

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-0169

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by

and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C., a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Kathisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian

ad Litem of Robert B. S.; Robert B. S., a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson B.; Jorgana Ranson B., a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin N.; Erin N., a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle H.; Krystle H., a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. B.; Tanisha P. B., a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea B.; Dondrea B., a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda S.; Brenda S., a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas S., Jr.; Thomas S., Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem,

Plaintiffs,

Of whom:

Allendale County School District,
Dillon County School District 2,
Florence County School District 4,
Hampton County School District 2,
Jasper County School District,
Lee County School District,
Marion County School District 7,
Orangeburg School District 3,
Lena Manning, individually, and as a taxpayer residing
in Allendale County and as Guardian ad Litem of
Courtney V.; Courtney V., a minor, by and through Lena
Manning, as Guardian ad Litem; Pamela Williams,
individually, and as a taxpayer residing in Dillon County,
and as parent and Guardian ad Litem of Katisha W.;
Katisha W., a minor, by and through Pamela Williams as
Guardian ad Litem; Eddie Wright, individually, and as a
taxpayer residing in Florence County, and as parent and
Guardian ad Litem of Brandon F.; Brandon F., a minor,
by and through Eddie Wright as Guardian ad Litem;
Brenda Brooks, individually, and as a taxpayer residing
in Hampton County, and as parent and Guardian ad
Litem of Tyrin B.; Tyrin B., a minor, by and through
Brenda Brooks as Guardian ad Litem; Marva Tigner,
individually, and as a taxpayer residing in Jasper County,
and as parent and Guardian ad Litem of Bryan T. and
Bradley T.; Bryan T., a minor, by and through Marva
Tigner as Guardian ad Litem; Bradley T., a minor, by
and through Marva Tigner as Guardian ad Litem; Gail Y.
Harriott, individually, and as a taxpayer residing in Lee
County and as parent and Guardian ad Litem of Rashade
H.; Rashade H., a minor, by and through Gail Y.
Harriott, as Guardian ad Litem; Linda Carraway,
individually, and as a taxpayer residing in Marion
County, and as parent and Guardian ad Litem of
Kimberly W.; Kimberly W., a minor, by and through
Linda Carraway as Guardian ad Litem; Bernice Profit,
individually, and as a taxpayer residing in Orangeburg
County and as parent and Guardian ad Litem of Russell
H.; Russell H., a minor, by and through Bernice Profit, as
Guardian ad Litem, are

Appellants-
Respondents,

Glenn F. McConnell, as President *Pro Tempore*
of the Senate and as a representative of the South
Carolina Senate; Robert W. Harrell, Jr., as
Speaker of the House of Representatives
and as a representative of the South Carolina
House of Representatives, Respondents-
Appellants,

And

The State of South Carolina; Mark C. Sanford, as
Governor of the State of
South Carolina, Respondents.

***AMICI CURIAE* BRIEF OF
THE LEAGUE OF WOMEN VOTERS OF SOUTH CAROLINA AND THE
SOUTH CAROLINA CONFERENCE OF THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED PEOPLE
IN SUPPORT OF APPELLANTS-RESPONDENTS**

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INTEREST OF *AMICI CURIAE*

The League of Women Voters (“League”) of South Carolina and the South Carolina State Conference of the National Association for the Advancement of Colored People (“NAACP”) implement well-informed, strategic policy agendas aimed at influencing all levels of government to provide high-quality early childhood education programs for low-income and disadvantaged children. The organizations also educate the general public about the critical need for such programs. The League’s and NAACP’s work in this area is derived from their knowledge of the scientific research establishing that disadvantaged children require high-quality pre-kindergarten programs in order to avail themselves of an adequate education. Through this Brief, the League and NAACP will discuss this research and how it relates to the General Assembly’s constitutional duty to provide South Carolina’s children with an adequate public education.

The League is a grassroots, non-partisan organization that encourages citizens to be informed and play an active role in government. With approximately 800 members and 10 local affiliates statewide, the League influences public policy through education and advocacy. The organization’s position on Child Welfare calls for “policies and programs that ensure quality services, personnel, financing and training at all levels of government in order to meet the needs of children and families.” This Child Welfare position is the foundation for the League’s work in support of high-quality pre-kindergarten programs for all at-risk children in South Carolina. The League educates its members, citizens, and public officials about the factors that place the majority of South Carolina’s four-year-olds at risk of failure in school and about the capacity of high-quality pre-kindergarten to increase the likelihood that at-risk children will succeed in

school and life. Pre-kindergarten also enhances the well-being of at-risk children by offering opportunities for parental involvement.

