THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. 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.

RESPONDENTS-APPELLANTS RESPONSE BRIEF TO SUPPLEMENTAL BRIEF OF APPELLANTS-RESPONDENTS

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Introduction

> **This case is not a forum about what ought to be or what policy choices the Court would make if it were authorized to do so. Accordingly, this Court must decide this case not in terms of whether the Court believes that one policy is superior and another is wanting, *but rather based on whether the system of education policies enacted by the General Assembly sufficiently provides the opportunity for students to acquire a minimally adequate education.***

(Trial Court Order dated Dec. 29, 2005; REC000061 ¶ 47 (emphasis added).)

This is the standard set by this Court in *Abbeville County School District v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999). This is the standard by which the Senate and the House tried this case. This is the standard by which the trial court decided this case. This standard does not contemplate that a particular level of achievement is required, or that equality of achievement is constitutionally mandated. Rather, it requires only a factual determination as to whether the system of educational inputs and policies adopted by the General Assembly provide the required opportunity in the Plaintiff Districts. The Court has disclaimed expertise in education, and has wisely declined to sit as a "super-legislature" or "super-school board," or to dictate the programs that will be used in our schools. 335 S.C. at 69, 515 S.E.2d at 541. Thus, the alleged superiority of policies that some believe "ought to be" is not the issue before the Court. The issue before this Court may be simply stated: does the record establish that *at the time of trial* students in the Plaintiff Districts had the opportunity to acquire a minimally adequate education?

Plaintiffs have consistently attempted to confuse the issue by substituting achievement for opportunity, and they have consistently ignored the definition of what constitutes a minimally adequate education as defined by this Court in *Abbeville*. Throughout the trial and continuing up until the present, Plaintiffs are attempting to re-

argue *Abbeville* in order to redefine what constitutes a minimally adequate education. Thus, their brief begins with the erroneous premise that the constitution requires the opportunity to acquire "the fundamental skills and knowledge required to lead a meaningful and productive life." (Supplemental Br. of Appellants-Respt's 1.) Such language does not appear in *Abbeville*. Likewise, Plaintiffs return to their previously rejected theory that a constitutional violation exists because "the children in the Plaintiff districts were not receiving an equal educational opportunity," because they have "greater educational needs." *Id.* The relatively lower educational achievement of students in poverty is a constant theme of Plaintiffs' brief.

These arguments ignore the express holdings of *Abbeville*, and ask the Court to reinstate some kind of comparative standard based upon achievement rather than opportunity, and to insert itself into the role of education policy maker by judicial decree. These issues have already been determined, however, and are not before the Court.

Nor was the trial court persuaded by the same arguments. In their supplemental brief, Plaintiffs spend a great deal of time setting forth what they purportedly "proved" at trial and on what they contend the evidence established. But the trial court gave little weight to Plaintiffs' evidence. This was not by accident, mistake, or error. Instead, it was because most of Plaintiffs' evidence was not relevant to the issue before the court. As prime examples, this case was never about whether at-risk children in the Plaintiff Districts have greater educational needs (a fact that the Senate and the House do not dispute), or whether their achievement is below that of more affluent students. Those statements can be true, however, and the opportunity to acquire a minimally adequate education can simultaneously exist. There can be a policy justification for more

resources without a judicial determination that the current resources are inadequate to create the opportunity for a minimally adequate education. It can be important to improve achievement without also finding that achievement is the proper constitutional standard. The fact that our system might be improved with different programs, or with more money, or "better" teachers is not inconsistent with the fact that the existing system is constitutionally sufficient. It is equally important to realize, however, as did the trial court, that better educational outcomes can not simply be legislated or bought. More money does not necessarily buy better achievement, "better" teachers cannot be identified on paper, and the effect of poverty on achievement overwhelms all other variables put together.

