

LAW, JUSTICE, AND THE CONSTITUTION

**South Carolina's
Unrealized Dream**

The South Carolina Constitution Mandates:

“The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state.”

S.C. Const. Act XI, §3

We will prove the State has violated this mandate by establishing an education financing system that fails to afford South Carolina’s school children the opportunity guaranteed by the Constitution.

We Will Show...

1. The constitutional standard;
2. The plain meaning of the constitutional standard set forth by the S.C. Supreme Court;
3. The specific meaning of the standard as it relates to South Carolina's poorest children;
4. The deficiency of the educational opportunity provided by the State;
5. The impact of the State's failure on her children;
6. And that South Carolina's systemic failure and her actions are a substantial cause of the constitutional violation.

Key Ideas:

- 1) Development of the standards
- 2) Deficiency in educational inputs
- 3) That deficiency shown in outputs
- 4) Causation

We Do Not Begin With A Blank Slate...

Abbeville provides a template:

First, “the provisions of the Constitution shall be ... construed to be **mandatory...**”

Second, “since the education clause uses the term ‘shall,’ **it is mandatory.**”

Key Idea: The General Assembly must provide South Carolina’s children educational opportunities.

The Instruction of Abbeville:

Third, “the purpose of providing a public education is to benefit not just the individual receiving it, but also the public at large.”

Key Idea:

The Supreme Court and the Constitution recognize that education is vital to our democracy, is the essence of our system of ordered liberty.

The Instruction Of Abbeville:

- The Court should take evidence and question:
- The purpose of educating South Carolina's children
- Why education of each child is important to democracy
- Why education of each child is important to economic opportunity
- Why education is important to the economics of the State

Key Idea: This Court should determine the meaning and purpose of public education in S.C. as it determines whether the State is violating the Constitution.

The Instruction of Abbeville:

Fourth, “We hold today that the South Carolina Constitution’s education clause

requires the General Assembly

to provide the opportunity

for each child

to receive a minimally adequate education.”

Key Ideas:

- 1) Education is for every child, not some children some of the time, in some places.
- 2) It is not enough for the State to just throw open a few school doors and stand a teacher in front of the class. The Constitution requires qualitative adequacy.

The Instructions of Abbeville:

This Court should receive evidence and ask questions about...

- The needs of each child
- The nature of the communities served
- The quality of the education offered in terms of facilities, instructional aids, and most of all teachers

Key Idea:

- Detailed evidence on the specific needs of children in the districts involved is appropriate and necessary.

The Instructions of Abbeville:

Fifth, the Court makes this finding citing to the Constitutions and Supreme Courts of other states. (reviewed briefly momentarily)

Key Idea:

1. It is highly unlikely that the Supreme Court of S.C. believes that our Constitution provides for less educational opportunity for S.C.'s children than that mandated by other states with substantially similar constitutional education clauses.
2. The experience of other states is instructive.

The Instructions of Abbeville:

Sixth, “we define this minimally adequate education required by our constitution to include providing students

adequate and safe facilities

in which they have

the opportunity to acquire.”

Key Idea:

1. The Constitution requires an environment where real learning can take place.
2. Within this environment, the Constitution requires that each child be provided with opportunities...to become productive citizens.

The Instructions of Abbeville:

The plain meaning of the Supreme Courts words...

- Opportunity: “A good chance for advancement or progress.” (Webster’s)
- Adequate: “Sufficient for a specific requirement, lawful and reasonably sufficient.” (Webster’s)
 - “fully sufficient, suitable or fitting.” (Oxford English Dict.)

Key Idea:

- The Constitution requires reasonably sufficient or fully sufficient facilities for each child to have a good chance for advancement or progress.

The Instructions of Abbeville:

This Court should take evidence and ask questions about ...

- The sufficiency and safety of facilities for learning
- The appropriateness and suitability of instructional aids, libraries, labs, etc.
- The real chances for progress
- Whether real progress is being achieved.
- Whether continued ignorance and poverty and despair are built in characteristics of the State's system of public education.

