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OCT 26 2015

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2007-065159

Abbeville County School District, *et al.*,

Appellants-Respondents,

vs.

The State of South Carolina, *et al.*, of whom Hugh K. Leatherman, 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.

REPLY TO RETURN TO PETITION TO VACATE SUPPLEMENTAL ORDER

Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules, Respondents-Appellants Hugh K. Leatherman, in his representative capacity and as President Pro Tempore of the South Carolina Senate, James H. Lucas, as Speaker of the South Carolina House of Representatives, Nikki R. Haley, as Governor of the State of South Carolina, and the State of South Carolina (collectively, "Defendants") hereby submit this Reply to Appellants'-Respondents' ("Plaintiffs") Return to Petition to Vacate the Court's September 24, 2015 Supplemental Order. The Supplemental Order represents the first time in the Court's history that the Court has intruded upon the powers of the Legislature by ordering it to comply with a timetable which is unworkable, unattainable and most importantly unconstitutional. The Order should therefore be vacated in its entirety. Plaintiffs' Return to the Petition does not support a different result.

As noted in Defendants' Petition, compliance with the Supplemental Order is not possible, and the pendency of the order creates an unnecessary constitutional impasse. The practical unworkability of the order itself requires that it be vacated. Plaintiffs fail to address these issues in their Return.

Defendants are gratified that Plaintiffs acknowledge the substantial work that has been done and attention that has been given by the Defendants addressing the constitutional violations identified in the *Abbeville II* decision. (Pls.' Return 1.) Defendants disagree, however, with Plaintiffs' assertion that the Supplemental Order does not violate separation of powers and the non-delegation doctrine. The Supplemental Order requires the General Assembly to present prosed legislation to an unelected, unaccountable expert panel, and empowers the panel to advise the Court as to the constitutional viability of any proposed remedy. The order further requires the panel to recommend the methodology for

determining constitutional compliance. Although the order does not expressly empower the panel to implement its recommendations, requiring the General Assembly to seek pre-enactment approval of proposed legislation form the panel and Plaintiffs is a usurpation of powers reserved exclusively to the legislative branch. *Joytime Distribs. & Amusement Co., Inc. v. State*, 338 S.C. 634, 643, 528 S.E.2d 647, 651 (1999) (noting that "[o]n a number of occasions, this Court has held that the power to legislate cannot be delegated to private persons . . .").

Moreover, consistent with separation of powers, this Court lacks the constitutional authority to direct the activities of the General Assembly, including imposing a timeline for legislative action, either for interim events or for final enactment of a bill. *Culbertson v. Blatt,* 194 S.C. 105, 9 S.E.2d 218, 220 (1940) ("Just as it is not within the power of the General Assembly to reverse a judicial decision by retroactive legislation, or to otherwise interfere with or nullify the legislative process, so it is not within the power of this court to impinge upon the exercise by the Legislature of a power vested in that body, merely because in the exercise of or failure to exercise that power, some constitutional provision has been violated."); *Sate ex rel. Coleman v. Lewis*, 181 S.C. 10, 186 S.E. 625, 630 (1936) ("The Constitution empowers each House to determine its rules and proceedings . . . . The power to make rules is . . . absolute and beyond the challenge of any other body."). Case law from other jurisdictions directing legislative action are neither relevant nor persuasive given the well-established legal principles in this state that proscribe such actions by the Court.

In issuing its opinion in this case, the Court's majority was acting within its right to declare the law and to identify a constitutional violation. By the same token, the General

Assembly is now acting well within its exclusive right to determine and enact a remedy pursuant to its constitutionally independent processes. There is no reason to assume that the General Assembly will not act to remedy the educational deficiencies in the Plaintiff Districts or that continued progress on the part of the Defendants needs to be subject to Court oversight. Accordingly, the Supplemental Order should be vacated in its entirety and the legislative process permitted to proceed.

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Columbia, South Carolina

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PROOF OF SERVICE

I hereby certify that I have caused to be served a copy of the Respondents-Appellants' Reply to Appellants' Respondents' Return to Petition to Vacate Supplemental Order upon counsel of record, as reflected below, by hand delivery, this **26h day of October 2015.**

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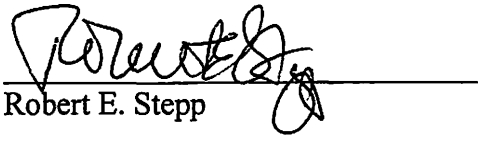

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