The distinction between our aspirations and our obligations lies at the heart of this case. This Court has already recognized this difference in *Abbeville I* by rejecting the claims based upon equal protection principles, by stating the constitutional duty in terms of opportunity rather than achievement, and by defining a minimally adequate education in the most basic terms. This appeal is not the place to re-visit those sound decisions. The question before this Court is whether students in the Plaintiff Districts had the opportunity to acquire a minimally adequate education as previously defined by the Court. That decision must be based upon the record adduced at trial, and not on the basis of anecdotal lay analysis of subsequent legislation. While this Court can take notice of legislation enacted by the General Assembly pertaining to education since the time of trial, this Court cannot make findings of fact based on this information alone. The information presented at the invitation of the Court is not self-evident or conclusive with respect to the issue that was before the trial court and is now before this Court.

The trial court considered the evidence and decided the case in a detailed and analytical order that addressed each issue presented by Plaintiffs. Although the Court can review the trial court's findings and determine whether the trial court was correct in its analysis as it related to the conditions in the Plaintiff Districts seven years ago, this Court is simply not equipped to answer the factual question as it relates to conditions in the Plaintiff Districts today because the information provided by the parties at the Court's invitation does not permit any factual conclusions to be drawn one way or the other. The fact question is now moot. Therefore, this Court's consideration of legislation enacted since 2005 can only amount to an assessment and judgment by this Court on the policy choices adopted since 2005, which this Court said it will not do. *Abbeville County*, 335 S.C. at 69, 515 S.E.2d at 541 ("We 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 are therefore brought back to the beginning. The question before this Court is not about policy choices this Court would make, or laws the Court would adopt, if it had the responsibility to do so. Rather, the question is whether the opportunity for a minimally adequate education existed at the time of trial.

Nonetheless, to the extent that the additional information requested by the Court has any relevance, the Senate and the House offer the following response to Plaintiffs' Supplemental Brief.

Argument

I. Plaintiff Districts Continue to be the Highest Spending Districts in the State.

"Plaintiffs . . . agree that additional funding . . . would not necessarily result in increased educational opportunities." (Final Resp'ts Br. of Appellants-Resp'ts dated May 1, 2008 at 115.) Notwithstanding this insightful admission, Plaintiffs today argue, among other things, that a lack of adequate funding in the Plaintiff Districts "makes it virtually impossible for the poorest and most isolated children in rural South Carolina to receive an adequate educational opportunity." (Supplemental Br. of Appellants-Resp'ts 6.)

As established in great detail at trial and in the trial court's order, higher spending does not correlate with better achievement. But to the extent that funding is indicative of whether the constitutional standard is being met in the Plaintiff Districts, the evidence establishes that funding for education in the Plaintiff Districts was more than adequate at the time of trial, and has continued to increase since then.

In their supplemental brief, Plaintiffs single out specific sources of education funding in an attempt to establish that the General Assembly continues to "underfund" education in South Carolina, particularly in the Plaintiff Districts. Plaintiffs begin their analysis by contending that the funding mechanisms in the Education Funding Act, S.C. Code Ann. §§ 59-20-10 to –80 (2004 & Supp. 2011) ("EFA"), and the Education Improvement Act, S.C. Code Ann. §§ 59-21-420 to –450 (2004) ("EIA"), are inadequate and remain unchanged. (*See* Supplemental Br. of Appellants-Resp'ts 7.) According to Plaintiffs, "[t]he effect on all school districts in the State has been devastating," especially in the Plaintiff Districts. (*Id.* at 9.)

Plaintiffs invoke such emotional rhetoric in lieu of factual analysis, however. For example, notwithstanding the fact there are "lots more computers [in the Plaintiff District classrooms] than we saw kids using them," (REC013568, ll. 12-21), Plaintiffs argue that the failure to revise the basic funding formulas has left the Plaintiff Districts with only the means "to educat[e] children solely for an agricultural society during the Industrial Age." (Supplemental Br. of Appellants-Respt's 9-11.) Plaintiffs even suggest that the General Assembly continues to ignore poverty "and the compounding impact of creating rural ghettos of poor children and herding them into small districts." (*Id.* at 11.) This has resulted, according to Plaintiffs, in a South Carolina divided into "a state of educational 'haves' and 'have nots' that lacks the ability to compete effectively in the 21st century global economy." (*Id.* at 12-13.)

