

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

September 30, 2015

Swati Shah Patel, Esquire
1205 Pendleton St.
Columbia SC 29201

Joel W. Collins, Jr., Esquire
Collins And Lacy, PC
PO Box 12487
Columbia SC 29211

Matthew Terry Richardson, Esquire
PO Box 12247
Columbia SC 29211-2247

Amanda Gibson Adler, Esquire
PO Box 7187
Columbia SC 29202-7187

Elizabeth Scott Moise, Esquire
PO Box 1806
Charleston SC 29402

Alan McCrory Wilson, Esquire
PO Box 11549
Columbia SC 29211-1549

Edward W. Laney, IV, Esquire
PO Box 1473
Columbia SC 29202

Stephen Keith Benjamin, Esquire
3501 North Main Street
Columbia SC 29203

Carl B. Epps, III, Esquire
PO Box 11070
Columbia SC 29211

Laura Callaway Hart, Esquire
PO Box 1486
Columbia SC 29202

Tina Nicole Herbert, Esquire
PO Box 147
Columbia SC 29217

Susan Jennifer Rose, Esquire
PO Box 64
Palo Alto CA 94302

J. Emory Smith, Jr., Esquire
PO Box 11549
Columbia SC 29211

R. Hawthorne Barrett, Esquire
PO Box 1473
Columbia SC 29202

Susan B. Berkowitz, Esquire
SC Appleseed
PO Box 7187
Columbia SC 29202

Rachel Atkin Hedley, Esquire
PO Box 11070
Columbia SC 29211

Robert E. Stepp, Esquire
PO Box 11449
Columbia SC 29211

Elizabeth Van Doren Gray, Esquire
PO Box 11449
Columbia SC 29211

Roland M. Franklin, Jr., Esquire
PO Box 11449
Columbia SC 29211

Ellen M Boylan, Esquire
60 Park Place, Suite 300
Newark NJ 07102

William F. Halligan, Esquire
PO Box 11367
Columbia SC 29211

Kenneth L. Childs, Esquire
PO Box 11367
Columbia SC 29211

Keith Robert Powell, Esquire
PO Box 11367
Columbia SC 29211-1367

W. Allen Nickles, III, Esquire
1122 Lady Street
Suite 610
Columbia SC 29201

Susan Marie Fittipaldi, Esquire
1122 Lady Street
Suite 610
Columbia SC 29201

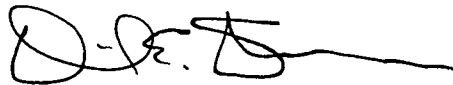
Holly G. Pisarik, Esquire
110 Centerview Dr.
Columbia SC 29210

Re: Abbeville County School District v. State of South Carolina
Appellate Case No. 2007-065159

Dear Counsel:

Enclosed is a copy of a letter from the Speaker of the House of Representatives to Carl H. Epps, III, Esquire, which was copied to the Chief Justice. I have also enclosed a copy of a letter that was sent to the members of the Court by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Very truly yours,

A handwritten signature in black ink, appearing to be "D. Epps", with a long horizontal line extending to the right.

CLERK

Enclosures

cc: The Honorable Hugh K. Leatherman
The Honorable James H. Lucas

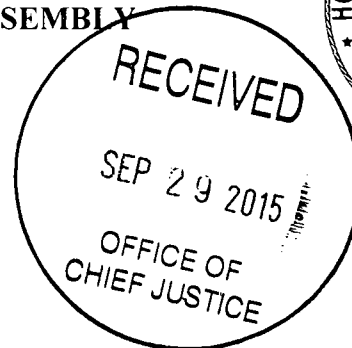


Hugh K. Leatherman
President Pro Tempore

SOUTH CAROLINA
GENERAL ASSEMBLY



James H. Lucas
Speaker



September 29, 2015

RECEIVED

SEP 29 2015

Via Hand Delivery

The Honorable Jean H. Toal
Chief Justice
South Carolina Supreme Court

S.C. SUPREME COURT

RE: September 24, 2015 Order Concerning Appellate Case No. 2007-065159

Dear Madam Chief Justice:

At the outset, let us be perfectly clear - the Senate and the House of Representatives recognize that the public education system in our State is in dire need of reform. We must, and will, work together to ensure that we do everything within our power to ensure that our State's schools have the programs and resources they need to best prepare our children for the future. It is our goal to make South Carolina public schools a shining example for the rest of the country.

