

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEE COUNTY
Thomas W. Cooper, Jr., Circuit Court Judge
Civil Action No.: 93-CP-31-0169
Case Tracking No.: 2007-65159

RECEIVED

JUN 23 2008

S.C. SUPREME COURT

Abbeville County School District, *et al.*,.....Petitioner,

v.

The State of South Carolina, *et al.*,.....Respondents.

BRIEF OF *AMICI CURIAE*
SOUTH CAROLINA ASSOCIATION OF SCHOOL ADMINISTRATORS
(SCASA)
AND
SOUTH CAROLINA SCHOOL BOARDS ASSOCIATION (SCSBA)

Stephen K. Benjamin
Tina N. Herbert
McAngus, Goudelock & Courie, LLC
700 Gervais Street, Suite 300 (29201)
Post Office Box 12519
Columbia, South Carolina 29211
(803) 779-2300

*Attorneys for South Carolina Association
of School Administrators and
South Carolina School Boards Association*

TABLE OF CONTENTS

Table of Authorities ii

Introduction1

Identity of *Amici Curiae*1

Argument2

 I. Current funding for maintaining and supporting the system of public schools is too fragmented, obsolete, and inadequate to support an opportunity for each child in South Carolina to receive a minimally adequate education.....3

 A. The current funding system is fragmented, inflexible, and restricted ...3

 B. The current funding system is obsolete and inadequate.....6

 II. The state should reform the funding for its system of public schools to ensure that adequate funding is available and targeted to the actual needs of our students, schools, and school districts10

Conclusion15

Exhibit A.....17

TABLE OF AUTHORITIES

CASES

<u>Abbeville Co. School District, et al., vs. State of South Carolina, et al.,</u> 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999)	2,3
---	-----

STATUTES, CODES, AND RULES

South Carolina Code Ann § 59-20-30 (2004).....	7
South Carolina Code Ann § 59-20-40 (2004).....	7
South Carolina Code Ann § 59-20-50 (2004).....	9
South Carolina Code Ann § 59-20-17 (2004).....	8
South Carolina Code Ann § 59-20-190 (2004).....	8
South Carolina Code Ann § 59-21-1030 (2004).....	14
South Carolina Code Ann § 59-59-10 (Supp. 2006).....	8
South Carolina Code Ann § 59-63-65 (2004).....	5
S.C. Regs. 43-220 (2002).....	8
S.C. Regs. 43-231 (2002).....	7
S.C. Regs. 43-232 (2002).....	7
S.C. Regs. 43-234 (2002).....	7
S.C. Regs 43-300 (2002).....	7
S.C. Regs. 43-258.1 (2002).....	8
Act 388 of 2006, Part II, Section 1	13
Act 288 of 2006, Part II, Section 2	14

OTHER AUTHORITIES

State of South Carolina, Department of Education, *Report of the Task Force on Funding for World Class Learning*, available at <http://ed.sc.gov/agency/divisions/fhr/Task-Force-on-Funding-for-World-Class-Learning.html> 11

CONSTITUTIONAL AUTHORITIES

S.C. Const. Art. XI, §3 3

INTRODUCTION

The Amici seek to assist the Court in reviewing the trial court's interpretation of the funding resources made available to South Carolina school districts by the State to support and maintain the system of public schools. The trial court's finding that State funding of the Plaintiff Districts was "generally sufficient" to support a "minimally adequate education" is contradictory to the experience and knowledge of Amici, which regularly address continuing and recurring problems associated with the under-funding of local school districts by the State of South Carolina.

IDENTITY OF *AMICI CURIAE*

The South Carolina Association of School Administrators (SCASA) is a non-profit organization with a membership of diverse school leaders in South Carolina. Its mission is to advocate for public education for the citizens of South Carolina by working to influence education legislation and policy, to stimulate and foster support for public schools, to ensure a cadre of effective school leaders, and to provide programs and services supporting its members. Its membership consists of school district superintendents, principals of schools, directors of career and technology centers, directors of adult education programs, school personnel administrators and allied school administrators employed in diverse school districts across the State of South Carolina. Its members have direct knowledge of the laws and regulations impacting the public school system and their implementation, as well as the funding provided by the State to support and maintain its public schools.

The South Carolina School Boards Association (SCSBA) is a non-profit organization that serves as a source of information and as a statewide voice for boards governing the 85 public school districts in South Carolina. Its mission is to advocate for public education for the citizens of South Carolina and to ensure excellence in school board performance through training and

service. SCSBA assists local school boards in legislative advocacy, working to change or encourage passage of laws to strengthen public schools and providing numerous avenues of communications by and among local school boards and state leaders (including members of the General Assembly, South Carolina's congressional representatives) and key state agencies (including the State Board of Education and the Education Oversight Committee). SCSBA is a member of the National School Boards Association (NSBA), which has also filed an amicus brief in support of Appellants-Respondents (hereinafter Plaintiffs).

ARGUMENT

In Abbeville County School District v. State, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999), this Court held, "We hold today 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." This Court further defined the constitutional standard:

We define this minimally adequate education required by our Constitution to include providing students 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. Current funding for South Carolina education, however, does not allow the Plaintiff Districts to meet this mandate. The current funding measures are too fragmented, obsolete, and inadequate to enable the State to meet the constitutional obligation of providing an opportunity for each student to acquire a minimally adequate education. Therefore, the State should reform the funding system to meet its constitutional obligation.

I. Current funding for maintaining and supporting the system of public schools is too fragmented, obsolete, and inadequate to support an opportunity for each child in South Carolina to receive a minimally adequate education.

The constitutional obligation to support and maintain the public school system in South Carolina is placed on the State of South Carolina, acting through the General Assembly. S.C. Const. art. XI, § 3; Abbeville Co. Sch. Dist. v. State, 335 S.C. 58, 69, 515 S.E.2d 535, 541 (1999). The State has chosen to share the burden of funding the public school system with local communities; like Plaintiffs, Amici do not contend that this practice violates the constitution. However, the State has not ensured that adequate funding, from whatever source, is available to the local school districts to enable them to deliver the constitutionally required opportunity. The State has, therefore, not met its constitutional obligation.

Amici urge this Court to reverse the trial court's decision that, except for early childhood intervention programs, the public education system in South Carolina is adequately funded. Amici further urge the Court to require the Defendants to reform and fund the public education system in such a way as to ensure that the opportunity for a minimally adequate education is available to each child according to his needs and the needs of the public school he attends.

A. The current funding system is fragmented, inflexible, and restricted.

Continuity and flexibility in funding that are essential for schools and school districts to design, implement, and continue successful strategies and programs are not available in the many South Carolina school districts that are heavily dependent on State support of their mission. South Carolina schools do not have the continuity and flexibility needed to meet the constitutional standard.

Funding for South Carolina's public schools from the State is derived from two primary sources and other miscellaneous sources: (1) State general funds are distributed to school

districts according to the formula established by the Education Finance Act of 1977 ("EFA"); (2) funds raised by the one-cent state sales tax established in the Education Improvement Act of 1984 ("EIA") are distributed to schools and school districts to be used for specific programs; and (3) other state funding is distributed on an ad hoc basis, depending on what programs the General Assembly decides to fund and at what levels. The result is a byzantine system of funding that lacks coherence, consistency, and reliability.

Funding that is allocated each year by the General Assembly through individual statutes, budgets, and budget provisos is not coordinated with the State's primary funding statutes (the EFA and EIA), with the result that funding for our state's school system is fragmented and irrational. The mandates placed by the State on schools and school districts to provide specific courses, services, or personnel positions place additional funding pressures on districts, often without necessary funding to support these mandates. In addition, much of the funding available to school districts comes from categorical or grant money, the uses of which are restricted to specific purposes for limited periods of time, which deprives students of learning opportunities. Further, reliance upon funding, whether through grants or budget provisos, that can and does change from year to year prevents school districts from designing and implementing education programs sufficient to meet their students' needs, further depriving their students of educational opportunities in violation of the State Constitution.

Greater continuity and flexibility in funding would better position schools and school districts to apply resources where their more urgent needs exist. Consider the budgeting decisions that must be made by school districts and school boards on an annual basis. District personnel are restricted in their abilities to assess and allocate the costs of providing educational opportunities designed to meet their students' needs but, instead, must follow state and federal

regulations in distributing funds: They must meet the categorical or grant constraints in determining how money can be spent and, thereafter, decide what services can be provided. Therefore, they build their budgets and educational programs each year based on what they are *allowed* to do with their money, rather than on what they *need* to do for their students.

One example of how inflexibility in funding negatively impacts the learning environment is in the area of funding to reduce class sizes in grades one through three. For every class that has a student to teacher ratio of 15:1, extra State money is available to the school. See S.C. Code -Ann. § 59-63-65 (2004). While class size reduction is an accepted and recognized method of improving instruction and learning, the State makes no accommodation for students in schools where the division of classes results in some, but not all, class sizes being fifteen or fewer. Districts and schools quite frequently are able to offer small classes of fifteen or fewer to only some of their students because their enrollments yield a few more than fifteen in each class. Thus, for example, a school may have sixty-eight students in grade three. Theoretically it could assign sixty of those students to four classes of fifteen students, thus entitling the school to the extra State funding for those classes. However, it would still have eight students to assign to third grade classes. If it chose to assign one or two additional third-graders to each of the four classes of fifteen, all of the classes would nevertheless remain relatively small, and indeed would be optimally sized according to some experts, but the school would not qualify for any of the class size reduction funding for its third grade classes. In this situation, the school leaders must decide whether to forego the extra funding and have optimal learning environments for all of their third-graders, or accept the extra funding for fewer classrooms with a 15:1 student to teacher ratio and consign some of their third-graders to larger classes that are less conducive to learning.

