v. Highland County School Board**

In this case, *346 S.E.2d 544 (1986)*, the Highland County School Board denied a religious exemption under compulsory public school attendance criteria to Orthodox Jewish parents regarding their four children. The Circuit Court of Highland County by order dated August 20, 1985 “held that the school board had not exceeded its authority, acted arbitrarily or capriciously, or abused its discretion in denying a request by appellant for religious exemption from compulsory public school attendance for their four children” (para. 2). The court ruled in favor of the School Board regarding the denial of a religious exemption.

This case speaks to the constitutional authority of the local school board as it relates to elementary and secondary education in Virginia. The local school board, who is not an administrative agency as prescribed in the Administrative Process Act, has the authority to deny a request for religious exemption.

### **Johnson v. Prince William County School Board**

This case, *404 S.E.2d 209 (1991)*, heard by the Supreme Court of Virginia, speaks to a request based on religious exemption citing *Article VIII, Section 3. Compulsory education* in the Commonwealth of Virginia Constitution and *Code § 22.1-254*. The Johnson’s claim the school board acted in an arbitrary and capricious manner and overstepped its authority. The court stated in this case that “the Johnsons’ opposition to their children’s attendance at school was not by reason of bona fide religious training or belief but, rather, by reason of essentially political, sociological or philosophical views or a merely personal moral code” (para. 30). The court affirmed the denial of a religious exemption by the school board.

This case addresses the authority given to the local school board under the Virginia Constitution to manage K-12 education to include the granting of religious exemptions from



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compulsory elementary and secondary education. The board decided the exemption request was not based on bona fide religious training or belief due to conflicting statements between the written application and public comments.

### **Political Culture**

Elazar's (1984) political culture theory is formulated around migration patterns and based on religious and ethnicity identifiers that occurred over several decades. Beginning with the founding of the United States, immigrants from various countries and cultures with differing religious backgrounds entered the United States primarily through the eastern states. Based on expansion towards the western parts of the country, the various cultures within the population sought differing opportunities.

This dissertation recounts Elazar's (1984) political culture theory, which identifies Virginia as a state that demonstrates a dominant *traditionalistic* subculture. As previously stated, this subculture reflects "an ambivalent attitude toward the marketplace coupled with a paternalistic and elitist conception of the commonwealth" (p. 118).

Political culture is an indicator that Elazar theorizes as a driver of legislative action to promote various social and societal programs within communities and states, which include school choice programs. Understanding the cultural beliefs of the community as well as the states political leadership and its objectives, it can be surmised that legislation is proposed, political votes are cast, and school choice programs that are shaped by the political culture will meet the needs of the constituents.

### **School Choice Programs**

As identified in Chapter II, Virginia has legislative authority for charter, homeschooling, open enrollment, and tax credit programs. These programs support students that choose to attend

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institutions in both the public and private sectors within the eight regions for a total of 133 school divisions.

A school choice program in Virginia is charter schools, referred to as public charter schools, and there are currently nine approved charter schools in the commonwealth. Guidelines are provided in the *Code of Virginia, Title 22.1. Education: Chapter 13, Article 1.2.*

*Establishment of Charter Schools* for establishing a public charter school that includes the purpose or type of instruction to be provided, the application process and approval, restrictions, terms of the charter, professional and licensed personnel, funding streams, and reporting requirements for these approved institutions. Currently, charter school applications are submitted to the Virginia Department of Education for review. However, the local school board gives final approval.

The Commonwealth of Virginia allows parents to choose homeschool as an option for educating their children. Though the Commonwealth has a constitutional compulsory elementary and secondary attendance requirement, the *Code of Virginia, Title 22.1-254* provides for exemptions and waivers with homeschool listed as an alternative to public school. The *Code of Virginia, Title 22.1-254.1* gives requirements for home instruction and the Virginia Department of Education website provides the *Guidelines for Home Instruction in Virginia* handbook.

Lastly, a school choice identified as a tax credit program in Virginia authorizes donations under the Education Improvement Scholarships Tax Credits Program. This program provides a tax incentive for individuals and businesses donating private dollars for educational expenses to be utilized by low-income students attending private institutions. The tax credit equates to 65 percent of the donated amount with individuals having a donation minimum amount of \$500 and

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a maximum amount of \$125,000 in any given year. However, businesses are currently not subject to any donation limits (The ABCs, 2014).

### **Summary**

Virginia, one of four Commonwealths in the nation and one of the original thirteen colonies, has constitutional components or articles that give definition regarding the legislature, judiciary and education system. These constitutional components or articles lay out the structure and authority or jurisdiction of each entity that plays a part and has certain responsibility for providing and supporting school choice programs as they relate to the education system within the Commonwealth.

Considering the limited school choice programs in the Commonwealth of Virginia, legal challenges were difficult to find based on the perspective that a case clearly indicated a direct challenge to any particular type of school choice program. The two cases discussed in this chapter focused on challenges to requests for religious exemption, which is a direct relationship to homeschooling. Though there is additional case law related to education, the preponderance of the cases are not directly related to school choice programs in the Commonwealth of Virginia.

## **CHAPTER VI: ANALYSIS OF DATA**

### **Background**

There is extensive research on the subject of school choice in the United States from a variety of different perspectives and interests (Bauries, 2014; Friedman, 1962; Merrifield, 2002, 2008; Saiger, 2007; Vergari, 2007). The premise of this dissertation focuses on political culture and school choice and how identified influencers potentially impact the education systems in the State of Louisiana and the Commonwealth of Virginia.

This study looked at the influences of constitutions, case law and public officials that may or may not impact school choice programs within Louisiana and Virginia. The influences that were focused on include the Constitution of the United States, the Louisiana and Virginia Constitutions, the political culture of Louisiana and Virginia based on Elazar's theory, federal and state case law, and interviews with selected public officials in Louisiana and Virginia.

The research and analysis of the constitutions, case law and data from the interviews with the identified public officials revealed themes, but did not reveal any cause-effect patterns; therefore logic models were not used. However, the researcher ascertained that the interviews provided consistent themes that revealed associations or relationships related to K-12 school choice programs.

Lastly, the education system in the United States is a complex system in that it has various components with varying degrees of involvement as well as differing authorities and responsibilities. Education policy and school choice programs are implemented at local and state levels while the federal level interjects authority on a case-by-case basis or with regards to a specific issue. This dissertation examines the entwining of the various influences in order to determine why some school choice programs are more or less prolific in Louisiana and Virginia.

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## Public Officials and the Constitution of the United States

The interviews were conducted with ten selected public officials in Louisiana and Virginia and represent the individual interpretations and viewpoints as they considered whether the Constitution of the United States has an impact or influences the education system regarding school choice programs. The following remarks are comments and statements extracted from the interviews conducted with the public officials in Louisiana and Virginia.

### Public Elected Officials

The remarks listed below are the perspectives of the eight elected public officials that were interviewed in Louisiana and Virginia regarding the Constitution of the United States and any influence related to school choice programs. The left column reflects comments and statements from the Senators and Representatives in Louisiana and the right column reflects comments and statements from the Senators and Delegates in Virginia.

**Table 6.1: Constitution of the United States - Elected Public Officials Remarks**

<b>Louisiana</b>	<b>Virginia</b>
Senator:  Have no idea / have to confess that's never really come up	Senator:  There is nothing except for the general welfare clause that might suggest they have any authority to have a department, much less a secretariat  It says it's the states responsibility, the general welfare clause is the excuse they use to bypass the 10 <sup>th</sup> Amendment  Equal opportunity, 14 <sup>th</sup> Amendment, but in my opinion that speaks well of school choice because of how you have an equal opportunity if you are trapped in schools that are failing
Senator:  Think it has very little impact as far as	Senator:  Basically leaves the decision to the state of

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<p>school choice goes</p> <p>Think if provide for public education, then don't think there are too many constitutional prohibitions</p> <p>To the extent the government is required regardless of who you are or what your disabilities are, you have to be provided an education</p>	<p>how we should educate our children</p> <p>Federal government has overstepped its bounds as far as the constitution is concerned</p> <p>There are programs that come from the federal level, but it's up to each state to deliver an education</p>
<p>Representative:</p> <p>Not familiar with / good question</p>	<p>Delegate:</p> <p>Something called the 10<sup>th</sup> Amendment</p> <p>Constitutionally, education was not an issue the federal government was given authority over</p>
<p>Representative:</p> <p>The right to enjoy certain things, the liberties that come with being a citizen</p>	<p>Delegate:</p> <p>Federal constitution doesn't mention anything about public education</p> <p>We like to refer to Jefferson obviously, being Virginians, but he saw it a state function</p> <p>Founders thought it was the responsibility for the states and localities and to a large regard, families</p> <p>The original intent in the reason education became a federal issue was because of discrimination</p> <p>Even though I'm a republican, NCLB was one of the worst policies put in place; it unrealistic and takes away the state's flexibility to do things</p>

The remarks of the eight elected public officials in Louisiana and Virginia differ in their grasp or familiarity with the Constitution of the United States and any potential influence it may or may not have regarding school choice programs and the education system under their purview.

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The public officials in Louisiana identified very little to no influence between the Constitution of the United States and school choice programs in their state. Two officials remarked it was not something they previously considered while the other two commented on a relationship to ensuring a system of education and liberties for all citizens in the United States.

The Virginia public officials articulated there is a relationship based on the 10<sup>th</sup> and 14<sup>th</sup> Amendments and federal programs created at the federal level. All four officials expressed their belief that education is a state responsibility, not a federal responsibility, and one official spoke to the historical significance and connection Virginia has with the founding fathers.

A few points to consider are that Louisiana was not a state until 1812, its legal foundation stems from French Law, and it did not have representatives involved with the creation of the Constitution of the United States. On the other hand, the Commonwealth of Virginia is one of the original thirteen colonies, was admitted into the Union in 1788, its legal foundation is based on Common Law, and it is home to several founding fathers, including James Madison, the author of the Constitution of the United States.

The interviews revealed a consistent theme that the Constitution of the United States does not have a provision for education, and that education decisions are left to the states. Though some factors identified above could be perceived as potential influences, the researcher did not identify any direct influence between the Constitution of the United States and school choice program decisions in the two states based on the interview data.

### **Public Appointed Officials**

The following remarks are extracted from the comments and statements that were recorded during the interviews with the two superintendents in Louisiana and Virginia as they relate to the Constitution of the United States and any influence over school choice programs.

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The remarks in the left column are from the superintendent in Louisiana and the remarks on the right column are from the superintendent in Virginia.

**Table 6.2: Constitution of the United States - Superintendents Remarks**

<b>Louisiana</b>	<b>Virginia</b>
Superintendent:  Potentially symbolic relationship, but no legal relationship  Doesn't speak to the education system	Superintendent:  Idea of equal opportunity in general  Some repercussions around school choice that are both positive and negative  Constitutionally protected by the 14 <sup>th</sup> Amendment  US Constitution's biggest impact is through those rights of access

Both superintendents reflected an awareness of the lack of federal constitutional authority as it relates to an education system and school choice programs. The superintendent in Louisiana stated there is no mention of an education system or direct legal authority, whereas the superintendent in Virginia spoke of the 14<sup>th</sup> Amendment, equal opportunity and rights that are education related issues influenced by the Constitution of the United States.

