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,

vs.

The State of South Carolina, *et al.*, of whom John E. Courson, as President Pro Tempore of the Senate and as a representative of the South Carolina Senate, and Robert W. Harrell, Jr., 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.

BRIEF OF RESPONDENTS / APPELLANTS JOHN E. COURSON AND ROBERT W. HARRELL, JR.

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BRIEF OF RESPONDENTS / APPELLANTS JOHN E. COURSON AND ROBERT W. HARRELL, JR.

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Table of Contents

Table of Authorities

State Cases

State Statutes

Constitutional Provisions

Other

Introduction

Pursuant to this Court's Order dated May 23, 2012, John E. Courson, as President Pro Tempore of the Senate and as a representative of the South Carolina Senate, and Robert W. Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives ("the Senate and the House"), submit this brief at the invitation of the Court. As previously noted by the Senate and the House, the principal issue that is before this Court is a relatively narrow question of fact: does the record establish that students in the Plaintiff Districts had the opportunity to acquire a minimally adequate education? The record upon which this question depends reflects the opportunities that existed at and before the time of trial in 2003 and 2004. As previously argued by the Senate and the House, the evidence overwhelmingly demonstrates that the students in the Plaintiff Districts had adequate and safe facilities in which they had the opportunity to acquire a minimally adequate education as defined by this Court. The Senate and the House therefore renew and incorporate herein all previous arguments made by them.

As requested by the Court, the Senate and the House have attempted to identify statutes and laws enacted by the General Assembly since June 25, 2005 relating to public school financing for primary and secondary schools in the State of South Carolina.[1] In considering these enactments it is readily apparent that both substantive educational policies and the manner in which K-12 education is funded have changed significantly since the trial court ruled in this matter seven years ago. These issues are the subject of continual legislative review and are constantly evolving. Additionally, many of the

[1] A copy of the laws and provisos identified are in the Appendix attached hereto.

teachers, buildings, assessments, interventions, achievement standards, and conditions in the Plaintiff Districts are different today than they were when the record in this case closed in 2004. The many legislative enactments since 2005, as well as the other changes that have occurred in the Plaintiff Districts since 2004, have materially changed the landscape in the Plaintiff Districts. Although the Court may take notice of the changes, the Court does not have any evidence before it that would permit it to make findings with respect to how those changes affect the findings of the trial court, or to determine independently what opportunities exist today.

This case is therefore moot. A decision by the Court as to the factual issue addressed by the record would have no practical significance because the facts are now much different. And as this Court itself has cautioned, it will leave it to the General Assembly to make the policy choices affecting education, and will not sit as a super-legislature or a super-school board. There is therefore no basis for this Court to pass judgment on the policies adopted by the General Assembly, except as to whether those choices create the opportunity for each child to acquire a minimally adequate education as a matter of fact. The Court should therefore refrain from deciding this case. A decision based on an outdated factual record will not be helpful, and no other issue is before the Court.

This result is not a criticism of the Court, but is a natural consequence of the limitations inherent in the judicial process. Courts are ill-equipped to consider issues of policy because of the time necessary to bring a case to trial, and further because the procedural and evidentiary rules of the courts are not designed to permit flexible consideration of all information necessary to inform policy decisions. The fact that this

case involves a record "frozen" in 2004 highlights the unsuitability of a process designed to decide cases and controversies, not to make and continually update policies. Thus, we have a case that has been pending for eighteen years without any final decision being rendered. These reasons compel the conclusion that this Court should dismiss this appeal as moot.[2]

Facts

Eighteen years ago, on November 1, 1993, forty school districts in the State of South Carolina together with certain students and taxpayers commenced a declaratory judgment action in the Court of Common Pleas for Lee County challenging the statutory scheme creating and funding South Carolina's public schools. (REC000339—REC000384.)[3] Plaintiffs sought a declaration that the Education Finance Act of 1977 ("EFA") was unconstitutional as implemented, as well as a declaration that the level of funding for education in South Carolina was inadequate. (REC000388a.0023—REC000338a.0024.)

Following a hearing before the trial court held on September 20, 1996, the trial court granted Defendants' motions to dismiss Plaintiffs' Second Amended Complaint with prejudice for failure to state facts sufficient to constitute a cause of action. Plaintiffs subsequently appealed the trial court's September 20, 1996 order to this Court.