The NAACP, established in 1909, is the nation's oldest civil rights organization. The South Carolina Conference of the NAACP implements the mission of the NAACP in South Carolina. The principal objectives of the NAACP are to ensure the political, educational, social, and economic equality of rights and eliminate race prejudice in the United States; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional rights; and to take all lawful action to secure the exercise of constitutional rights.

Access to a quality public education, including pre-kindergarten, is a strategic priority of the NAACP. The NAACP believes that high-quality pre-kindergarten educational experiences for disadvantaged children ages three to five are critical to improving learning outcomes. The NAACP also believes that low-income areas typically lack quality early childhood education programs and do not have adequate access to the limited amount of such services that do exist. Moreover, the special impact on minorities is driven in part by poverty because the majority of South Carolina children living in poverty are minorities. The NAACP encourages federal and state governments and educational agencies to substantially increase high-quality early childhood education programs and services in poor and minority communities. Further, the NAACP encourages state, local, and federal educational agencies to work with the NAACP and other community organizations to systematically evaluate and expand both minority access to early childhood programs, and the efficacy of such programs as gauged by measurable outcomes for children.

ARGUMENT

I. Summary of Argument

Amici curiae, the League of Women Voters of South Carolina (“League”) and the South Carolina Conference of the National Association for the Advancement of Colored People (“NAACP”), urge this Court to affirm the trial court’s finding that the “system of free public schools” mandated by the South Carolina Constitution requires the South Carolina General Assembly to adopt “effective and adequately funded early childhood intervention programs designed to address the impact of poverty” on the educational success of South Carolina’s youngest children. (R. p 31, at 170) This Brief will focus on the critical need for high-quality pre-kindergarten programs for children in poverty and the General Assembly’s duty under the State Constitution to ensure the opportunity for children in poverty to participate in such programs.¹

Decades of scientific research establishes that high-quality pre-kindergarten programs for economically disadvantaged children are an integral part of a modern public

¹ There are numerous models of effective pre-kindergarten programs. Generally, these programs are center-based and provide developmentally appropriate educational experiences, health assessments and referrals, and family support services for children during the year or years before kindergarten. See, e.g., Linda M. Espinosa, High-Quality Preschool: Why We Need It and What It Looks Like, *Preschool Policy Matters*, Nov. 2002, at 2, available at <http://nieer.org/resources/policybriefs/1.pdf>; W. Steven Barnett, et al., The State of Preschool: 2007 State Preschool Yearbook (2007), available at <http://nieer.org/yearbook/pdf/yearbook.pdf>. In all states, including South Carolina, participation in a state-funded pre-kindergarten program is voluntary on the part of families. See W. Steven Barnett, Kirsty Brown & Rima Shore, The Universal vs. Targeted Debate: Should the United States Have Preschool for All?, *Preschool Policy Matters*, Apr. 2004, at 11, available at <http://nieer.org/resources/policybriefs/6.pdf> (noting that public opinion does not support mandatory pre-kindergarten programs); see also S.C. Code Ann. § 59-5-65(8) (2004) (establishing eligibility for the Half-Day Child Development Program for “. . . four-year-old children who have predicted significant readiness deficiencies and whose parents voluntarily allow participation”).

education system. See infra, at 16-17. Studies show that by age five, low-income and disadvantaged children have significant early learning deficits that prevent them from succeeding once they enter kindergarten. See infra, at 13-14. In the absence of effective early intervention measures, these deficiencies are likely to grow and the risk of academic failure increases. See infra, at 14-15. Despite the obstacles faced by disadvantaged children, however, school failure need not occur. High-quality pre-kindergarten programs help close early learning gaps and enable at-risk children to succeed academically and later in life, infra, at 16-20.

In fact, numerous witnesses for both plaintiffs and defendants testified in support of these research findings. See infra, at 6. Indeed, the General Assembly itself has recognized pre-kindergarten is essential, as evidenced by its enactment of several such programs intended to minimize the impact of poverty on academic achievement. See infra, at 6-7. Unfortunately, however, the General Assembly has failed to fund these programs at a level sufficient to serve a significant number of children in poverty, much less all such children. (R. p. 31, at 171-74)

The League and NAACP strongly believe the South Carolina Constitution compels the General Assembly to address the early learning deficits of low-income children, who are disproportionately Black children, because an adequate education system cannot relegate these children to prospective academic failure and limited lifetime success. *Amici curiae* urge the Court to find that the Constitution requires state-funded, high-quality pre-kindergarten programs for children in poverty.²