### **Summary**

Regardless of the differences in Louisiana and Virginia history, the analysis of the interviews supports the theme that the majority of the public officials in both states believe the Constitution of the United States does not have an education provision and has no direct influence on the education system and school choice programs within Louisiana and Virginia.

### **Public Officials and State Constitutions**

The Louisiana Constitution depicts a more detailed structure and multiple levels of authorities for the legislative branch, judicial branch and education system, whereas, the Virginia



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Constitution provides a less detailed structure and limited levels of authorities for the legislature, judiciary and education system. The following summary is provided regarding the two state constitutions.

### **Legislative Branch**

The Louisiana and Virginia legislatures work within a set of constitutional rules regarding political leadership, type and length of session, and when they convene. There are precise yet differing requirements stipulating eligibility to run for office, term of the office, and how long an individual may hold office. As previously stated, the Louisiana legislature is term limited, and this has the potential to influence urgency and need for bipartisan action as it relates to debating and passing legislation. However, the Virginia General Assembly does not have term limits, and this factor may negate urgency as well as promote partisan action when debating and passing legislation.

Each legislature has the opportunity to propose education legislation during its general session. However, the political leadership and the office terms afforded the legislature may have greater influence toward school choice programs than the state constitution.

### **Judicial Branch**

Based on constitutional structures and jurisdiction, there are similarities and differences. The Louisiana Constitution provides a more detailed and specific structure regarding the various courts and jurisdiction when presiding over cases. Judges serve different terms based on the court they preside over and are elected. The Commonwealth of Virginia provides less detail regarding structure and provides greater autonomy and jurisdiction to its Supreme Court over the lower courts with the General Assembly retaining limited authority. Supreme Court judges serve

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twelve-year terms while all other judges serve eight-year terms and are appointed by the General Assembly.

Based on the number of cases as well as types of school choice programs identified in this dissertation, it may be perceived that the Louisiana Judicial Branch realizes more influence over school choice programs than does the judiciary in Virginia.

### **Education**

Again, the Louisiana Constitution provides more detail regarding structure and authority for the education system and consists of multiple levels and boards. The Louisiana legislature passes education laws and various state bodies within the structure to establish policy that is enacted and managed by the Board of Elementary and Secondary Education and state superintendent for K-12 education. Though Virginia has multiple levels of authority, its structure consists of one board at the state level to establish and implement K-12 education policy. The Virginia Constitution does not provide detail regarding the authority of the Superintendent of Public Instruction and local school boards. However, the General Assembly does pass education laws and the Board of Education establishes education policy to be enacted and managed by the Superintendent of Public Instruction and local school boards.

A primary difference between the Louisiana and Virginia Constitutions centers on managing K-12 education and where school choice programs obtain approval. The Louisiana Constitution retains state level authority while the Virginia Constitution affords authority to the local school boards.

### **Public Elected Officials**

The eight elected public officials in Louisiana and Virginia, based on their experience and knowledge with having served more than one term in office, provided individual

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interpretations and perspectives regarding how each state constitution influences the education system and the school choice programs that exist in Louisiana and Virginia. The remarks in the left column reflect the comments from the four Louisiana officials and the remarks in the right column reflect comments from the four Virginia officials.

**Table 6.3: State Constitution - Elected Public Officials Remarks**

<b>Louisiana</b>	<b>Virginia</b>
<p>Senator:</p> <p>The Louisiana Constitution is a strange critter; was written in 1973, the current one, and it has some very simple language</p> <p>The state shall create schools and a system of education that is equitable and so forth and the state shall create school boards, but it says nothing about what they are to do</p> <p>Provide a minimum foundation program</p>	<p>Senator:</p> <p>There is a particular provision in the constitution that speaks to whether or not state funds go to private institutions</p> <p>It makes it fairly clear that the responsibilities lie with local, localities and that gives the power to the school boards</p> <p>Provision language that speaks to whether or not the state taxpayer dollars can go to local interest</p>
<p>Senator:</p> <p>It hasn't / if there is any, if there has been any hindrance to school choice, we've been able to work around it</p> <p>Primarily with the way we fund education</p>	<p>Senator:</p> <p>We have to provide an education to all students</p> <p>Think that probably the one thing that affects education in Virginia is the fact that our constitution says that we have to provide that to all students, it's how do we provide that</p>
<p>Representative:</p> <p>Don't think necessarily that it does</p> <p>Think the only time that it's impacted is in the way you present the legislation</p>	<p>Delegate:</p> <p>It prohibits us in our school choice decisions from even giving tax breaks to people who send their children to parochial schools</p> <p>The authority for education has been given to the localities</p>
<p>Representative:</p> <p>In Louisiana we have four-year terms, we</p>	<p>Delegate:</p> <p>Think the constitution has always been very</p>

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<p>are termed out after the third term</p> <p>What we've done is to ensure that all kids are entitled to quality education and ultimately that's what it's all about</p>	<p>clear that education is an important component and responsibility for the state's government</p> <p>Another thing I think has changed regarding school choice programs, related to our constitution, is we've been struggling with how we provide or have Charter Schools</p> <p>We're going to have to change the constitution to allow that authority, because Charter Schools have to work through the local school boards, because they have that authority, invested in that authority</p> <p>We have elected school boards now and I think some people would say that's made them more accountable</p> <p>One problem with the system is they are accountable for policies, but not accountable for funding; there's been some indication from City Councils and Boards of Supervisors they would like school boards to be more accountable for the funds they spend</p> <p>Part of that is our constitution is very specific and very clear on school boards and very strong on education, but it's also limited us</p>
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The elected public officials in Louisiana addressed how the state constitution influences school choice programs and particularly towards education funding and the use of the Minimum Foundation Program (MFP), which provides the formula for the annual allocation of appropriations for K-12 education.

One official mentioned term limits and the perception of urgency this may have on proposed legislation. The reality of having time constraints as it relates to term limits and passing legislation might have the potential to influence the political commitment as it relates to quality

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education and school choice programs. However, further research would need to be performed as this is the opinion of one public official and is not conclusive.

Another official commented on the way legislation is drafted and presented, when there are perceived hindrances to school choice programs, the issues are worked through by the legislators and resolved prior to legislation submitted for committee vote.

In Virginia, the elected public officials speak in relation to the constitutions impact on funding issues and that authority is given to local school boards limiting the ability to pass legislation for school choice programs. A primary factor in Virginia regarding the approval and implementation of school choice programs is where the authority lies, and the Constitution clearly states it lies with local school boards. As one official stated above, in order to expand charter schools in Virginia, it will require a constitutional solution. In the 2016 legislative session, a constitutional amendment was introduced that would allow charter school approval at the state level as well as at the local level. The amendment did not pass the Senate, and this is one example of a hindrance to the expansion of charter schools and additional school choice programs in Virginia.

The remarks from the eight officials identify that state constitutions do influence the education system and school choice programs. The most visible theme that emerged from the interviews reveals that state constitutions provide a structure and authority for K-12 education and school choice programs. While each state's constitution provides a structure, the structures differ in who has influence over what and how the decision-making process is managed. Both Louisiana and Virginia have multiple entities involved in education as well as multiple types of school choice programs that are incorporated into each state's education systems.

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### Public Appointed Officials

The two superintendents in Louisiana and Virginia, based on their experiences in education, provided their interpretations and perspectives regarding how the state constitution influences the education system as it relates to school choice programs in Louisiana and Virginia. The remarks provided in the column on the left are comments from the superintendent of Louisiana and the remarks in the column on the right are comments from the superintendent of Virginia.

**Table 6.4: State Constitution - Superintendents Remarks**

<b>Louisiana</b>	<b>Virginia</b>
Superintendent:  Creates powers, particularly the powers of the State Board of Education and the legislature to define the education system  It gives the legislature the power to create the school system thus the power to create a system of school choice  Probably the constitutional power of our board is greater than in most places  State Superintendent Office is greater than in most places  The limit is really a limit on gubernatorial authority over the education system more than anything else	Superintendent:  The Virginia constitution speaks to a definition of quality  The constitution sets down some expectations for performance  Through one lens for the state constitution we get to look at, how does the constitutional guarantee for quality play out through choice and those kinds of things  The clear edict in the constitution that gives local control to schools, a higher standing

The superintendents spoke more of constitutional authority, not structure, for K-12 education. Both recognized the importance of that authority in driving educational decision-making including school choice programs. The superintendent of Louisiana recognized that authority lies at the state board level, while the superintendent of Virginia recognized

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constitutional authority is afforded to local school boards to manage and maintain the K-12 education system.

### **Summary**

The State of Louisiana and the Commonwealth of Virginia operate under separate and distinct constitutions with separate and distinct constitutional structures and authorities. The emerging theme revealed through the interviews conducted with the public officials is the recognition that constitutional structure and authority under each state's constitution does influence school choice programs. Though all the public officials stipulated an awareness of constitutional structure and authority, there are differing components regarding specificity, funding and where authority lies. The Louisiana Constitution provides more specific and detailed structure and authority, has a funding formula provision, and retains authority at the state level. However, the Virginia Constitution is less specific and more general, provides no funding formula, incorporates Blaine Amendment language that limits the use of public funding, and affords authority to local school boards.

The public officials comments and statements are established from the experiences they have attained in their current positions and shared during the interviews. The knowledge they have acquired during their tenure supports the theme that state constitutional structure and authority does influence decision-making related to school choice programs and the education systems in Louisiana and Virginia.

### **Public Officials and Case Law**

In order to understand how school choice programs are legislated and established, it is necessary to factor in case law and the precedence this establishes based on the rulings and decisions of the courts. This dissertation reviewed several cases found in the literature, but few

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are specific cases that are directly related to school choice programs in the State of Louisiana and the Commonwealth of Virginia.

### **Louisiana**

The research identified five cases that are directly related to school choice programs in the State of Louisiana. All five cases stipulate a primary emphasis on the use and allocation of public funds for the education of children within the state in nonpublic institutions, which the Louisiana Constitution does allow. In addition to funding considerations, the *Cochran v. Louisiana State Board of Education (1930)* case established what is known as the *child benefit test*, and when the case demonstrates the benefit is to the child, it is constitutional under the Establishment Clause. In *Brumfield v. Dodd (1975)* the additional component was dealing with discrimination practices, a violation of the 14<sup>th</sup> Amendment. The case *Mitchell v. Helms (2000)*, though a funding issue, ruled it is a constitutional responsibility to ensure all children are provided educational materials, whether attending a public or private institution, as well as emphasizing the *child benefit test*. In *Charlet v. Legislature of the State of Louisiana (1998)* the court addressed the constitutional provision of minimum foundation program or MFP and the allocation to ensure equal educational opportunity. Lastly, the *Louisiana Federation of Teachers v. State of Louisiana (2013)* questions the constitutionality of the approved MFP formula and the disbursement for costs in nonpublic schools.

These cases address the constitutionality of public funds used for the education of children attending nonpublic institutions, which includes sectarian or religious institutions of learning. Though the primary assertion in all of these cases focuses on the use of public funds, the cases are questioning the use of public funds when there is a sectarian or religious educational institution involved. The *child benefit test* is a factor in deciding cases that question



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school choice programs in Louisiana and the applicability of public funds when there is benefit to the students and the state.

