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DEC 28 2022

S.C. SUPREME COURT

December 22, 2022

Hon. Patricia A. Howard
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: *Amy Garrard v. Charleston County School District*,
Appellate Case No. 2020-000605

Dear Ms. Howard:

I am writing to correct two inadvertent erroneous representations of fact made at the oral argument on December 14, one by myself and one by Mr. Parker, and to comment briefly on the significance of these misstatements of the record. Because Mr. Parker's misrepresentation was made during his reply period, I did not have the opportunity to correct it during my argument.

My Misstatement.

Justice Hearn inquired several times whether Superintendent McGinley stated in her press conference that the face drawn on the watermelon was a "racist caricature." When I was before the Court, I replied that I thought Dr. McGinley had characterized the drawing as a "racial caricature." This is not correct. In fact, what she said was that it "could be considered a caricature." Of course, there were general comments she made in the press conference about the concerns over negative racial stereotypes inherent in the ritual, and she showed the drawing of the face. See App. 610, 880.

Whether this drawing is a "racist" caricature or not goes to the heart of the issue of whether the admittedly pejorative term, "racist," is a statement of opinion or fact. Some people will look at the drawing and conclude that the wide eyes, broad grin, flat nose, and kinky hair are a caricature of a Black person. Others will look at it and conclude that it's just a silly face. The conclusion anyone draws from this drawing is a matter of interpretation, not fact, and will be strongly influenced by that individual's life experiences, position in society, and personal view of what racism means. It is not a question that can be objectively proved true or false, such as "was the traffic light green when defendant entered the intersection?" The same is true of the watermelon ritual itself, in its entirety.

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Mr. Parker's Misstatement

In his reply argument, Mr. Parker repeatedly stated that the *Charleston City Paper* was the only publication that labeled the watermelon ritual "racist." This is a gross misrepresentation of the record. Contrary to Mr. Parker's assertion, the record is replete with numerous publications by other media characterizing the ritual as racist, even "horribly racist." *See, e.g.*, App. 636, 639, 642-43, 649, 667-68, 675-76, 685, 688, 710, 715, 767. These articles began on October 20, 2014, the day before the press conference and the first *City Paper* editorial; they continued throughout the time both *City Paper* editorials were published; and there is no evidence to suggest that they were derived in any way from the *City Paper's* editorial opinions. This fact underscores the Petitioners' failure to present any actual evidence (as opposed to mere allegation) of injury to their reputations (as opposed to embarrassment or self-consciousness) as a proximate result of the *City Paper's* editorials (as opposed to all the other publicity).

I apologize for my misstatement to the Court and appreciate the opportunity to correct the record.

With highest regards,


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cc: Justice John W. Kittredge
Justice Kaye G. Hearn
Justice John Cannon Few
Justice George C. James, Jr.
The Honorable R. Keith Kelly
John E. Parker, Esquire
John E. Parker, Jr., Esquire

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