But these arguments ignore an inconvenient fact that was true at the time of trial and remains true today. Plaintiff districts are among the highest spending districts in the State. If this case is to be determined on the basis of whether Plaintiff Districts receive more support (which of course is not the issue), Defendants win hands down. Plaintiffs' argument is undone because they ignore the fact that "the [base student cost] is only one component of funding received by districts from the State . . . ." (REC000073 ¶ 75.) Moreover, Plaintiffs overlook the fact that since trial, the base student cost formula has been modified specifically to add a 0.20 weight for at-risk students, further increasing funds to the Plaintiff Districts. S.C. Code Ann. § 11-11-156(a)(2) (2011).[1] This has the

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[1] Section 11-11-156(a)(2) of the South Carolina Code provides, in part: "For purposes of the reimbursement increases school districts receive under this subsection based on weighted pupil units determined pursuant to the Education Finance Act, an additional add-on weighting for students in poverty of 0.20 must be included in the weightings provided in Section 59-20-40(1)(c) of the 1976 Code. The weighting for

effect of increasing state funding for the Plaintiff Districts because they tend to have higher numbers of such students.

Plaintiff also want the Court to overlook the fact that funds flow into the Plaintiff Districts through a variety of federal, state, and local sources and mechanisms. When funding from all sources is considered, it is clear that funding for education in South Carolina, particularly in the Plaintiff Districts, has increased over time and is continuing to increase. As the Senate and the House demonstrated in their previous briefs, over a roughly fourteen year period, each of the Plaintiff Districts enjoyed a significant increase in state revenue available per pupil:

	1992 – 1993 Revenue Per Pupil	**2007 – 2008 Revenue Per Pupil**	**Percent Increase[2]**
Allendale	**$4,820**	**$6,847**	**42.1%**
Dillon 2	**$4,052**	**$5,548**	**30.8%**
Florence 4	**$4,413**	**$7,159**	**62.2%**
Hampton 2	**$5,226**	**$6,868**	**31.4%**
Jasper	**$4,446**	**$5,613**	**26.2%**
Lee	**$4,293**	**$6,843**	**59.4%**

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poverty shall provide additional revenues for students in kindergarten through grade twelve who qualify for Medicaid or who qualify for reduced or free lunches, or both. Revenues generated by this weighting must be used by districts and schools to provide services and research-based strategies for addressing academic or health needs of those students to ensure their future academic success, to provide summer school, reduced class size, after school programs, extended day, instructional materials, or any other research-based educational strategy to improve student academic performance."

[2] This chart was compiled from data extracted from S.C. Dep't of Educ., *available at* http://ed.sc.gov/agency/ac/Data-Management-and-Analysis/RankingsBook.cfm (last visited June 28, 2012).

Marion 7[3]	$4,785	$8,341	74.3%
Orangeburg 3	$4,484	$5,551	23.8%

Since 2005, expenditures per pupil, including revenue from all sources, has continued to increase in each of the Plaintiff Districts:

