THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Casey Edwards and Justin Williams,..... Petitioners,

v.

State of South Carolina and Mark Sanford, in his Official Capacity as Governor of the State of South Carolina .....Respondents.

and

South Carolina Association of School Administrators,.....Petitioner,

v.

The Honorable Mark Sanford, in his official capacity as the Governor of the State of South Carolina, and The Honorable Jim Rex, in his official capacity as the State Superintendent of Education of South Carolina,.....Respondents.

AMICUS CURIAE BRIEF OF THE SOUTH CAROLINA EDUCATION ASSOCIATION

STATEMENT OF THE CASE

This case presents questions of state constitutional and legislative authority. Specifically, the issues presented are: (1) whether the Governor can refuse to execute ministerial duties contained in legislation adopted over his veto and (2) whether the Governor can be compelled to perform these ministerial duties.

CONTROLLING CONSTITUTIONAL PRINCIPLES

All political power in this State is vested in and derived from the people only. S.C. Const. Art. I, § 1. These powers are divided among the three branches of government which operate separate and distinct from each other. S.C. Const. Art. I, § 8. Legislative power is vested in the General Assembly. S.C. Const. Art. III, § 1. The Governor has the duty to take care that all laws enacted by the General Assembly are "faithfully executed." S.C. Const. Art. IV, § 15.

The Constitution anticipates that the Governor and the General Assembly may disagree as to those laws necessary to serve the interests of the people. Specifically, the Constitution provides that the Governor may endorse legislation, allow legislation to become effective without his signature or veto proposed legislation. Ultimately, however, the General Assembly has the authority to override any gubernatorial veto by two-thirds vote of both houses. When this occurs, the bill or joint resolution "has the same effect as if it had been signed by the Governor." S.C. Const. Art. IV, § 21. In the event of a dispute regarding the adoption or implementation of laws, this Court has the power to issue such writs or orders as may be necessary. S.C. Const. Art. V, § 5.

FACTUAL BACKGROUND

The Constitution requires that the "General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in this State and shall establish, organize and support such other public institutions of learning, as may be desirable." S.C. Const. Art. XI, § 3. The legislative duty to insure provision of minimally adequate education for each student in South Carolina was affirmed by this Court in Abbeville County School District v. State, 255 S.C. 58, 69, 515 S.E.2d 535, 541 (1999).

South Carolina public schools are in the process of dealing with serious economic constraints. Members of the SCEA have been faced with furlough, reduction in force, reduction in work days, and even requests to "voluntarily" relinquish portions of their local salary supplements.[1] Teachers, administrators and support staff employed in public school districts and by the State of South Carolina have been informed that if "stimulus money" is not received, jobs will be lost, classrooms will be closed, and programs available to students will be reduced or discontinued.[2]

The American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115, as amended by P.L. 111-8, 123 Stat. 524 (hereafter the "ARRA") provides for a "State Fiscal Stabilization Fund." The congressional purposes of the ARRA include preservation and creation of jobs, promotion of economic recovery, assistance of those most impacted by the recession and stabilization of state and local government budgets to minimize reductions in essential services. ARRA § 3. To obtain ARRA funds, states must provide assurance that they will maintain support for elementary, secondary and public post-secondary education at the 2006 fiscal year level through 2011 and address four designated educational parameters. Upon receipt of the funds, states must use 81.8% to maintain support at fiscal year 2008-2009 levels, whichever is greater, for school districts and public institutions of higher education. See, ARRA § 14002.

In response to the ARRA, the General Assembly enacted a budget providing, in relevant part, that "the Governor has certified that (1) the State will request and use funds provided by the ARRA, and (2) the funds will be used to create funds and promote economic growth . . . in order

[1] See, "School district might raise taxes to save jobs." TheState.com (Tuesday, June 2, 2009) attached as Appendix A.

[2] See, "More teachers scramble for fewer S.C. openings" TheState.com (Monday, June 1, 2009) attached as Appendix B.

to fund the appropriations provided by this part, the Governor and the State Superintendent of Education shall take all action necessary required by the ARRA and the U.S. Secretary of Education and will secure receipt of the funds recognized and authorized for appropriation pursuant to this section." See, Part Three of the State's Fiscal Year 2010 Budget (Act R. 49 of 2009) ("the State Budget Act"). Part Three of the State Budget Act further provides "(1) within five days of the effective date of this part, the Governor shall submit an application to the United States' Secretary of Education to obtain Phase I of the Fiscal Stabilization Funds and (2) within thirty days of Phase II of the State Fiscal Stabilization Funds becoming available or thirty days following the effective date of this Act, whichever is later, the Governor shall submit an application to the United States' Secretary of Education to obtain Phase II State Fiscal Stabilization Funds."

