

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No.: 2007-65159

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C., a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through

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Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Kathisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. S.; Robert B. S., a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson B.; Jorgana Ranson B., a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin N.; Erin N., a minor, by and through Dr. John Nobles, as Guardian ad

Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle H.; Krystle H., a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. B.; Tanisha P. B., a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea B.; Dondrea B., a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda S.; Brenda S., a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas S., Jr.; Thomas S., Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem,

Plaintiffs,

Of Whom

Allendale County School District, Dillon County School District 2, Florence County School District 4, Hampton County School District 2, Jasper County School District, Lee County School District, Marion County School District 7 and Orangeburg Consolidated School District 3; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Kathisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a minor, by and through Marva Tigner as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and

Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem, are

Appellants / Respondents,

vs.

The State of South Carolina, Mark C. Sanford, as Governor of The State of South Carolina; Glenn F. McConnell, in his representative capacity as President Pro Tempore of the South Carolina Senate and as representative thereof; Robert William Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives,

Defendants,

Of Whom

Glenn F. McConnell, in his representative capacity as President Pro Tempore of the South Carolina Senate and as representative thereof; Robert William Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives,

Respondents / Appellants

and

The State of South Carolina and Mark C. Sanford, as Governor of the State of South Carolina are

Respondents.

RESPONDENTS / APPELLANTS GLENN F. McCONNELL AND ROBERT WILLIAM HARRELL, JR.'s RETURN TO BRIEF OF *AMICI CURIAE* SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER AND SOUTH CAROLINA ASSOCIATION OF SCHOOL NURSES

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Argument

Without having heard the evidence in this case or studied its procedural history, the South Carolina Appleseed Legal Justice Center and the South Carolina Association of School Nurses (collectively referred to as “the *amici*”) moved this Court on May 1, 2008 for leave to file an *amicus curiae* brief in the above-referenced matter.¹ The brief of the *amici* offers no unique insights into the legal issues in this case. Indeed, most of the positions taken are merely restatements of the positions advanced by the Appellants/Respondents. Accordingly, this Court should give little weight to the arguments advanced by the *amici*.

I. Standard for *Amicus Curiae* Briefs

By definition, an *amicus curiae* is a “friend of the court” whose general purpose is to “give[] information for the assistance of the court on some *matter of law* in regard to which the court might be doubtful or mistaken rather than one who gives a highly partisan account of the facts.” 3B C.J.S. *Amicus Curiae* § 1 (2004) (emphasis added). *Amicus* status is typically granted when: “(1) the amicus has a special interest in the particular case; (2) that interest is not represented competently or at all in the case; (3) the proffered information is timely and useful; and (4) the amicus is not partial to a particular outcome in the case.” 3B C.J.S. *Amicus Curiae* § 4 (2004).

¹ The *amici*’s misapprehension of this case is apparent in the opening paragraph of their motion in which they state that the Appellants/Respondents brought this action in this Court’s original jurisdiction. (Mot. of South Carolina Appleseed Legal Justice Center and South Carolina Association of School Nurses for Leave to File a Brief as *Amicus Curiae* at 3). Moreover, *amici* contend that in this purported original jurisdiction action, this Court “sits as a trial court, rather than an appellate court.” *Id.* Both statements are incorrect.

The *amicus* brief does not meet these criteria and offers no special benefit to the Court. This Court should therefore accord little weight to the *amici*'s arguments.

II. The Parties Have Adequately and Competently Presented All Relevant Legal Arguments.

On September 5, 2007, this Court issued an order addressing certain issues regarding the briefs submitted by the parties. In all, the parties have submitted approximately 778 pages of written materials to this Court in this matter covering a plethora of legal issues pertinent to this case. Nothing presented in the *amici*'s brief sheds light on any legal issue relevant to this case, and in fact the *amici*'s brief simply regurgitates many of the arguments already advanced by Appellants/Respondents.

For example, in their opening paragraph, the *amici* represent that they "seek to show the court that the State can compensate for, and overcome, the poverty-based obstructions to a child's opportunity to learn *by properly applying appropriate resources.*" (Br. of *Amici Curiae* 1 (emphasis added)). Specifically, according to the *amici*, in order for children in the Plaintiff Districts to receive an adequate education "children living in poverty need more financial resources, increased programs developed to address specialized needs, instructional supplies, more effective and high-quality teachers, and access to technology and high-quality curriculum." (Br. of *Amici Curiae* 6 (footnote omitted)). This is the same argument advanced by the Appellants/Respondents in their briefs. (See, e.g., Final Resp'ts Br. of Appellants/Respt's 69 (arguing that "Plaintiffs have demonstrated that although poverty is a reality in the lives of many children in the Plaintiff Districts, the obstacles to achievement faced by these children can be overcome with quality teachers and targeted educational programming"); *id.* at 82 (contending that certain evidence

proffered by Plaintiffs “supports the conclusion that inadequate educational programs and policies, not poverty, are the cause of poor academic achievement in the Plaintiff Districts”)).