These kinds of state and federal restrictions on how education funds must be spent, combined with unreliable and fragmented funding, prevent school districts, including the Plaintiff School Districts, from implementing educational programs sufficient to meet their children's needs. The opportunities for even a minimally adequate education are absent in many schools across South Carolina for these and other reasons, which Amici ask this Court to remedy.

B. The current funding system is obsolete and inadequate.

Education is not a commodity that is purchased with a one-time outlay of money. Education is a *process* that must be adjusted to compensate for changing conditions and circumstances impacting our schools' ability to deliver appropriate instruction and educational opportunities to their students. To be effective and adequate, instruction and learning must build over time, enabling students to add cumulatively to their knowledge and skills until they ultimately have acquired sufficient knowledge and skills to graduate from our high schools. The State, however, currently relies on a complicated, inadequate, and outdated funding system that does not provide for an effective delivery of educational opportunities to accomplish this goal.

The EFA and the EIA were both forward-looking funding strategies at the time they were enacted, but they are now obsolete and inadequate. The EFA was designed in 1974, almost 35 years ago, and the EIA in 1984, almost 25 years ago. Since then, dramatic changes have taken place in the knowledge surrounding how children learn, the strategies and technologies developed to support learning, and the families and social environments in which children live. In addition, the numbers of non-English speaking families and children in our State have risen to a degree that few foresaw. Yet basic funding for public education remains essentially the same, making little or no accommodation for these various altered circumstances.

The funding formula set out in the EFA provides the basic state funding for the maintenance and support of South Carolina's public school system. The EFA formula was intended to assure that each school and each school district had certain required basic elements in place, referred to as the *Defined Program*: courses; numbers of days, hours, and minutes of instruction; personnel positions; media centers; teacher workloads; and facilities. See S.C. Code Ann. §§ 59-20-30 and -40 (2004); S.C. Regs. 43-231, 43-232, 43-234, 43-300 (2002). The Base Student Cost ("BSC")—which is shared by the State and the local school districts on a sliding scale determined by the fiscal capacity of the individual districts—is the cost of the Defined Program as it was estimated in the mid-1970s when the EFA was designed, increased by an annual rate of inflation. The General Assembly meets the annual inflation rate required under the EFA in some years; in most, however, it does not.

The EFA's Base Student Cost is not sufficient to support the minimally adequate education we must deliver to our students under current conditions, and the funding deficiencies are not covered by other funding. Although the EFA was designed and intended to serve as the foundational funding for all school districts, it does not include such necessary educational supports as facilities, transportation, or technology. It also does not include fringe benefits for teachers or other school district employees, a rapidly rising cost for districts that was borne by the State when the EFA was enacted but is no longer. The EIA funds specific programs and provides partial support of fringe benefits and mandatory minimum teacher salaries, but does not pay all fringe benefits, nor does it cover other funding gaps experienced by districts.

Other initiatives and programs enacted by the State each year are occasionally accompanied by additional funding, but most often they are not. Therefore, to pay for new initiatives, school districts are forced to search for additional funding to meet them while

continuing to fund essential services. Without funding to support them, legislative initiatives, no matter how well intended, are insufficient. The lack of funding for these initiatives are yet another hurdle Plaintiff Districts must climb in their efforts to deliver educational opportunities to their students and demonstrate a lack of State support for its public schools.

Examples of inadequate funding of legislative initiatives abound. The following are by no means an exhaustive list, but they are illustrative of the funding dilemmas forced upon school districts and school boards by the State:

- The EIA requires all schools to provide gifted education services for children who "demonstrate[e] high performance ability or potential in academic and/or artistic areas and therefore require an educational program beyond that normally provided by the general school program in order to achieve their potential." S.C. Reg. 43-220 (2002). State funding for these mandatory services is determined by applying a weight of .30 to the base student cost, then distributing those funds to districts based on the proportion of gifted and talented students served in each district compared to the numbers of gifted and talented students statewide. See S.C. Code Ann. § 59-29-170 (2004). For districts with forty or fewer gifted and talented students, the State simply provides \$15,000, id., an amount clearly not connected to cost or need, particularly since the gifted and talented students are generally spread across several grades and schools. The minimum \$15,000 is not sufficient to pay the salary of even one teacher.
- High schools are required to offer Advanced Placement courses "developed by the College Board with prescribed curricula and tests" and taught by teachers who have undergone a special training program. See S.C. Code Ann. § 59-29-190 (2004); S.C. Reg. 43-258.1 (2002). Allocation of funding from the State is on a per-pupil basis and does not pay for the costs incurred by districts in offering these courses. Funding is insufficient to pay for the costs of even online Advanced Placement courses, which is the only access some students have to these courses.
- The South Carolina Education and Economic Development Act, which alters and increases curriculum and guidance requirements in high schools, does not provide adequate funding to the school districts to meet these mandated changes. S.C. Code Ann. §§ 59-59-10, et seq. (Supp. 2006).
- State funding available to districts to pay for instructional services for the increasing numbers of students who do not speak English or have limited English language skills is wholly insufficient to pay for materials and teachers, many of whom must travel between schools to serve these students.

- Parenting and family literacy services, which are invaluable in assisting families in giving their children literacy skills and behavioral training in preparation for their formal education, are funded by the State at only a fraction of what they cost.

The State and its policymakers also claim credit for improving teaching and learning conditions in situations in which the actual conditions are not as claimed, further demonstrating a lack of State support of appropriate educational opportunities. The lack of funding flexibility and sufficiency to provide small class sizes in every classroom, as discussed in the preceding section of this brief, is one example. The State also congratulates itself on raising the "average teacher salary" to \$300 above the southeastern average, an illusory accomplishment because a large part of these salary increases come not from the State but from the local school districts that are forced to adhere to the state-mandated minimum teacher salary schedule. See S.C. Code Ann. § 59-20-50(4) (2004). The State also includes the large bonuses paid to teacher specialists and National Board certified teachers in calculating the "average teacher salary" in South Carolina, thus artificially inflating the stated amount of the salary earned by the "average teacher." Id. In fact, because of a lack of meaningful State support enabling school districts to raise teacher compensation, school districts across the state perennially struggle to hire and retain teachers capable of meeting the learning challenges our diverse student population brings to our classrooms.

Moreover, and most importantly for the purposes of this case and our Constitution, the EFA was intended to pay for the particular elements the State determined over thirty years ago that each school and school district should have as a minimum. The EFA was not intended to pay for any particular quality of education. Even after this Court's 1999 *Abbeville* decision mandated specified minimal education opportunities, the State made no effort to revise the EFA to meet that mandate.

Amici also believe that the Education Accountability Act ("EAA") and the curriculum standards enacted pursuant to it delineate what the State expects of its schools and its students, and therefore what it deems to be an adequate education. These standards are not mere "goals," but requirements. If students do not master the curriculum standards, they cannot successfully complete public school. Students who score "Basic" on the Palmetto Achievement Challenge Tests (PACT) have demonstrated a minimal understanding of these standards. Thus, a score of at least Basic on PACT would suggest that a child is acquiring a minimally adequate education.¹ Nevertheless, the State has made no effort to align its funding of public education with the demands of the EAA curriculum standards. State funding remains disconnected from the meaning of an adequate education.

Amici urge the Court to require the State, through the General Assembly, to reform the system of public schools to provide the human and material resources for student performance to meet the specifications of the EAA curriculum standards, thereby ensuring that not only the students, parents, schools and school districts are held accountable under the EAA accountability legislation, but that the State is also held accountable for its part in the equation. Until the State itself is held accountable for providing the necessary supports for each student to score at least Basic on the PACT tests, we cannot hope to meet our own constitutional standard.

II. The State should reform the funding for its system of public schools to ensure that adequate funding is available and targeted to the actual needs of our students, schools, and school districts.

Ominously for South Carolina's children, funding provided by the State for their education is not determined by a calculation of what it costs to deliver an adequate education to each of them; instead, funding is based on what the State and its policymakers decide is available

¹ Amici note that, as the Plaintiffs demonstrated at the trial of this case, minimal achievement, or a score of Basic on PACT, in one year frequently is followed by failure on PACT tests in ensuing years as the level of knowledge and skills required of our children rises.

to spend each year on education. Although public education is a constitutional mandate, its funding competes with a variety of other governmental initiatives and programs. As a result, it frequently loses the battles for priorities in funding not only to programs that are not constitutional mandates but also to measures designed to reduce taxes and revenues available to the State to discharge its constitutional obligations to its people.