### **Virginia**

The Commonwealth of Virginia has limited school choice programs and research has revealed few cases in Virginia directly address school choice programs or the use of public funds for nonpublic or sectarian educational institutions, which the Virginia Constitution prohibits. The following are two cases that address the constitutional provision regarding compulsory education. The *Schwartz v. Highland County School Board (1986)* case questions local school board authority to deny a religious exemption waiver. The claim stated the school board exceeded their authority and acted arbitrarily and capriciously. The *Johnson v. Prince William County School Board (1991)* case is a religious exemption waiver denied by the local school board. Again, the claim stated the school board exceeded their authority and acted arbitrarily and capriciously.

As previously identified, the Virginia Constitution gives authority to local school boards and these two cases challenge the authority of the local school board citing the constitutional provision for compulsory education. This authority allows local school boards to question religious exemption applications and the intent of the parents to choose a nonpublic alternative. In addition, research has not identified any cases in Virginia that link use of public funds with school choice programs. This may be attributed to the fact that Virginia has limited school choice programs and the Virginia constitution prohibits the use of public funds to any nonpublic institution of learning. However, the question of choosing homeschooling based on religious grounds is and has been challenged in the courts as represented by these two cases.

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### Elected Public Officials

The initial interviews conducted with the eight elected public officials in Louisiana and Virginia provided limited responses regarding legal challenges and court decisions or case law as it relates to individual decision-making and school choice programs. The remarks represent comments from the initial interviews as well as follow up emails to the eight officials with six officials providing comments. The remarks in the left column are comments from three Louisiana officials, and the remarks in the right column are comments from three Virginia officials.

**Table 6.5: Case Law - Elected Public Officials Remarks**

<b>Louisiana</b>	<b>Virginia</b>
Senator:  There is always some case law on any issue, however this area of law is relatively new for us and there is not much  As I recall there were more challenges based upon legislative procedural issues than on any issues of merit	Senator:  Largely rely on staff attorneys from the Division of Legislative Services to provide guidance regarding Constitutional or legal issues  Am sure their opinions are based on a review of case law, but cannot cite cases
Senator:  Not aware of any court decision that guides me in my decisions	Delegate:  Do not have any information concerning school choice court cases
Representative:  Small suits that had been filed based on our implementation of teacher tenure and our implementation of some other pieces of legislation we enacted in 2012  Opponents tried every angle they could to find that what we did was unconstitutional or did not follow the law	Delegate:  Really no guiding decision except the Blaine Case or Amendment is often referred to regarding school choice issues  We defer and reference our constitution most often in what is allowed or not allowed to be accomplished

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There were limited responses from six elected public officials in Louisiana and Virginia regarding case law and the potential influence it may have on decisions made when proposing legislation regarding K-12 education. While the officials in Louisiana and Virginia indicated they are aware that case law exists, none provided knowledge of any specific case or cases that provides guidance or influences decision-making as it relates to proposed legislation for school choice programs. As one Virginia official stipulated, research and guidance is sought from other sources when drafting legislation for school choice programs.

### Appointed Public Officials

The interviews conducted with the superintendents in Louisiana and Virginia provide broad or overarching responses regarding legal challenges and court decisions or case law as it relates to school choice programs. The remarks in the column on the left are comments by the superintendent in Louisiana and the remarks in the column on the right are comments by the superintendent in Virginia.

**Table 6.6: Case Law - Superintendents Remarks**

<b>Louisiana</b>	<b>Virginia</b>
<p>Superintendent:</p> <p>There are cases that have tested the teaching of specific subject matter on the federal level in nonpublic school settings</p> <p>There is a long list of case law regarding how the government can and cannot regulate private school; how the government can and cannot regulate curricula</p> <p>There are free speech cases that guide regulations of schools</p> <p>There are cases at the state level that guide which funds can be used for which services</p>	<p>Superintendent:</p> <p>We certainly look at many of the tax-relief voucher cases around, because I think they provide some guide for us in Virginia</p> <p>We're also monitoring, I think, the array of antidiscrimination, anti-EEO, or EEO cases</p> <p>As we look in other Circuit Court cases, how we structure tax-relief is informed by many other Circuit decisions around in the area and in how we support choice and make sure that choice doesn't run afoul of OCR or EEO</p>

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Not aware of any specific case that guides decision making	
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The superintendents provided comments that were topical, but neither provided any specific case law that supports decision-making. However, they did indicate that case law is relevant and influences school choice programs. The superintendent of Louisiana views case law from the perspective of how it influences private school, curricula, use of funding based on constitutional authority and free speech challenges. Virginia's superintendent discussed case law that deals with tax-relief for school choice programs and from a discrimination perspective stating that the Virginia Constitution stipulates there is to be quality education provided to all children of school age.

### Summary

The comments provided by the eight public officials regarding legal challenges and court decisions or case law reveals an emerging theme that there was negligible influence on decision-making and the impact case law has on school choice programs. One reason for limited impact can be attributed in large part to the fact that there is limited case law in Louisiana and Virginia. Though Louisiana has more types of school choice programs, the cases identified in this dissertation focused on funding and ensuring public funds are provided and allocated in a manner pursuant to the minimum foundation program or MFP in the Louisiana Constitution. Virginia on the other hand has fewer types of school choice programs, which could provide rationale for the limited number of legal challenges and case law. In addition, the Virginia Constitution has a Blaine Amendment provision that clearly states in *Article VIII, Section 10* that public funds shall be exclusively used for public schools and public institutions of learning (p. 26).

### **Public Officials and Political Culture**

This dissertation examines the potential influence of political culture based on Elazar's theory that evolved from studying migration patterns beginning in the early 1900s. Looking at the fifty states and determining a study of all fifty states exceeds the time frame allocated for this dissertation, therefore premise for selecting Louisiana and Virginia is:

1. Louisiana: a state with dominant French influence and the only state in the nation with a legal system founded on French or Napoleonic Law, and
2. Virginia: a commonwealth influenced by the English, a legal system founded on English or Common Law and is one of the original thirteen colonies.

Interestingly, both Louisiana and Virginia fall within the *traditionalistic* subculture yet both have separate and distinct constitutional education structures and legislated school choice programs.

#### **Elazar's Theory**

When applying the theory to Louisiana and Virginia, it was important to consider the structure and authority of the Louisiana and Virginia constitutions and the various types of school choice programs. It can be claimed that Louisiana is more traditionalistic than Virginia because of the number of school choice programs the legislature has authorized, which gives support to a marketplace attitude. In addition, Louisiana's *Article VIII - Education* is a detailed hierarchical structure and can be perceived as paternalistic and elitist.

On the other hand, the structure under *Article IV - Legislature* can be perceived as paternalistic and elitist due to the retention of power and authority of the General Assembly, thus suggesting fewer school choice programs in Virginia. However, Virginia's *Article VIII - Education* is less hierarchical than Louisiana's in that localities manage and maintain the K-12

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education system. Yet the policymaking and funding of education resides with other authorities, which lends support to having an ambivalent attitude towards a marketplace system.

### Elected Public Officials

When asked about political culture and the influence it may have in decision-making, the elected public officials in Louisiana and Virginia were unfamiliar with Elzaar's political culture theory. The researcher thus provided a handout to each official, which gave the definition of the *traditionalistic subculture* as prescribed by this theory. After a few moments to review the handout, the officials provided their comments as to whether this subculture influenced their decision-making. The remarks in the left column are comments from officials in Louisiana and the remarks in the right column are comments from officials in Virginia.

**Table 6.7: Political Culture - Elected Public Officials Remarks**

Louisiana	Virginia
<p>Senator:</p> <p>It used to be that there would be an unwritten rule that the speaker would be of one party and the senate president another party, that's gone, we're all republican</p> <p>The speaker pro temp and the president pro temp are both democrats, that's kind of the same balance</p> <p>It's more like unwritten rules of fairness, we're not very partisan, we actually try not to be partisan</p> <p>The initial boards were very high-level successful business and civic leaders; they could bring money, contacts, political resources and so forth to the table</p> <p>It doesn't affect me, because I don't care</p>	<p>Senator:</p> <p>Actually it does and it is in a sense that this ruling culture, but it's not in the sense that people think of, an aristocracy necessarily</p> <p>I'll be very frank about it, all you have to do is sit in on one of our committees and watch the dynamics</p>
Senator:	Senator:

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<p>I don't know how to answer that</p> <p>That is true in Louisiana, it's true because maybe people acquiesce in that culture and they say that's just not, I don't run because that's not my role in society</p> <p>It's a difficult process to get there, because it requires influence and money</p>	<p>I don't come from a political background; my family was never involved in politics, I'm the first person</p> <p>When I ran for office it was never about a party issue, it was about people</p> <p>I think God gave me the opportunity to represent people, so I don't have a political agenda</p> <p>I think that the job of a representative is to represent the people you are elected to represent</p>
<p>Representative:</p> <p>I personally don't see that here</p> <p>I'm in a semi elite class, I'm retired and I've got a few dollars</p>	<p>Delegate:</p> <p>Virginia has tried very hard, under it's current legislators, to maintain traditions in education</p> <p>Since 1999 we've had a republican majority in the house and that majority has been a wall of protection in keeping Virginia's education more conservative and traditional</p> <p>We've had a conservative House of Delegates and we've continued trending in a conservative direction and there are things we have not allowed to be incorporated into education</p>
<p>Representative:</p> <p>I am guided by biblical principle, which basically says trust not necessarily in the wisdom of men but in the power of God</p>	<p>Delegate:</p> <p>What I can see, and traditionally growing up in Virginia, that was much more so for my parents' generation than it has been for my generation or I guess my cohorts</p> <p>I can see that with older members of the General Assembly, but I think that's changing especially with the younger members</p> <p>The disappointing thing that I see is I think I saw a lot of involvement from a parent standpoint when I was early on in the General Assembly, than I do now from a</p>

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	<p>standpoint of public education</p> <p>I don't think people are as willing to get involved in the political system as they once were, so maybe that traditional system wasn't all that bad from this standpoint</p> <p>Things are always partisan, but I think there is also a sense that you have a responsibility to the community and to government</p> <p>I think the fact that you can get information very readily and unfortunately people don't always really look and go through that information, really see if it's authoritative or the source is really credible</p> <p>And unfortunately the news media falls into that</p>
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The public officials provided a variety of responses regarding thoughts and perceptions related to political culture and whether any influence is derived from attitudes and actions of elected public officials when discussing education legislation and school choice programs.

The Louisiana officials remarked that political party, not necessarily culture, is an influence and the leadership positions held by the parties reflect political standing. However, one official alluded to efforts towards bipartisanship in how the legislature operates, but also pointed out the elite status of individuals that sit on education boards and how this may influence school choice programs. Two officials stated they are not influenced by political culture, but rely on other guiding principles that play a role in their decision-making. Other officials recognized money plays a role in the political process as well as the influence wielded from being engaged in the political process and holding leadership positions on education committees. One official identified self as having semi-elite status stating age and financial standing as factors.



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Based on the remarks of the Virginia public officials, the emerging theme is that political party rather than political culture influences decision-making regarding school choice programs. Though the theme focused on political party, other comments eluded to the possible influence of the elite or majority party in the General Assembly and the need for more parental involvement in the education process. There is the historical perception or awareness of change that was recognized by Virginia officials, and this may be attributed to elected officials holding public office for decades. Two officials speak about tradition and the importance of maintaining traditions in education and political systems. All but one official mentioned some manner of partisanship in the General Assembly, again emphasizing the theme that political party versus political culture influenced decision-making.