Following veto by the Governor, on May 20, 2009, the General Assembly by two-thirds vote of both houses reenacted the above-quoted provisions. Ignoring the language of Article IV, § 21 of the State Constitution that a bill or joint resolution adopted by override of a veto "has the same effect as if it had been signed by the Governor", and his duty under Article IV, § 15 to faithfully execute the law, Governor Sanford asserts that he is not obligated to submit an application for the funds requested in Part Three of the State Budget Act. In view of this position, the SCEA and its members respectfully submit that unless this Court informs the Governor of his duty to comply with the certification requirements contained in the State Budget Act, public education in this State will be seriously injured.[3] Simply put, teachers will lose jobs,

[3] On June 1, 2009, the Governor announced that he will abide by the decision of this Court regarding the State Budget Act and his responsibility to seek available federal funds. See, "Long stimulus fight might be near end" TheState.com (Tuesday, June 2, 2009) attached as Appendix C.

students will lose teachers, and public education in this State will suffer in a manner that is both tragic and avoidable.

LEGAL ARGUMENT

For more than one hundred years, this Court has recognized that a joint resolution may compel action by an elected officer of this State. In Smith v. Jennings, 67 S.C. 324, 45 S.E. 821 (1903), this Court accepted original jurisdiction of a petition to restrain the State Treasurer from acting pursuant to a joint resolution passed over the Governor's veto that required the Treasurer to "write off the books in his office and no longer carry on the books as a debt of the state" certain railway bonds. In rejecting the petition, this Court acknowledged that joint resolutions have "long been the practice" and "are most usually employed in directing an officer to do or not do a particular thing." *Id.* at 824.

In 1936, this Court accepted original jurisdiction of a taxpayer action challenging the issuance of certain certificates of indebtedness and the election of district highway commissioners. Addressing numerous constitutional objections, the Court refused to consider the "advantages or disadvantages, the wisdom or folly. . ." of the challenged legislation, and held instead that "the question is only one of power." State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625, 631 (1936). Recognizing the plenary powers vested in the General Assembly, the Court upheld as ministerial a legislative mandate that the Governor "shall issue a commission" to persons elected as district highway commissioner and found it "inescapable" that commissioners need not await the Governor's act of issuing a commission to discharge the functions of their offices. *Id.* at 636.

Particularly relevant to this proceeding, the Court in Coleman commented on its exclusive authority to resolve disputes involving legislation and exercise of constitutional

mandates. Quoting Receiver v. R.H. Jennings, as Treasurer, 206 U.S. 276, 278 (1907), the Court observed: "The conformity with the state Constitution of the proceedings in the enactment of the law is a question for the determination of the state court, and its judgment is final."

To date, the Governor has taken the position that he may ignore the directive of the General Assembly and refuse to certify the State's request for educational funding.[4] This position is not supported by the Constitution or by the established precedents of this Court. Instead, both the plain language of the State's Constitution and the consistent authority contained in the opinions of this Court confirm that the Governor acts as an **agent** of the State when executing its laws. The Governor does not have the authority to substitute his judgment for that of the General Assembly and may not frustrate the public policy of this State by selectively enforcing the law.

It is hoped that the Governor will accept this Court's declaration of his responsibility to act in keeping with law. If necessary, however, it is without question that this Court has the authority to compel the Governor to complete the tasks required in Part Three of the State Budget Act. See, Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 (1996); Easler v. Maybank, 191 S.C. 511, 5 S.E.2d 288 (1939) (courts have jurisdiction to compel ministerial acts by the Governor).

[4] The ARRA in section 14005(a) states: "The Governor of **a state desiring to receive an allocation** under section 14001 shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require." (emphasis added). This language clearly calls for the "state" to determine whether it desires to receive an allocation of funds. If this decision is made, as here in Part Three of the State Budget Act, the Governor "shall submit an application. . ." Because our State Constitution vests authority in the General Assembly to speak for the people through legislation, the Governor's submission of an application is ministerial only and he acts as agent of the State in making certain that the law is "faithfully executed."

CONCLUSION

For the reasons set forth above, the South Carolina Education Association endorses the requests of the Petitioners in seeking a declaratory judgment regarding the rights, status and other legal relations affecting public education in Part Three of the State Budget Act. The SCEA further endorses the request for a declaration that the Governor must take actions required by Part Three of the State Budget Act. Finally, should the Court find it necessary, the SCEA endorses the request for issuance of an order mandamus to compel the Governor to immediately submit an application to the United States' Secretary of Education to obtain Phase I State Fiscal Stabilization Funds in accordance with Part Three of the State Budget Act.

Respectfully submitted,

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