Amici do not advocate additional funding for funding's sake, unrelated to reason and a careful determination of needs and costs. To the contrary, Amici believe that the State has been remiss in not assessing the cost of providing each child in South Carolina with the opportunity for a minimally adequate education and then implementing a funding plan to ensure the opportunity exists in each school and classroom. Shortly after taking office in January 2007, State Superintendent of Education Jim Rex convened a group of experts to study this matter and issue a report and recommendations for reforming the education funding system. The Task Force included experts on learning and school finance, as well as business and policy leaders from across the state, and its report represents a comprehensive review of funding problems and possible remedies to many of the problems raised in this case. See Report of the Task Force on Funding for World Class Learning, Attached as Exhibit A. The Report's recommendations are not the only possible solutions, and the General Assembly and Governor are certainly entitled to accept or reject any of its recommendations. Amici respectfully submit the report, however, as an example of the kind of work that must be done if our system of public schools is ever to fulfill its purpose of providing at least the opportunity for an education to each child in South Carolina.

Educational challenges that poor children bring to classrooms undisputedly require greater resources. As the trial court ruled, based on the evidence at trial, children living in poverty can learn at the levels the State expects of them, but it requires highly skilled teachers

and more time. We currently have more knowledge about how to achieve learning in high-poverty homes and schools than ever before. However, the State has yet to incorporate that knowledge into its funding for public education.

The most important element in education is the quality of instruction. High-quality instruction depends on the existence of highly skilled teachers with the training, knowledge, and experience necessary to assess students' abilities and needs, create instructional programs designed to meet the children's own level of understanding, and deliver instruction that will enable them to build continuously and enthusiastically on what they know. Statutes and regulations applicable in South Carolina to the teaching profession do not ensure that such human talent and skills are available in the classrooms where they are needed. Students with the most daunting learning challenges—those living in poverty, with special needs, or with limited English language skills—need the best teachers. Highly skilled and talented teachers can command the highest salaries, and the districts with the most challenging students must have access to funding that allows them to be competitive in hiring those teachers. In many cases, as with the Plaintiff Districts, such funding is not available because of limited local fiscal abilities and other funding requirements and limitations. The State should reform its funding to allow districts the funding adequacy and flexibility to hire the teaching force needed to educate their students and equip them to graduate from high school with the knowledge and skills necessary to be productive adults and citizens.

Improved working conditions and facilities are also essential to attracting and retaining teaching talent. The State provides no recurring funding of any sort to enable school districts to maintain or build facilities conducive to current learning strategies and, further, has no plan or procedures targeted to assist those districts that are unable to build or maintain school facilities

on their own. Facility needs also challenge school districts with greater local resources but rapidly-growing student populations requiring ever more classrooms and ancillary facilities. This is a glaring omission in the State's support of the public school system, but can be remedied with proper attention and thought.

Other reforms essential to ensuring constitutionally adequate educational opportunities for poor children are high-quality, long-term summer school and after-school programs. The State makes little effort to ensure adequate funding for these kinds of programs; the funding for these programs is primarily from grants that districts seek out on their own. Consequently, these programs are unevenly available across the State and funding for them may not be available from year to year.

Although the State argues that the needs of children raised in poverty, including those in the Plaintiff School Districts, were met by Act 388 of 2006, Amici disagree. The .20 weight is quite obviously a very negligible amount because it is applied not to the entire local property tax reimbursement from the new state sales tax, but only to any future increases in reimbursement caused by inflation and population growth. See Act 388 of 2006, Part II, Section 1 (A)(2).² Moreover, it adds nothing to the total reimbursement to the districts from the State. The amounts to be distributed because of the .20 weight for poverty will be deducted from the total statewide reimbursement increases to be distributed to districts, with the result that some districts will actually receive less than they would otherwise be entitled as a result of the Act. More importantly, the amounts distributed are not related in any real sense to the actual costs of meeting the needs of poor students.

² Application of the poverty "factor" in Act 388 is estimated to produce only approximately \$1.32 additional per poor student in Orangeburg Consolidated School District No. 3. In Orangeburg 3, 77% of its students qualify for Medicaid or the free or reduced lunch program, increasing its total weighted pupils by 15.3%, through the application of the .20 poverty "factor" equation in Act 388. These additional weighted pupils add only \$4117 to the estimated 2008-09 Act 388 reimbursement for Orangeburg 3 over what it would be without the poverty factor.

The State must also eliminate the inconsistencies that have arisen because of the fragmentation and lack of cohesion among the funding statutes. For example, the EIA maintenance of local effort requirement prohibits school districts from reducing the local funding support they provide from the levels of the previous year. S.C. Code Ann. § 59-21-1030 (2004). However, Act 388 of 2006 restricts the increase in local revenues to inflation (measured by the Consumer Price Index³) and population growth. Act 388 of 2006, Part II, Section 2. In many school districts, the minimum they must raise in local revenues to comply with the EIA maintenance of local effort provision is higher than the amount they are permitted to raise under Act 388.

The millage caps imposed by Act 388 and Act 402 of 2006 also prevent school districts from keeping pace with fast-growing student populations, needs, and State mandates. Districts across the State are already reporting difficulties in building budgets for the next school year; the limited amounts of local revenues they are now permitted by State law to raise will very likely require them to spend reserves, eliminate personnel including teachers, increase class sizes, and cut programs.

Act 388 is clearly not a solution to the funding crisis in public education, nor was it intended to be such. Amici do not attempt to catalog here all the funding issues created by Act 388, but urge this Court to recognize that the Act is not the answer to the funding problems plaguing our system of public schools.

³ The Consumer Price Index (CPI) is not particularly suited to school districts or any other governmental or business function because it is based on prices of consumer goods. The Gross Domestic Product (GDP) Deflator measure combines the inflationary experience of federal, state, and local governments, businesses, and consumers, and is a better measure of the costs facing state and local governments, including school districts.

III. Conclusion: The State Has Failed In Its Constitution Duty.

Amici SCASA and SCSBA urge this Court to recognize the realities facing local school districts. They are charged with delivering a 21st-century education to children, many of whom have barriers to learning created by poverty, isolation, special needs, or other special circumstances, yet the State supports that charge with a funding system that is fragmented, outdated, and unreliable. Our state cannot continue to enact piecemeal legislation, increasing or decreasing funding here and there, with no comprehensive and cohesive funding plan in place that will ensure that all of its children can receive the education promised by our Constitution. Amici respectfully submit that the State should be required to fulfill its constitutional mandate to provide the opportunity for each child to receive a minimally adequate education by reforming the system of funding that, as currently structured, does not ensure that school districts have adequate funding to discharge the duties delegated to them by the State.

All South Carolina students are our responsibility, no matter where they attend school, and our State will rise or fall on our united efforts to educate them adequately so that they may discharge their own responsibilities as adult citizens in our communities. Aside from the constitutional implications of this case, the current funding system raises real economic and quality of life issues. If the children in our public school system fail because we did not provide them what they needed to learn, we all fail. If they succeed, we will all benefit. Our Constitution requires more of the State with respect to its support and maintenance of our system of public schools.

June 23, 2008



Stephen K. Benjamin
Tina N. Herbert
McAngus, Goudelock & Courie, LLC
700 Gervais Street, Suite 300 (29201)
Post Office Box 12519
Columbia, South Carolina 29211
(803) 779-2300

*Attorneys for South Carolina Association
of School Administrators and
South Carolina School Boards Association*

EXHIBIT A

**Report of the
Task Force on Funding
*for World Class Learning***

**Presented to Jim Rex
State Superintendent of Education**

iii



South Carolina
Department of Education

Together, we can.

From the

Task Force on Funding for World Class Learning

One day, South Carolina can be the state all of us want her to be.

The South Carolina we envision is no longer the “go to” state for cheap labor and low-paying jobs, where some enjoy a desirable quality of life but many more do not. We see our state, instead, as the “go to” place for corporate offices, for growing companies and businesses that provide good jobs and a higher per-capita income, for well-educated employees who earn a good living and have a better quality of life.

We envision a state no longer known for poverty but for breaking the cycle of poverty, for upward mobility—a state known for our commitment to meeting our moral obligations and constitutional responsibilities, regardless of the challenges.

We see a progressive state whose people flourish.

A number of groups and individuals across South Carolina share our vision and are committed to creating what many describe as a “New Carolina.” The South Carolina Competitiveness Council, the Palmetto Institute, Higher Education Research Agenda, State Superintendent of Education Jim Rex, and other visionary leaders are embracing the hard work and the promise of creating this new state.

To establish South Carolina as a leading player in the twenty-first century economy, we must address many needs: infrastructure, health care, and, above all else, education.

It is a daunting challenge. But it is one we will meet if we fix our vision on a positive future, plan and invest in our progress in an intentional and collaborative way, and implement our plan systematically and pragmatically.

In South Carolina, we have set high goals for ourselves educationally, and we have made substantial progress over the past two decades in improving student achievement.

What we have not done, comprehensively and with a long-term focus, is to determine what it will take to move beyond the incremental progress of recent years toward the level of transformational change necessary for a New Carolina.

In August 2007, Superintendent of Education Jim Rex created the Task Force on Funding for World Class Learning and charged us with looking comprehensively at education funding in South Carolina and recommending changes that will create the dramatic improvements our state needs.

Our task force was deliberately designed to bring all points of view together. Our membership is comprised of learning experts, school finance experts, business leaders, and policy leaders from every corner of South Carolina—from large and small communities, urban and rural areas, communities with the wealth to support a quality education and those without it.

We represent a variety of perspectives. But we have been guided in our work by this principle that each one of us deeply believes: all children in South Carolina should have access to a quality educational program that is adequately and equitably funded, no matter where those children live, where they go to school, or what their needs are.