Overall, the emerging theme the elected public officials in Louisiana and Virginia focused on was the influence of political party rather than political culture. Additional comments pointed out a belief in God and the importance of community involvement in relation to decision-making and school choice programs. Many of the comments may not appear to fall within Elazar's traditionalistic definition, but comments addressed the paternalistic mindset with an expected construct, which does fall within the realm of the traditionalistic subculture.

### **Appointed Public Officials**

The superintendents in Louisiana and Virginia were asked if they were familiar with Elazar's political culture theory and whether it had any influence in their decision-making as it relates to school choice programs. Stating they were not familiar with the theory, the researcher provided a handout to each superintendent and a few moments to review the definition of the *traditionalistic* subculture. After reviewing the handout, the superintendents provided comments

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with the remarks from Louisiana’s superintendent provided in the left column and the remarks from Virginia’s superintendent provided in the right column.

**Table 6.8: Political Culture - Superintendents Remarks**

Louisiana	Virginia
Superintendent:  Louisiana is a state that is increasingly tilting conservative, so it is fair to say that from just as a matter of sheer politics, probably market type programs are popular in ways here that they might not have a generation ago  There is a confluence of market based conservative thinking  Strong Christian kind of ethos to the politics here, and that stretches across party and race lines  Values based on Christian thinking  Bi-race, bi-party social justice thinking that I think has just sort of won the day beyond the populist establishment strand of our politics	Superintendent:  I think Virginia’s political climate clearly is traditionalist in the sense that when we look at how elections play out, incumbents have a higher than 90 percent reelection rate, that there are actually districts in Virginia where incumbents run unopposed regularly  The sense of some people are called to govern and others are not, that’s very clear in Virginia  Our perspective on schools is often, how do we make sure that we orient people to the way things are versus encourage them to see how things might be different  I think it colors choice in the sense of I like choice more if it conforms to my views, of how we want to deal with culture, then choice that opens them up

The superintendent of Louisiana associated the marketplace of education with the increased conservative leaning populous as influenced by politics and a strong Christian culture as it relates to school choice programs. The superintendent of Virginia spoke of the staying power of political incumbents, a belief or sense of being called to govern and how this translates to a paternalistic or elitist attitude when considering what could be and school choice programs.

### Summary

Though the public officials were not familiar with Elazar’s political culture theory, they all acknowledged there is a political component to decision-making and school choice programs.

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The public officials comments revealed a consistent theme that identified political party, not political culture, as influencing their decision-making in relation to school choice programs.

However, public officials identified various other factors that provide influence over their decision-making such as a belief system, leadership positions on committees, paternalistic and elitist attitudes, partisanship versus bipartisanship, power of political incumbents and money.

### **Summary**

This dissertation looked at the influence of the Constitution of the United States, Louisiana and Virginia Constitutions, case law and political culture as they relate to the education systems and school choice programs in two states. In addition, eight elected and two appointed public officials agreed to be interviewed in order to help determine how legislation influences the overall success or failure of school choice programs in Louisiana and Virginia.

The Constitution of the United States does not explicitly address education or an education system. However, it does address the 1<sup>st</sup> and 14<sup>th</sup> Amendments and how these relate to education legislation and the implementation of school choice programs. The 1<sup>st</sup> Amendment ensures public funding is not used to establish a religion in public education and the 14<sup>th</sup> Amendment provides for equality or equal protection in relation to public education. In addition, the 10<sup>th</sup> Amendment addresses states rights and all ten public officials viewed education as a responsibility to be left to the states.

The Constitutions of Louisiana and Virginia are different in structure and authority regarding the *Constitutional Articles* for legislature, judiciary, and education. Louisiana is detailed and specific in describing its structure and authorities for each entity involved in the education system and retains overall authority for education and school choice programs at the state level. However, Virginia provides a high level description, is not as detailed in the structure

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of the legislature, judiciary, and education, and declares limited state authorities regarding education and school choice programs based on the constitutional authority given to localities or local school boards.

Louisiana has more types of school choice programs than Virginia and therefore, it stands to reason there would be more case law in Louisiana than Virginia. Based on research, the preponderance of case law addresses voucher programs or the use of public funding for nonpublic and sectarian institutions of learning. This holds true in this dissertation in that Louisiana has more case law than Virginia, and Louisiana authorizes voucher programs to be used for nonpublic and sectarian institutions of learning where Virginia does not.

Louisiana and Virginia fall within the traditionalistic subculture of Elazar's political culture theory, a subculture that provides a means to maintain an existing order. The public officials, stating they were unfamiliar with Elazar's theory, identified that political party is more influential in decision-making than political culture, which was a consistent theme. There were several other factors identified to include belief systems, bipartisanship versus partisanship, leadership positions on committees, and money that influence decision-making. However, further research would need to be performed in order to determine the impact or influence these other factors have in decision-making in relation to school choice programs.

## **CHAPTER VII: FINDINGS AND RECOMMENDATIONS**

This dissertation looked at various possible influences as they relate to school choice programs in the State of Louisiana and the Commonwealth of Virginia. The possible influences include federal and state constitutions; legislature, judiciary, and education structure and authorities; federal and state case law; and political culture as they relate to school choice programs.

The research indicates the topic of school choice and the various types of school choice programs the states legislate are many and vary in their implementation. There are a variety of disciplines that research and study school choice and look at the various aspects and components from education, economic, legal and political points of view. Regardless of which discipline is providing research or performing a study, it is a certainty that school choice programs remain a topic of controversy.

Providing a look at the various possible influences in Louisiana and Virginia help to further understand how school choice programs are legislated and implemented within an education system. It is critical that research appreciates and recognizes the constitutional parameters for what can and cannot be legislated, where authorities lie when implementing any school choice program, and the role of political will within the culture of the legislative body. In addition, authorities must recognize the potential for challenges via the judiciary system to any school choice program as there will continue to be advocates and opponents.

### **Summary Based on Analysis of Data**

School choice programs are expanding throughout the majority of states in our nation with each state choosing to implement what programs work best within a K-12 education system for their student population.

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This dissertation identifies that the education system is primarily viewed as a state responsibility in that the Constitution of the United States does not address education, and cases decided at the federal level do not speak directly to school choice programs, but to the establishment and equal protection clauses as prescribed under the 1<sup>st</sup> and 14<sup>th</sup> Amendments.

At the state level, Louisiana has a constitution that extends authority through a detailed structure that influences school choice programs. The *legislative branch* takes a more balanced approach on its education committees by having representation from both parties at the leadership level. Having term limits and holding elections every four years in the Senate and House is viewed as cultivating an environment that takes action in a more bipartisan manner. The *judicial branch* identifies the authority at the different levels of the court system and where claims begin when challenges to school choice programs are made. The *education* system differentiates K-12 and higher education with multiple state boards that have authority over school choice programs and policy and the implementation of the programs throughout the state. Though Louisiana has district school boards, the state boards retain authority for the education system with Louisiana implementing a variety of school choice programs. This look at the Louisiana Constitution points to a conclusion that the *traditionalistic* subculture is applicable and does have influence as implied by the patriarchal and elitist tendencies related to the constitutional structures and authorities.

Identified in the Virginia Constitution is a structure that retains state level authorities in the legislature and judiciary, but not in education. The *legislature* or General Assembly allows the majority party to hold the leadership positions on education committees in the Senate and House. This indicates an unbalanced or partisan approach to the legislative process and seeks opportunity when majority votes can be realized. Virginia does not have term limits and

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elections are different for Senate and House seats. The structure and authority of the *judiciary* resides with the state supreme court and the chief justice where direction is given to the courts of record as it pertains to appointments and cases. The *education* system has a defined structure in that there is a state board, but the authority is given to localities or local school boards in managing and maintaining the K-12 education system. Though mandates from the state influence the education system, this constitutional authority to localities allows for inconsistencies in implementation of school choice programs. In addition, the Virginia Constitution has Blaine Amendment language that limits the use of public funds as it relates to education and has fewer legislated types of school choice programs. A conclusion can be drawn regarding the political culture in Virginia in that the structure and authority provided under the constitution supports an education system that is patriarchal and elitist as it relates to school choice programs.

### **Findings from Research Questions**

#### **1. In what way has the Constitution of the United States influenced and/or shaped K-12 school choice programs in Louisiana?**

The Constitution of the United States does not have a provision for K-12 education or explicitly address an education system and does not have a direct influence on school choice programs. However, any perceived influence over K-12 school choice programs is derived from a constitutional amendment perspective, respectively the 1<sup>st</sup>, 10<sup>th</sup> and 14<sup>th</sup> Amendment. The 1<sup>st</sup> Amendment ensures public funding is not used to establish a religion in public education. The 14<sup>th</sup> Amendment provides for equality or equal protection in relation to public education, and the 10<sup>th</sup> Amendment addresses states rights with education viewed as a responsibility left to the states.

**2. In what way has the Louisiana State Constitution influenced and/or shaped K-12 school choice programs in Louisiana?**

There are three entities in the Louisiana Constitution and they are identified as *Article III. Legislative Branch, Article V. Judicial Branch, and Article VIII. Education*. The data reveals the state constitution's structure and authority of these germane articles has influence over K-12 school choice programs. The legislature influences and shapes school choice programs based on the legislation that is passed and enacted into state code. The judiciary decides or rules on court cases that establish precedence and potentially impacts future education legislation. The education policy and types of school choice programs is implemented through the various education boards within the education system throughout the state.

**3. Does the political culture of Louisiana influence and/or shape K-12 school choice programs in Louisiana?**

It is clear that political party has an influence on K-12 school choice programs. However, the interviews revealed little to no understanding of Elazar's political culture theory, and that there are other influencing factors such as belief systems, leadership positions on committees, bipartisanship and money.

**4. In what way has federal and state case law and their interpretation influenced and/or shaped K-12 school choice programs in Louisiana?**

The United States Supreme Court has remained primarily hands-off when deciding cases dealing with education and school choice programs unless the claim falls under the 1<sup>st</sup> Amendment or Establishment Clause, the 10<sup>th</sup> Amendment or states rights, and the 14<sup>th</sup> Amendment or Equal Protection Clause.



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Regarding federal case law, *Brown v. Board of Education* was a claim for equality or equal access to public education, but the Supreme Court decision submitted a ruling for the case based on discrimination in an educational environment. In *Lemon v. Kurtzman*, and *Zelman v. Simmons-Harris*, school choice programs were directly challenged based on claims regarding the unconstitutional use of public funding. However, these cases were decided not on actual use of funding, but on rulings under the Establishment Clause and Equal Protection Clause. In the case of *San Antonio Independent School District v. Rodriguez*, the Supreme Court ruled that funding for education is not a federal issue and referred the case back to the state. These federal cases identify there is an indirect influence on school choice programs when claims are relevant or interpreted as a violation of rights and due process.

Regarding state case law, this dissertation addressed five cases that directly influence school choice programs. The five cases focus on the use of public funds and where and how the public funds are used and allocated. The decisions made in these cases create the potential to influence future legislation, in particular the language used in proposed bills and the interpretations made by the education board and superintendent for K-12 when writing and implementing policy and developing programs.

### **5. In what way has the Constitution of the United States influenced and/or shaped K-12 school choice programs in Virginia?**

The Constitution of the United States does not have a provision for K-12 education or explicitly address an education system and does not have a direct influence on school choice programs. However, any perceived influence over K-12 school choice programs is derived from a constitutional amendment perspective, respectively the 1<sup>st</sup>, 10<sup>th</sup> and 14<sup>th</sup> Amendment. The 1<sup>st</sup> Amendment ensures public funding is not used to establish a religion in public education. The

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14<sup>th</sup> Amendment provides for equality or equal protection in relation to public education, and the 10<sup>th</sup> Amendment addresses states rights with education viewed as a responsibility left to the states.

