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May 8, 2025

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S.C. SUPREME COURT

By electronic mail

The Honorable John W. Kittredge
Chief Justice of the South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201
supctfilings@sccourts.org

Re: *Albertson et al. v. Ellen Weaver, in her official capacity as State Sup't of Ed.*
Appellate Case No. 2024-002062
Our file no. 044337/01503

Chief Justice Kittredge and Justices of the Court:

We represent Respondent in the above-referenced matter. We were served yesterday with Petitioners' Motion to File a Supplemental Brief, which was filed without advance notice or consent. For the reasons explained below, we ask the Court to hold Petitioners' Motion in abeyance for consideration at a later, more appropriate time. Alternatively, we ask the Court to construe this letter as a request for a briefing schedule or an extension of time by which Respondent's response to the Motion will be due at a time when a meaningful analysis and response can more ably and appropriately be made.

As an initial matter, when the Petition for Original Jurisdiction was first filed in this matter, Respondent asked the Court to hold the Petition in abeyance until the General Assembly had acted on then-proposed legislation that would, if enacted, moot Petitioners' claims. That legislation is now law, and the South Carolina Department of Education will take steps to implement it in a manner consistent with its statutory obligations. The enactment of the new legislation has mooted the pending Petition and Complaint, as can be explained in greater detail at an appropriate time. Respondent can also, in proper time, explain the demerits of Petitioners' recent arguments in their proposed Supplemental Brief. Their Motion to Supplement, however, is not yet ripe for argument—much less decision—for at least four reasons.

First, it is premature. Petitioners' putative Supplemental Brief proposes an Amended Complaint and potential consolidation with a lawsuit that Petitioners anticipate will be filed against the new legislation. No such litigation has yet been filed, however, so their Motion is premature.

Second, the proposed consolidation is necessarily speculative. The not-yet-filed litigation, assuming it materializes, may not be filed in this Court as an original action. The *Adams* case, for example, was initially filed in a trial court before this Court took jurisdiction. *Adams v. McMaster*, 432 S.C. 225, 233 (2020). Petitioners' proposed consolidation might not even be possible here.

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Third, even if the litigation predicted by Petitioners is filed, as they assume, as an Original Jurisdiction action, only then can Respondent thoughtfully analyze and respond to the substance of Petitioners' brief and the proposed consolidation. Whether amendment and consolidation are appropriate depends, at minimum, on whether the claims in any new case and the Petition's claims are overlapping, related, mutually exclusive, or entirely unrelated. There is simply no way to know that yet.

Fourth, regardless of whether and where any separate litigation is filed, Petitioners have a more fundamental problem: their arguments and claims—whether under the old statute or the new one—are barred by mootness and Petitioners' lack of standing. *See generally* Respondent's Resp. to the Pet. for Original Jurisdiction at 6–7 (filed December 25, 2024). Accordingly, dismissal, not amendment or consolidation, is the appropriate next step. To that end, the Court could, of its own volition, dismiss this matter as moot in light of intervening legislative action. Alternatively, if the Court prefers to dismiss only after receiving a Motion to Dismiss, Respondent is willing to file such a Motion in the coming weeks. But, whether *sua sponte* or by motion, consideration of the jurisdictional question of Petitioners' lack of standing and mootness must precede the secondary questions raised in Petitioners' recent Motion.

For the foregoing reasons, Respondent asks this Court to hold Petitioners' Motion in abeyance for 30 days. If, by that time, the Court has received a request for a new original action against the legislation, Respondent requests that the Court then set a briefing schedule on the Petitioners' questions of amendment and consolidation. Respondent reserves the right to oppose the request, move for dismissal, or request additional extensions if necessary or appropriate. We ask that you hold the current response deadline in abeyance pending your consideration of this request.

Sincerely,


Miles Coleman, Esq.

CC: (by electronic mail)

Counsel for Petitioners

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¹ Putative Intervenors are not parties to this proceeding, and Respondent copies them on this letter merely as a professional courtesy without waiving any arguments that their participation in the case is neither necessary nor appropriate.