This report is the product of our work. In each section, we have identified our goals, the rationale for the changes we are seeking, and our recommendations. We have also suggested a timeline for phased, pragmatic implementation of each component of the educational system we believe is necessary to create the South Carolina we want to see.

We recognize that creating a world-class educational system will take work, strong will, and time. We also know that it will require a unified vision. Our concern in this report is not to present a single final answer but to establish a framework for statewide discussion—to set the pieces on the table and begin productive dialogue about how best to achieve our shared objectives.

The members of the Task Force on Funding for World Class Learning appreciate the opportunity to help lead our state toward a prosperous future. We have embraced the responsibilities of leadership: to set our sights on the future we want, to help plan for it, to communicate it, and to persuade our state that this is what we need.

We are grateful for South Carolina's commitment to public education. We are proud to present these recommendations as the first step in a much-needed statewide discussion about adequate and equitable funding for our schools.

Dr. Karen Woodward
Chair
Task Force on Funding for World Class Learning

Report of the Task Force on Funding for World Class Learning

The Case for Change

The Task Force on Funding for World Class Learning fully agrees with the description of South Carolina's education funding system given by Dr. Rex's Transition Leadership Team, which summarized school funding as "fragmented, unfair, uneven, and inadequate."

The foundation upon which schools currently operate in South Carolina was established more than forty years ago, with the goal of ensuring a "minimally adequate" education. Resources have been added to education over the years through a patchwork of reforms that have modernized some areas and fueled the incremental progress of the past two decades

But the world is changing rapidly around us, and incremental improvement in education is not enough. South Carolina will not meet the modern educational expectations we have set for ourselves, nor will our state become a leading player in the modern economy, unless we find the will to provide a modern education

We believe that creating an educational funding system with the capacity to fuel the future South Carolinians want requires several things.

First and foremost, it requires a comprehensive re-thinking of what schools and students need to achieve not at the basic, minimal levels we have been content with in the past but at the world-class levels required for a prosperous tomorrow. South Carolina can no longer afford the outdated concept of minimal adequacy; we must set our sights on contemporary standards of excellence.

As a significant part of that effort, we also must finally confront the enormous challenges of poverty in our state, and win. In South Carolina, more than 50 percent of our students lack the family resources even to pay full price for school lunch. Half of our schools have an enrollment with more than 70 percent of students in poverty. And in one of every five schools, 90 percent or more of students live in poverty.

We can break the cycle of poverty in our state if we work aggressively to mitigate its effects on educational achievement. But we must accept that the greater educational challenges of our poorest children require greater resources.

Creating a funding system that can support world class learning also means ensuring that the funding available for schools is used efficiently and effectively, and that schools have the flexibility to direct education resources toward the student and community needs that are specific to their communities. A modern education funding system recognizes that student needs may be very different in one community than another, and that flexibility in

funding, with accountability to the state for results, is needed for schools to resolve their own individual challenges.

Finally, funding to support world class learning requires us to recognize that adequate facilities are not a luxury but a necessity for learning. We cannot attract high-quality teachers to schools with a substandard working environment. We cannot help students achieve well in environments that aren't even safe or clean, much less supportive of contemporary learning. We cannot provide a modern education without modern libraries, up-to-date technology, and well-equipped science labs

Goals

In meeting its charge to develop an education funding model to support world class learning, the task force was guided by four goals addressing student learning objectives, school resources, and changes in educational system requirements to support school improvement

Our primary objective was to provide adequate support for all students to meet learning goals at critical points in the K-12 progression—to ensure that they are reading well by third grade, well prepared for the rigor of high school by eighth grade, and prepared for postsecondary work by twelfth grade.

- To provide K-12 public school students with a standards-driven, contemporary educational program that is equitably and adequately funded regardless of where those students live, where they go to school, or what their needs are and that leads to achievement of the following learning criteria: students who are reading by the end of third grade, are prepared for high school work at the end of eighth grade, and are prepared for postsecondary work by the end of twelfth grade.
- To provide schools with a contemporary educational program that is necessary for graduates' success in the twenty-first century economy including provisions for choice, innovation, and excellence.
- To provide for efficiency and flexibility in use of state dollars and simplicity in management of and accountability for those dollars.
- To provide a government structure that represents a genuine partnership between the state and local school districts.

To achieve these goals, the task force proposes recommendations in four broad policy areas:

- A. creating a standards-driven, contemporary educational program capable of promoting world-class learning;

- B increasing efficiency and simplicity in education funding;
- C replacing state-level mandates with flexibility, accountability, and intervention; and
- D establishing a facilities funding model that is fair, equitable, and reliable and that provides the necessary funding for world-class education in all districts and for all children.

In addition, the task force issued several recommendations that we believe should be implemented immediately to mitigate the unintended effects of Act 388 on district ability to provide a quality education.

Modernizing education and accelerating progress as recommended through these strategies will require a significant investment. The task force therefore proposes re-directing more than \$3.4 billion from current education funding to support the initiatives we recommend. We also suggest for each initiative a multi-year phase-in that would enable South Carolina to work toward this new vision in a systematic and pragmatic way.

A. A Standards-Driven, Contemporary Educational Program

The task force identified five reforms crucial in creating a standards-driven, contemporary educational program:

- 1) a modern defined program for elementary, middle, and high schools—described in this report as the “adequacy program”—that provides the resources and staff to meet the needs of every student, with additional funding to meet the greater challenges of students and schools in poverty and other special circumstances (Appendix A);
- 2) effective early intervention via quality four-year-old programs for students in poverty;
- 3) concentrated state support for school innovation and public school choice;
- 4) effective incentives to bring good teachers and principals to low-income and rural schools; and
- 5) more learning time for students.

The task force recommends phasing in these initiatives over time beginning in 2008-09 (Appendix B). Funding priority is given to four-year-old programs and the proposed poverty weighting for the first four years, followed by phase-in of the remaining portion of the adequacy program.

Adequacy Program

The staff and resources currently available in South Carolina’s schools are determined by the state’s Defined Program, a listing of the resources schools need to provide a minimally

adequate education. The defined program that currently provides the foundation for school funding in South Carolina was developed four decades ago as a basis for the Education Finance Act (EFA).

Legislation has added to the Defined Program some of the elements needed for a contemporary education, including physical education, health, and guidance resources. Until now, however, South Carolina has not conducted a comprehensive review of the defined program to determine the resources needed in contemporary schools. Nor have we accounted in our existing program for the challenges of educating the poorest children in the poorest schools.

The task force believes that a new educational program is needed to provide the human and material resources for student performance to grow at a satisfactory level as specified by state accountability standards. The adequacy program we propose is based on national research regarding the resources schools need to achieve high standards, on the professional judgment of experienced and successful educators, and on current state policy as established in law, regulation, and funding.

The new adequacy program would place substantially more resources in the classroom to support teaching and learning. The program includes significant improvements in the student-teacher ratio, more support for technology and equipment, more teachers, instructional assistants, and instructional supplies; and support for teacher coaches in core subjects, all strategies that have proven successful in raising student achievement.

In addition to defining modern and more adequate resources for schools, the program we are proposing acknowledges that it costs more to educate students who have special learning or curricular needs, who do not speak English, or who live in poverty, and that challenges are escalated in areas of concentrated poverty. A second component of the adequacy program applies to the program cost a revised student weighting system to ensure sufficient resources for individual students and districts in special circumstances.

Our task force recognizes that some will feel that the proposed adequacy program includes too much, and others will feel it includes too little. We believe the program we are proposing is necessary and sufficient to meet the learning goals we have set: ensuring that students are reading on grade level by grade three, that they are prepared for high school work by the end of eighth grade, and that they are well prepared for postsecondary work by the end of high school. We propose this program as a starting point for a statewide discussion of what schools and students need, understanding that these components should be evaluated over time based on effectiveness, new research, and changing circumstances.

We also recognize that schools and districts need flexibility to use education funds in ways that meet the specific needs of their communities. Accordingly, we recommend that districts have reasonable flexibility to use adequacy program funds as they judge best while being accountable to the state for results.

1. The General Assembly should adopt the proposed adequacy program for elementary, middle, and high schools (see Appendix A).
2. The General Assembly should add a poverty weight of .25 for students eligible for free- and reduced-price lunch and an additional weight, on a graduated scale up to a maximum of .375, for districts with a poverty concentration of 50 percent or more.
3. The General Assembly should add a weight of .60 for students with limited English proficiency for a period of three years per student from the time of enrollment.
4. Special weights for elementary, middle, and high school should be eliminated, all other weights should be maintained, and students who qualify for more than one weight category should receive multiple weights.
5. The poverty weightings should be implemented over a three-year period beginning in 2009-10 (see Appendix B)
6. Implementation of the remaining portion of the adequacy program should begin no later than 2012 and be completed as soon as feasible.
7. Districts should have reasonable flexibility to use adequacy program funds and be held accountable for results. In the event that schools or districts fail to meet the necessary goals of the funding program, the South Carolina Department of Education (SCDE) should have authority to intervene.

Four-Year-Old Programs

In 2005, Judge Thomas Cooper ruled in South Carolina's equity lawsuit that children in the state's poorest districts are denied the opportunity for a minimally adequate education "because of the lack of effective and adequately funded early childhood intervention programs."