### **6. In what way has the Virginia State Constitution influenced and/or shaped K-12 school choice programs in Virginia?**

The three entities in the Virginia Constitution identified as *Article IV. Legislature*, *Article VI. Judiciary*, and *Article VIII. Education* does influence K-12 school choice programs. The data reveals the Commonwealth's Constitution provides a structure and authority within the germane articles that influences K-12 school choice programs. The legislature influences and shapes school choice programs based on the legislation passed and enacted into state code. The judiciary decisions or rulings made in the courts become case law and influence future legislation for school choice programs. Lastly, education policy influences school choice programs based on implementation by the Department of Education and local school boards to manage and maintain a K-12 education system throughout the Commonwealth.

### **7. Does the political culture of Virginia influence and/or shape K-12 school choice programs in Virginia?**

It is clear that political party has an influence on K-12 school choice programs. However, the interviews revealed little to no understanding of Elazar's political culture theory, and that there are other influencing factors such as adhering to traditions, years of experience, community involvement as well as a belief system.

**8. In what way has federal and state case law and their interpretation influenced and/or shaped K-12 school choice programs in Virginia?**

Research has shown that the United States Supreme Court remains primarily hands-off when deciding cases dealing with education unless the claim falls under the 1<sup>st</sup> Amendment or Establishment Clause, the 10<sup>th</sup> Amendment or states rights, and 14<sup>th</sup> Amendment or Equal Protection Clause.

Regarding federal case law, *Brown v. Board of Education* was a claim for equality or equal access to public education, but the Supreme Court decision submitted a ruling for the case based on discrimination in an educational environment. In *Lemon v. Kurtzman*, and *Zelman v. Simmons-Harris*, school choice programs were directly challenged based on claims regarding the unconstitutional use of public funding. However, these cases were decided not on actual use of funding, but on rulings under the Establishment Clause and Equal Protection Clause. In the case of *San Antonio Independent School District v. Rodriguez*, the Supreme Court ruled that funding for education is not a federal issue and referred the case back to the state. These federal cases identify there is an indirect influence on school choice programs when claims are relevant or interpreted as a violation of rights and due process.

Regarding state case law, research for this dissertation identified two cases that directly influence school choice programs. Both of these cases focused on the Virginia constitutional provision under *Article VIII. Section 3* regarding compulsory education and the right of parents to request a waiver based on religious exemption. The decisions made in these two cases will influence future legislation, in particular the language used in proposed bills and the interpretations made by the state education board and local school boards when writing policy and developing school choice programs.

## Conclusions

A primary conclusion drawn in this dissertation is that constitutions, case law and public officials do influence school choice programs in the State of Louisiana and the Commonwealth of Virginia. However, the degree to which each component influences school choice programs is not conclusive.

It is reasonable to conclude that the Constitution of the United States has no direct influence because education is primarily viewed as a state responsibility from a constitutional perspective. This is evidenced by the fact that education is not mentioned in the Constitution of the United States as a federal responsibility, and case rulings are grounded in constitutional amendments that do not directly address education systems and school choice programs.

At the state level, constitutions do directly speak of education and provide a structure with given authorities to provide an education system and school choice programs for the citizens. The Louisiana and Virginia Constitutions each have multiple articles, in particular *Article VIII. Education*, which provides structures and authorities that directly influence the education systems and school choice programs. Each constitution provides the basis or framework for how the education system will be established, who has authority and at what level (state or local), Virginia has incorporated specific Blaine Amendment language that addresses the use of public funds as they relate to public education and school choice programs. The Louisiana and Virginia Constitutions do directly influence the K-12 education systems and school choice programs that are managed and maintained based on their structures and authorities.

The interpretation of case law is challenging in the best of circumstances. However, in cases that deal with school choice programs, there are recognized boundaries represented by

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individuals and groups that have strong beliefs as to the viability or validity of a school choice program. The research for this dissertation identified that the majority of challenges to school choice programs focus on the use of public funding solely for public, non-religious institutions of learning. The outcome of these cases can and do influence school choice programs in that the opinions are reviewed by legal scholars and other interested bodies that participate in the development of legislation, education policy, and school choice programs. In addition, case law establishes precedence and thus influences school choice programs simply based on interpretation, the understanding of court decisions, and the drafting of legislation that can be justified based on precedence.

Political party is the dominant influence in Louisiana and Virginia, not political culture as defined by Elazar's theory. However, Louisiana appears to be less traditionalistic than Virginia as it relates to political culture. Though not conclusive, reasons for this include the fact that Louisiana has term limits for its legislators, which tends to minimize elitism and maximize the will to accomplish. Having limits can encourage the legislative body to work in a more collaborative or bipartisan manner, though this does not necessarily minimize a paternalistic attitude or eliminate partisan action. Political parties are equally represented in the leadership of the education committees in the Louisiana legislature. The Senate and House each have a Republican and Democrat that sits as Chair and Vice-Chair of the education committees with the majority party holding the Chair position. This make up can also be perceived as supporting an ambivalent attitude towards marketplace and the common good, which is a component of the *traditionalistic* subculture.

Virginia, on the other hand, does not have term limits, which tends to maximize a paternalistic and elitist attitude. The legislature grants leadership positions to the majority party

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on education committees where Republicans currently hold the Senate Chair and Sub-committee Chair and the House Chair and Vice-Chair positions. Based on majority party dominance in the Virginia legislature, this tends to foster or promote an attitude of ruling class or elitism and does not necessarily provide for or maximize opportunities for collaboration and bipartisan action.

Interviews with the elected and appointed public officials were conducted and selected for this dissertation based on the position they held at the time of the interview. The series of questions (see Appendix A) were developed to help the researcher identify what public officials believe influence the education system and school choice programs in Louisiana and Virginia. The responses to the questions reveal that public officials view influence over school choice programs through their awareness of how they assess the education system and school choice programs. These views incorporate political position or standing, belief systems, and the experiences the public officials have had in their current positions.

In drawing a conclusion as to whether constitutions, case law, and public officials influence school choice programs, the interviews reveal varying themes of influence. While the Constitution of the United States has little to no direct influence over school choice programs, state constitutions have direct influence as established through constitutional structure and authority. Case law indirectly influences school choice programs through the establishment of precedence set from court rulings and the impact these rulings have on future legislation. Though unfamiliar with Elazar's political culture theory, public officials identified that political party, not political culture, influenced decision-making in relation to school choice programs in the State of Louisiana and the Commonwealth of Virginia.

### **Recommendations for Further Research**

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This dissertation focused on the State of Louisiana and the Commonwealth of Virginia, which provides a limited perspective on what directly and indirectly influences school choice programs. Though there is extensive research on school choice issues such as charters and vouchers, there is additional research that could help understand why one state realizes success with school choice programs and another state does not. The following are some recommendations:

1. Research should be conducted in the states with constitutions that do not include Blaine Amendment language to help determine the degree of constitutional influence on the success of implementing school choice programs. Blaine language restricts the use of public funding solely for the purpose of funding public education institutions.
2. Further research should be conducted on Elazar's theory as it was developed more than fifty years ago. Changes in immigration and migration patterns have continued, along with advances in the use of technology, in education and in society. It could be beneficial to understand if technology is a factor in subculture shifts and if so, how or to what degree does it change the political culture of the state and impact education and school choice programs.
3. Perform a study on the New Orleans Regional School District (RSD) system that was created after Hurricane Katrina and identify the potential influence the RSD system had or did not have on the expansion of charter schools and vouchers in the State of Louisiana and possibly in other states.
4. Expand this study to include states that are identified by Elazar's theory as individualistic and moralistic subcultures to determine what, if any, influence these subcultures may have regarding political culture and school choice programs.

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5. Perform a study in Louisiana that looks at the political culture of the Board of Elementary and Secondary Education (BESE), the governing board for K-12 education, and what influence it may have at the local school board level on implementing school choice programs.
6. Perform a study in Virginia that looks at political culture and the structure and authority afforded the state board and local school boards throughout the Commonwealth to determine what influence there may be for implementing other types of school choice programs.
7. Research the constitutional authority and structure of the fifty states and do a comparison on political culture and political party affiliation to determine any realized success or failure of proposed legislation regarding school choice programs.
8. Research charter schools within identified regions and analyze the characteristics that have influenced and supported successful outcomes as they relate to the negotiated charter, academic focus, and student achievement.
9. Research the education associations in identified regions and analyze the characteristics and actions that have been used to influence successful outcomes as they relate to school choice programs.



## References

- Agnes, M. (Ed.). (1996). *Webster's New World Dictionary and Thesaurus*. New York, NY: Simon & Schuster, Inc.
- American Legislative Exchange Council. (2007). *School choice and state constitutions: A guide to designing school choice programs*. (2007). Retrieved from <http://www.alec.org/publications/school-choice-and-state-constitutions/>
- Axelrod, A. (2001). Designing Virginia. *The life and work of Thomas Jefferson* (pp. 83-92). Indianapolis, IN: Alpha Books
- Bauries, S.R. (2011). State constitutional design and education reform: Process specification in Louisiana. *Journal of Law & Education*, 40(1), 1-56.
- Bauries, S.R. (2014). A common law constitutionalism for the right to education. *Georgia Law Review*, 48(4), 949-1017.
- Belfield, C.R. (2004). Modeling school choice: A comparison of public, private-independent, private-religious and homeschooled students. *Education Policy Analysis Archives*, 12(30). Retrieved from <http://epaa.asu.edu/epaa/v12n30/>.
- Bennett, A.P. (1864). Education of freedmen. *Debates in the convention for the revision and amendment of the constitution of the state of Louisiana* (pp.33-34). New Orleans, LA: W.R. Fish, printer to the Convention.
- Ben-Porath, S.R. (2009). School choice as a bounded ideal. *Journal of Philosophy of Education*, 43(4), 527-544.
- Benson, C.R. (1971). Part II: Jefferson on social structures and functions: On educational institutions. *Thomas Jefferson as social scientist* (pp. 157-187). Cranbury, NJ: Associated University Presses, Inc.

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

- Bolick, C. (2008). The constitutional parameters of school choice. *Brigham Young University Law Review*, 2008(2), 335-351.
- Bolick, C. (2012). State constitutions as a bulwark for freedom. *Oklahoma City University Law Review*, 37(1), 1-15.
- Boyd, W.L. (2007). The politics of privatization in American education. *Educational Policy*, 21(7), 7-14. doi:10.1177/0895904806297728
- Branson, M.S. (2016). *George Mason: The reluctant founder*. Retrieved from <http://www.civiced.org/resources/curriculum/mason>
- Brasington, D.M. & Hite, D. (2014). School choice: Supporters and opponents. *Contemporary Economic Policy*, 32(1), 76-92. doi:10.1111/coep.12002
- Brown v. Board of Educ., 347 US 483, 493 (1954). Retrieved from <http://www.uscourts.gov/educational-resources/educational-activities/history-brown-v-board-education-re-enactment>
- Brumfield v. Dodd, 405 F. Supp. 338 (E.D. La. 1975). Retrieved from [http://www.leagle.com/decision/1975743405FSupp338\\_1691/BRUMFIELD%20v.%20DODD](http://www.leagle.com/decision/1975743405FSupp338_1691/BRUMFIELD%20v.%20DODD)
- Bruno, R. (2007). Union building and professionalism: The Chicago teachers union campaign to close the educational “governance gap”. *Labor Studies Journal*, 32, 167-188.
- Charlet v. Legislature of the State of Louisiana, 730 So.2d 934 (La. 1998). Retrieved from <http://caselaw.findlaw.com/la-court-of-appeal/1270737.html>
- Clowes, G.A. (2008). With the right design, vouchers can reform public schools: Lessons from the Milwaukee parental choice program. *Journal of School Choice*, 2, 367-391.