We write to you today concerning the above referenced Order. Please accept this letter as notice that we are dismayed by the Order's breathtaking disregard for one of the most fundamental constitutional principles upon which our system of government is based. Even though we recognize the Court's finding of constitutional deficiencies outlined in *Abbeville II*, we believe the Court's authority ends there. The General Assembly will continue to proceed in a constitutional manner to address those shortfalls.

To address the constitutional deficiencies identified by the Court, the Senate and the House of Representatives each convened special committees to closely study the issues involved and propose legislation to address the lingering problems facing the State's educational system. We are pleased with

the progress that the committees have made and look forward to receiving their recommendations and the legislative debate that will occur.

However, your Order seeks to impose on the General Assembly a blatantly unconstitutional process that eviscerates Article I, Section 8 of the South Carolina Constitution. Our State's jurisprudence is clear with regards to the separation of powers - the General Assembly makes the laws, the Executive Branch executes the laws, and the Judiciary interprets and declares the laws. In a little more than four pages, the Court ends this fundamental, time honored principle and seizes control of the legislative process. The Court mandates that the General Assembly formulate a legislative plan, anoints a three person panel of experts with the power to accept or reject the plan, empowers plaintiffs in a lawsuit to effectively veto the plan, and vests in yourselves the authority to declare the constitutionality of the plan before it has even been voted on by the General Assembly. The Court is establishing a judicial preclearance process for legislation not even considered, much less adopted pursuant to the Constitution by the General Assembly.

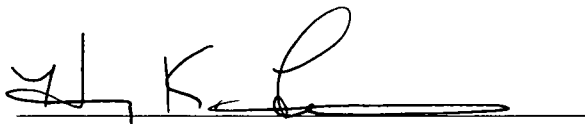
Furthermore, the Court's Order also violates Article III, Section 1 of our State's Constitution through an open and blatant unlawful delegation of legislative authority by directly inserting the "expert panel" and the plaintiff districts into the legislative process. This unlawful delegation is compounded by yet another separate and distinct violation of the separation of powers accomplished through egregiousness of the composition of the expert panel. The Governor, as one of the defendants, has equal input along with the General Assembly in choosing one of the panel members. In so doing, the separation of powers is completely turned on its head - all three branches of the Government would be involved in the legislative process. No concept of the separation of powers allows for this to happen. The Constitution is clear - only the General Assembly, as representatives of the people, has the authority to legislate. No other person, group, or entity can be forced into that process.

The Court's order amounts to a judge created, predetermined legislative outcome that usurps the constitutional duty of each member of the General Assembly to independently represent the interests of his or her constituents. In cases too numerous to mention, this Court and many others have cautioned that it is not the purview of any Court to act as a "super legislature." The infringement on the separation of powers and the unlawful delegation of legislative authority, to both the Court and the expert panel, achieved through this Order carries the court so far down that path that there is little if any discretion left to the people's representatives.

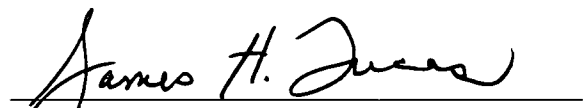
Aside from the obvious constitutional deficiencies, the order further sets an unreasonable, arbitrary timeline for this unconstitutional process to unfold. After spending two decades pondering the constitutionality of our existing system, the Court expects the General Assembly to create a plan in a matter of months. Aside from being arbitrary, the schedule the Court Order seeks to impose is virtually impossible to meet given the demands of the legislative process and the scope and complexities of the issues we are facing. If an obvious answer for solving them existed, it would have been enacted long ago. The General Assembly will continue to move forward in a deliberate, responsible manner to address the problems in our State's educational system. It is vital that we get this right. An arbitrary timeline set by a court under an unconstitutional directive will not deter us.

This Court has gone too far. The Court should respect the General Assembly's constitutional authority to determine how it will address the Court's decision through substantive legislation and through the appropriations process. This path comports with the constitutionally mandated roles and means of interaction between the General Assembly and the Court and maintains the delicate balance of constitutional authority. Once the General Assembly, and only the General Assembly, has acted, the Court may then exercise its constitutional authority to review the final product for constitutional compliance.

