



Hugh K. Leatherman
President Pro Tempore

**SOUTH CAROLINA
GENERAL ASSEMBLY**



James H. Lucas
Speaker

September 29, 2015

Via Hand Delivery

The Honorable Jean H. Toal
Chief Justice
South Carolina Supreme Court

RE: September 24, 2015 Order Concerning Appellate Case No. 2007-065159

Dear Madam Chief Justice:

At the outset, let us be perfectly clear - the Senate and the House of Representatives recognize that the public education system in our State is in dire need of reform. We must, and will, work together to ensure that we do everything within our power to ensure that our State's schools have the programs and resources they need to best prepare our children for the future. It is our goal to make South Carolina public schools a shining example for the rest of the country.

We write to you today concerning the above referenced Order. Please accept this letter as notice that we are dismayed by the Order's breathtaking disregard for one of the most fundamental constitutional principles upon which our system of government is based. Even though we recognize the Court's finding of constitutional deficiencies outlined in *Abbeville II*, we believe the Court's authority ends there. The General Assembly will continue to proceed in a constitutional manner to address those shortfalls.

To address the constitutional deficiencies identified by the Court, the Senate and the House of Representatives each convened special committees to closely study the issues involved and propose legislation to address the lingering problems facing the State's educational system. We are pleased with

the progress that the committees have made and look forward to receiving their recommendations and the legislative debate that will occur.

However, your Order seeks to impose on the General Assembly a blatantly unconstitutional process that eviscerates Article I, Section 8 of the South Carolina Constitution. Our State's jurisprudence is clear with regards to the separation of powers - the General Assembly makes the laws, the Executive Branch executes the laws, and the Judiciary interprets and declares the laws. In a little more than four pages, the Court ends this fundamental, time honored principle and seizes control of the legislative process. The Court mandates that the General Assembly formulate a legislative plan, anoints a three person panel of experts with the power to accept or reject the plan, empowers plaintiffs in a lawsuit to effectively veto the plan, and vests in yourselves the authority to declare the constitutionality of the plan before it has even been voted on by the General Assembly. The Court is establishing a judicial preclearance process for legislation not even considered, much less adopted pursuant to the Constitution by the General Assembly.

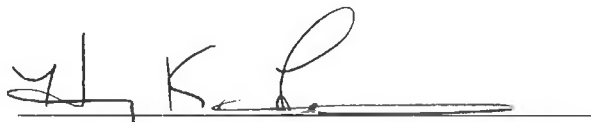
Furthermore, the Court's Order also violates Article III, Section 1 of our State's Constitution through an open and blatant unlawful delegation of legislative authority by directly inserting the "expert panel" and the plaintiff districts into the legislative process. This unlawful delegation is compounded by yet another separate and distinct violation of the separation of powers accomplished through egregiousness of the composition of the expert panel. The Governor, as one of the defendants, has equal input along with the General Assembly in choosing one of the panel members. In so doing, the separation of powers is completely turned on its head - all three branches of the Government would be involved in the legislative process. No concept of the separation of powers allows for this to happen. The Constitution is clear - only the General Assembly, as representatives of the people, has the authority to legislate. No other person, group, or entity can be forced into that process.

The Court's order amounts to a judge created, predetermined legislative outcome that usurps the constitutional duty of each member of the General Assembly to independently represent the interests of his or her constituents. In cases too numerous to mention, this Court and many others have cautioned that it is not the purview of any Court to act as a "super legislature." The infringement on the separation of powers and the unlawful delegation of legislative authority, to both the Court and the expert panel, achieved through this Order carries the court so far down that path that there is little if any discretion left to the people's representatives.

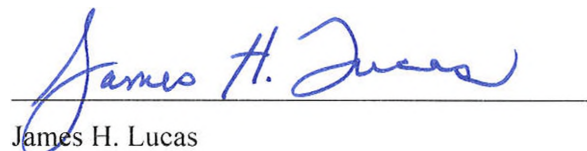
Aside from the obvious constitutional deficiencies, the order further sets an unreasonable, arbitrary timeline for this unconstitutional process to unfold. After spending two decades pondering the constitutionality of our existing system, the Court expects the General Assembly to create a plan in a matter of months. Aside from being arbitrary, the schedule the Court Order seeks to impose is virtually impossible to meet given the demands of the legislative process and the scope and complexities of the issues we are facing. If an obvious answer for solving them existed, it would have been enacted long ago. The General Assembly will continue to move forward in a deliberate, responsible manner to address the problems in our State's educational system. It is vital that we get this right. An arbitrary timeline set by a court under an unconstitutional directive will not deter us.

This Court has gone too far. The Court should respect the General Assembly's constitutional authority to determine how it will address the Court's decision through substantive legislation and through the appropriations process. This path comports with the constitutionally mandated roles and means of interaction between the General Assembly and the Court and maintains the delicate balance of constitutional authority. Once the General Assembly, and only the General Assembly, has acted, the Court may then exercise its constitutional authority to review the final product for constitutional compliance.

Therefore, our special committees will continue their work and will be prepared to present their recommendations to the General Assembly in an expedient, but carefully considered fashion.



Hugh K. Leatherman
President Pro Tempore
South Carolina Senate



James H. Lucas
Speaker
South Carolina House of Representatives

CC: The Honorable Costa M. Pleicones
The Honorable Donald W. Beatty
The Honorable John W. Kittridge
The Honorable Kaye G. Hearn
Her Excellency, Governor Nikki R. Haley
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