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS, CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

Cochran v. Louisiana State Board of Education, 281 U.S. 370 (1930). Retrieved from

<https://www.law.cornell.edu/supremecourt/text/281/370>

Colburn, B. (2012). Responsibility and school choice in education. *Journal of Philosophy of Education, 46*(2), 207-222.

Constitution of Virginia framed by the Convention (1870).Richmond, VA. Retrieved from

[https://archive.org/stream/ConstitutionOfTheStateOfVirginiaAndTheOrdinancesAdoptedByThe/The\\_constitution\\_of\\_Virginia#page/n75/mode/2up](https://archive.org/stream/ConstitutionOfTheStateOfVirginiaAndTheOrdinancesAdoptedByThe/The_constitution_of_Virginia#page/n75/mode/2up)

Coulson, A.J. (2010). The effects of teachers unions on American education. *Cato Journal, 30*,155-170.

Council of Chief State School Officers. (2013). *School choice in the states: A policy landscape*. (2013). Retrieved from

[http://ccsso.org/Resources/Publications/School\\_Choice\\_in\\_the\\_States\\_A\\_Policy\\_Landscape.html](http://ccsso.org/Resources/Publications/School_Choice_in_the_States_A_Policy_Landscape.html)

Davis, J. (2013). *School choice in the states: A policy landscape*. Retrieved from Council of Chief State School Officers website:

[http://www.ccsso.org/Documents/2013/Choice\\_by\\_State\\_2013.pdf](http://www.ccsso.org/Documents/2013/Choice_by_State_2013.pdf)

Duncan, K. (2003). Secularism's laws: State Blaine amendments and religious persecution. *Fordham Law Review, 72*(3), 493-593.

Elazar, D.J. (1984). *American federalism: A view from the states*. New York, NY: Harper & Row, Publishers.

Enlow, R.C. & Ealy, L.T. (Eds.). (2006). *Liberty & learning: Milton Friedman's voucher idea at fifty*. Washington, D.C.: CATO Institute.

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

- Fleming, D.J. (2014). Learning from schools: School choice, political learning, and policy feedback. *Policy Studies Journal*, 42(1), 55-78.
- Ford, M. & Merrifield, J. (2013). School choice legislation: Impact assessment and fiscal notes. *Journal of School Choice*, 7, 37-60. doi:10.1080/15582159.2013.761826
- Forster, G. (2008). Vouchers and school choice: The evidence. *Economic Affairs*, 28, 42-47.
- Freid, S.H. (1992). The constitutionality of choice under the establishment clause. *The Clearing House*, 66(2), 92-95.
- Friedman, M. (1962). The role of government in education. In M. Friedman (Ed), *Capitalism and freedom* (pp. 85-107). Chicago, IL: The University of Chicago Press.
- Friedman, M. & Friedman, R. (1980). What's wrong with our schools? In M. Friedman & R. Friedman (Eds), *Free to choose: The classic inquiry into the relationship between freedom and economics* (pp. 150-188). New York, NY: Houghton Mifflin Harcourt.
- Garnett, R.W. & Pearsall, C.S. (2005). Bush v. Holmes: School vouchers, religious freedom, and state constitutions. *Education and the Law*, 17(4), 173-183.
- George Mason University (GMU). (2015). *George Mason, the man*. Retrieved from [http://www.law.gmu.edu/about/mason\\_man](http://www.law.gmu.edu/about/mason_man)
- Gilreath, J. (Ed.). (1999). *Thomas Jefferson and the education of a citizen*. Washington, DC: Library of Congress.
- Green III, P.C. & Moran, P.L. (2010). The state constitutionality of voucher programs: Religion is not the sole determinant. *Brigham Young University Education and Law Journal*, 2010, 275-306.

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

- Holme, J.J., Frankenberg, E., Diem, S. & Welton, A.D. (2013). School choice in suburbia: The impact of choice policies on the potential for suburban integration. *Journal of School Choice*, 7, 113-141. doi:10.1080/15582159.2013.789293
- Hoxby, C.M. (2002). Would school choice change the teaching profession? *The Journal of Human Resources*, 37, 846-891.
- Jacoby, D. (2011). Teacher unionization in school governance. *Educational Policy*, 25, 762-783.
- Jeynes, W.H. (2014). School choice and the achievement gap. *Education and Urban Society*, 46, 163-180. doi:10.1177/0013124512447101
- Johnson v. Prince William County School Board, 404 S.E.2d 209 (1991). Retrieved from <http://law.justia.com/cases/virginia/supreme-court/1991/900988-1.html>
- Kenny, L.W. (2010). The appeal of vouchers for failing large city school districts: Voting in congress on two very different voucher proposals. *Journal of School Choice*, 4, 5-22.
- King, K.A. (2005). The impacts of school choice on regional economic growth. *The Review of Regional Studies*, 35(3), 356-368.
- La. Const. art. III. (1974).
- La. Const. art. V. (1974).
- La. Const. art. VIII. (1974).
- Lemke, R.J. (2004). Estimating the union wage effect for public school teachers when all teachers are unionized. *Eastern Economic Journal*, 30, 273-291.
- Lemon v. Kurtzman, 403 US 602 (1971). Retrieved from [https://www.law.cornell.edu/supremecourt/text/403/602#writing-USSC\\_CR\\_0403\\_0602\\_ZO](https://www.law.cornell.edu/supremecourt/text/403/602#writing-USSC_CR_0403_0602_ZO)

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

Lieske, J. (2010). The changing regional subcultures of the American states and the utility of a new cultural measure. *Political Research Quarterly*, 63(3), 538-552.

Louisiana. (2015). *Government, politics, and higher education*. Retrieved from <http://www.infoplease.com/encyclopedia/us/louisiana-government-politics-higher-education.html>

Louisiana Department of Education. (2016). *Recovery school district*. Retrieved from <https://www.louisianabelieves.com/schools/recovery-school-district>

Louisiana Federation of Teachers v. State of Louisiana, 118 So.3d 1073 (La. 2013). Retrieved from <http://caselaw.findlaw.com/la-supreme-court/1630493.html>

Louisiana Government (2015). *About Louisiana*. Retrieved from [http://louisiana.gov/Explore/About\\_Louisiana/](http://louisiana.gov/Explore/About_Louisiana/)

Louisiana Judicial Branch. (2015). Retrieved from [http://louisiana.gov/Government/Judicial\\_Branch/](http://louisiana.gov/Government/Judicial_Branch/)

Machin, S. (2014). Economics of education research and its role in the making of education policy. *Fiscal Studies: The Journal of Applied Public Economics*, 35(1), 1-18.

McGinn, K.C. & Ben-Porath, S. (2014). Parental engagement through school choice: Some reasons for caution. *Theory and Research in Education*, 12, 172-192.  
doi:10.1177/1477878514530714

Merrifield, J. (2002). *School choice: True and false*. Oakland, CA: The Independent Institute.

Merrifield, J. (2008). School choice evidence and its significance. *Journal of School Choice*, 2(3), 223-259. doi:10.1080/15582150802371408

Mintrom, M. & Vergari, S. (1996). Advocacy coalitions, policy entrepreneurs, and policy change. *Policy Studies Journal*, 24(3), 420-434.

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

Mitchell v. Helms, 530 U.S. 793 (2000). Retrieved from

<https://www.law.cornell.edu/supct/html/98-1648.ZO.html>

National Center for Education Statistics. (2015). *Number and percentage of homeschooled students ages 5 through 17 with a grade equivalent of kindergarten through 12th grade, by selected child, parent, and household characteristics: 2003, 2007, and 2012.*

Retrieved from

[https://nces.ed.gov/programs/digest/d13/tables/dt13\\_206.10.asp?current=yes](https://nces.ed.gov/programs/digest/d13/tables/dt13_206.10.asp?current=yes)

National Conference of State Legislatures.(2014). *Scholarship tax credits*. Retrieved from

<http://www.ncsl.org/research/education/school-choice-scholarship-tax-credits.aspx>

Ni, Y. & Arsen, D. (2011). School choice participation rates: Which districts are pressured? *Education Policy Analysis Archives*, 19(29), 1-29.

Powers, J.M. & Cookson Jr., P.W. (1999). The politics of school choice research: Fact, fiction, and statistics. *Educational Policy*, 13, 104-122. doi:10.1177/0895904899131009

Riley, J. (2015). *Political Culture of the United States*. Retrieved from

<http://academic.regis.edu/jriley/421elazar.htm>

Rome, G. & Block, W. (2006). Schoolhouse socialism. *Journal of Instructional Psychology*, 33, 83-88.

Saiger, A. (2006). The role of empirical research in informing debates about the constitutionality of school choice. *Journal of School Choice*, 1(3), 123-144.

Saiger, A. (2007). School choice and states' duty to support "public" schools. *Boston College Law Review*, 48(4), 909-969.

San Antonio Independent School District v. Rodriguez, 411 US 1 (1973).

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

Schwartz v. Highland County School Board, 346 S.E.2d 544 (Va. Ct. App. 1986). Retrieved from

[http://www.leagle.com/decision/1986890346SE2d544\\_1883/SCHWARTZ%20v.%20HIGHLAND%20COUNTY%20SCHOOL%20BD](http://www.leagle.com/decision/1986890346SE2d544_1883/SCHWARTZ%20v.%20HIGHLAND%20COUNTY%20SCHOOL%20BD)

Sidorkin, A.M. (2007). Is schooling a consumer good? A case against school choice, but not the one you had in mind. *Philosophy of Education Yearbook 2007*, 75-83.

Slawson, S. (2003). Changing American schools: The intersection of choice and the constitution. *The Review of Litigation*, 22, 759-790.

Sutton, L.C. & King, R.A. (2013). Financial crisis not wasted: Shift in state power and voucher expansion. *Journal of Education Finance*, 38, 283-303.

*The ABCs of school choice: The comprehensive guide to every private school choice program in America*. (2014). Indianapolis, IN: The Friedman Foundation for Educational Choice.

U. S. Const. amend. I.

U.S. Const. amend. X.

U.S. Const. amend. XIV.

Va. Const. art. IV. (1971).

Va. Const. art. VI. (1971).

Va. Const. art. VIII. (1971).

Vergari, S. (2007). Federalism and market-based education policy: The supplemental educational services mandate. *American Journal of Education*, 113(2), 311-339.

Vergari, S. (2007). The politics of charter schools. *Educational Policy*, 21, 15-39.

Virginia's Judicial System. (2016). *Virginia Courts in Brief*. Retrieved from <http://www.courts.state.va.us/courts/cib.pdf>



POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

Wm. & Mary Law Review. (1968). The Virginia constitution: A documentary analysis. *William and Mary Law Review*, 10(2), 511-539.