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[2] Alternatively, the Court should affirm in part and reverse in part consistent with the prior arguments of the Senate and the House. Such a decision would answer the pending question, although it would not preclude further litigation or address current conditions and opportunities.

[3] As a result of district consolidations, the number of Plaintiff Districts was reduced to thirty-six. Prior to trial, Plaintiffs' counsel selected eight school districts as trial plaintiffs. (REC000246.)

Three years later, in *Abbeville County School District v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999), this Court affirmed dismissal of the action with the exception of the claim made pursuant to Article XI, Section 3 of the South Carolina Constitution, which provides:

> The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning as may be desirable.

S.C. Const. art. XI, § 3.

In *Abbeville County*, this Court proclaimed that it was "the duty of this Court to interpret and declare the meaning of the Constitution," *Abbeville County*, 335 S.C. at 67, 515 S.E.2d at 539 (citing *State ex rel. Rawlinson v. Ansel*, 76 S.C. 395, 57 S.E. 185 (1907)), and that the trial court erred in concluding that Plaintiffs' Second Amended Complaint failed to state a claim for violation of the state constitution's education clause. *Abbeville County*, 335 S.C. at 67, 515 S.E.2d at 539. This Court held that "the South Carolina Constitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education." *Id.* at 68, 515 S.E.2d at 540. This Court defined "minimally adequate education"

> to include providing students with adequate and safe facilities in which they have the opportunity to acquire:
>
> 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science;
>
> 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and
>
> 3) academic and vocational skills.

Id. This Court then remanded the case to the trial court for a factual determination of whether the requisite opportunity existed in the Plaintiff Districts. *Id.* at 69, 515 S.E.2d at 541. Specifically, this Court charged the trial court to determine only one factual issue: Do students in the Plaintiff Districts have adequate and safe facilities in which they have the opportunity to acquire a minimally adequate education as defined by this Court?

On remand, a non-jury trial began on July 28, 2003 and ended on December 9, 2004. During the course of 102 days of trial, 112 witnesses testified in person or by deposition, and approximately 4,400 documents were received into evidence. Most of the data introduced into evidence pertaining to the Plaintiff Districts was from 1999 to 2003. Based on this evidence and the testimony of the many experts and witnesses who testified at trial, on December 29, 2005, the trial court issued a 170 page order concluding

> (1) that the instructional facilities in the Plaintiff Districts are safe and adequate to provide the opportunity for a minimally adequate education as defined in Abbeville County;
>
> (2) that the South Carolina Curriculum Standards encompass the knowledge and skills necessary to satisfy the definition for a minimally adequate education as set out in Abbeville County;
>
> (3) that the system of teacher licensure, including the minimum passing scores on Praxis I and the different Praxis II tests, is sufficient to ensure at least minimally competent teachers to provide instruction consistent with the curriculum standards;
>
> (4) that inputs into the educational system, except for the funding of early childhood intervention programs, are sufficient to satisfy the constitutional requirement;
>
> (5) that the constitutional requirement of adequate funding is not met by the Defendants as a result of their failure to adequately fund early childhood intervention programs.

(REC000206.) In sum, based on the evidence before the trial court at that time, the trial court answered the factual question before it and concluded that all existing components of the education system were constitutionally adequate. The trial court nonetheless also concluded that students in the Plaintiff Districts were denied the opportunity to receive a minimally adequate education "because of the lack of effective and adequately funded early childhood intervention programs designed to address the impact of poverty on their educational abilities and achievements." (REC000207.)

After Plaintiffs filed a notice of appeal and the Senate and the House filed a notice of cross-appeal and all issues were fully briefed, this Court held oral argument in this matter on June 25, 2008. On May 23, 2012, this Court issued an order directing that this matter be reargued, stating that "[i]n addition to the issues the parties have addressed in their briefs, the parties should be prepared at oral arguments to discuss how any enactments of the General Assembly regarding public school financing for primary and secondary schools since June 25, 2005 may have impacted the parties' arguments." (Order dated May 23, 2012.) The Court then invited the parties to submit briefs addressing any statutory enactments since June 25, 2005 impacting public school finance if the parties desired to do so. *Id.*