South Carolina has made progress in providing pre-kindergarten programs for four-year-olds at risk of school failure, but funding levels are sufficient to serve only the highest-risk children in half-day programs. Thousands of children remain on waiting lists, and districts are left to their own resources in attempting to reach these children.

8. The General Assembly should enact legislation during the 2008 session to fund full-day four-year-old pre-kindergarten programs for all students eligible for free- and reduced-price lunch in South Carolina.
9. Expansion of four-year-old programs should be phased in over two years, beginning in 2008-09 (see Appendix B).

Innovation and Choice

The task force believes that schools' ability to offer innovative twenty-first century programs, based on individual community needs and preferences, is essential to promote dramatic improvement in student learning. Districts need funding to provide innovations including but not limited to choice programs, initiatives to improve graduation rates, community learning centers, and curriculum innovations (expanding course offerings, developing effective teaching strategies, reforming high schools, or expanding arts programs, among many others).

Priority in funding for innovation and choice should be given to districts or schools with a concrete and comprehensive plan to enhance curriculum, professional development, leadership, and teaching and learning, and to expand curriculum and learning choices for students -

- 10 Various accounts under the General Fund, the Education Improvement Act (EIA), and other funding sources should be consolidated to create an innovation and choice grant program, with funding provided for three to five years, depending on the depth and breadth of school and district plans
- 11 Appropriations should annually increase the innovation and choice fund.

Incentives to Attract Teachers and Principals to Rural Schools

South Carolina's schools cannot make the progress needed to achieve our educational vision without quality teachers and administrators, who are particularly difficult to attract and retain in many of our state's low-income and rural areas. The task force recommends that South Carolina consider a variety of incentives, including salary supplements and housing incentives, to attract and retain qualified teachers and administrators in communities where it is difficult to employ and keep staff.

The task force studied a variety of housing initiatives considered or implemented in other states to attract and retain teachers. Options might include:

- ♦ providing housing developments for teachers in critical-needs areas managed by non-profit organizations, with land leased to buyers rather than sold and districts receiving a percentage of profits whenever houses are sold;
- ♦ providing \$5,000 as a signing bonus to teachers in critical-needs areas to be used for housing expenses such as a down payment or security deposit, or for moving expenses, accompanied by a \$400 monthly stipend for two years;
- ♦ providing housing-assistance promissory notes that convert to interest-free grants when approved applicants serve as certified teachers and agree to

employment for a period of three years or more in districts with a critical teacher shortage:

- ♦ providing state assistance to teachers in critical-needs areas to cover the actual amount needed to close on a home, not to exceed \$6,000, with applicants contributing a minimum down payment of one percent of the sales price and one month's reserve; and
 - ♦ retaining developers to build housing in critical-needs areas on land owned by school districts, with a small development fee and no profit margin.
12. South Carolina should pay a salary supplement to teachers who teach in schools where 60–79 percent of students qualify for free- or reduced-price lunch and a higher supplement to teachers in districts where over 80 percent of students qualify for free- or reduced-price lunch.
 13. The General Assembly should provide housing incentives, with no income limits, to attract and retain teachers in counties designated by the SCDE as critical-needs areas
 14. South Carolina should devise a bonus program that encourages teachers to stay in high-poverty districts, such as bonuses at intervals to compensate teachers for returning for another interval period or increased salaries for extended contracts with a minimum number of years required.
 15. South Carolina should provide additional salary for teachers who are certified in teaching children in poverty.
 16. South Carolina should improve teaching conditions to include facilities, teaching supplies and materials, and support as included in the proposed adequacy program and facilities program.

Extended Year for Students

The task force believes that South Carolina's ability to become and remain internationally competitive requires expanded learning time for students.

17. South Carolina should begin moving toward additional days for students up to 200 days per school year or the equivalent of additional learning time provided through quality after-school, summer, or weekend learning programs.

B. Efficiency and Simplification

The task force recommends policy changes in three areas to increase efficiency and effectiveness in use of state and local education funding: streamlining and consolidating funds, cyclical review of education funding, and incentives for voluntary school district consolidation.

Streamlining and Consolidating Funds

State and local resources available for education are currently allocated through an array of programs legislated over decades, resulting in an inflexible funding system, cumbersome accountability, and programs that are not routinely reviewed for effectiveness or need. A preliminary review by the task force has identified at least \$3.4 billion that could be re-directed from current programs to support the new adequacy funding model and the innovation and choice initiative.

18. Funds for current programs should be reviewed for effectiveness and need and streamlined to create a more efficient accountability system, increase flexibility for schools in building twenty-first century programs, and re-direct funding to the revised adequacy program.
19. Consolidation and re-allocation of general funds, EIA funds, and other funding accounts should be implemented in coordination with the phase-in of the adequacy program and other provisions of this report.
20. When consolidating EIA funds to help support the adequacy program and innovation and choice programs, funds should not be allocated according to the EFA formula but should be distributed and accounted for separately, based on weighted pupil unit.
21. Adequate state software and accounting mechanisms should be provided for efficient implementation of the revised program, accounting, and accountability requirements contained in this report.

Cyclical Review of Education Funding

Periodic review of education funding is needed to re-evaluate all elements of the adequacy program, including but not limited to: the investment needed, elements to be included, pupil weights, the formula for the index of taxpaying ability, impact of the innovation program, effectiveness of incentives for attracting and retaining teachers to poverty schools, and impact of Act 388 on school and district ability to provide for student learning needs.

22. The adequacy program should be assessed and changes recommended at the end of three, five, and eight years of funding and every five years thereafter, with review

to be overseen by an Education Adequacy Committee (EAC) including representatives from the Legislature, the office of the State Superintendent of Education, the education community, and the business community. The EAC should contract with a national research organization to conduct its reviews.

Incentives for Voluntary District Consolidation

The task force did not undertake a formal study of consolidation of school districts but does recommend incentives for local school districts and communities to improve the efficient and effective delivery of educational services and opportunities to students. The task force supports the right of districts and communities to collaborate and examine consolidation, deconsolidation, sharing of services, or any organizational framework that improves district ability to meet the educational needs of students and the expectations of the local community

23. Consolidating districts should receive general state aid at the level of the district receiving the most aid prior to consolidation for four years after consolidating. If general state aid is less for the consolidated districts in the first year than it would have been that same year for separate districts, the General Assembly should make supplementary state aid payments equal to the difference for the first four years.
24. For a four-year period following consolidation, consolidating districts should receive state grants to compensate for any difference in teacher salaries, so that salaries for all teachers are increased to the same level. If there is a difference between the sum of the salaries earned during the previous year by teachers in the new district and the sum of salaries that would have been paid according to the salary schedule of the previously existing districts, using the highest salary, the state should make supplementary payments equal to the difference for the first four years of the reorganized district.
25. If needed, consolidating districts should receive a one-time grant to cover some portion of the negative fund balance that any district brings into the consolidation. A single supplemental aid payment should be made to the reorganized district equal to the difference between the largest and smallest deficit. A district with a positive fund balance should be considered to have a deficit of zero.
26. A consolidated district should receive a "hold harmless" on the district report card rating for a period of three years following consolidation, with individual schools receiving report card ratings as usual.
27. South Carolina should develop mechanisms to assist in consolidating operations and/or facilities among districts without consolidating districts.

C. Flexibility, Accountability, and Intervention

The task force believes strongly that South Carolina must move toward an education funding system that increases flexibility for schools and districts to meet the needs that are specific to individual communities and individual schools. Just as schools and districts need flexibility in use of funding under the new adequacy program, they also need greater freedom to use state aid in general as they judge best, with stringent accountability for results and state intervention for both academic and financial failure.

Flexibility and Accountability

Flexibility enables schools and districts to maximize the effect of education funding, create innovative programs, expand choices for parents and students, and meet local needs

28. Districts should have greater flexibility in using state aid and be held accountable for results.

Intervention

Under current law, the SCDE has the responsibility and the authority to provide support to schools and districts that are under-performing academically and to intervene when necessary. Greater flexibility in use of funding should be accompanied by strict accountability and the authority to intervene in cases of financial mismanagement.

29. The General Assembly should provide the State Superintendent of Education with authority to intervene when districts are in serious financial difficulty or when there is evidence of gross mismanagement. This authority should include reviews of the effectiveness and efficiency of district financial practices, support to districts in financial planning and budgeting, and provisions for the appointment of a fiscal management team to assist when there is evidence of gross mismanagement.

D. Fair and Adequate Funding for Facilities

Research demonstrates that students learn best when taught in safe, clean facilities that are appropriate for contemporary curriculum and instruction needs. It is also clear that teachers are difficult to attract and retain in schools with poor teaching conditions and an unprofessional and substandard work environment.

Currently in South Carolina, funding for public school facilities is unequal and inadequate. Most facilities funding is derived from general obligation bonds issued within a district's eight percent constitutional debt limit or pursuant to a local referendum. Limited state assistance has been provided sporadically through Barnwell funds, EIA funds, and the state school facilities bonds approved in 1999. Lease-purchase and installment-purchase obligations were options in the past, as well, but are no longer allowed.