The Instructions of Abbeville:

..."to include providing students...

the opportunity to acquire:

1. The ability to read, write, and speak the English language, and knowledge of mathematics and physical science.

The Instructions of Abbeville:

The plain meaning of the Supreme Courts words...

- Acquire: "To come to have as a new or added characteristic, trait, or ability" (Webster's)
- Ability: "Competence in doing." (Webster's)
 - "Suitableness, fitness, aptitude." (Oxford English Dict.)

Key Idea:

- The Constitution requires each child to be given a good chance of progress toward coming to have competence in reading, writing and speaking the English language and suitableness or fitness in knowledge of mathematics and physical science ... to be a productive citizen.

The Instructions of Abbeville:

The plain meaning of the Supreme Courts words...

- Read: “To look over or scan (something written, printed, etc.) with understanding of what is meant by the letters or signs.” (Oxford English Dict.)
- Write: “To give expression to (one's feelings, thoughts, etc.) by means of writing; to compose and set down on paper.” (Oxford English Dict.)
- Speak: “To express thoughts, opinions, feelings by words; to hold talk or discourse, to converse with others.” (Oxford English Dict.)

Key Idea:

- These are the core skills it takes to get along in modern society... to communicate effectively with others. The Constitution mandates these abilities.

The Instructions of Abbeville:

The plain meaning of the Supreme Courts words...

- Knowledge: "The circumstance or condition of apprehending truths or fact through reasoning."
(Webster's)
 - "The condition of understanding." (Oxford English Dict.)

Key Idea:

- The Constitution mandates a meaningful chance of progress toward the condition of understanding mathematics and physical science through reasoning.

The Instructions of Abbeville:

This means the Court should hear evidence and ask questions about...

- Reading standards and reading achievement
- Writing standards and achievement
- Mathematic standards and achievement
- Physical science standards and achievement

Key Idea:

- The Constitution requires that the Court examine rigorously whether S.C. is providing her children with adequate opportunities in each area.

The Instructions of Abbeville:

... "to include providing students...
the opportunity to acquire:

2. A fundamental knowledge of
economic
social and
political systems and
of history and
governmental processes.

Key Idea:

- The Constitution mandates that each child be given an opportunity to understand through reasoning economics, social systems, political systems, history, and the processes of government.

The Instructions of Abbeville:

This means the Court should consider...

- Offerings, standards, and achievement in knowledge of
 - Political systems
 - Social systems
 - Economic systems
 - History
 - Government Processes

The Instructions of Abbeville:

"To include providing students ... the opportunity to acquire

academic and

vocational

skills

Key Idea:

- The Constitution mandates that the education opportunity afforded each child in S.C. be focused on acquiring useful skills ... useful in being a productive citizen.

The Instruction of Abbeville:

Again, the plain meaning of the words:

Skill: "The ability to use one's knowledge effectively and readily in execution or performance" (Webster's)

"Practical knowledge in combination with ability" (Oxford English Dict.)

"Also an ability to perform a function." (Oxford English Dict.)

Key Idea: The Constitution mandates that educational opportunity be focused on function, performance, and effective use...to give each person a good chance to be a productive citizen.

The Instruction of Abbeville:

The plain meaning of the words

- Academic (skills): Related to or associated with...a school especially of higher learning;" (Webster's)

and

- Vocational (skills): "relating to or being training in a skill or trade to be pursued as a career"

Key Idea:

The Constitution mandates that the educational opportunity provided to each child in S.C. be focused on providing skills necessary for future higher learning and for making a living in the modern world.

The Instruction of Abbeville:

This means that this Court should consider whether the children of these districts are being provided an opportunity for

- Preparation for college, and
- Preparation for a career

What Other Courts Have Said...

"The purpose of public education in Minnesota is to help all individuals acquire knowledge, skills, and positive attitudes toward self and others that will enable them to solve problems, think creatively, continue learning and develop maximum potential for leading productive, fulfilling lives in a complex and changing society."