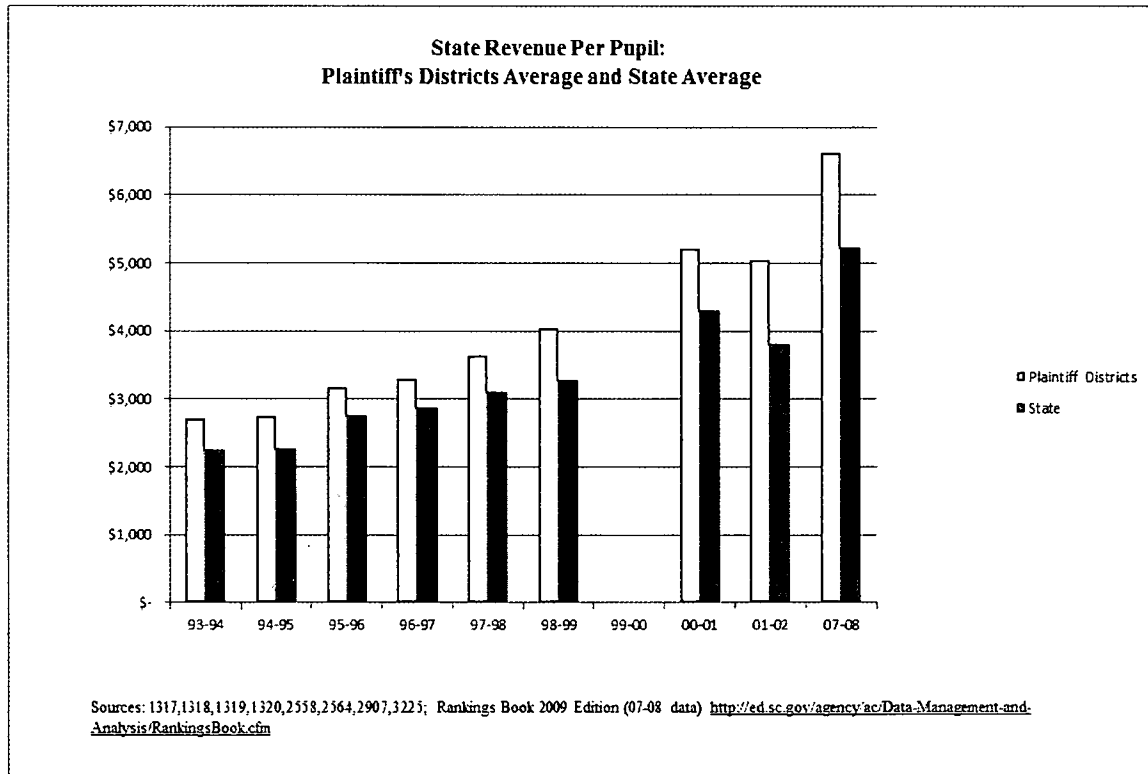
	2005 – 2006 Expenditures Per Pupil	2010 – 2011 Expenditures Per Pupil	Percent Increase
Allendale	**$11,956**	**$12,543**	**4.9%**
Dillon 2	**$7,258**	**$8,532**	**17.6%**
Florence 4	**$8,941**	**$10,515**	**17.6%**
Hampton 2	**$10,130**	**$14,159**	**39.8%**
Jasper	**$8,242**	**$10,351**	**25.6%**
Lee	**$9,173**	**$9,657**	**5.2%**
Marion 7	**$10,473**	**$13,273**	**27.0%**
Orangeburg 3	**$9334**	**$10,750**	**15.2%**

As noted in the Senate and the House's prior brief, with the exception of Dillon 2, today each of the Plaintiff Districts spend more per pupil than the average state per pupil expenditure of $9,008 (*see* Supplemental Br. of Resp'ts-Appellants 9), and five of the eight Plaintiff Districts are in the top ten of school districts in the state in terms of revenues received. (*Id.* at 9-10.) Additionally, since 2005, the General Assembly has appropriated $571,651,609 in state lottery funds for K-12 educational programs. (*See*

[3] Marion 7 is a product of the merger of Marion District 3 and Marion District 4. Figures prior to the merger of Marion have been averaged as they were during trial.

S.C. State Budget & Control Board, *available at* http://www.budget.sc.gov/webfiles/ OSB/historical/Lottery_Appropriations_ 072911.pdf (last visited June 22, 2012).)