As a result of inadequate funding, many low-wealth districts are unable to raise sufficient revenue to maintain existing facilities, let alone build modern schools. High-growth districts are faced with the challenge of keeping pace with student growth without sufficient assistance from the state

The Task Force on Funding for World Class Learning established a separate study committee to develop recommendations for a modern facilities funding model. The Facilities Study Committee was guided by four goals:

- To provide an adequate, stable, and reliable source of funding for school facilities that is available when needed and that addresses current and future capital needs.
 - To address severe safety code-deficient facility needs statewide.
 - To provide priority assistance to low-wealth districts and rapid-growth districts while providing assistance to all districts
 - To provide classroom space and technology infrastructure.
- To provide facility funding that is equitably allocated to meet the particular needs of each school district.
- To provide facility standards and accountability systems for schools to ensure that all students, teachers, administrators, and other staff have appropriate learning and working environments to provide a high quality education.

The task force was also guided by five principles:

- Any system of capital support should ensure fairness for both pupils and taxpayers throughout the state.
- Local school districts, as owners of school buildings, should provide a portion of funds for building facilities and should have primary responsibility for maintaining them.
- State aid should be provided for school construction focused on eliminating critical emergency needs; assisting low-wealth districts; addressing needs of growth districts; and supporting all districts with documented facilities and equipment needs necessary for students to meet the state's accountability goals and to provide for world-class learning.
- Efficiency and accountability should be included as part of state aid allocations.
- Capital revenue and expenditures should continue to be kept separate from operating revenue and expenditures.

The task force issued recommendations in three areas: providing for quality facilities; effective and efficient use of facility funding; and standards, accountability, and state intervention.

Providing for Quality Facilities

30. South Carolina should approve the South Carolina School Facilities Infrastructure Act (SFIA) to provide support in all districts for facilities improvement necessary to meet educational standards, provide appropriate technology infrastructure, and address equity concerns. Provisions of the Act include the following:

School Facilities Review Commission

- (a) The legislation establishes a School Facilities Review Commission to oversee a comprehensive program of state-assisted school infrastructure funding. The commission consists of five members as follows: the Governor, ex officio, or his designee; the State Superintendent of Education, ex officio, or his designee; one member appointed by the State Treasurer, which member shall serve as chairman; one member appointed by the Speaker of the House; and one member appointed by the President Pro Tempore of the Senate
- (b) The commission is charged with reviewing with each applicant the need for proposed facilities, established by growth patterns or in reference to other factors, such as age and condition of facilities, suitability of facilities for curriculum needs, current use of portable classrooms, current and projected enrollments, and other relevant factors. The commission considers project costs, adequacy of reserves for inflation and cost overruns, the impact of a proposed financing structure on the taxpayers of a school district, and the available debt limit of a school district. The commission is further charged with promoting the use of site-adapted prototype school components and energy-efficient building technologies for use by program participants. The commission must report its findings in writing to the Budget and Control Board, sitting pursuant to the Act as the South Carolina School Facilities Infrastructure Authority, which may issue general obligation or revenue bonds as appropriate.
- (c) The commission may adopt regulations to implement its powers.
- (d) The legislation establishes a School Facilities Infrastructure Fund to provide additional financial assistance such as interest rate subsidies, credit and support, and the like. The Infrastructure Fund is capitalized with origination fees, annual appropriations, and other funds made available by the General Assembly.

Statewide Assessment and Management System

- (e) The Act establishes an Assessment and Maintenance system (AMS) applicable to all school districts, addressing maintenance management, training, and custodial programs; an energy management plan; a facilities renewal and replacement program; and a long-term capital program. The AMS is developed and managed by the SCDE.

Funding Sources

- (f) State general obligation bonds are distributed based on relative assessed values per pupil ("wealth per pupil") of school districts. Distribution to any particular school district is by application and subject to review and adjustment by the commission to ensure appropriate use of funds. Until all school districts have had an opportunity to receive funding, funds are granted, rather than loaned, to school districts. Until the initial report from the AMS is completed, funds are allocated among districts according to wealth per pupil, funding per pupil will vary according to funding levels established by the Act. Following receipt of the initial AMS report, 20 percent of subsequent funding is allocated in the discretion of the commission without regard to wealth per pupil to address the physical condition and adequacy of school facilities within a particular attendance area of a school district (10 percent) and to remedy facility needs resulting from growth in enrollment (10 percent), with additional needs to be identified and funded subsequently.

A proposed formula for distribution of funds under the SFIA is given in Appendix C. Appendix D provides a sample distribution projection by school district.

- (g) State revenue bonds are issued periodically to fund other school construction projects on an annual appropriation basis. Revenue bond proceeds are loaned to schools to fund construction and school districts are responsible for periodic payments back to the state, with amounts applied to debt service on revenue bonds. School district obligations are subject to annual appropriations and repaid from general obligation bonds issued by school districts. School district obligations are not subject to constitutional debt limitations. Participation in the revenue bond program is by application and subject to review and approval by the commission to ensure appropriate use of funds and taxpayer impact.
- (h) The Act authorizes the commission to undertake the issuance of short-term obligations to provide tax anticipation note and general obligation bond funding to districts. Program fees derived from short-term obligations provides additional revenue for the Infrastructure Fund.

Timeline

- (i) The School Facilities Infrastructure Act is implemented over a two-year period as follows:

Spring 2008:	Adoption of SFIA.
Spring 2008:	Adoption of first general obligation bond bill.
Summer 2008:	Appointment of School Facilities Review Commission.
Fall 2008:	Review Commission receives and reviews proposals for revenue bond funding.
Winter 2009:	Review Commission receives and reviews proposals for grant funding.
Spring 2009.	General obligation and revenue bonds issued.
Winter 2010	First assessment report received and reviewed by General Assembly.
Spring 2010	Second general obligation bond bill adopted, based on needs identified in assessment report.
Fall 2010.	Second round of general obligation bonds issued.

31. Local districts should continue to issue general obligation bonds pursuant to constitutional debt limits and/or local referendum.
32. South Carolina should propose and adopt a constitutional amendment to increase general obligation debt limits of all local governments from eight percent of assessed value to 15 percent of assessed value.
33. South Carolina should authorize local districts to assess impact fees on new residential construction to offset school construction costs.
34. South Carolina should develop options for alternative facilities funding such as enabling local sales tax for facilities, developer incentives (such as tax credits), and real estate transfer taxes.
35. The General Assembly should include in the adequacy program an annual allocation for maintenance.
36. The General Assembly should provide facilities assistance to charter schools. A proposal to provide charter schools assistance is given in Appendix E.

Providing for Efficient and Effective Use of Facility Funding

Ensuring efficiency and effectiveness in use of capital resources is an essential component of a quality facilities funding model. Passage of the School Facilities Infrastructure Act would ensure comprehensive assessment of facilities and funding based on demonstrated needs. The Act also would promote use of prototype school and school components and

energy-efficient building technologies. Further efficiencies would result from the state's sponsorship and administration of appropriations-based financing.

The task force recommends several additional steps to ensure efficiency and effectiveness in facilities funding:

37. The General Assembly should fund a comprehensive, standardized statewide assessment of school building needs to be overseen by the SCDE.
38. South Carolina should promote joint use of school facilities among districts, colleges and universities, municipalities, and other public agencies.
39. The General Assembly should provide in the General Fund an annual allocation to districts for technology equipment and infrastructure.

Providing for Standards, Accountability, and State Intervention

The task force recommends development of a common standards and accountability system for all school facilities to ensure that appropriate learning and working environments exist in all schools. South Carolina should ensure that districts receiving state-allocated general obligation and/or revenue bonds meet state facility standards through appropriate monitoring, assistance, and intervention.

40. The SCDE should establish clear, concise, and workable standards that are characteristic of facilities that provide a high-quality, high-performance environment for teaching and learning. A cyclical standards review schedule should be established. The SCDE should also provide training on planning and implementation of preventive maintenance and should charge districts with monitoring compliance with state guidelines.
41. Funding should be budgeted for the SCDE to create a statewide school facilities Assessment and Maintenance system (AMS) to assist state and local decision-makers in determining short- and long-term school facilities needs and to document the level of state funding needed. All school districts should participate in the AMS process on an ongoing basis.
42. Each school district should prepare and adopt a five-year facilities plan to meet or exceed state facilities standards. The five-year plan should be designed to allow for flexibility to meet emergent needs and should be updated annually, allowing for modified benchmarks and goals.
43. The General Assembly should adopt legislation authorizing the SCDE to apply for funding under the School Facilities Infrastructure Act to intervene in the absence of action of local districts to meet health, safety, and code violations.

Mitigating the Adverse Effects of Act 388 on Schools and Districts

Act 388, which drastically reduced the most stable source of funding for education and replaced it with an increase in the state sales tax, has created a number of adverse consequences for schools and districts, particularly in high-growth areas. The Task Force on Funding for World Class Learning shares the view of many state leaders who believe that comprehensive reform of South Carolina's tax system is needed to create a system that is equitable, adequate, stable, and sustainable. For the short term, the task force recommends several provisions to mitigate the adverse effects of Act 388 on funding for schools and districts: changing the Index of Taxpaying Ability; instituting "hold harmless" provisions for the 2008-09 school year; adding a special short-term weight for new schools; and re-allocating the \$2.5 million in Act 388 funds currently distributed on a county-wide basis as the new poverty weighting is implemented.