Yin, R.K. (2014). *Case Study Research Design and Methods 5<sup>th</sup> edition*. Thousand Oaks, CA: SAGE Publications, Inc.

Young, T.V. (2011). Teachers unions in turbulent times: Maintaining their niche. *Peabody Journal of Education*, 86, 338-351.

Zelman v. Simmons-Harris, 536 US 639 (2002). Retrieved from <http://caselaw.findlaw.com/us-supreme-court/536/639.html>

# APPENDIX A

## INTERVIEW QUESTIONS

# POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS, CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

## **Louisiana: Elected Officials**

Introduction: This is a study to help determine if there is a relationship between political culture and school choice and if influencing factors can be traced to constitutions, case law and public officials.

Questions:

1. When you decided to run for public office, was education part of your election platform?  
What were your primary interests and position regarding education issues and the education system in Louisiana?
2. Why were you selected to serve on the Education Committee? What experience do you bring to the committee? How many years have you served on the Education Committee?
3. Overall, what do you believe to be the Education Committee's current position when discussing school choice? Based on your knowledge and experience, has the Education Committee position changed over the last twenty-five years? Explain.
4. In what ways do you believe the Constitution of the United States impacts the Louisiana education system regarding school choice programs?
  - a. If you believe there is an impact, explain in what way the constitution impacts school choice programs in Louisiana?
  - b. If you believe there is no impact, why not?
5. In what ways do you believe the Louisiana State Constitution impacts the Louisiana education system regarding school choice programs?
  - a. If you believe there is an impact, explain in what way the constitution impacts school choice programs in Louisiana?
  - b. If you believe there is no impact, why not?

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6. Most states have some degree of school choice with Louisiana allowing charter schools, homeschooling, open enrollment, tax credits, and vouchers. In what ways, individually or collectively, do you believe these programs are benefiting the participating students in Louisiana?
  - a. If you believe benefiting, how?
  - b. If you believe not benefiting, why not?
7. Would you consider yourself an advocate or opponent for school choice in Louisiana regarding charter schools? Homeschooling? Open enrollment? Tax credits? Vouchers? Why?
8. Have you sponsored, co-sponsored or voted for any school choice bills? If so, identify the school choice program(s) that resulted from the bill?
9. Did you and your children attend public school? Private school? In what ways do you think you or your children's education experience influenced your decision-making when voting on school choice bills?
10. How does the political culture of Louisiana guide or influence your decision-making regarding education legislation and school choice programs? How does political culture influence your sense of support for school choice programs? (Provide Elazar's theory)
11. Do you have any additional comments that would help me better understand education legislation and school choice programs in the Louisiana?
12. Are there any individuals involved in school choice that you think I should speak with?
13. **Follow up question:** Regarding legal challenges to school choice programs and court decisions, is there any case law that you believe guides you in your decision making on proposed legislation for school choice programs in Louisiana? Why?

Thank you for your time.

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## **Louisiana Superintendent: Appointed**

Introduction: This is a study to help determine if there is a relationship between political culture and school choice and if influencing factors can be traced to constitutions, case law and public officials.

Questions:

1. In what ways did your experience and education prepare you to be the Superintendent for the State of Louisiana?
2. In what ways do you believe the Constitution of the United States impacts the Louisiana education system regarding school choice programs?
  - a. If you believe there is an impact, explain in what way the constitution impacts school choice programs in Louisiana?
  - b. If you believe there is no impact, why not?
3. In what ways do you believe the Louisiana State Constitution impacts the Louisiana education system regarding school choice programs?
  - a. If you believe there is an impact, explain in what way the constitution impacts school choice programs in Louisiana?
  - b. If you believe there is no impact, why not?
4. Most states have some degree of school choice with Louisiana allowing charter schools, homeschooling, open enrollment, tax credits, and vouchers. In what ways, individually or collectively, do you believe these programs are benefiting the participating students in Louisiana?
  - a. If you believe benefiting, how?
  - b. If you believe not benefiting, why not?

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5. Would you consider yourself an advocate or opponent for school choice in Louisiana regarding charter schools? Homeschooling? Open enrollment? Tax credits? Vouchers? Why?
6. Based on your knowledge and experience, which school choice program has been the most beneficial to students in Louisiana? In what way?
7. Regarding legal challenges to school choice programs and court decisions, is there any case that you believe guides you in your policy implementation planning for school choice programs in Louisiana? Why?
8. Did you and your children attend public school? Private school? In what ways do you think you or your children's education experience influenced your decision-making when implementing policy?
9. How does the political culture of Louisiana guide or influence your decision-making regarding education legislation and school choice programs? How does political culture influence your sense of support for school choice programs? (Provide Elazar's theory)
10. Do you have any additional comments that would help me better understand education policy and school choice programs in Louisiana?
11. Are there any individuals involved in school choice that you think I should speak with?

Thank you for your time.

# POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS, CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

## **Virginia: Elected Officials**

Introduction: This is a study to help determine if there is a relationship between political culture and school choice and if influencing factors can be traced to constitutions, case law and public officials.

Questions:

1. When you decided to run for public office, was education part of your election platform?  
What were your primary interests and position regarding education issues and the education system in Virginia?
2. Why were you selected to serve on the Education Committee? What experience do you bring to the committee? How many years have you served on the Education Committee?
3. Overall, what do you believe to be the Education Committee's current position when discussing school choice? Based on your knowledge and experience, has the Education Committee position changed over the last twenty-five years? Explain.
4. In what ways do you believe the Constitution of the United States impacts the Virginia education system regarding school choice programs?
  - a. If you believe there is an impact, explain in what way the constitution impacts school choice programs in Virginia?
  - b. If you believe there is no impact, why not?
5. In what ways do you believe the Virginia State Constitution impacts the Virginia education system regarding school choice programs?
  - a. If you believe there is an impact, explain in what way the constitution impacts school choice programs in Virginia?
  - b. If you believe there is no impact, why not?

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
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6. Most states have some degree of school choice with Virginia allowing charter schools, homeschooling, open enrollment, and tax credits. In what ways, individually or collectively, do you believe these programs are benefiting the participating students in Virginia?
  - a. If you believe benefiting, how?
  - b. If you believe not benefiting, why not?
7. Would you consider yourself an advocate or opponent for school choice in Virginia regarding charter schools? Homeschooling? Open enrollment? Tax credits? Why?
8. Have you sponsored, co-sponsored or voted for any school choice bills? If so, identify the school choice program(s) that resulted from the bill?
9. Did you and your children attend public school? Private school? In what ways do you think you or your children's education experience influenced your decision-making when voting on school choice bills?
10. How does the political culture of Virginia guide or influence your decision-making regarding education legislation and school choice programs? How does political culture influence your sense of support for school choice programs? (Provide Elazar's theory)
11. Do you have any additional comments that would help me better understand education legislation and school choice programs in the Virginia?
12. Are there any individuals involved in school choice that you think I should speak with?
13. **Follow up question:** Regarding legal challenges to school choice programs and court decisions, is there any case law that you believe guides you in your decision making on proposed legislation for school choice programs in Virginia? Why?

Thank you for your time.



# POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS, CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

## **Virginia Superintendent: Appointed**

Introduction: This is a study to help determine if there is a relationship between political culture and school choice and if influencing factors can be traced to constitutions, case law and public officials.

Questions:

1. In what ways did your experience and education prepare you to be the Superintendent for the Commonwealth of Virginia?
2. In what ways do you believe the Constitution of the United States impacts the Virginia education system regarding school choice programs?
  - a. If you believe there is an impact, explain in what way the constitution impacts school choice programs in Virginia?
  - b. If you believe there is no impact, why not?
3. In what ways do you believe the Virginia State Constitution impacts the Virginia education system regarding school choice programs?
  - a. If you believe there is an impact, explain in what way the constitution impacts school choice programs in Virginia?
  - b. If you believe there is no impact, why not?
4. Most states have some degree of school choice with Virginia allowing charter schools, homeschooling, open enrollment, and tax credits. In what ways, individually or collectively, do you believe these programs are benefiting the participating students in Virginia?
  - a. If you believe benefiting, how?
  - b. If you believe not benefiting, why not?

POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS,  
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5. Would you consider yourself an advocate or opponent for school choice in Virginia regarding charter schools? Homeschooling? Open enrollment? Tax credits? Why?
6. Based on your knowledge and experience, which school choice program has been the most beneficial to students in Virginia? In what way?
7. Regarding legal challenges to school choice programs and court decisions, is there any case that you believe guides you in your policy implementation planning for school choice programs in Virginia? Why?
8. Did you and your children attend public school? Private school? In what ways do you think you or your children's education experience influenced your decision-making when implementing policy?
9. How does the political culture of Virginia guide or influence your decision-making regarding education legislation and school choice programs? How does political culture influence your sense of support for school choice programs? (Provide Elazar's theory)
10. Do you have any additional comments that would help me better understand education policy and school choice programs in Virginia?
11. Are there any individuals involved in school choice that you think I should speak with?

Thank you for your time.

## APPENDIX B

# INTERNAL REVIEW BOARD (IRB) SUBMISSION

**Title: Political Culture and School Choice: The Influence of Constitutions,  
Case Law and Public Officials**

**PI: Dr. Roger Jones**

**Co-PI: Karen M.S. Hiltz**

1. Provide a description of the purpose of your study. The purpose of a study is different than a topic statement; make sure that your response to this item focuses on the purpose of the study as it relates to the conduct of research with human subjects toward the goal of creating or contributing to generalizable knowledge. Note for student researchers: Be mindful that completion of a course assignment or project is not an acceptable study purpose. In order to be in compliance with recordkeeping requirements, the researcher must present a cogent statement regarding the purpose of the study as it relates to creating or contributing to generalizable knowledge.

**Response:** The purpose of this study is to:

1. review the United States Constitution, amendments and case law;
2. compare Louisiana and Virginia State Constitutions, amendments, case law, and legislative structure concerning authorities, constraints, and flexibilities; and
3. determine if political culture and school choice have been influenced by constitutions, case law and public officials as they relate to programs enacted within each state.

Political culture is a theory that was discussed and developed by D. Elazar in the 1960s and further analyzed in subsequent decades. This study is intended to look at the identified political culture of Louisiana and Virginia, as identified by Elazar, and analyze whether constitutions, case law, and public officials have influenced school choice programs in each state.

2. Provide a detailed description of how you will collect data for your study. Be specific about your procedures for data collection (including if you will distribute online, in-person, etc.) and the data collection instrument itself (standardized, created by researchers, etc.) This is not a question about recruitment or access to your sample (see question 3, below, for that); instead, this is a question about what type of data collection instrument(s) you will utilize. Attach/include in your proposal packet all of the data collection instruments that you will use.

**Response:** The researcher will gather data by performing interviews of selected public officials in two states: Louisiana and Virginia. The individuals listed in Table 3.1 and Table 3.2 below was selected for interview based on the position they hold as a public official. However, the researcher may need to adjust the list of interviewees due to availability. Though these public officials were selected, when the researcher makes contact to schedule interviews, they may not be available for interview. If this is the case, the researcher will select other public officials from the legislative committees and Department of Education to contact and seek interviews from.

It is the intent of the researcher to perform ten interviews, five in Louisiana and five in Virginia. However, during the planned interviews, there may be other public officials that could provide data relevant to this study and the researcher needs to have the flexibility to consider additional interviews. The researcher will take into consideration the position, experience, and

## POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS, CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

knowledge of additional public officials, but will not exceed two additional interviews of public officials in Louisiana and two in Virginia.

