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October 21, 2015

### Hand Delivered

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29211

RE: Abbeville County School District, et al. v. State of South Carolina, et al.  
Civil Action No. 93-CP-31-169  
Court of Appeals Case Tracking No. 2007-065159  
Our File No. 11884/01500

Dear Mr. Shearouse:

Enclosed for filing are the original and 7 copies of Return to Petition to Vacate Supplemental Order in regard to the above matter. Please file the original and six copies and return one clocked-in copy to us via our courier.

By copy of this letter to other counsel, we are serving them with a copy of the above-referenced document.

Very truly yours,

*Carl B. Epps*  
*by Rachel Daly with express permission*  
Carl B. Epps, III

CBEIII:ljs

Enclosures

cc: Robert E. Stepp, Esquire (via hand delivery and U.S. mail)  
Elizabeth Van Doren Gray, Esquire (via hand delivery and U.S. mail)  
J. Emory Smith, Jr., Esquire (via hand delivery and U.S. mail)  
Swati Patel, Esquire (via hand delivery and U.S. mail)

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM LEE COUNTY  
COURT OF COMMON PLEAS

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2007-065159

RECEIVED

OCT 21 2015

S.C. Supreme Court

Abbeville County School District, et al., ..... Appellants-Respondents,

v.

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

and

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

RETURN TO PETITION TO VACATE SUPPLEMENTAL ORDER

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*Attorneys for Appellants-Respondent*

Appellants-Respondents (hereinafter referred to as “Plaintiffs” or “Plaintiff Districts”) hereby submit this Return to the Respondents’ Petition to Vacate the Court’s September 24, 2015 Supplemental Order.

In their Petition to Vacate, Respondents detail the efforts that have been undertaken by the State in response to this Court’s determination that the State violated its constitutional duty to ensure that the students of South Carolina receive the opportunity to acquire a minimally adequate education. Plaintiffs agree that, since Plaintiffs filed their June 18, 2015 Motion for a Supplemental Order, the elected officers and representatives of the State of South Carolina have been engaged in efforts to address the constitutional deficiencies identified in *Abbeville II*. The House Education and Policy Review and Reform Task Force (The House Task Force) formed by the Honorable House Speaker James H. (Jay) Lucas has met on a regular and timely basis to address the educational needs of children in the Plaintiff Districts. The Chairperson of the Task Force, the Honorable Rita Allison, is scheduled to deliver the House Task Force recommendations to Speaker Lucas on or before January 12, 2016, and Speaker Lucas has stated that he will introduce legislation that will provide programs designed to eliminate the constitutional deficiencies identified in *Abbeville II* by the time the 2016 legislative session commences. The Senate Special Abbeville Committee, formed by the Honorable Hugh K. Leatherman, President Pro Tempore of the State Senate, has commenced its work. Its Co-Chair stated publically that the Committee will address the constitutional deficiencies during the 2016 legislative session. Lastly, the Honorable Nikki Haley, Governor of South Carolina, has met with the Plaintiff Districts and, in addition to prior initiatives, is pursuing initiatives designed to address the needs of students in the Plaintiff Districts.

At the same time, however, Plaintiffs recognize that each year that passes without adequate and essential educational offerings sufficient to overcome the constitutional deficiencies is a lost year and corresponding lost opportunity for children attending schools in the Plaintiff Districts. In its November 12, 2014 Order, the Supreme Court directed the parties to return to the Court, within a reasonable time, to present a plan to address the constitutional violation. Because the parties were unable to agree on a plan, Plaintiffs petitioned the Court to enter an order establishing a deadline by which remedial programs, legislation, and support for the legislation must be enacted. The Plaintiffs also requested that an expert panel be created to advise the Parties and the Court on the adequacy of the proposed remedies.