² *Amici curiae* League and NAACP fully support Appellant-Respondents' arguments respecting the other glaring constitutional defects in South Carolina's education system. Pre-kindergarten programs do not substitute for effective K-12 programs and gains made

II. The Constitutional Standard of Educational Adequacy Requires High-Quality Pre-Kindergarten Programs for Children in Poverty

In Abbeville County School District v. South Carolina, 335 S.C. 58, 515 S.E.2d 535 (1999), this Court interpreted the Constitution’s education article, article XI, section 3, to “require [] the General Assembly to provide the opportunity for each child to receive a minimally adequate education.” Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540. A minimally adequate education was defined “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.

The Court in Abbeville County underscored the General Assembly’s constitutional duty to provide an adequate education for all children and to determine the ways in which adequate educational opportunities are provided. Id. at 69, 515 S.E.2d at 541. Both the trial record in this case and compelling early childhood research, see infra, Part III, make clear, however, that the General Assembly has shirked its constitutional duty by failing to provide high-quality pre-kindergarten programs for all children in poverty. See id. at 68, 515 S.E.2d at 540 (finding that the South Carolina Constitution requires that *each* child have an opportunity to receive a minimally adequate education).

in the pre-kindergarten years must be reinforced and strengthened throughout elementary and secondary schooling. In order to start on an equal footing with more advantaged peers and have the opportunity to continue to learn and progress throughout school, disadvantaged children need effective pre-kindergarten programs *and* more intensive interventions from kindergarten through twelfth grade. Because the opportunity to start kindergarten ready to learn and on equal footing is so absolutely essential to the adequacy of the public education system and to the potential for success in educating children in poverty, these *amici curiae* will address only the pre-kindergarten issue.

The trial court's order respecting the General Assembly's duty to enact pre-kindergarten programs was grounded in the uncontroverted testimony of witnesses for both parties establishing that an adequate education is unattainable for children in poverty without the opportunity to participate in high-quality early learning programs designed to mitigate the cognitive gaps caused by childhood poverty. (See, e.g., R. p. 2780, lines 4-8 (Matthews); R. p. 2427, lines 11-14 (Herriott); R. p. 5900, lines 1-6 (Land); R. p. 10840, lines 14-17 (Cobb-Hunter); R. p. 11030, lines 9-10; R. p. 11119, line 18-p. 11120, line 22 (Tenenbaum); R. p. 11414, lines 4-10; R. p. 11460, lines 5-13; R. p. 11463, lines 1-6 (Peterson); R. p. 2514, lines 3-17; R. p. 2515, lines 11-13; R. p. 2572, lines 8-16 (Ramsdale); R. p. 4762, line 24-p. 4763, line 2 (Harris); R. p. 5069, lines 4-14 (J. Franchini); R. p. 5470, lines 9-13 (J. Franchini); R. p. 6513, lines 13-24 (Wilson); R. p. 7547, line 18-p. 7548, line 3 (Harrison); R. p. 9043, line 20-p. 9044, line 7 (J. Anderson); R. p. 9123, lines 3-11 (Townes{ TA \s "Townes" }); R. p. 9904, lines 1-4 (Singleton); R. p. 31, at 175 (finding that “effective and appropriate pre-school programs can materially assist at-risk children to be able to go to kindergarten and have an opportunity to acquire a minimally adequate education”); see also R. p. 31, ¶¶ 428-29, 431, at 171)

The trial court also relied on the General Assembly's own legislative determinations, made over the course of two decades, that South Carolina's disadvantaged children require the opportunity to participate in pre-kindergarten programs to achieve an adequate education. (R. p. 31, at 166-70; see also R. p. 29519 (EIA); R. p. 29626-27 (First Steps to School Readiness)); S.C. Code Ann. §§ 59-5-65(8) { TA \l "S.C. Code Ann. § 59-5-65(8) (2004)" \s "59-5-65(8)" \c 2 }(EIA adding voluntary half-day program for four-year-olds with significant school readiness

deficiencies), 59-139-05 (2004) { TA \l "S.C. Code Ann. § 59-139-05 (2004)" \s "59-139-05" \c 2 }(Act 135 emphasizing early childhood education and prevention of future education problems); R. p. 13137, lines 9-15 (S. Smith{ TA \s "Smith" }) (agreeing that early childhood development and education programs enacted by the General Assembly reflect the State's policy to prepare disadvantaged children for school); see also R. p. 31, at 171-74 (highlighting the contrast of the General Assembly's findings and enactments regarding the educational necessity of pre-kindergarten programs with its failure to adequately fund such programs).