As of 2008, the last year for which data was available, state revenue per pupil in the Plaintiff Districts has exceed the state average in each year since FY 1993-1994, and the difference is increasing.[4]



Thus, there can be no doubt that despite the "widespread economic hardship" caused by the recent recession (*see* Supplemental Br. of Appellants-Resp'ts 5), per pupil revenues and expenditures for education in the Plaintiff Districts have continued to increased over time. Also, as shown in the Senate and the House's brief filed June 11, 2012, total expenditures on education in South Carolina are higher now than they were at the time of trial. (Br. of Resp'ts-Appellants 8.) Accordingly, the suggestion that an

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[4] See Appendix for charts demonstrating revenue per pupil from state sources only, and from local, state, and federal sources on a district by district basis.

alleged decline in spending has created "a permanent and unconstitutional structure deficit in the educational opportunities provided to at-risk children in the Plaintiff Districts" (*id.* at 12-13) is simply not supported by the facts.

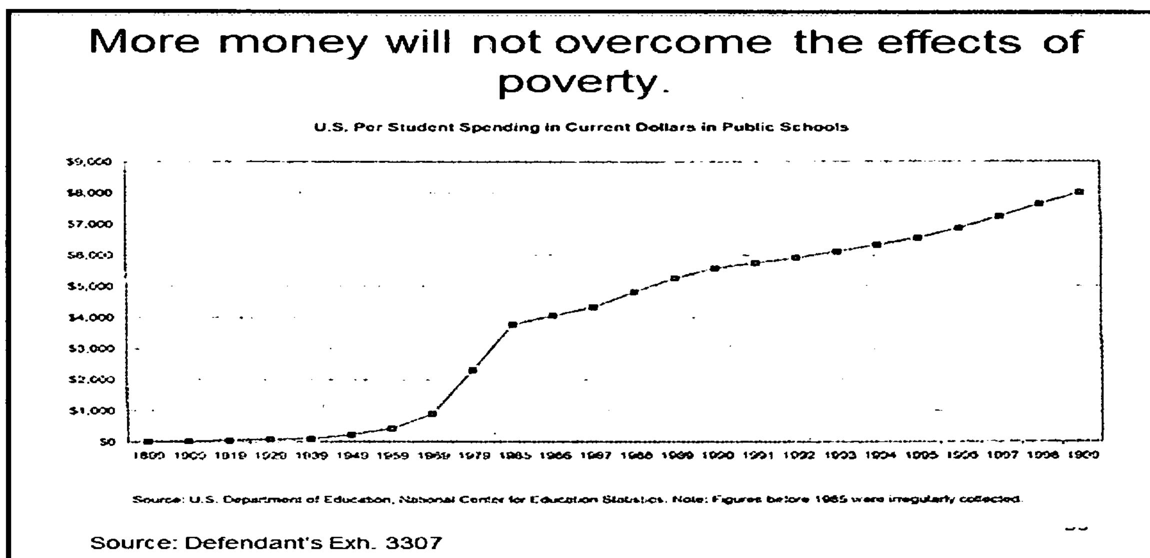
II. To the Extent This Case is About Achievement, Increasing Funding Will Not Improve Achievement.

"Opportunity means the *chance* for progress or advancement to occur. Opportunity does not mean that progress, advancement or achievement will, in fact, occur." (REC000054 ¶ 34) (emphasis in original) (internal citation omitted). The evidence presented at trial demonstrated beyond a reasonable doubt that children in poverty in the Plaintiff Districts had the opportunity to acquire a minimally adequate education under the programs in existence at the time of trial. The record establishes that the opportunity exists, even though not every student achieves at satisfactory levels. As the Senate and the House have repeatedly noted, achievement may be relevant to establishing the presence of educational opportunities, but achievement is not necessarily evidence of the absence of opportunity.