Argument

Pursuant to this Court's order, the Senate and the House have identified the pertinent statutory enactments impacting public school financing since June 25, 2005. What is clear from a review of these enactments is that education continues to receive constant attention from the General Assembly. Even in difficult economic times, the General Assembly has made and continues to make education policy and funding a

legislative priority. In 2005, based on the evidence before it the trial court correctly found that with the exception of funding for early childhood education programs, all of the inputs into the educational system in South Carolina were minimally adequate. Since then, however, the General Assembly has addressed many of the issues raised by the Plaintiff Districts at trial by providing for pre-kindergarten programs,[4] increasing the total funding to the Plaintiff Districts, eliminating reliance on property taxes as the primary source of education funding, replacing the Palmetto Achievement Challenge Test ("PACT") with a different assessment mechanism, and providing increased spending flexibility at the district level. The constitutional standard of *Abbeville County* was well met in the record before the Court, and it continues to be today.

I. Material Changes in the Facts and Laws Since 2005 Have Significantly Altered the Education Landscape.

A. Material changes in funding for education in South Carolina have occurred since the trial court's decision.

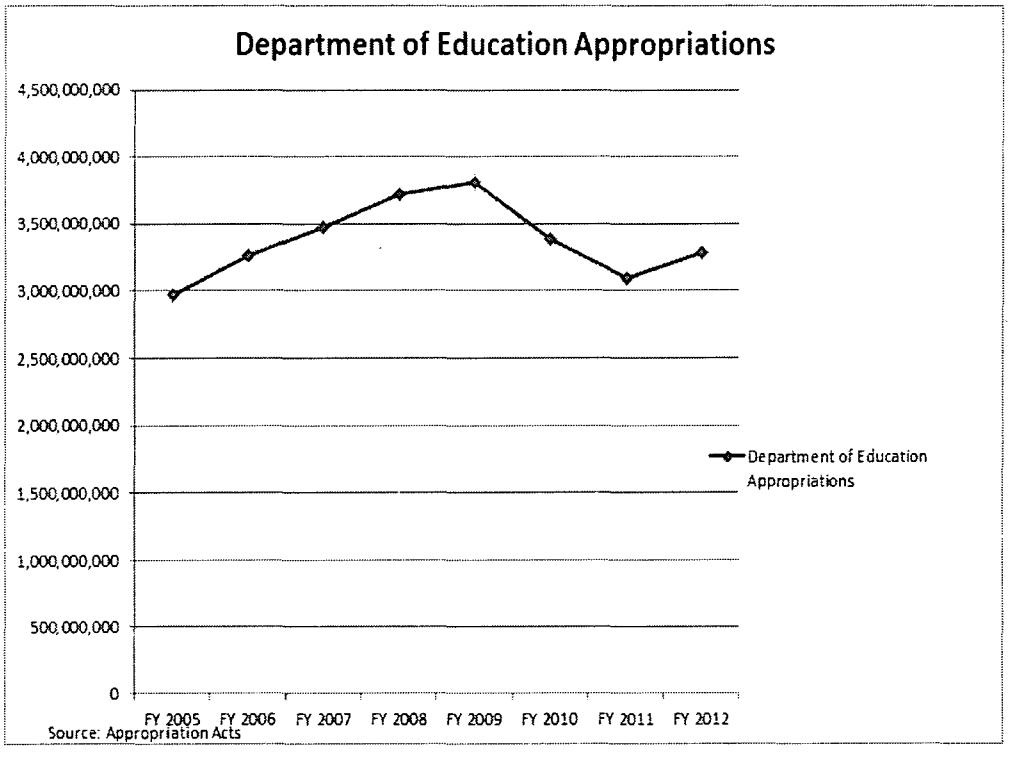
The enactments by the General Assembly since June 25, 2005 relating to public school financing establish that the South Carolina General Assembly continues to make education a top priority. Even though the state experienced across-the-board budget cuts beginning in fiscal year 2008, on average state appropriations to education have continued to increase over-time. In their prior filings in this Court, the Senate and the House asked the Court to take judicial notice that funding for education had increased significantly since the time of trial. The Senate and the House now ask the Court to take

[4] Funding for early childhood education was an initiative on the part of the Senate and the House as a specific response to the order of the trial court. The Senate and the House still maintain however that the trial court erred in concluding that early childhood education programs must be delivered as a matter of constitutional obligation. *See* Cross Appeal Br. of Resp'ts/Appellants 58-71.

judicial notice that spending in the Plaintiff Districts has continued to increase through the current year.