In fact, the General Assembly's early childhood policy enactments are part of a national consensus among most states' policymakers and the nation's leading educators that pre-kindergarten for disadvantaged children is an indispensable component of an adequate public education system. See, e.g., W. Steven Barnett, et al., The State Of Preschool: 2007 State Preschool Yearbook 10 (2007) (reporting that thirty-eight states and the District of Columbia fund a pre-kindergarten program), available at <http://nieer.org/yearbook/pdf/yearbook.pdf>. In the 2006-07 school year, more than a million children were served nationwide in state pre-kindergarten programs, an increase of 80,000 from the 2005-06 school year. Id. at 10. Despite severe budget constraints in most states, state spending on pre-kindergarten increased by 14% during this time period. Id. at 13.

Moreover, the nation's top education organizations strongly support expanding publicly funded pre-kindergarten. See, e.g., Michael Resnick, The Time Has Come for Voluntary Pre-K for All, Sch. Bd. News, Dec. 26, 2006, at 2 (National School Board Association editorial stating that voluntary pre-kindergarten opportunities for all three-

and four-year-olds is “essential for our national commitment to individual opportunity and our country’s global success.”), available at <http://www.nsba.org/HPC/Features/SBN/SbnArchive/2006/December2006/NSBAEditorialThetimehascomeforvoluntarypreKforall.aspx>; Nat’l Ass’n of Elementary Sch. Principals, Leading Early Childhood Learning Communities: What Principals Should Know and Be Able to Do 7 (2005) (urging principals to advocate for free universal pre-kindergarten programs staffed with qualified, certified, and well-paid early childhood teachers and specialists), available at http://web.naesp.org/misc/ECLC_ExecSum.pdf; Council of Chief State School Officers, Building a Cadre of Champions, http://www.ccsso.org/projects/Early_Childhood_and_Family_Education/Projects/2973.cfm (explaining CCSSO’s plan to educate chief school officers to advocate for voluntary, universal pre-kindergarten for all three- and four-year-olds); Nat’l Educ. Ass’n, NEA on Prekindergarten and Kindergarten 6 (2004) (advocating for voluntary, publicly funded, high-quality universal pre-kindergarten programs for all three and four-year-old children whose parents choose to enroll them), available at <http://www.nea.org/earlychildhood/images/prekkinder.pdf>; American Fed. of Teachers, Where We Stand: Early Childhood Education 11 (2003) (supporting high-quality early childhood programs that are accessible to all children beginning at age three, free for low-income children, and affordable to all), available at <http://www.aft.org/pubs-reports/downloads/teachers/EarlyChildRes.pdf>.

Early childhood research supports the national consensus on the absolute educational necessity of high-quality pre-kindergarten programs for children in poverty. See infra, Part III. This Court has recognized that the scope of a constitutionally adequate education system will necessarily evolve over time, depending on social context

and other changes. See Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133, 140-141 (1946) (“The development of our school system in South Carolina has demonstrated the wisdom of the framers of the Constitution in leaving the General Assembly free to meet changing conditions.”). Accord Montoy v. State, 102 P.3d 1160, 1163 (Kan. 2005) (noting that the definition of a “suitable” education under the Kansas Constitution “is not stagnant but requires constant monitoring,” and accepting the trial court’s “findings regarding the various statutory and societal changes which occurred after [the court’s earlier decision]”); McDuffy v. Secretary, 615 N.E.2d 516, 555 (Mass. 1993) (“The content of the duty to educate which the Constitution places on the Commonwealth necessarily will evolve together with our society.”); Abbott v. Burke, 575 A.2d 359, 367 (N.J. 1990) (“[W]hat a thorough and efficient education consists of is a continually changing concept.”); Robinson v. Cahill, 355 A.2d 129, 133 (N.J. 1976) (finding “a perceptive recognition” on the part of the legislature of the “constantly evolving” nature of education, and noting that “what seems sufficient today may be proved inadequate tomorrow”); Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71, 94 (Wash. 1978) (finding that the education clause must be interpreted “in accordance with the demands of modern society or it will be in constant danger of becoming atrophied and, in fact, may even lose its original meaning”); Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1279 (Wyo. 1995) (“The definition of a proper education is not static and necessarily will change.”).