Plaintiffs offer a comparison of PACT scores as they existed in 2001 with PASS test scores in 2010 as "proof" that student outcomes in the Plaintiff Districts have not changed. (Supplemental Br. of Appellants-Resp'ts 29-30.)[5] Even assuming, however,

[5] Assuming that PACT and PASS are functionally the same, it should be noted that Plaintiffs' own expert, Greg Hawkins, found that poverty—not funding or conditions in the schools—accounted for over 62% of the variation in PACT scores across every school in the State. (REC002337—REC002338.) Defense expert David Armor testified that "nearly all" of the differences in PACT scores across the state are attributable to poverty. (REC014742—REC014744.) Thus, it cannot be concluded that low PACT or PASS scores are caused by an alleged problematic system. As defense expert Dr. David Armor concluded, "so much of [the] low [test] score[s] is—is a function of family characteristics that are way beyond control of the school system and the state at this point." (REC014775, ll. 9-13.) The trial court agreed. (REC000200 ¶ 427 (noting that

that such a comparison can be made (which it cannot)[6] or has any relevance (which it does not), the evidence offered at trial conclusively demonstrated that there is no correlation between spending and achievement. As demonstrated at trial, from approximately 1959 to 1999, per pupil spending for education in the United States increased many times over:



Yet notwithstanding this tidal wave of increased spending, there was no corresponding improvement in reading scores:

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ameliorating certain risk factors intervening conditions that affect achievement "would have a positive effect on achievement, but these issues lie outside the traditionally accepted scope of education policy, and require interventions beyond those traditionally produced by schools").)

[6] PACT and PASS are two different tests. At trial, experts were able to calibrate PACT with the constitutional standard. The PASS exam has not been calibrated in the same way. Therefore, a comparison between PACT scores and PASS scores cannot be made.

More money will not overcome the effects of poverty.

U.S. Reading Scores of 17-, 13-, and 9-Year-Olds

9 Year Olds
13 Year Olds
17 Year Olds

60

Source: Defendant's Exh. 3307

Nor was there a corresponding improvement in math scores:

More money will not overcome the effects of poverty.

U.S. Math Scores of 17-, 13-, and 9-Year-Olds

9 Year Olds
13 Year Olds
17 Year Olds

61

Source: Defendant's Exh. 3307

Nor did more spending lead to an improvement in science scores:

More money will not overcome the effects of poverty.

U.S. Science Scores of 17-, 13-, and 9-Year-Olds

9 Year Olds
13 Year Olds
17 Year Olds

Source: Defendant's Exh. 3307

In light of this evidence, it is therefore not surprising that test scores in the Plaintiff districts have not increased despite the increased funding that has been provided to them. As noted by the trial court "there is little, if any, relationship between spending and achievement." (REC000189 ¶ 402.) This incontrovertible fact "is not something that is unique to South Carolina." (*Id.* ¶ 403.) Therefore, even if this Court accepts Plaintiffs' erroneous contention that education continues to be underfunded in South Carolina, the evidence conclusively establishes that an increase in funding has no impact on student achievement.

This is because the causes of poor achievement among students in poverty are a variety of non-school related factors that will exist no matter what educational policies are adopted in South Carolina. (*See* REC038773—REC038774, pp. 3-4; *see also* Cross-Appeal Br. of Resp'ts-Appellants 52-56.) Better achievement cannot be legislated or bought. There is no silver bullet that will increase test scores, although increasing student performance is a worthy and necessary goal for the State. Neither absolute nor

comparative achievement levels are constitutionally required, however, and the appropriate inquiry remains whether the opportunity to acquire a minimally adequate education exists or not. Where the State puts adequate resources in the classroom, the constitutional promise under the education clause is satisfied "even though student performance remains substandard." *Paynter v. State*, 797 N.E.2d 1225, 1229 (N.Y. 2003).