1. Funding

In fiscal year 2003-2004, education received 36% of the general fund appropriations in South Carolina. (*See* REC038841-REC038851; REC014081, l. 9—REC014082, l. 12.) In fiscal year 2011-2012, education received 39.08% of the general fund appropriations. (App. 00001.) Although the recent recession resulted in across-the-board state budget cuts that brought decline in state appropriations in 2008, education's percentage of total state appropriations, including Education Improvement Act ("EIA") appropriations has remained steady during this time at 40.5% in 2008 to 42.2% in 2012. Total state education appropriations are on the rise again.



2. Per-pupil spending

Total per pupil expenditures (state, local, and federal funds) have increased in each of the Plaintiff Districts, in some cases dramatically:

	2005-2006 Per Pupil Spending	2010-2011 Per Pupil Spending
Allendale	$11,956	$12,543
Dillon 2	$7,258	$8,532
Florence 4	$8,941	$10,515
Hampton 2	$10,130	$14,159
Jasper County	$8,242	$10,351
Lee County	$9,173	$9,657
Marion 7	$10,473	$13,273
Orangeburg 3	$9,334	$10,750
Average State Per Pupil Expenditures	$8,159	$9,008

See S.C. Dep't of Educ., *available at* http://ed.sc.gov/agency/cfo/finance/Insite.cfm (last visited May 31, 2012).

3. Rankings of the Plaintiff Districts

Education funding in the Plaintiff Districts continues to be higher than funding in non-Plaintiff Districts. In fact, in fiscal year 2007-2008[5], a majority of the eight Plaintiff Districts were in the top ten of school districts in the state in terms of revenues received:

[5] The publication from which this information is taken ceased to publish rankings of the districts after fiscal year 2008.

	State Revenue Per Pupil 2007-2008	Rank
Allendale	$6,847	7
Dillon 2	$5,548	43
Florence 4	$7,159	4
Hampton 2	$6,868	6
Jasper County	$5,613	39
Lee County	$6,843	8
Marion 7	$8,341	1
Orangeburg 3	$5,851	30
Average State Revenue	$5,248	

(App. 00002—00003.)

Thus, the Plaintiff Districts continue to receive more than other districts and continue to receive more since this lawsuit began and each year since 2005.

B. Material changes in the laws governing education in South Carolina have occurred since the trial court's decision.

During many of the 102 days of trial, the Plaintiff Districts offered evidence purporting to challenge many aspects of the education system in South Carolina. In the intervening years, much of those challenged items have been changed.

First, Plaintiffs claimed they didn't have enough money. The expenditures by the Plaintiff Districts have increased *See* http://ed.sc.gov/agency/cfo/finance/Insite.cfm (last visited May 31, 2012.) Plaintiffs challenged the use of property taxes as a method of securing local funds for education. Today, property taxes are no longer the source of local money. *See* S.C. Code Ann. § 11-11-156 (2011). Plaintiffs were critical of PACT that was utilized under the Education Accountability Act ("EAA") for the measurement

component of accountability. Now, the PACT test has been eliminated and replaced by the new Palmetto Assessment of State Standards ("PASS") test. (2008 Act 282.)[6] Plaintiffs challenged the manner in which technical assistance under the EAA was provided to troubled districts and schools. Now technical assistance is provided to the districts in a different way, with more flexibility afforded to the districts as to how those funds are utilized. (*See* Appendix, 2008 Act. No. 0288.) Plaintiffs claimed their hands were tied with how they could utilize funds appropriated to the districts. Today, they have been allowed greater flexibility in utilizing the funds appropriated. (2009 Act 86; App. 00014.) At trial, Plaintiffs claimed that not enough focus was placed on early childhood education. Now, the Child Development Education Pilot Program ("CDEPP") addresses those issues by providing not only voluntary public 4-K programs in the Plaintiff Districts, but also facilitating private 4-K programs in those districts through First Steps. (*See* discussion, *infra.*) Facilities attacked at trial have been renovated or replaced with brand new schools (Jasper County)[7] or, as in the case of the much criticized J.V. Martin Junior High School, in Dillon School District 2 (now consolidated Dillon School District 4) is being replaced with a new facility open for students in the Fall of 2012.[8] While there is no data to confirm the impact of these changes in the Plaintiff

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[6] The PASS test features both essay exams and multiple choice exams for students in grades three through eight.