The trial evidence and national early childhood research establish that the concept of an adequate education under the South Carolina Constitution has evolved to include an opportunity for children in poverty to participate in high-quality pre-kindergarten programs. It is time for the General Assembly to live up to its constitutional

responsibility by adopting and adequately funding such programs. Accord Abbott v. Burke, 710 A.2d 450, 463-64, 473 (N.J. 1998) (directing the legislature to offer a high-quality pre-kindergarten program to all three- and four-year-old children residing in the state’s lowest-income school districts as a part of its duty under the New Jersey Constitution, Article 8, section 4, to provide a “thorough and efficient” education for all children, because such program is essential to overcoming the effects of poverty on educational achievement); Hoke County Bd. of Educ. v. State, 599 S.E.2d 365, 373, 395 (N.C. 2004) (imposing a legislative duty to prepare at-risk pre-kindergarten children to avail themselves of the opportunity for the “sound basic education” required by the North Carolina Constitution, Article 9, section 2).

III. Most of the State’s Young Children, Especially Black Children, Live in Poverty; are at Risk of School Failure; and Require High-Quality Pre-Kindergarten Programs for the Opportunity to Avail Themselves of a Constitutionally Adequate Education

a. Young children in poverty and Black children are at great risk of school failure before they even enter kindergarten

The link between childhood poverty and higher rates of academic failure, grade retention, and school dropout is well documented in research. E.g., Elizabeth P. Pungello, Frances Campbell & W. Steven Barnett, Poverty and Early Childhood Intervention, Ctr. on Poverty, Work and Opportunity Policy Brief Series 2 (2006) (summarizing research findings on poverty’s negative effects on school performance), available at http://www.law.unc.edu/documents/poverty/publications/pungelloandcampbellpolicy_brief.pdf. (R. p. 31, at 168 (finding that “the impact of poverty on achievement is not questioned”))

This devastating correlation is especially significant for the South Carolina public education system, where 64% of students live in poverty. See South Carolina Educ. Oversight Comm., Interim Evaluation Report on the First Year Implementation of the Child Development Education Pilot Program, App. A, Table 4, at 45-47 (Jan. 2008) (defining “children in poverty” as those eligible for the federal free- or reduced-price lunch program and/or Medicaid services). (R. pp. 42684-86) The situation is even more dire in the 37 Plaintiff Districts, where 79% of students are considered children in poverty, and an even more astounding 94% in the eight Trial Districts. See South Carolina Educ. Oversight Comm., supra, at App. A, Table 4, at 48-49. (R. pp. 42687-88)

Poverty Index in the 8 Trial Districts and State (2007-2008)

Allendale	95.05
Dillon 2	91.63
Florence 4	92.31
Hampton 2	94.06
Jasper	92.96
Lee	96.87
Marion 7	97.08
Orangeburg 3	91.62
8 Trial Districts Total	93.94
State	64.3

Source: South Carolina Educ. Oversight Comm., Interim Evaluation Report on the First Year Implementation of the Child Development Education Pilot Program (Jan. 2008).

Data show that poverty and minority status are highly correlated, both nationwide and in South Carolina, making it more likely that Black children will fail in school. In 2006, 33% of Black children under age eighteen nationwide lived in households with

income below the federal poverty level, compared to only 10% of White children. See, e.g., C. Denavas-Walt, B.D. Proctor & C.H. Lee, [Income, Poverty, and Health Insurance Coverage in the United States](#), US Census Bureau, Current Population Report: Consumer Income, 52-53 (2006). Black children are also more likely than White children to experience long-term poverty. See, e.g., Mary E. Corcoran & Ajay Chaudry, [The Dynamics of Childhood Poverty](#), The Future of Children, Summer/Fall 1997, at 45-47, available at http://www.futureofchildren.org/usr_doc/vol7no2ART3.pdf.

The National Center for Children in Poverty reports that in South Carolina, 27% of Black children live in families with incomes at or below the federal poverty level; 63% percent live in families with incomes at or below 200% of the federal poverty level.³ Black children comprise nearly 40% of all public school students in the state and 85% of all students in the eight Trial Districts. See South Carolina Dep’t of Educ., [Pupil Count in South Carolina Schools: Enrollment Percentages by Race and Sex, by School District \(2005-2006\)](#), available at <http://ed.sc.gov/agency/offices/research/documents/PUPSEX6.xls>.

Percentage of Black Students in the 8 Trial Districts and State

Allendale	94.0
Dillon 2	66.9
Florence 4	85.4
Hampton 2	95.4
Jasper	69.5
Lee	93.6
Marion 7	86.0
Orangeburg 3	88.8

³ Nat’l Ctr. for Children in Poverty, State Profiles, <http://www.nccp.org/profiles>.