The following information is provided for each state:

### Louisiana Public Officials

For the State of Louisiana, it is the researchers intent to conduct interviews with the Chairman and Vice-Chairman of the Education Committees in the Senate and House of Representatives and the state Superintendent of Education. The Senate and House members are elected positions and the Governor of Louisiana appoints the Superintendent of Education.

The name of these public officials along with their title, position, party affiliation and district are identified as Table 3.1:

**Table 3.1: Louisiana Legislators and Superintendent**

<b>Title</b>	<b>Name</b>	<b>Position</b>	<b>Party</b>	<b>District</b>
Senator	Conrad Appel	Chairman, Education Committee	Republican	9 <sup>th</sup>
Senator	Eric LaFleur	Vice-Chairman, Education Committee	Democrat	28 <sup>th</sup>
Representative	Stephen F. Carter	Chairman, Education Committee	Republican	68 <sup>th</sup>
Representative	Patrick O. Jefferson	Vice-Chairman, Education Committee	Democrat	11 <sup>th</sup>
Superintendent	John White	Superintendent of Education		

### Virginia Public Officials

For the Commonwealth of Virginia, it is the researchers intent to conduct interviews with the current and former Chairman of the Education and Health Committee in the Senate, as there is no Vice-Chairman position, the Chairman and Vice-Chairman of the Education Committee in the House of Delegates and the Superintendent of Public Instruction. The Senate and Delegate members are elected positions and the Governor of Virginia appoints the Superintendent of Public Instruction.

The name of these public officials along with their title, position, party affiliation and district are identified as Table 3.2:

**Table 3.2: Virginia Legislators and Superintendent**

<b>Title</b>	<b>Name</b>	<b>Position</b>	<b>Party</b>	<b>District</b>
Senator	Stephen H. Martin	Chairman, Education and Health Committee	Republican	11 <sup>th</sup>

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Senator	R. Edward Houck	Education and Health Committee	Democrat	17 <sup>th</sup>
Delegate	R. Steven Landes	Chairman, Education Committee	Republican	25 <sup>th</sup>
Delegate	Brenda L. Pogge	Vice-Chairman, Education Committee	Republican	96 <sup>th</sup>
Superintendent	Steven R. Staples	Superintendent of Public Instruction		

The researcher plans to travel to Louisiana and Virginia to conduct face-to-face interviews with all interviewees.

There are multiple sets of interview questions that were developed by the researcher (see Appendix A). The first set of questions is directed to the Louisiana Senate and House committee members with another set of questions developed for the Louisiana Superintendent of Education. Similar questions were then developed for the Virginia Senate and Delegate committee members and the Virginia Superintendent of Public Instruction. There is the possibility that the selected interviewees will not be available for interview due to their schedule or extenuating circumstances beyond the control of the researcher. In that case, the researcher reserves the right to contact other public officials on the education committees in Louisiana and Virginia. Selection of other public officials on the education committees will be based on seniority. These individuals will be contacted and interviews will be scheduled and conducted.

The initial interviews may reveal additional public officials that the researcher determines will be of benefit to her research. These individuals will be contacted and, if available, an interview will be scheduled. These individuals may consist of public officials (elected, appointed, or civil servants).

Should additional interviews be necessary, the researcher will use the existing interview questions or a modified version of the existing questions based on the type of expertise the interviewee offers.

3. Provide a detailed description of how you will recruit subjects. No individual, office, program, or division at LC holds the responsibility for or expressed authorization to distribute recruitment statements and/or links to data collection instruments among those in the LC community. It is the responsibility of the PI and the research team to make arrangements for these tasks and then to clearly explain the recruitment and data collection methods for the study within this proposal. If your study protocol incorporates procedures for electronic recruitment and/or collection of data among faculty, staff, and/or students at LC, then your proposal submission materials must include explicit reference to the methods used to recruit and collect data (e.g., who will send recruitment email, to whom it will be sent, how many emails will be sent and at what frequency). Indicate in the proposal if arrangements have already been made or if the arrangements are in the planning stage. For studies involving recruitment through sign-up sheets: Researchers are to explain the sign-up sheet protocol using explicit details regarding location/placement, duration of

## POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS, CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

posting, who will have access to the building/location (reasonable expectations of privacy for potential subjects who sign up), and include a copy of the sign-up sheet itself; researchers are encouraged to utilize electronic means (e.g., Google forms) to facilitate the sign-up process as this reduces risk for privacy concerns. Be advised that studies utilizing sign-up sheets that are placed in publicly accessible buildings (including those on campus that are not secured by a device such as keycard entry) will not be qualified for exempt status.

**Response:** Subjects have been identified under question 2 above. These individuals are public officials and were selected based on the position and title they hold within the state government of Louisiana and Virginia.

There will be no electronic recruitment and/or collection of data among faculty, staff, and/or students at LC. There will be no recruitment using sign-up sheets within the LC community. All interviews will be with public officials in the States of Louisiana and Virginia.

4. Provide a detailed description of what will happen to or be required of the subjects in your research study. Answer the following questions, in complete sentences: (a) Will deception be involved in this study?; (b) Will an experimental or quasi-experimental design be used?; and (c) Will participants be asked to disclose information about illegal activity?

**Response:** The following is provided:

- (a) There will be no deception in this study. All participants will be provided full disclosure as to the purpose of the interview. The interview questions will not be provided in advance of the interview.
- (b) There will be no experimental or quasi-experimental design used for this study.
- (c) The interviewees will not be asked to disclose or identify any information regarding illegal activity.

5. What is the maximum number of participants for your study? Answer in a complete sentence. How long will participation last? Provide duration for individual sessions and duration over time if multiple sessions are required. Answer in complete sentences.

**Response:** There will be five public officials (four in the legislative branch and one in the executive branch) interviewed in Louisiana and five public officials (four in the legislative branch and one in the executive branch) interviewed in Virginia. However, there may be additional interviews conducted based on identification of additional public officials in the field of school choice in Louisiana and Virginia. The researcher expects to interview a minimum of ten persons and a maximum of fourteen persons.

The researcher expects each interview to last approximately one hour, but the researcher reserves the right to engage in follow up sessions, via email or phone call, with interviewees for clarification or additional information. The researcher plans to interview each participant

## POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS, CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

formally for no more than one hour, but follow up may increase the total participation time slightly.

6. You may not collect any data with personally identifiable information. Provide a statement in which you clearly state that you will not be collecting personally identifiable information. Clearly state what, if any, demographic information will be collected. Be advised that multiple demographic items in a small sample or from a limited population such as a specific College will decrease the ability to protect individuals' identities and maintain confidentiality.

**Response:** The interviews will be conducted with public officials based on their experience and knowledge of school choice programs in Louisiana and Virginia. There will not be any data collected regarding personally identifiable information. All data collection is focused on school choice programs.

There will be some demographic data collected from public sites such as the U. S. Census Bureau, Louisiana Department of Education, and Virginia Department of Education. The data will consist of the number of school districts in each state, the student population in each state, the number of students that attend public school, the number of students that attend private school, and the number of students that are homeschooled. This data will be used for comparison purposes and will not be used to validate or imply any influence related to school choice.

7. Research involving vulnerable populations will rarely qualify for exempt status. Provide a statement in which you clearly state the level of involvement of vulnerable populations in your study. While the federal regulations do not provide a definitive list of vulnerable populations, the study of the following groups is generally accepted as the study of vulnerable populations: Pregnant women, human fetuses, and neonates; prisoners; children (anyone under the age of 18 years); cognitively impaired persons; students and employees; minorities; economically and/or educationally disadvantaged; AIDS/HIV+ subjects; terminally ill subjects. There are special regulations for the study of fetuses; pregnant women and in vitro fertilization, prisoners, and children.

**Response:** This research will not conduct interviews with a vulnerable population. All interviews will be conducted with individuals over the age of 18, are public officials, and do not fall within any category identified as vulnerable.

8. Describe all foreseeable plans for dissemination, including print and oral. Include venues that are private (e.g., classroom dissemination or paper that will only be read by professor) and those that are public (e.g., Student Scholar Showcase, academic journal, conference).

**Response:** The final dissertation will be printed and published in accordance with the policy established for the Ed.D Leadership Studies program at Lynchburg College. The researcher intends to use information from this research to write articles for academic journal publication.



## POLITICAL CULTURE AND SCHOOL CHOICE: THE INFLUENCE OF CONSTITUTIONS, CASE LAW AND PUBLIC OFFICIALS IN LOUISIANA AND VIRGINIA

Based on the analysis and recommendations from the study, proposals may be provided for future school choice legislation in the Louisiana and Virginia. Information may be disseminated to non-profits that specialize and work with state legislatures on school choice programs.

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5/5/15, 8:11 AM



**LYNCHBURG**  
COLLEGE EST. 1903

Lynchburg College Institutional Review Board  
for Human Subjects Research  
*Research Study Determination Letter*

Date: May 4, 2015  
To: Dr. Roger Jones, Dr. Sally Selden, and Karen M. S. Hiltz  
From: Dr. Sharon B. Foreman-Kready  
Director and Chair, Institutional Review Board (IRB)

Review Reference No.: LCHS1415 130  
LC IRB Approval No.: LCHSA1415 104  
Project Title: Political Culture and School Choice: The Influence of Constitutions, Case Law, and Public Officials in Louisiana and Virginia  
Final Determination: Approved  
Approval Date: May 4, 2015  
Expiration Date: May 4, 2016

Thank you for your recent submission to the Lynchburg College Institutional Review Board (IRB) for Human Subjects Research. Your request for review of your research project listed above has been completed. The proposal and related study comply with the standards set by the U.S. Department of Health and Human Services, Code of Federal Regulations, Title 45 CFR Part 46, Protection of Human Subjects, and all applicable federal, state, and institutional policies. If a member of the research team is affiliated with and/or if there is an affiliated research site from which participants are recruited and/or data are gathered, then your study may necessitate review from another entity. It is the responsibility of the PI to inquire at other site(s) and with other IRBs regarding reviewability and, if necessary, secure approval from other site(s)/IRB(s) prior to the collection of data.

Please remember that if any modifications are necessary, these changes need to be approved by this Board. The IRB website includes detailed instructions and forms for this process. Approval for this proposal is for one year; the expiration date is listed above. Investigators must submit a closure form or a renewal request form to the IRB Director following the instructions provided on the IRB website\* at least 30 days before the end date of the approval period as stated in the most recent approval letter for the study. While the LC IRB makes an effort to send reminder correspondence 60-90 days before the end of the approval period, it is ultimately the responsibility of the PI and research team, not the LC IRB, to ensure that this deadline is met. This deadline will allow adequate time for the IRB to review the form so that a decision can be made before the research proposal approval expires. Please feel free to contact me at [irb-hs@lynchburg.edu](mailto:irb-hs@lynchburg.edu) if you have any questions.

\*The Lynchburg College Institutional Review Board website is located at <http://www.lynchburg.edu/institutional-review-board-human-subjects-research>; use menu on left of page to navigate to Submission Instructions and Forms page.

<https://mail.lynchburg.edu/owa/WebReadyViewBody.aspx?t=att&...4n14w7Z6z7ZAAEt9JBzAAABEGAQAJMZ2G14bQhOhsoql8Palks%3D&pn=1> Page 1 of 2