[7] In Jasper County, a new Hardeeville K-12 School opened in the fall of 2007. *See* Jasper County Sch. Dist., *available at* http://hes.jcsd.net/?PageName= 'AboutTheSchool' (last visited June 5, 2012).

[8] Dillon Middle School is tentatively scheduled to open in August of 2012, replacing J.V. Martin Junior High School, which was used by Appellants-Respondents as the photographic image associated with this case. *See* Dillon Sch. Dist. 4, *available at* www.dillonK12.sc.us/home/ dillonmiddle.asp (last visited June 5, 2012).

Districts, the programs in place today are in many respects quite different from those presented to the trial court in 2003-2004 by virtue of the continuing policy decisions made by the General Assembly about how education is delivered to the children of South Carolina during each legislative session.

Noteworthy enactments of the General Assembly regarding public school financing for primary and secondary schools since June 25, 2005 are as follows:[9]

1. Child Development Education Pilot Program

The trial court found that the state's only deficiency in terms of complying with the constitutional standard set by this Court was the failure of the state early childhood intervention programs. The new program responsive to the trial court's ruling is CDEPP, which was established by the General Assembly in the 2006-2007 General Appropriations Bill. (Part IB, Proviso 1.75, Act 397 of 2006 & Part IB, Proviso 1.66, Act 177 of 2007; *see also* App. 00007; 00241—00246.) The General Assembly created this early childhood education program "to focus on the developmental and learning support that children must have in order to be ready for school and must incorporate parenting education." (Proviso 1A.45; App. 000371.) CDEPP has continued into the current fiscal year and is now funded on a recurring basis. (*See* App. 0222—0338.) For the 2011-12 school year, CDEPP is first made available to at-risk students in the Plaintiff Districts. (Proviso 1A.45(A); App. 00371—00372.) The funded cost per each child in 2011-2012 is $4,218 to be increased annually with inflation. (Proviso 1A.45(K); App. 00376.) Under CDEPP, Providers transporting eligible children to and from school are eligible for a reimbursement of $550 per child transported. *Id.*

[9] *See also* Cross-Appeal Br. of Resp'ts/Appellants 26-33.

2. 2006 Act No. 388

Act 388 of 2006, codified at section 11-11-156 of the South Carolina Code (2011), provides an exemption for the property tax on owner-occupied real property for school operations to be funded by a one-cent increase in the sales tax. This Act created the Homestead Exemption Fund to reimburse school districts for the loss of revenue resulting from the exemption. Under the Act, no county may be reimbursed less than $2.5 million to compensate for the loss in revenue. S.C. Code Ann. § 11-11-156(B)(1) (2011). This results in extra money for thirty school districts across twenty-two counties because the amount of money they were collecting prior to the Act was less than the $2.5 million reimbursement floor established by the Act.

3. Education-related initiatives: fiscal year 2005-2012

In addition to the above laws, the General Assembly has enacted and funded a variety of other education-related programs since 2005 including parenting/family literacy programs, financial literacy initiatives, nutrition and physical education standards, virtual school programs, charter schools, early childhood review programs, and programs for age-eligible children who qualify for free or reduced-price lunch programs. (*See* App. 00004—00018.)

II. This Case is Moot.

Consideration of these enactments and the many other changes that have occurred since the trial of this case leads to the inescapable conclusion that this case is moot.

"'A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.'" *Marietta Garage, Inc. v.*

South Carolina Dep't of Pub. Safety, 352 S.C. 95, 100, 572 S.E.2d 306, 308 (2002) (quoting *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). A plethora of events have occurred making it impossible for this Court to grant effectual relief in this matter.