8 Trial Districts Total	84.9
State	39.3

Source: South Carolina Dep't of Educ., Pupil Count in South Carolina Schools: Enrollment Percentages by Race and Sex, by School District (2005-2006)

South Carolina's youngest Black children are the most severely impacted by poverty. According to the National Center for Children in Poverty, 28% of Black children under the age of six live in families with incomes at or below the federal poverty level, compared to just 12% of young White children; 66% live in families with incomes at or below 200% of the federal poverty level, compared to 30% of young White children. See Nat'l Ctr. for Children in Poverty, supra, n. 3.

Not surprisingly, there are significant correlations between race, ethnicity, and socioeconomic status (SES) and children's cognitive skills *before they enter kindergarten*. Ron Haskins & Cecilia Rouse, Closing Achievement Gaps, The Future of Children, Spring 2005, at 1, available at http://www.futureofchildren.org/usr_doc/Policy_Brief__SPRING_2005pdf.pdf (citing data from the Early Childhood Longitudinal Study, Kindergarten Cohort (ELCS-K), a nationally representative sample of nearly 23,000 kindergarten children, showing that Black and Hispanic children score substantially lower than White children at the beginning of kindergarten on assessments of math and reading achievement); Valerie E. Lee & David T. Burkam, Inequality at the Starting Gate: Social Background Differences in Achievement as Children Begin School 2, 17-22 (2002) (using data from ELCS-K to show differences in cognitive development at entry to kindergarten between economically disadvantaged children and their wealthier peers and by racial and ethnic groups).

The foundation for learning and academic achievement is laid before children enter kindergarten. See From Neurons to Neighborhoods: The Science of Early Childhood Development (Jack P. Shonkoff & Deborah A. Phillips eds., 2001), available at <http://books.nap.edu/openbook.php?isbn=0309069882>; How People Learn: Brain, Mind, Experience, and School (John D. Bransford, Ann L. Brown & Rodney R. Cocking, eds., 2000), available at <http://www.nap.edu/html/howpeople1>; Eager To Learn: Educating Our Preschoolers (Barbara T. Bowman, M. Suzanne Donovan & M. Susan Burns, eds., 2001), available at <http://www.nap.edu/openbook.php?isbn=0309068363>. A variety of socioeconomic factors affects this early development and puts many children at risk for school failure before they even begin kindergarten. For example, studies show that children of less well-educated parents, parents who receive welfare benefits, and single parents, are far less likely to be read to and told stories and have fewer books in their homes than their peers with more affluent, better educated parents. See, e.g., Lee & Burkam, supra, at 36-44. (R. p. 31, at 171 (trial court finding that “[m]any students from the Plaintiff Districts lack prior exposure to print rich environments, standard English or experiences beyond their front yards”); Cognitive development for these children may be stymied, and the acquisition of early language, math, and reasoning skills may be limited. Lee & Burkam, supra, at 36-44. Consequently, at the point they enter school, many children from disadvantaged backgrounds are far behind and ill-equipped to succeed along with their more advantaged peers. Id. at 2, 17-22, 57-61.

Even more disturbing is that unless gaps in children’s skills and knowledge are addressed before kindergarten entry, children not only start school behind but also remain behind, and the gap between them and their more advantaged peers widens over time.

Haskins & Rouse, supra, at 2 (citing studies showing that “children who score poorly on tests of intellectual skills during the preschool years do less well in elementary and high school and are more likely to become teen parents, engage in criminal activities, suffer from unemployment, and become clinically depressed as adults”); Meredith Phillips, James Crouse & John Ralph, Does the Black-White Test Score Gap Widen After Children Enter School?, The Black-White Test Score Gap 229, 232, 248 (Christopher Jencks & Meredith Phillips eds., 1998) (showing that half the gap between Blacks and Whites at high school exit is attributable to the gap at school entry); From Neurons to Neighborhoods, supra, at 5 (finding that the “striking disparities” with which children begin kindergarten “are predictive of subsequent academic performance”).

In summary, a sizeable majority of students in South Carolina public schools live in poverty. Many school districts experience extreme concentrations of poverty – nearly 80% of students in the Plaintiff Districts and 94% of children in the eight Trial Districts live in poverty. Most of these students are Black children. These are the children at the greatest risk for poor academic performance, grade retention, and school dropout, i.e., failure. From the outset, many young children, particularly low-income children and Black children, do not have an equal opportunity to the adequate education guaranteed by the South Carolina Constitution. They enter school without the basic experiences and cognitive skills needed to learn to read and write and attain the other educational foundations necessary for the opportunity to succeed in our public education system. Without adequate early intervention measures, they are highly likely to experience academic failure.