Setting aside the fact that in their briefs, Respondents/Appellants conclusively establish the fact that children in the Plaintiff Districts already have the resources the *amici* claim are needed, the *amici* would have this Court decide what financial resources, specific programs, and instructional supplies are provided to each student, as well as determine what constitutes an effective or high-quality teacher and a high-quality curriculum. But in *Abbeville County*, this Court constrained the courts of this state from engaging in policy making for education in South Carolina. *Abbeville County v. State of South Carolina*, 335 S.C. 58, 69, 515 S.E.2d 535, 541 (1999). Arguing how this Court should apply appropriate resources runs afoul of this prohibition as established by Respondents/Appellants in their briefs. Respondents/Appellants therefore refer the Court to their discussions of this issue in their briefs. (See Cross-Appeal Br. of Resp’ts/Appellants 62-71; Reply Br. of Respt’s/Appellants 51-65).

The *amici* contend further that in order to fulfill its constitutional obligation to provide the opportunity for a minimally adequate education for students in the Plaintiff Districts, “the state must consider the pervasiveness of poverty within the plaintiff districts, as well as its impact on educational performance.” (Br. of *Amici Curiae* 3 (footnote omitted)). This same argument was advanced by Appellants/Respondents in their briefs. (See Final Resp’ts Br. of Appellants/Resp’ts 61). Not only did Respondents/Appellants consider the pervasiveness of poverty, the

Respondents/Appellants established, and the record reflects, that the influence of poverty rather than schools determines the lower achievement in the Plaintiff Districts. (See Final Br. of Resp'ts/Appellants 24-30; Cross-Appeal Br. of Resp'ts/Appellants 53-57).

Thus, the *amici* provide ample reason for this Court to discount their brief. The *amici*'s effort is merely an extension of the Appellant/Respondents' arguments before this Court. As Judge Posner explains, these types of *amicus* briefs are an abuse:

The vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made by the litigants' briefs, in effect *merely extending the length of the litigant's brief*. Such *amicus* briefs should not be allowed. They are an abuse. The term '*amicus curiae*' means friend of the court, not friend of a party.

Ryan v. Commodity Futures Trading Comm'n, 125 F.3d 1062, 1063 (7th Cir. 1997) (citations omitted) (emphasis added). While this Court has already granted the *amici*'s motion to file an *amicus* brief, this Court should give little weight to the arguments contained therein.

III. The *Amici* are Arguing Facts, Not the Law.

"An *amicus* who argues facts should rarely be welcomed." *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970). In their brief, the *amici* have amplified the Appellant/Respondents' positions and have failed to acknowledge any countervailing evidence presented by the Respondents/Appellants. The *amici* barely discuss any legal issues in their brief. Indeed, the twenty page brief submitted on

behalf of the *amici* fails to cite even one proposition of law.² Moreover, *amici*'s brief is replete with factual references and expert opinions that are outside the record, which the Respondents/Appellants cannot possibly test through cross-examination or impeachment. Thus, the *amici*'s brief is reduced to nothing more than a brief selectively supplementing factual arguments offered by the Appellants/Respondents during the course of trial and already in the record. Because the *amici* argue facts and not law, their brief is of very limited utility to the Court and should therefore be discounted by this Court.

Conclusion

The *amici*'s effort to educate the Court on how to overcome perceived "poverty-based obstructions to a child's opportunity to learn by properly applying appropriate resources" is contrary to this Court's conclusion in *Abbeville County v. State* that "[w]e do not intend by this opinion to suggest to any party that we will usurp the authority of [the legislative] branch to determine the way in which educational opportunities are delivered to the children of our State. We do not intend the Courts of this State to become super-legislatures or super-school boards." 335 S.C. at 69, 515 S.E.2d at 540. Moreover, the *amici* offer little by way of educating the Court about the law. Accordingly, this Court should give little weight to the opinions expressed by the *amici*.

[Signature page follows]

² Respondents/Appellants have never disputed that all children can learn, and the suggestion that there is evidence in support of the proposition that funding and achievement are correlated is highly questionable.

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Plaintiffs,

Of Whom

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Appellants /

Respondents,

vs.

The State of South Carolina, Mark C. Sanford, as Governor of The State of South Carolina; Glenn F. McConnell, in his representative capacity as President Pro Tempore of the South Carolina Senate and as representative thereof; Robert William Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives,

Defendants,

Of Whom

Glenn F. McConnell, in his representative capacity as President Pro Tempore of the South Carolina Senate and as representative thereof; Robert William Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives,

Respondents / Appellants

and

The State of South Carolina and Mark C. Sanford, as Governor of the State of South Carolina are

Respondents.

PROOF OF SERVICE

I hereby certify that I served a copy of the Return to Brief of *Amicus Curiae* upon counsel of record and all interested parties, as reflected below, by placing same in the United States mail, postage prepaid, this 20th day of May, 2008.

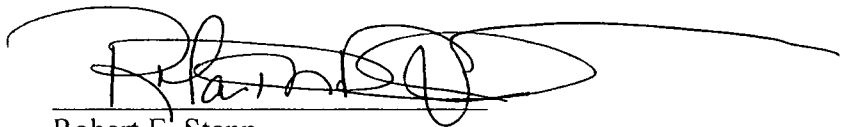
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