The trial court decided this case in 2005 based largely on evidence and data that related to conditions and programs that existed from1999 to 2003. Those conditions and programs are different today. Today, most of the students have graduated; the teachers are different; the superintendants are different; the tests used to measure achievement are different; the amount of money being spent is different; how it is being spent is no doubt different; and the people making the decisions about how and where to spend it are different.[10] Additionally, many of the school buildings that were previously at issue have been replaced or substantially renovated, and the Plaintiff Districts themselves are different because at least two school districts have merged or consolidated.[11] Per pupil spending has increased, state appropriations for education have continued to rise, and a charter school system is now part of the landscape.

Thus, the issue before the Court is now of only historical interest because the evidence adduced at trial reflected programs, policies, and conditions that existed at the

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[10] Virtually every principal and superintendent in the Plaintiff Districts has been replaced since the time of trial. The notable exception is Dillon 2, whose superintendent remains.

[11] In February of 2011, the Dillon County Board of Education approved the merger of Dillon District 1, Lake View, and Dillon 2 into one District (Dillon 4). (*See* http://www. dillonheraldonline.com/2011/02/25/a-qa-on-the-consolidation-of-districts-1-and-2-with-superintendent-ray-rogers/ (last visited June 10, 2012); South Carolina Dep't of Educ., *available at* http://ed.sc.gov /schools/ (last visited June 5, 2012). In Marion County, Districts 1, 2, and 7 have been consolidated to form the Marion County School District. *See* Marion Sch. Dist. 7, *available at* http://www.marion7.K12. sc.us/education/district/district .php?selectionid=1 (last visited June 5, 2012).

time of trial, but which are considerably different today. While the Court can decide whether the conditions that prevailed in 2004 created the opportunity for students in the Plaintiff Districts to acquire a minimally adequate education, it cannot reach any conclusion as to the students currently enrolled.

What is not moot, of course, is the continuing consideration of the policies best designed to improve student achievement that goes on during every session of the General Assembly. But this debate was not the issue before the trial court and is not the question before this Court. This Court has consistently recognized that because education involves policy choices that change over time, the framers wisely left "the General Assembly free to make changing conditions" with respect to education. *Mosely v. Welch*, 209 S.C. 19, 34, 39 S.E.2d 133, 140 (1946); *see also Richland County v. Campbell*, 294 S.C. 346, 349, 364 S.E.2d 470, 472 (1988) (noting that under the state constitution's education clause, "the framers of the Constitution have left the legislature free to choose the means of funding the schools of this State to meet modern needs"). This fundamental constitutional principle was not lost on this Court in *Abbeville County*. *See Abbeville County*, 335 S.C. at 69, 515 S.E.2d at 540-41 ("We recognize that we are not experts in education, and we do not intend to dictate the programs utilized in our public schools. . . . [W]e emphasize that 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."). A decision that this case is moot does not therefore affect the ongoing effort to improve student achievement to even higher levels.

III. If the Court Concludes This Case is Not Moot, the Record Requires Affirmance.

Seven years ago, after 102 days of trial in which 112 witnesses testified and 4,400 documents were received into evidence, the trial court concluded that with one exception, the General Assembly was meeting the minimally adequate standard set by this Court. The record before the trial court at the time of trial overwhelmingly established that instructional facilities were safe and adequate; that the curriculum standards were minimally adequate; that the system of teacher licensure was minimally adequate; and that all of the inputs into the educational system with the exception of early childhood intervention programs were minimally adequate. The trial court fully considered all of the data and statistical evidence in the record in reaching its conclusion.

Therefore, to the extent that the Court finds that the case is not moot, it should affirm the trial court's order regarding the adequacy of the inputs provided by the General Assembly, and reverse the trial court's erroneous conclusion regarding early childhood programs. The latter finding is squarely at odds with *Abbeville County*. *Id.* at 69, 515 S.E.2d at 541 ("We do not intend the courts of this State to become super-legislatures or super-school boards.").

Conclusion

The Senate and the House believe the Court should find the appeal moot for all of the above reasons. However, should the Court believe it is appropriate to consider the appealed order on its merits, then for all of the reasons submitted in the previously filed briefs for the Senate and the House, this Court should affirm the trial court's order in part and reverse in part consistent with the arguments previously made by the Senate and the House.

