



CCSD
APR 30 2009
Office of the
General Counsel

HENRY McMASTER
ATTORNEY GENERAL

April 29, 2009

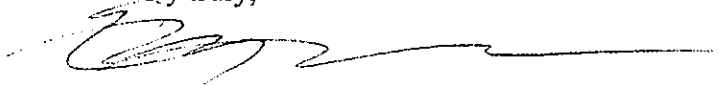
The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Charleston Co. School District v Harrell, etc. et al 09-CP-10-1348

Dear Ms. Armstrong:

Enclosed for filing with your Office is the Motion to Dismiss of the Defendants in this case together with a motion slip, a certificate of service and a check for the filing fee. I would appreciate your confirming filing by stamping the enclosed copy of this letter and returning it to me in the enclosed envelope. Thank you for your assistance.

Yours very truly,


J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc: ✓ John F. Emerson, Esquire
Bradley S. Wright, Esquire
Charles F. Reid, Esquire
Michael R. Hitchcock, Esquire
Kenneth M. Moffitt, Esquire

SECTION II: Motion/Order Type

- Written motion attached and proposed order
- Form Motion/Order

This Order has been executed by the Judge.

Signature of Attorney for Plaintiff / X Defendant Date submitted April 29, 2009

SECTION III: Motion Fee

X PAID – AMOUNT: \$25.00

- EXEMPT: Rule to Show Cause in Child or Spousal Support
(check reason) Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCP)
 - Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other: _____

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- MOTION FEE COLLECTED: _____
- CONTESTED – AMOUNT DUE: _____

| | | |
|---|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON |) | |
| |) | |
| Charleston County School District, |) | C/A No. 2009-CP-10-1348 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MOTION TO DISMISS |
| |) | |
| Robert W. Harrell, in his official capacity |) | |
| as Speaker of the S. C. House of |) | |
| Representatives, Andre Bauer in his |) | |
| official capacity as President of the S. C. |) | |
| Senate, and Mark Sanford in his |) | |
| official capacity as Governor of the State of |) | |
| South Carolina, |) | |
| |) | |
| Defendants. |) | |
| |) | |

The Defendants move for the dismissal of the Complaint herein pursuant to Rules 12(b)(1) and (6), SCRCF, in that, for the reasons set forth below, the Court lacks jurisdiction over the subject matter of this action and Plaintiff has failed to state facts sufficient to constitute a cause of action:

1. The Complaint fails to state facts sufficient to constitute a cause of action of any kind against the Defendants because it fails to allege any claim against them whatsoever and fails to allege a short and plain statement of the facts showing that the pleader is entitled to relief against them.
2. The Governor has no authority under the Act at issue and no authority to provide relief as to the subject of this action.
3. Act No. 189, 2005 S.C. Acts 1923, is constitutional under S.C. Const. art. III, §34.
4. Act 189 is Constitutional under art. VIII § 7¹.
5. *Ops. Atty Gen.* (October 19, 2007) properly interpreted Act 189.

¹ Plaintiff has miscited this provision as article XIII rather than article VIII.

6. The Plaintiff has failed to state facts sufficient to constitute a cause of action.
7. The Court lacks jurisdiction over the subject matter of this action.

Respectfully submitted,

HENRY D. MCMASTER
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J. EMORY SMITH, JR.
Assistant Deputy Attorney General
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(803) 734-3680

BY: 

ATTORNEYS FOR THE GOVERNOR

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BY: 

ATTORNEYS FOR THE PRESIDENT OF THE SENATE

BRADLEY S. WRIGHT, ESQUIRE
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P.O. Box 11867
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803-734-3125

BY: 

ATTORNEYS FOR THE SPEAKER

April 29, 2009

| | | |
|---|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON |) | |
| |) | |
| Charleston County School District, |) | C/A No. 2009-CP-10-1348 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CERTIFICATE OF SERVICE |
| |) | |
| Robert W. Harrell, in his official capacity |) | |
| as Speaker of the S. C. House of |) | |
| Representatives, Andre Bauer in his |) | |
| official capacity as President of the S. C. |) | |
| Senate, and Mark Sanford in his |) | |
| official capacity as Governor of the State of |) | |
| South Carolina, |) | |
| |) | |
| Defendants. |) | |
| |) | |


I hereby certify that I have served copies of the Motion to Dismiss of the Defendants upon each of the other parties by mailing the copies to their counsel at the addresses below via the United

States Mail this April 29, 2009:

John F. Emerson, Esquire
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 Charleston County School District
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