Therefore, our special committees will continue their work and will be prepared to present their recommendations to the General Assembly in an expedient, but carefully considered fashion.



Hugh K. Leatherman
President Pro Tempore
South Carolina Senate



James H. Lucas
Speaker
South Carolina House of Representatives

CC: The Honorable Costa M. Pleicones
The Honorable Donald W. Beatty
The Honorable John W. Kittridge
The Honorable Kaye G. Hearn
Her Excellency, Governor Nikki R. Haley
Mr. Carl Epps, Esq.
Mr. Robert Stepp, Esq.



Office of the Speaker
South Carolina House of Representatives

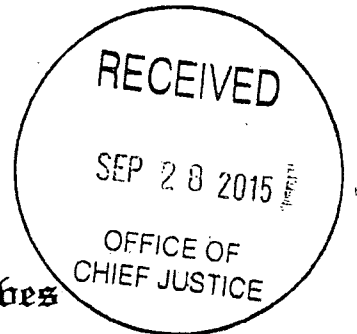
P. O. BOX 11867

Columbia 29211

(803) 734-3125

September 28, 2015

JAMES H. LUCAS
SPEAKER OF THE HOUSE



DISTRICT 65
CHESTERFIELD-DARLINGTON-
KERSHAW-LANCASTER
COUNTIES

HOME ADDRESS
1744 GARLAND DRIVE
HARTSVILLE, SC 29550
(843) 383-9421

Mr. Carl B. Epps, III
Nelson Mullins Riley & Scarborough
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201
VIA HAND DELIVERY

RECEIVED

SEP 29 2015

S.C. SUPREME COURT

Dear Mr. Epps:

In January of 2015, following the denial of a rehearing in the *Abbeville County School District v. State of South Carolina* case, I reached out to you about the formation of a joint legislative task force with significant representation from the plaintiffs' districts as a possible method to comply with the Supreme Court's order. After much discussion, you agreed to participate in the task force model I proposed and to work together in good faith to address the education delivery system in South Carolina.

In the months that followed, the members chosen by the plaintiffs' districts have had a significant impact in shaping the work of the task force, and they have had a prominent voice in the discussions. It came as such a severe disappointment to me when, in June, you filed a motion with the South Carolina Supreme Court to engage in an alternative process to answer the Court's concerns in *Abbeville*.

Of even greater disappointment was the Court's 3-2 vote granting your ill-conceived motion despite the tremendous progress made by the task force. I, Chairwoman Allison, and members of the task force believed you to be working with us in good faith. I see now, that was not the case.

In my time as Speaker of the House I have emphasized consensus. I saw our task force as the best hope to build that consensus and to make meaningful reforms to South Carolina's education system. Clearly, you and the Court disagree.

Unfortunately, the new and unprecedented process that you have asked the Court to force upon the General Assembly cannot coexist with the current task force model. Because of your actions, months and months of hard work has been potentially placed in jeopardy.

Mr. Carl B. Epps, III
September 28, 2015
Page Two

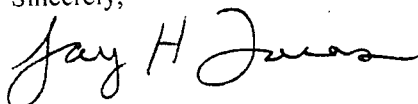
I now believe that you must choose to either fulfill your commitment to participate in the task force model or continue to litigate this matter before the State Supreme Court as you suggested in your June motion. The two methods are not compatible with one another and cannot be carried out simultaneously.

I very much hope that you will choose to continue working with the task force as I believe that group has built an excellent opportunity for real, meaningful, impactful change to education in South Carolina. I also hope you will see that the Court's order is simply an unworkable solution to a complex problem. The arbitrary system you have proposed and the Court has granted does not serve the best interest of your clients. It simply places an additional hurdle and creates further acrimony in a process that requires thoughtful, careful consideration.

Given that the task force has completed over nine months of work and that the Court's first deadline is October 15th, I must insist on any response from you by no later than Monday, October 5, 2015. If you decline to respond, I will be forced to assume that you have chosen to insist upon your motion and that your clients no longer wish to participate in the House Education Policy Review and Reform Task Force.

Thank you for your attention to this matter and I await your response.

Sincerely,



James H. "Jay" Lucas
Speaker of the House

JHL:cd

cc: The Honorable Jean H. Toal (hand delivery)
The Honorable Rita M. Allison (hand delivery)
Members of the Education Policy Review and Reform Task Force (via email)