44. The Index of Taxpaying Ability should be changed to keep the taxpaying ability of all school districts consistent with their ability to pay at the date of implementation of Act 388 by including as part of the formula the revenue districts would have received from homeowner-occupied property. Specifically, for purposes of calculating the Index of Taxpaying Ability, the value of owner-occupied property should be imputed based on revenue districts received.

A proposed formula is presented in Appendix F.

45. Under the Act 388 distribution formula, schools that grow in enrollment will experience a decline in the amount reimbursed per pupil, while districts that lose enrollment will experience an increase in the amount reimbursed per pupil. The General Assembly should approve a "hold harmless" provision for the 2008-09 school year to ensure that growing districts are not penalized for growth.
46. The General Assembly should add to the proposed adequacy program a weight of 10 for a two-year period following the opening of a new school with a new BEDS code, computed outside of the individual student weights included in the adequacy program.

A proposed formula is given in Appendix G.

47. The provision of Act 388 for distribution of \$2.5 million on a countywide rather than a district basis is inequitable, since some districts receive funds and others with similar needs do not. These funds, along with the Act 388 poverty allocation, should be re-allocated to help fund the proposed poverty weight.

Task Force on Funding for World Class Learning Members

Dr. Karen Woodward, Chair
Superintendent
Lexington School District One
Lexington, SC

Dr Scott Andersen
Superintendent
Lexington and Richland School District Five
Irmo, SC

Jon Butzon
Executive Director
Charleston Education Network
Charleston, SC

Dr JoAnne Anderson
Executive Director
Education Oversight Committee
Columbia, SC

Melissa Campbell
Executive Director of Finance
Pickens County School District
Easley, SC

Tom Ashley
Director of Finance
Orangeburg School District Four
Cope, SC

Robert Davis
Chief Financial Officer
Richland School District Two
Columbia, SC

Betty Bagley
Superintendent
Anderson School District Five
Anderson, SC

Dr. Rette Dean
Superintendent
Marion School District Seven
Mullins, SC

Dr Russell Booker
Superintendent
York School District One
York, SC

Rut Dingle
Principal
Sumter High School
Sumter, SC

Michele Brinn
Greater Greenville Chamber of Commerce
Greenville, SC

Theodore DuBose, Esq.
Haynsworth Sinkler Boyd, P.A.
Columbia, SC

David Brooks
Assistant Superintendent
Anderson School District Five
Anderson, SC

The Honorable Lois Eargle
Horry County Auditor
Conway, SC

John Butler
Chief Financial Officer
Lexington School District One
Lexington, SC

The Honorable Marvin Flowers
Darlington County Council
Darlington, SC

Karl Fulmer
Chapin, SC

Sheila Gallagher
President
South Carolina Education Association
Columbia, SC

Dr. William Gummerson
Superintendent
Lexington School District Three
Batesburg-Leesville, SC

The Honorable Charlene Herring
Mayor
Ridgeway, SC

Brenton Jeffcoat
McGuire Woods, LLP
Columbia, SC

Mark Kelley
Conway, SC

Dr. David Longshore
Superintendent
Orangeburg School District Three
Holly Hill, SC

Greg Mack
Assistant Superintendent
Spartanburg School District Three
Glendale, SC

Kathy Maness
Executive Director
Palmetto State Teachers' Association
Columbia, SC

Charles McKinney
Member, State Board of Education
Clinton, SC

Ed McMullen
President
South Carolina Policy Council
Columbia, SC

Stephen G. Morrison
Nelson Mullins Riley & Scarborough, LLP
Columbia, SC

Dr. Terry Peterson
Charleston, SC

Dr. Jim Ray
Superintendent
Spartanburg School District Three
Glendale, SC

Jeff Riddle
Chief Finance and Human Resource Officer
Horry County School District
Conway, SC

Dr. Frank Roberson
Aiken, SC

Ray Rogers
Superintendent
Dillon School District Two
Dillon, SC

Molly Spearman
Executive Director
South Carolina Association of School
Administrators
Columbia, SC

Ellen Still
Columbia, SC

Ann Marie Taylor
SC Teacher of the Year
Camden, SC

Dr. Ed Taylor
Superintendent
Laurens School District Fifty-five
Laurens, SC

John Tindal
Superintendent
Clarendon School District Two
Manning, SC

Dr. Tom Truitt
Pee Dee Education Foundation
Florence, SC

Facilities Study Committee Members

John Butler
Chief Financial Officer
Lexington School District One
Lexington, SC

Robert Davis
Chief Financial Officer
Richland School District Two
Columbia, SC

Theodore DuBose, Esq
Haynsworth Sinkler Boyd, P A
Columbia, SC

Allyson Duke
Director of Business
Dorchester School District Two
Summerville, SC

Michael Jackson
Director of Finance
Clarendon School District Two
Manning, SC

Scott Price
General Counsel
South Carolina School Boards Association
Columbia, SC

Jerry Sullivan
Chief Financial Officer
Calhoun County School District
St. Matthews, SC

John Tindal
Superintendent
Clarendon School District Two
Manning, SC

Dr Karen Woodward
Superintendent
Lexington School District One
Lexington, SC

Task Force on Funding for World Class Learning Staff Members

Melanie Barton
Evaluation Specialist
Education Oversight Committee

Betsy Carpentier
Deputy Superintendent for Innovation and
Support
South Carolina Department of Education

Melissa Carter
Research Analyst
Municipal Association of South Carolina

Chris Caughman
South Carolina Department of Revenue

John Cooley
Deputy Superintendent for Finance and
Operations
South Carolina Department of Education

Mike Horton
South Carolina Department of Revenue

Sandy Houck
South Carolina Department of Revenue

Trey Kannaday
South Carolina Budget and Control Board

Lisa Nichols
Senior Budget Analyst
Senate Finance Committee

Beth Phibbs
South Carolina Association of School
Administrators
Columbia, SC

Janice Poda
Deputy Superintendent for Administration
South Carolina Department of Education

Allyn Powell
Research Budget Analyst
House Ways and Means Committee

Scott Price
General Counsel
South Carolina School Boards Association

Sandy Smith
Deputy Superintendent for Policy and
Legislation
South Carolina Department of Education

John Augenblick
John Myers
Justin Silverstein
Augenblick, Palaich and Associates

Appendix A

PROPOSED ADEQUACY PROGRAM – (Allocation Per Pupil = \$7,270)

District Wide 7,500 Pupils	500 Pupil Elementary School	Middle School 750 Students	High Schools 900 Students
1 District Superintendent	1 Principal	1 Principal	1 Principal
1 Chief Academic Officer	1 Assistant Principal	1.5 Assistant Principals	2 Assistant Principals
1 Director for Instruction	1 Media Specialist	1 Media Specialist	1.8 Media Specialists
1 Chief Financial Officer	1 Counselor	2.5 Counselors	3 Counselors
1 Business Manager	1 Nurse	1 Nurse	1 Nurse
1 Bookkeeper	Technology Supplies	Technology Supplies	Technology Supplies
1 Chief Information Officer	Instructional Supplies	Instructional Supplies	Instructional Supplies
1 Coordinator for Technology	1 Technology Specialist	1 Technology Specialist	1 Technology Specialist
1 Director of Human resources	1 Academic Coach Reading, Math, Science & ESOL	1 Academic Coach-Math, Science, Reading and ESOL	1 Academic Coach-Math, Science, Reading & ESOL
1 Coordinator of Human Resources	4.5 Instructional Assts	4 Instructional Assts	2 Instructional Assts
1 Certification Coordinator	34.9 Classroom Teachers	43.8 Classroom Teachers 24:1	47.7 Classroom Teachers 24:1
1 Director of Assessment, Research, and Evaluation	5K Teachers 15:1 5K paraprofessional	1 Resource Officer	1 Resource Officer
1 Coordinator Safety and Security	grade one 15:1		
1 Coordinator Guidance and programs for alcohol, drug abuse, mentoring, character ed.	grade two 15:1		
1 Coordinator School/Community Relations	grade three 15:1		
1 Coordinator Career Involvement/Development	grade four 24:1		
11 Secretaries	grade five 24:1		
District Level Technology	World Language Teacher		
District Maintenance & Operational Costs	PE teacher		
District Strategic planning	Art teacher		
New Principal Induction Program	Music teacher		
Professional Development	4 Clerical Staff	6 Clerical Staff	7 Clerical Data
Program Support for Family Literacy	Professional Development 5 additional teacher days	Professional Development 5 additional teacher days	Professional Development 5 additional teacher days
Instructional Supplies and Library Books			
ADEPT for new teachers			
Induction coordination and training			
Character Development Education			
Bullying Legislation			
Parent Involvement			

Appendix B

Implementation of Adequacy Program

	<u>Program Cost</u>	<u>Adequacy Cost</u>	<u>Total Cost</u>
Year 1 Fiscal Year 2008-09			
4 Yr Old at Risk Program (1 of 2)	\$ 36,500,000		
Modify Index of Tax Paying Ability			
Act 388 New Schools Weight @ .1	5,503,023		
Act 388 Hold Harmless	15,7980.018		\$ 57,793,041
Begin Implementation of Choice and Innovation Program	Redirect Current Funds		
Year 2 Fiscal Year 2009-10			
4 Yr Old at Risk Program (2 of 2)	\$ 36,500,000	\$ (30,000,000)	
1 st 1/3 of Poverty Weighting@80/20		152,501,825	159,001,825
Year 3 Fiscal Year 2010-11			
2 nd 1/3 of Poverty Weighting@80/20		152,501,825	152,501,825
Year 4 Fiscal Year 2011-12			
Final 1/3 of Poverty Weighting@80/20		\$ 152,501,825	152,501,825
Total 1 st Four Years			<u>\$ 521,798,517</u>

Year 5 Fiscal Year 2012-13 Begin Adequacy Program phase in no later than 2012-13

Note: Adequacy cost projected at \$7,270 (2005-06)
 Based on 80/20 Relationship
 \$ 3,436,144,239 Current Dollars Redirected to Fund Adequacy Cost
 No Inflation

Appendix C

FORMULA FOR ANNUAL DISTRIBUTION OF GENERAL OBLIGATION BONDS

The proposed School Infrastructure Facilities Act allocates State general obligation bond proceeds on a grant basis to the school districts based upon the relative wealth per pupil of each district. Wealth per pupil is defined as the assessed value of a district divided by its enrollment. Funding per pupil from bond funds is variable, depending on relative wealth per pupil. Each district is required to demonstrate substantial effort in meeting capital needs through a local match requirement.