- b. High-quality pre-kindergarten programs help young children overcome poverty’s effects on learning and succeed in school**

Fortunately, as numerous witnesses testified and the trial court found, high-quality pre-kindergarten programs help reverse early learning gaps by providing children in poverty with the school readiness skills they need to succeed. See generally W. Steven Barnett & Clive R. Belfield, Early Childhood Development and Social Mobility, *The Future of Children* 73, 80-86, Fall 2006, available at http://www.futureofchildren.org/usr_doc/05_5563_barnett-belfield.pdf (summarizing the research on short- and long-term effects of early childhood programs on child development and adult outcomes).

1. The National Research

High-quality pre-kindergarten programs can diminish the impact of poverty on education by improving children's language, cognitive, and social development. Id. Three prominent longitudinal studies of children who attended high-quality early childhood programs—Carolina Abecedarian Project, Chicago Parent Child Program, and High/Scope Perry Preschool Program—demonstrated dramatic effects in academic achievement. Participants in the Carolina Abecedarian Project, a year-round, full-day early education program for low-income children, achieved much higher IQ and achievement test scores through age 21 than non-participants. They were also significantly less likely than the control group to have repeated a grade or been placed in special education and more likely to graduate from high school and attend a four-year college. W. Steven Barnett & Leonard Masse, Comparative Benefit-Cost Analysis Of The Abecedarian Program And Its Policy Implications, *Economics of Educ. Rev.*, Feb. 2007, at 113, 116.

Low-income children enrolled in the Chicago Parent Child Project, a pre-kindergarten and kindergarten program in the Chicago Public Schools that emphasized

parental involvement and early literacy skills, demonstrated higher cognitive skills and greater school achievement than those who had not attended the program. Arthur J. Reynolds, et al., Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Centers, Educ. Evaluation & Policy Analysis, Winter 2002, at 267, 268, available at <http://www/irp.wisc.edu/publications/dps/pdfs/dp124502.pdf>. Preschool participation at ages three and four was associated with significantly higher rates of school completion, lower rates of special education services and grade retention, and lower rates of involvement in the juvenile justice system. Id. at 268-69. And economically disadvantaged three- and four-year-olds who received two- and one-half hours of daily classroom instruction by state-certified teachers in the High/Scope Perry Preschool Program significantly outperformed the non-program group on various intellectual, language, literacy, and achievement tests throughout their school years. Lawrence J. Schweinhart, Lifetime Effects: The High/Scope Perry Preschool Study Through Age 40 60-64 (2005) (A summary of research findings is available at http://www.highscope.org/file/Research/PerryProject/3_specialsummary%20col%2006%2007.pdf). They were also less likely to be placed in special education, id. at 55-58, and more than twice as likely to graduate from high school than a similar group of children who did not participate in the program, id. at 51-55.

2. Research on South Carolina's Highly Successful Pre-Kindergarten Program

South Carolina's Half-Day Child Development Program ("EIA four-year-old program") shows positive impacts on the participating children's academic success. The program was created in 1984 as a part of the Education Improvement Act. S.C. Code Ann. § 59-5-65(8) (2004). It provides funding to every school district in the state to offer

at least one half-day pre-kindergarten program to four-year-olds at risk of school failure on the basis of low family income and other risk factors, with the goal of improving school readiness. *Id.*, see also S.C. Code Ann. § 59-139-70. There have been two research evaluations of the EIA four-year-old program, both of which show positive educational outcomes for program participants. See What is the Penny Buying for South Carolina: Twenty-Second Annual Reporting on the South Carolina Education Improvement Act of 1984, at 6-16 (2006) (hereinafter “What is the Penny Buying 2006”), available at <http://167.7.215.69/reports/education/PennyBuy2006.pdf>; Cynthia Lamy, W. Steven Barnett & Kwanghee Jung, The Effects of South Carolina’s Early Childhood Programs on Young Children’s School Readiness (2005) (hereinafter “NIEER study”), available at <http://nieer.org/resources/research/multistate/sc.pdf>.

