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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE 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,

v.

The State of South Carolina, et al., of whom Hugh K. Leatherman, Sr., 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, Henry D. McMaster, as Governor of the State of South Carolina, are, ... Respondents.

APPELLANTS-RESPONDENTS' RETURN TO PETITION TO VACATE SUPPLEMENTAL ORDERS OF RESPONDENT-APPELLANT HUGH K. LEATHERMAN, AS PRESIDENT PRO TEMPORE OF THE SENATE, AND RESPONSE TO REPORTS OF RESPONDENT/RESPONDENT-APPELLANT

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Appellants-Respondents (hereinafter referred to as "Plaintiffs" or "Plaintiff Districts") respectfully submit this Return to Petition to Vacate Supplemental Orders of Respondent-Appellant Hugh K. Leatherman, as President Pro Tempore of the South Carolina Senate, and Response to Reports of Respondent Governor McMaster and Respondent-Appellant Leatherman. This Return also responds to Respondents State and the Honorable Henry McMaster, Governor of the State of South Carolina, to the extent they joined in the House and Senate's Petitions to Vacate.

I. Response to Reports of the Senate, the State, and the Governor.

Plaintiffs hereby incorporate their previously filed response to the Report of Respondent-Appellant James H. Lucas, as Speaker of the South Carolina House of Representatives, which illustrates that legislative actions taken since this Court's Order of November 2014 (*Abbeville II*) have not remedied the constitutional violations found therein. The Reports filed by the Senate and the Governor do not suggest otherwise. For example, the Governor's Report acknowledges that the State must fund education to serve the needs of its students, but cites an increase in funding of base student cost from 2016 to 2017 that obscures the fact that the base student cost continues to be historically underfunded -- by approximately $400 million for the 2017-2018 school year -- as addressed on pages 18-19 of the Plaintiff Districts' previously filed response. Likewise, the Senate's Report highlights the fact that the only general legislation enacted is "focused on the oversight of the public education system." Senate Report at 4. None of the Reports filed by the Defendants suggest that the State is taking a "broader look" at the way education is offered in South Carolina or considering the wisdom of enacting new laws that have no demonstrable impact on student learning. Additionally, as pointed out on page 21 of the Plaintiff Districts' previously filed response, school districts are

precluded from making long-term investments when funding is provided in provisos since there is no guarantee of continued funding and reforms must be matched with consistent and reliable funding over time. Further, education legislation must be focused on reforming the way educational opportunities are offered, and new legislation aimed only at studying and monitoring school district performance, while not harmful, does not provide relief to students in the Plaintiff Districts or constitute the comprehensive reform called for by this Court's Order in *Abbeville II. Abbeville County School Dist. v. State*, 410 S.C. 619, 659, 757 S.E.2d 157, 178 (2014).

II. Return to Petition to Vacate Supplemental Orders of Respondent-Appellant Hugh K. Leatherman, As President Pro Tempore of the South Carolina Senate, and to Respondents State and the Honorable Henry McMaster, Governor of the State of South Carolina, to the extent they joined in the House and Senate's Petitions to Vacate.

The Senate's position that the Court lacks jurisdiction to enforce its prior Orders is not new. Throughout the history of this litigation, the Defendants have maintained that the Court lacks authority to adjudicate the constitutional questions presented in this litigation and insisted that they should be left alone to develop educational policy and legislation. This Court has repeatedly rejected these arguments, and in properly exercising its constitutional authority to enforce the Constitution, stated that the Defendants' arguments in this respect "ring hollow when compared to the Defendants' failure to comprehensively analyze the troubling issues preventing educational opportunity in the Plaintiff Districts." *Abbeville II*, 410 S.C. at 661-62, 767 SE.2d at 179.

Indeed, this Court stands in good company with the United States Supreme Court in concluding that judicial intervention is not only proper, but necessary, to secure constitutional compliance when the Defendants have failed to meet their constitutional obligations.

Abbeville II, 410 S.C. at 650-53, 767 SE.2d at 173-75 (citing *Brown v. Board of Education*, 347 U.S. 483, 495 (1954)). The Court has carefully balanced its solemn duty to enforce the Constitution without intruding into the General Assembly's prerogative to make educational policy decisions. Continued jurisdiction in this instance is essential to ensuring constitutional compliance in a reasonably timely manner, and whereas other courts have imposed specific deadlines to implement reform legislation and sanctions for noncompliance, this Court has required only interim reports to ensure progress continues at an acceptable pace to solve the "crisis affecting students in the Plaintiff Districts." *Abbeville II*, 410 S.C. at 660, 757 S.E.2d at 178.

The Senate's objection to this restrained exercise of judicial authority is internally inconsistent. On the one hand, the Senate accuses the Court of invading the province of the legislature by retaining jurisdiction, while on the other hand, the Senate contends that the Court has been insufficiently specific in providing for a remedy. The Senate also supports the importance of improving educational opportunities, describing this as a "high priority" for the State, while on the other hand, suggesting that the Court's resources would be better spent focusing on "new, emerging" issues. This Court has previously recognized that education is of critical importance to the future of our State, and that it will not infringe on legislative prerogative to fashion educational policy choices. The Court properly exercised its authority by ruling on the constitutional question presented and offering clear guidance on what troubled the Court.

Twenty-four years have passed since this case began, and twelve years have elapsed since the Defendants were put on notice by the trial court that they were not providing the constitutionally required educational opportunities to students in the Plaintiff Districts. Nearly

three years ago, in *Abbeville II*, this Court affirmed that the Defendants are operating an unconstitutional system of public education and made clear that a comprehensive reform effort is necessary to bring the education system into constitutional compliance. The Defendants have yet to make this effort, and have given no indication of when a constitutionally compliant system will be implemented. Notably, Plaintiffs are not aware of any meeting by a committee of the Senate for the stated purpose of developing a response to *Abbeville II* since the last meeting of the Senate Special Subcommittee on March 3, 2016.

The history of this twenty-four year litigation has taught that, without any deadlines, other matters will take priority, and the school children in the Plaintiff Districts will continue to suffer. Plaintiffs therefore ask that the Court provide a deadline for a plan providing comprehensive reform to be in place. Plaintiffs see no reason to delay drafting reforms reasonably calculated to cure the constitutional defects beyond the end of the 2018 legislative session.

For these and all the reasons previously stated, the Plaintiff Districts again request that the Court continue to retain jurisdiction over this case while the unconstitutional deficiencies exist, and push the Defendants toward achieving constitutional compliance by requiring a specific date by which the Defendants will finalize and agree to comprehensive reform measures to cure the constitutional deficiencies found in *Abbeville II*.

Respectfully submitted,

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July 10, 2017

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants-Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by **hand delivery** to the following address(es):

Pleadings:

Appellants-Respondents' Return to Petition to Vacate Supplemental Orders of Respondent-Appellant Hugh K. Leatherman, as President Pro Tempore of the Senate, and Response to Reports of Respondent/Respondent-Appellant

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July 10, 2017