Step 1 RANKING DISTRICTS – Wealth per pupil based on assessed value and enrollment figures from the second preceding year will be utilized annually to prioritize districts. The district with the lowest wealth per pupil will be given the highest priority. The district with greatest wealth per pupil is given the lowest priority.

Step 2. STATE FUNDING CAPS – The Act creates four tiers among the school districts ranked according to Step 1 above. Each tier is assigned a funding cap, which limits the amount of funding on a per pupil basis a district may receive. Tier One consists of the first 14 districts, beginning with the school having the least wealth per pupil. Tier Two consists of the next 14 districts, Tier Three consists of the next 28 districts, and Tier 4 consists of the final 29 districts.

Tier One districts may be allocated up to \$6,000 per pupil, Tier Two districts may be allocated up to \$4,500 per pupil, Tier Three districts may be allocated up to \$3,000 per pupil, and Tier Four districts may be allocated up to \$1,500 per pupil. The foregoing amounts are caps, and a district may elect to receive a lesser amount.

Step 3: WEALTH FACTOR – Subtract each district's wealth per pupil from the highest district's wealth per pupil. Divide the result by the highest district's wealth per pupil. This produces a wealth factor.

Step 4 . LOCAL MATCH – The local match is determined by subtracting the wealth factor from 1.0 and multiplying the result times the amount of funding to be provided by the State. The local match is satisfied, however, if the school district has, or will have, taking into account the project to be funded, general obligation bonds outstanding in an aggregate principal amount equal to at least 75% of its constitutional debt limit.

Step 5. FUNDED DISTRICTS – Once a district has received grant funding pursuant to steps one through four, that district will not be eligible for additional grant funding until all districts have been funded.

The preceding formula will apply only to State g.o. bond proceeds granted to school districts. The order of priority may be set aside as to 20% of bond proceeds made available following issuance of initial AMS report, as further described at page 5 above. The limitation on State funds described in Step 2 above will apply in every case.

Appendix D

Charter School Funding

Assistance to charter schools for facilities funding should be provided if the charter school meets the required academic standards of other public schools and

- The governing body of a school district may apply for and receive funding for the charter schools in that district from the School Facilities Infrastructure Authority.
- The State should consider creation of a separate financing authority for the benefit of state charter schools; the success of a financing program for state charter schools will be subject to demonstration by a charter school that it has the means to repay long-term indebtedness
- A state charter school is eligible for financial assistance consisting of a grant of up to \$500,000, disbursed over two years. The grant funds may be applied to new construction, renovation of existing facilities, to reimburse a district or charter committee for prior expenditures for such purposes, or to retire indebtedness incurred for such purposes. Facilities improved with the proceeds of a grant shall be subject to a mortgage in favor of the State; the State may foreclose upon the mortgage if, within five years of the final distribution of grant proceeds, the facilities shall cease to be used for charter school purposes. The mortgage will expire on the fifth anniversary of the final distribution of grant proceeds.
- Facilities used for educational purposes by a charter school are exempt from ad valorem property taxes
- Owners of real property that lease such real property for use by a charter school are entitled to a credit against State income tax in an amount equal to the fair market value of such lease less any rent payable under the lease.

Appendix E

Index of Taxpaying Ability

The index of taxpaying ability should be adjusted to reflect the change in the taxable status of owner-occupied property caused by Act 388 and earlier property tax relief programs by treating school property tax relief as a revenue stream that enables the DOR to impute the equivalent value of owner-occupied residential property for inclusion in calculation of the index. The calculation would take the amount of money each district receives and determine what assessed value would generate that amount of money and then add that figure to each district's non-owner occupied assessments to come up with an overall assessment for each district to use in the calculation of the index of tax paying ability

Formula:

The amount of funds received by each district from Act 388 Homestead Funds divided by the operating millage of each district would calculate an assessed value for the Act 388 funds. Add that result to each district's non-owner occupied assessment. That sum would be the total assessed value for each school district and then each district's assessed value as a percent of the total of all school districts' assessed values would produce each district's index of tax paying ability

Appendix F

Hold Harmless Formula

Step 1: To ensure districts receive at least the same per pupil amount as previous year

1. Subtract the 135 ADM from the current year for each district from the 135 ADM from the previous year to see if the district is growing or declining in enrollment.
2. Divide the amount received from Act 388 tier 3 reimbursement from the previous year by the 135 ADM from the previous year to get a per pupil amount for the reimbursement, then divide the amount proposed to be received from Act 388 tier 3 reimbursement from the current year and divide that amount by the current year 135 ADM to get a per pupil amount for the current year
3. Subtract the current year per pupil amount from the previous year per pupil amount to see if a district is receiving less per pupil than they did in the previous year
4. If a district is scheduled to receive less in the current year per pupil than it did in the previous year, multiply the deficit amount per pupil calculated to be received by the current year's 135 ADM. This produces the amount needed to be funded to ensure that each district receives at least the same amount per pupil as it did in the previous year

Step 2: To ensure growing districts receive the funds from the state's increase in tier 3 due to growth

1. The increase in tier 3 funds each year comes from the increase in CPI and growth in population. Take the portion that is due to growth and distribute it to growing districts. Take the percent that is due to growth as a percent of the total of the CPI plus growth and multiply that percentage times the total amount the tier 3 funds increased each year. For example, if the growth in the state is 1.51% and the CPI increase is 3.93%, then the total of these is 5.44%. The growth figure is 27.8% of the total increase ($1.51/5.44$).
2. Then multiply the resulting percentage (27.8%) times the total increase in tier 3 funds. If the tier 3 funds grow by \$30,000,000, then multiply the 27.8% times the \$30,000,000 to get \$8,340,000 to be distributed to growing districts. If the growing districts grew by a total of 6,460.64 students, then divide the \$8,340,000 by the 6,460.64 to get a per pupil amount of \$1,290.89. Multiply that amount times the number of students each district grew to get the amount each district should receive.

Step 3: Distribute the CPI portion of the increase in tier 3 funds in the same manner as which all tier 3 growth funds are currently distributed

1. Take the CPI percentage and multiply that by the total increase in tier 3 funds to get the amount to be distributed to all districts by total WPU's of each district.

Appendix G

Weight for District Growth

1. Take the number of students in a new school and multiply that number by 727 or (.1 times the adequacy cost amount) for the first two years of the school.

**STATE OF SOUTH CAROLINA
In the Supreme Court**

APPEAL FROM LEE COUNTY
Thomas W. Cooper, Jr., Circuit Court Judge
Civil Action No.: 93-CP-31-0169
Case Tracking No.: 2007-65159

Abbeville County School District, *et al.*,.....Petitioner,

v.

The State of South Carolina, *et al.*,.....Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the **Motion for Leave to File a Brief as *Amici Curiae*** and the proposed ***Amici Curiae* Brief** by depositing a copy of it in the United States Mail, postage prepaid, on June 23, 2008, addressed to the following:

AS TO THE PETITIONER:

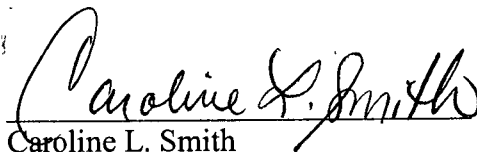
Carl B. Epps, III
Stephen O. Morrison
Laura Callaway Hart
Shelby K. Leonardi
Nelson Mullins Riley & Scarborough, L.L.P.
Meridian, 17th Floor
1320 Main St.
Columbia, SC 29201

AS TO THE RESPONDENT STATE AND GOVERNOR OF SOUTH CAROLINA:

Henry D. McMaster
J. Emory Smith, Jr., Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

**AS TO THE RESPONDENT SENATE AND HOUSE OF REPRESENTATIVES
OF THE STATE OF SOUTH CAROLINA:**

Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
Sowell Gray Stepp & Laffitte, L.L.C.
1310 Gadsden St.
P.O. Box 11449
Columbia, SC 29211



Caroline L. Smith

Legal Assistant to Stephen K. Benjamin and
Tina N. Herbert

McANGUS GOUDELOCK & COURIE LLC

Post Office Box 12519

700 Gervais Street, Suite 300 (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

*Attorneys for South Carolina Association
of School Administrators and
South Carolina School Boards Association*