Contrary to the Respondents' arguments in the Motion to Vacate Supplemental Order, the Plaintiffs did not request, and the Court did not award, any relief that would disrupt the balance of powers among the judicial, legislative and executive branches. The Court's Supplemental Order does not require the Respondents to enact any particular laws or fund any particular budgetary items. The authority to choose policies, enact legislation, and appropriate funding remains entirely within the legislative branch, and the power to veto legislation remains exclusively with the Governor.

Instead, as it has done throughout this litigation, the Court struck an appropriate balance between its solemn duty to uphold and enforce the State Constitution and the General Assembly's prerogative to determine educational policy. The Court directed the parties to select a three expert panel to serve in a purely advisory capacity to facilitate the work of all of the Parties and the Court in assessing whether the proposed remedies form a rational means of bringing the system of public education in South Carolina into constitutional compliance.

Nowhere in its September 24, 2015 Supplemental Order did the Court vest the three expert panel, or the Plaintiff Districts for that matter, with the authority to dictate educational policy, or the power to approve or veto the State's plan. Therefore, the three expert panel is not designed to be nor does it constitute a "super-legislature" as stated in the Motion to Vacate. Its role is advisory only to assist the parties and the Court in evaluating whether the proposed remedies are reasonably designed to cure known constitutional defects.

Likewise, Respondents have misinterpreted the purpose and intent of the interim deadlines set forth in the Court's September 24, 2015 Supplemental Order. These interim deadlines were established for the sole purpose of creating a defined timeline designed to ensure that progress continued at an acceptable pace. Deadlines are necessary in cases like this to cure the constitutional violations within a reasonable period of time, and in this instance to allow each student in the Plaintiff Districts the opportunity for a minimally adequate education.

Accordingly, the Plaintiffs ask that the Respondents' Motion to Vacate be denied. Both advisory expert input and interim deadlines are entirely appropriate.

Nonetheless, to eliminate the Respondents' stated concerns about the expert panel and the interim deadlines, the Plaintiffs ask that the Court consider removing them in favor of a court appointed expert and a final deadline for completion of remedial legislation and support. The Court may find court appointed expertise helpful when addressing the constitutional defects identified in *Abbeville II*. A final compliance deadline of June 2016 gives Respondents a full eighteen months to respond to the Court's November 12, 2014 Order, a time period that meets Respondents' stated needs as well as those of the Plaintiff students.

This is consistent with what other states have done. Indeed, at page "6" of the Respondents' Return to Appellants-Respondents' Motion for Entry of a Supplemental Order,

the Respondents quoted the Wyoming Supreme Court's statement that "the legislature must be afforded ample time for adequate study, drafting of appropriate reform legislation, and debate on and passage of that legislation." See *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1280 (Wyo. 1995), *as clarified on denial of reh'g* (Dec. 6. 1995). The Wyoming Supreme Court determined that a deadline of July 1, 1997, approximately eighteen months from the date of its decision, was "a reasonable period of time for the legislature to achieve constitutional compliance." *Id.* See also, *Lake View Sch. Dist. No. 25 v. Huckabee*, 364 Ark. 398, 415-16, 220 S.W.3d 645, 657 (Ark. 2005) (allowing the state legislature one year to correct the constitutional deficiencies in public-school funding legislation); *Montoy v. State*, 278 Kan. 769, 120 P.3d 306, 310-11, *supplemented*, 279 Kan. 817, 112 P.3d 923 (Kan. 2005) (finding the state's school funding scheme unconstitutional, the Kansas Supreme Court withheld its final order to give the legislature three months to enact corrective legislation); *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 930, 801 N.E.2d 326, 349 (N.Y. 2003) (granting the defendants just over one year to implement necessary reforms); *Abbott by Abbott v. Burke*, 119 N.J. 287, 389, 575 A.2d 359, 409 (N.J. 1990) (*Abbott II*) (finding the New Jersey public school funding act unconstitutional, the court required the legislature to put "in place" a new funding mechanism within approximately fifteen months - to take effect in the 1991-1992 school year with implementation phased-in).