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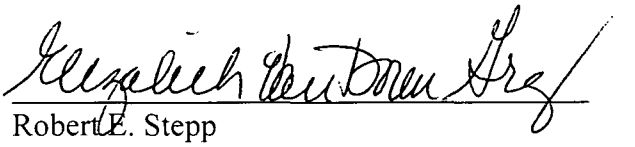
CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief complies with the Court's Order dated May 23, 2012.



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PROOF OF SERVICE

I, the undersigned, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for the Respondents/Appellants, do hereby certify that on June 11, 2012 I have caused counsel in this action to be served with a copy of the following as indicated below:

1. Brief of Respondents / Appellants John E. Courson and Robert W. Harrell, Jr.; and

2. Appendix to Brief of Respondents / Appellants John E. Courson and Robert W. Harrell

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June 11, 2012

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June 11, 2012

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk of Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: Abbeville School District, *et al.* vs. The State of South Carolina, *et al.*
Case No.: 2007-65159
Civil Action Number: 93-CP-31-169
SGS&L File Number: 2014/1500

Dear Mr. Shearouse:

Enclosed for filing please find the unbound original and twenty-five (25) bound copies of each of the following:

1. Brief of Respondents / Appellants John E. Courson and Robert W. Harrell, Jr.; and

2. Appendix to Brief of Respondents / Appellants John E. Courson and Robert W. Harrell, Jr.

Please file the originals and fifteen (15) copies and return five (10) filed-stamped copies of each to my courier.

By copy of this letter to opposing counsel and as evidenced by the proof of service, I am serving him with a copy of the same.

Thank you for your assistance and please do not hesitate to contact my office with any questions.

Very truly yours,

Robert E. Stepp

Enclosures

SOWELL SG GRAY

Litigation is our Business.

cc: Stephen G. Morrison ***(via hand delivery)***
J. Emory Smith, Jr. ***(via hand delivery)***
Amanda Gibson Adler ***(via U.S. Mail)***
Susan B. Berkowitz ***(via U.S. Mail)***
Stephen K. Benjamin ***(via U.S. Mail)***
Matthew T. Richardson ***(via U.S. Mail)***
Joel W. Collins, Jr. ***(via U.S. Mail)***

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
JUL 02 2012
S.C. Supreme Court

July 2, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: Abbeville County School District v. State 93-CP-31-169 - Final brief
Concurrence of State and Governor in Brief of Respondents/ Appellants
Courson and Harrell

Dear Mr. Shearouse:

In lieu of a formal brief in response to the briefs filed pursuant to this Court's Order of May 23, 2012, I would appreciate your accepting this letter as a statement of concurrence of the Respondents State and Governor in the legal arguments in the brief of Respondents Courson and Harrell dated June 11, 2012, except that, because the Governor's predecessor and the State did not appeal the December 29, 2005, and July 12, 2007, Orders of the Honorable Thomas W. Cooper, Jr, Circuit Court Judge, the State and the Governor cannot join in any part of the Courson / Harrell brief requesting reversal of that decision. The State and Governor oppose the legal arguments of Appellants-Respondents in their Supplemental Brief of June 11 and also note that they believe, contrary to the allegations of Appellants-Respondents (Supplemental Brief at p. 31), that every child can learn and learn at high levels.

If you have questions or prefer a more formal filing regarding this position, please let me know. I am mailing and emailing copies of this letter to counsel for the other parties.

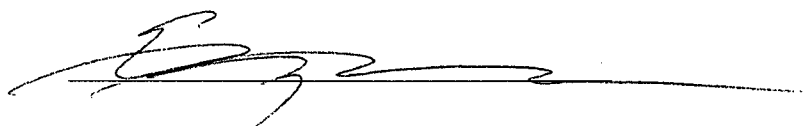
Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Counsel for the State and the Governor

cc: Carl B. Epps, III, Esquire
Stephen G. Morrison, Esquire
Laura Callaway Hart, Esquire
Elizabeth Scott Moise, Esquire
Rachel Atkin Hedley, Esquire
Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
Roland M. Franklin, Jr., Esquire

CERTIFICATE OF COMPLIANCE WITH RULE 211 (b)

Although no initial briefs are being filed in this case, I hereby certify that the final letter brief of the State and the Governor complies with Rule 211(b), SCACR.



J. Emory Smith, Jr.
Assistant Deputy Attorney General