III. Funding for Inputs Remains Adequate.

A. Teachers

Much of what Plaintiffs claim they "proved" at trial or that the evidence "established" is belied by the findings of the trial court. For example, Plaintiffs contend they proved that "[s]tudents in the Plaintiff Districts lacked access to high quality teachers, instructional materials, and physical facilities they needed to overcome the substantial deficits caused by their social circumstances." (Supplemental Br. of Appellants-Resp'ts 3.) While Plaintiffs may have offered evidence suggesting this, the trial court, after considering all of the evidence, concluded differently. With respect to teachers, the trial court rejected "the assertion that large percentages of the teachers in the Plaintiff Districts are incompetent" (REC000152 ¶ 252) and, consistent with this Court's standard, concluded that while there may be room for improvement, "a desire to improve teacher quality in a district does not mean that the current teachers cannot provide instruction at a level sufficient to create the opportunity for each child to acquire a minimally adequate education." (*Id.*) Additionally, the court found that "the system of teacher licensure in South Carolina is more than adequate . . ." (REC000129); that the average experience of teachers in the Plaintiff Districts (13.1 years) was comparable to

the experience of teachers in non-Plaintiff Districts (13.6 years) (REC000138 ¶ 218); that the court "would be hard pressed to find that even brand new teachers are necessarily inadequate to create the opportunity to acquire a minimally adequate education" (REC 000138 ¶ 219); that average teacher pay in the Plaintiff Districts exceeds "the average pay for all workers in the county in which the district is situated by a ration of 1.51 to 1 . . ." (REC000133 ¶ 206); and that teacher compensation in South Carolina does not represent "a constitutional defective barrier to the attraction of qualified teachers into the profession." (*Id.*) As was the case at trial (*See* Br. of Resp'ts-Appellants 93-103), even today there is no evidence that teachers are leaving the profession en masse for financial reasons. Instead, a recent survey shows that in 2011 statewide, teachers left the profession for a variety of reasons, including retirement (938.5); promotion to administrative positions (63.5); retirement and electing not to return (295); termination (202.5); personal reasons (460.5); spouse relocation (416.5); and other unknown reasons (558). (*See* CERRA, *available at* http://www.cerra.org/research/SupplyAndDemand/index.html (last visited June 24, 2012).)

And while Plaintiffs complain that funding for teachers continues to be inadequate, (Supplemental Br. of Appellants-Resp'ts 20-24), perhaps the most important finding of the trial court with respect to teachers in the Plaintiff Districts is the court's considered finding that "there is no empirical evidence between teacher characteristics and student achievement." (REC000152 ¶ 253. *See also* REC014375, ll. 14-24; REC040237; REC030238; REC040249; REC040262; REC040275; REC040289; REC040302 (no statistical association between teacher pay and achievement);

REC014376, ll. 3-14; REC023859 (no statistical association between teacher turnover and achievement).)

B. Instructional Support

Plaintiffs next single out "instructional materials", specifically textbooks, and contend that appropriations for instructional materials have been "essentially cut in half." (Supplemental Br. of Appellants-Resp'ts 24-26). But in fact, with the exception of Lee County, per pupil appropriations to the Plaintiff Districts for "instruction"[7] have increased since the time of trial. Additionally, in 2010, six of the eight Plaintiff Districts spent more than (or right around) the state average for instruction:

	FY 2005 Appropriations for Instruction Per Pupil	**FY 2010 Appropriations for Instruction Per Pupil**	**Percent Increase**
Allendale	**$5,786**	**$6,594**	**14.0%**
Dillon 2	**$3,772**	**$4,375**	**16.0%**
Florence 4	**$4,899**	**$5,039**	**2.8%**
Hampton 2	**$4,529**	**$6,380**	**40.9%**
Jasper	**$4,408**	**$5,237**	**18.8%**
Lee	**$5,287**	**$4,807**	**-9.0%**
Marion 7	**$5,337**	**$6,798**	**27.4%**
Orangeburg 3	**$5,154**	**$5,804**	**1%**
State Average	**$4,546**	**$5159**	

[7] "Instruction" includes monies appropriated for teachers, substitute teachers, instructional paraprofessionals, pupil use technology and software and instructional materials. *See* South Carolina Dep't of Educ., *available at* http://ed.sc.gov/agency/cfo/finance/Insite.cfm (last visited June 23, 2012).