The South Carolina Department of Education is currently conducting a longitudinal study of the effects of the EIA four-year-old program on academic achievement. The most recently published study analyzes sixth and seventh grade academic performance data for students who participated in an EIA four-year-old program during the 1995-96 school year. What is the Penny Buying 2006, *supra*, at 8. The study’s findings showed overwhelmingly that despite risk factors, students who attended EIA four-year-old programs “significantly outscored” the nonparticipants on both English Language and mathematics assessments as measured by the Palmetto Achievement Challenge Tests (“PACT”) through seventh grade. *Id.* at 15-16. The mean scores for English Language and mathematic PACT of program participants were significantly higher than nonparticipants among males, Black students, and those eligible for the free and reduced-price lunch program. *Id.* Significantly, the performance gap

between White and Black students was substantially reduced for program participants compared to nonparticipants. Id.

In 2005, NIEER released a study of the EIA four-year-old program as a part of a study of the effects of state-funded, high-quality pre-kindergarten programs in five states—Michigan, New Jersey, Oklahoma, South Carolina, and West Virginia. NIEER study, supra, at 3. The NIEER study measured the impacts of attending the EIA four-year-old program at age four for a sample of 777 entering kindergarteners from across the state. Id. The study found, “strong, statistically significant, and meaningful impacts on children’s literacy skills at the start of kindergarten, and evidence of an enhanced program effect for print awareness skills for children in low-income families.” Id. Children’s vocabulary scores improved by 42%, or an additional four months of progress, due to the program. This is an especially important finding because the measure is “strongly predictive of general cognitive abilities.” Id. Additionally, children who participated in the program experienced a large increase in their understanding of print concepts, including increased knowledge of letters, letter-sound associations, and word and book concepts. Id.⁴

⁴ Recent studies of other state-funded pre-kindergarten programs provide additional evidence of high-quality pre-kindergarten’s effectiveness in preparing children for academic success. See generally Southern Reg’l Educ. Bd., Ready to Start: Ensuring High-Quality Prekindergarten in SREB States 3 (2007) (summarizing research findings on state pre-kindergarten programs in the southern states), available at http://www.sreb.org/main/Goals/Publications/07E09_Ready_to_Start.pdf. For example, a study of Oklahoma’s universal pre-kindergarten program showed that the program had considerable impact on three subsets of a standardized, nationally normed achievement tests that measure pre-reading, pre-writing, and pre-numeracy skills. William T. Gormley, Jr., et al., The Effects of Universal Pre-K on Cognitive Development, 41 *Developmental Psych.* 872, 880-82 (2005), available at <http://www.psych.umn.edu/courses/fall05/mcguem/psy8935/readings/gormley2005.pdf>. Each of four racial and ethnic groups—Hispanic, Black, White, and American Indian children—made significant

3. Research on Adult Outcomes

Research also shows that a child’s participation in high-quality pre-kindergarten provides at-risk children an opportunity to achieve long-term success in life. Participants are more likely to have higher earnings, own their home, and marry, and less likely to be involved in the criminal justice and welfare systems, have children by age 21, and smoke. Barnett & Maase, *supra*, at 117-120; Schweinhart, *supra*, at 74-85; Reynolds, et. al, *supra*, at 276-77. When added to the benefits accrued during the school years—lower incidences of grade retention, school dropout rates, and placement in special education and remedial services—many economists have concluded that high-quality pre-kindergarten is also a smart public investment. See, e.g., Art Rolnick & Robert Grunewald, *Early Childhood Development: Economic Development with a High Public Return*, fedgazette, March 2003 (finding that investment in early childhood programs results in better public schools, more educated workers and less crime, resulting in an “extraordinary” return on investment), available at <http://woodrow.mpls.frb.fed.us/pubs/fedgaz/03-03/earlychild.cfm>.

CONCLUSION

gains in school readiness skills, as did both children who were eligible for the federal lunch program and those who were not, although the greatest benefits were evidenced by low-income and limited-English children. *Id.*

As shown in this Brief, educational adequacy must begin with high-quality pre-kindergarten programs for children in poverty. Given the General Assembly's early childhood enactments over the past two decades and its obvious knowledge of the readily available research supporting such enactments, it is disingenuous for it now to claim that pre-kindergarten is beyond the scope of an adequate education. (Respondents-Appellants' Initial Br. at 57) The General Assembly's disavowal of its constitutional duty to South Carolina's young children in poverty renders it necessary for this Court to protect their educational rights. See Abbeville County, 335 S.C. at 67, 515 S.E.2d at 540. *Amici curiae* urge this Court to interpret the South Carolina Constitution to require the General Assembly to offer economically disadvantaged pre-kindergarteners the opportunity to participate in high-quality early learning programs that will enable them to have an adequate public education.

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