The Respondents' remaining challenges to the Court's authority to retain jurisdiction over this case, including its authority to require the Respondents to submit a plan for remedying the constitutional deficiencies before enacting reform legislation, have previously been raised and rejected by this Court in denying Respondents' December 30, 2014 Petition for Rehearing, and should be summarily rejected here. The doctrine of separation of powers, upon



which Respondents base their serial objections to this Court's rulings, patently does not prohibit the Court from fulfilling its duties as the protector of the State Constitution. Significantly, the obligation imposed upon the General Assembly by Article IX, Section 3 of the South Carolina Constitution, the education clause, to provide the opportunity for a minimally adequate education to each child is a mandatory obligation to act, rather than a limitation on legislative action. *Abbeville Cnty. Sch. Dist. v. State*, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999) ("*Abbeville I*"). Judicial deference to the other branches of government reaches its limits when inaction on the part of other branches of government is the source of a constitutional violation and deference would allow that violation to persist. *See, e.g., Robinson v. Cahill*, 351 A.2d 713, 724 (N.J. 1975) (the court, "as the designated last-resort guarantor of the Constitution's command, possesses and must use power equal to its responsibility"); *Londonderry Sch. Dist. SAU #12*, 907 A.2d 988, 996 (N.H. 2006) ("a judicial remedy is not only appropriate but essential" when other branches fail to act to ensure constitutional compliance of the state's educational system); *Lake View Sch. Dist. No. 25 v. Huckabee*, 220 S.W.3d 645, 657 (Ark. 2005) (Court acted on its "duty . . . to assure constitutional compliance" and to "assure that the will of the people of our state as expressed in our constitution is fulfilled" by giving the legislature less than a year to remedy its educational system or have the solution mandated by the court).

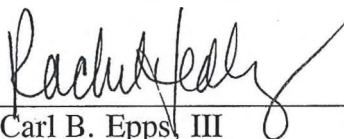
For these reasons, Plaintiffs respectfully request that the Court deny Respondents' Petition to Vacate the Court's September 24, 2015 Supplemental Order. However, to eliminate the concerns raised by the Respondents, the Plaintiffs propose that the Court consider amending its Supplemental Order of September 24, 2015, as follows:

1. Plaintiffs request that paragraph “1” be modified to eliminate the requirement of engaging a three expert panel and the corresponding timelines. Instead, Plaintiffs request that the Court engage an independent expert to aid the Court in its review of whether the programs and legislation, including funding, are reasonably designed to cure the constitutional defects identified in *Abbeville II*. The Court may find it appropriate to receive periodic reports on the progress and sufficiency of the proposals during the next legislative year to ensure that the constitutional deficiencies are cured within the time set forth in the ensuing paragraph.
2. Plaintiffs request that the provisions of Paragraphs “2-4” be modified so that the interim deadlines will be suspended, and that instead a deadline be established of June 15, 2016, or alternatively the end of the 2016 legislative session, by which time the Respondents must finalize the remedial programs and have enacted legislation reasonably designed to bring the system of public education in South Carolina into constitutional compliance, with sufficient funding.
3. Plaintiffs request that the provisions of paragraphs “5” and “6” be modified to eliminate reference to the expert panel, but otherwise remain as stated in the September 24, 2015 Supplemental Order.



Respectfully submitted,

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*Attorneys for Appellants-Respondents*

October 21, 2015

Columbia, South Carolina

CERTIFICATE OF SERVICE

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

**Mail** to the following address(es):

Pleadings: Return to Petition to Vacate Supplemental Order

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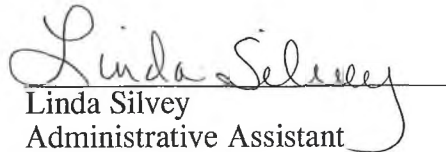
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OCT 21 2015

S.C. Supreme Court

  
Linda Silvey  
Administrative Assistant

Oct. 21, 2015