Plaintiffs' selection of a subcategory of instruction in an attempt to make the case that funding for "essential supports" continues to be inadequate illustrates an important point. Most of the material supplied by the parties in response to the Court's May 23, 2012 Order is not self-evident and is subject to interpretation. While it is true that funding for "instructional materials" may have decreased since 2005, overall funding for "instruction" has increased. Perhaps a policy choice was made that in today's learning environment it is more prudent to spend more per pupil on "pupil use technology and software," for example, than on textbooks. Plaintiffs cannot in any way correlate the decreased spending on subcategory of materials with poor performance or the absence of the opportunity to acquire a minimally adequate education. Without testimony on that matter, it is impossible to draw any conclusions.

IV. This Court Does Not Have a Record Upon Which to Assess The Impact of Legislation Since 2005 Relating to Public School Finance.

Following 102 days of trial, the trial court considered the testimony of 112 witnesses and the 4,400 documents that were received into evidence. Much of the evidence considered by the trial court was data driven and necessitated the testimony of expert witnesses. In their supplemental brief, Plaintiffs argue that CDEPP and 2006 Act No. 388 are inadequate, that budget cuts have decreased the effectiveness of alleged "piecemeal legislation," and that the post-2005 legislation "has only exacerbated funding problems." (Supplemental Br. of Appellants-Respt's 27.) But in the absence of expert testimony, these contentions amount to no more than pure speculation. There is no evidence, data, or expert testimony to support Plaintiffs' contentions—only lawyer arguments. Lawyers are not experts, educators, or policy makers. Reviewing changes in legislation in an attempt to interpret the delivery of educational opportunities consistent

with *Abbeville* is not a role for counsel. Nor can it be the role of the Court. For it is clear that money for K-12 education in South Carolina has continued to increase, and increased even more for Plaintiffs than the State average. Plaintiffs say it is not enough. Perhaps in Plaintiffs' eyes it will never be enough. But one thing is certain: there is no objective evidence in this record to support any conclusions concerning the impact of legislation passed since 2005, and this Court cannot speculate on one

As clearly demonstrated above, despite Plaintiffs' contentions to the contrary, overall spending in the Plaintiff Districts has increased significantly since 2005. Yet despite this increase in spending, the trial court found and the evidence establishes that there is absolutely no correlation between increased spending and achievement. The Senate and the House recognize that achievement in the Plaintiff Districts is still not at desired levels. But determining the means and methods to address achievement in the Plaintiff Districts is the very decision this Court has declined to make. Setting policy rests with the legislature, not the Courts, and this Court should allow the legislature to make those policy decisions with respect to education in South Carolina.

Conclusion

The order of the trial court should be vacated as moot, and all appeals dismissed. Alternatively, the portion of the trial court's order finding that each child in the Plaintiff districts did not have the opportunity to acquire a minimally adequate education should be reversed, and judgment entered for the Defendants.

[Signature page follows]

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July 2, 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 July 2, 2012 I have caused counsel in this action to be served with a copy of the following as indicated below:

1. Respondents / Appellants Response Brief to Supplemental Brief of Appellants / Respondents; and

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

Counsel Served: ***VIA HAND DELIVERY***
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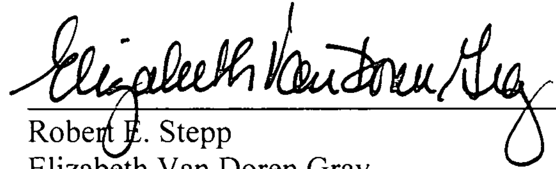

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July 2, 2012

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RECEIVED
JUL 02 2012
S.C. Supreme Court

July 2, 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
SGSL File Number: 2014/1500

Dear Mr. Shearouse:

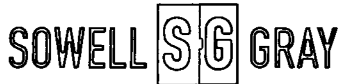
Enclosed for filing please find the unbound original and twenty-five (25) bound copies of each of the following:

1. Respondents-Appellants Response Brief to Supplemental Brief of Appellants / Respondents ; and

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

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



Litigation is our Business.

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

Very truly yours,

Elizabeth Van Doren Gray

Enclosures

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)***