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VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
1231 Gervais Street
Columbia, SC 29201

RECEIVED

OCT 22 2012

S.C. SUPREME COURT

Re: Rocky Disabato d/b/a "Rocky D" v. South Carolina Association of School
Administrators
Case Tracking No. 2011-198146

Dear Mr. Shearouse:

Pursuant to Rule 208(b)(7), SCACR, the respondent, South Carolina Association of School Administrators ("SCASA"), hereby respectfully responds to Appellant's Rule 208(b)(7) citation to the supplemental authority *Asgeirsson v. Abbott*, Case No. 11-50441, 2012 U.S. App. LEXIS 2068 (5th Cir. Sept. 25, 2012).

The *Asgeirsson* decision is not significant new authority. Importantly, it addresses the Texas Open Meetings Act (TOMA), Texas Government Code, § 551.144. The scope of the TOMA is much narrower in its application than the South Carolina Freedom of Information Act. Under § 551.001(3), the TOMA applies in almost all cases only to actual governmental bodies, and a non-profit corporation like SCASA would not even be subject to the requirements of the TOMA. Additionally, the definition of "Meeting" is narrower under the TOMA, § 551.001(4), than under the South Carolina Freedom of Information Act. Accordingly, the *Asgeirsson* decision does not even begin to address the fundamental issue raised in this case, which concerns only the First Amendment rights of private corporations engaged in issue advocacy--not the constitutional rights of public, governmental entities. Likewise, Judge Cooper's order does not assert the unconstitutionality of the South Carolina Freedom of Information Act with respect to actual governmental entities. In short, the *Asgeirsson* decision does not address a conflict between open meeting and disclosure requirements and private corporate speech and expressive associational rights. Indeed, footnote 15 of the *Asgeirsson* decision recognizes this important difference.

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Because of TOMA's narrow scope, it neither restricts the speech of private corporations unrelated to actual government decision-making, nor implicates or directly interferes with the freedom of mind, editorial processes, or expressive associational rights of private entities. Consequently, the analysis of the applicable level of constitutional scrutiny and the balancing of interests discussed in *Asgeirsson* is inapposite to the review of Judge Cooper's order in this case. Ultimately, *Asgeirsson* and the TOMA support, if anything, SCASA's position that the public's interest in open government can be fully vindicated without restricting the speech of private issue advocacy organizations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'J. Reagle', with a long horizontal flourish extending to the right.

John M. Reagle

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/lmc

c: J. Emory Smith, Jr., Esq.
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