

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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AUG 25 2016

SC SUPREME COURT

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2007-065159

Abbeville County School District, *et al.*,

Appellants-Respondents,

vs.

The State of South Carolina, *et al.*, of whom
Hugh K. Leatherman, as President Pro Tempore
of the Senate and as a representative of the
South Carolina Senate, and James H. Lucas,
as Speaker of the House of Representatives and
as a representative of The South Carolina House
of Representatives,
are

Respondents-Appellants,

and

State of South Carolina, Nikki R. Haley,
as Governor of the State of South Carolina,
are

Respondents.

PETITION TO VACATE CONTINUING JURISDICTION

Pursuant to Rule 240, SCACR, and further pursuant to this Court's Order of November 5,
2015, Respondents-Appellants Hugh K. Leatherman, in his representative capacity and as

President Pro Tempore of the South Carolina Senate, and James H. Lucas, as Speaker of the South Carolina House of Representatives (“the Senate and the House”), hereby petition the Court to vacate its continuing jurisdiction in this case to permit the General Assembly to perform its duty and to exercise its authority to determine the manner in which educational opportunities are provided to students in South Carolina without continued direct oversight by the judicial branch. As this Court noted in *Abbeville I*, “the constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina rests on the legislative branch of government.” *Abbeville County Sch. Dist. v. State*, 335 S.C. 58, 69, 515 S.E.2d 535, 541 (1999). Thus, the Court concluded, “[w]e do not intend by this opinion to suggest to any party that we will usurp the authority of that 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.” *Id.* In *Abbeville II*, the court exercised its authority to declare the law, and held that the public education system did not comply with the constitutional requirements announced in *Abbeville I*. *Abbeville Cty. Sch. Dist. v. State*, 410 S.C. 619, 661, 767 S.E.2d 157, 179 (2014). Additionally, the Court retained jurisdiction of the case, citing *Brown II*, 349 U.S. at 300–01, 75 S.Ct. 753, in which the Supreme Court retained jurisdiction until the defendants made a “prompt and reasonable start toward full compliance” with the ruling from *Brown I*. *Id.*

Pursuant to its continuing jurisdiction, the Court subsequently issued its Order of November 5, 2015, in which the Court required the Senate and the House to provide a report to the Court following the conclusion of the 2016 legislative session “detailing their efforts to implement a constitutionally compliant education system” The Senate and the House

submitted the required report on June 29, 2016. Appellants filed a response to that report on July 21.

The November 5 Order provides that following receipt of the Defendants' report, the Court will assess "whether the efforts seem designed to provide a remedy for the constitutional defects identified in Abbeville II" and will consider "the General Assembly's constitutional prerogative to choose the methodology by which the constitutional violation shall be remedied." Additionally, the Order states that the Court will analyze "whether the Defendants' efforts are a rational means of bringing the system into constitutional compliance, and whether or not the Court's continued maintenance of jurisdiction is necessary."

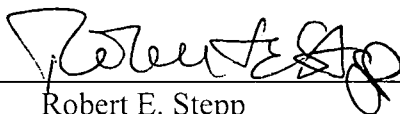
The Senate and the House acknowledge that more work remains to be done to ensure a system of public education that complies with the constitution. The June 29 report to the Court specifically contemplates further legislative action to provide a remedy. The record before the Court establishes by any measure, however, that the efforts to date of the Senate and the House represent a "rational means of bringing the system of public education into constitutional compliance," and at the least a "prompt and reasonable start toward full compliance." Under these circumstances, the Court should acknowledge that Defendants are acting in good faith to implement a remedy for the Court's concerns and that the rationale for the reservation of continuing jurisdiction is no longer applicable. The Court should therefore defer to the acknowledged prerogative of the General Assembly to make policy choices regarding education in compliance with Abbeville I and Abbeville II, and vacate the continuing jurisdiction it reserved for limited purposes in 2014.

In seeking this relief, Defendant acknowledge that Plaintiffs are critical of the sufficiency of the efforts undertaken by Defendants to date. Consensus as to the precise policy choices to be

made, however, may be neither possible as part of an adversarial process, nor even desirable, because constructive disagreement may lead to better programs in the future. The proper forum for those discussions, however, is in not in this Court, but rather in the marketplace of ideas and in the halls of the General Assembly, where Plaintiffs and all of the public can have input.

But while there may always be debate about the best way to provide educational opportunities to students in South Carolina, there can be no debate whether the efforts of the Senate and the House represent a rational means of improving the system of public education and a prompt and reasonable start toward full compliance with Abbeville I and II. The Senate and the House therefore respectfully request that the Court vacate its continuing jurisdiction in this case.

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August 25, 2016

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PROOF OF SERVICE


I hereby certify that I have caused to be served a copy of the Respondents-Appellants' Petition to Vacate Continuing Jurisdiction upon counsel of record, as reflected below, by hand delivery, this 25th day of August 2016.

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