In Re: Welfare of T.K.

What Other Courts Have Said...

"[The] goal of a thorough and efficient system of free public schools [is] to provide all children in New Jersey regardless of socioeconomic status or geographic location, the educational opportunity which will prepare them to function politically, economically, and socially in a democratic society."

Levin v. State Dept.

What Other Courts Have Said:

“The U.S. Supreme Court has long recognized that public education is meant to assist students to become ‘self-reliant and self-sufficient participants in society.’ Most state’s courts that have examined the substantive right to education under the Education Clause of their Constitutions have recognized both civic participation and preparation for employment as the basic purposes of public education.”

Campaign for Fiscal Equity v. State (NY);
Quoting Wisconsin v. Yoder (US) and citing
Abbeville

What Other Courts Have Said...

“Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system’s survival.... The constitutional right to have the State ‘make ample provision for the education of all children’ would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the marketplaces of ideas.”

Seattle Schl Dist 1 v. Washington

What Other Courts Have Said...

“We . . . begin by examining the indispensable role which education plays in the modern industrial state. This role, we believe, has two significant aspects: first, education is a major determinant of an individual’s chances for economic and social success in our competitive society; second, education is a unique influence on a child’s development as a citizen and his participation in political and community life. [The] pivotal position of education to success in American society and its essential role in opening up to the individual the central experiences of our culture lend it an importance that is undeniable.”

Serrano v. Priest, 487 P.2d 1241 (Cal. 1971).

What Other Courts Have Said...

"Americans regard public schools as a most vital civic institution for the preservation of a democratic system of government."

Abington School Dist. v. Schempp,
374 U.S. 203, 230, 10 L.Ed.2d 844, 863,
83 S. Ct. 1560 (1963) (Brennan, J., concurring).

What Other Courts Have Said...

“If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.”

Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So.2d 400, 409 (Fla. 1996) (Overton, J. concurring) (quoting Letter from Thomas Jefferson to Colonel Charles Yancey (Jan. 6, 1816)).

We Will Ask This Court To Consider...

- What the rising generation needs in order to function productively as civic participants
- To measure opportunity with reference to the demands of modern society
- To measure opportunity with respect to preparation for employment and higher learning
- The fact that to compete for jobs that enable people to support themselves, a high school education is now all but indispensable
- The fact that manufacturing jobs are becoming more scarce (and those remaining more complex)
- The fact that service sector jobs require a higher level of knowledge, skill in communication and the use of information, and the capacity to continue to learn over a lifetime

We Will Ask This Court To Determine Whether...

The State has failed to provide each and every child with an opportunity to achieve:

1. Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; **FAILED**
2. Sufficient knowledge of economic, social and political systems to enable the student to make informed choices; **FAILED**
3. Sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community; **FAILED**

We Will Ask This Court To Determine Whether...

4. Sufficient self-knowledge and knowledge of his or her mental and physical wellness; **FAILED**
5. Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; **FAILED**
6. Sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue like work intelligently; **FAILED**

We Will Ask This Court To Determine Whether...

7. Sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states and the nation in academics or in the job market; **FAILED**

Key Idea: South Carolina's children have a constitutional right to a meaningful high school education. The State has systematically failed to provide that opportunity.

The State Fails To Provide Adequate Teaching

- Teacher certification rates? Inadequate
- Teacher test results? Inadequate
- Teacher experience levels? Inadequate
- Teacher retention rates? Inadequate
- Teacher salaries? Inadequate
- Teachers teaching in field? Inadequate

Key Ideas:

- Despite the commendable, even heroic, efforts of many teachers, the State consistently fails to provide her children with quality instruction.
- More importantly, there is a consistent mismatch between student needs and the quality of teaching directed to that need.
- Uncertified and inexperienced teachers tend to be concentrated in the lowest performing schools.

Do Teachers Matter?

- In districts where teachers perform badly on teacher tests, student performance declines as student grade level rises.
- Teaching is cumulative...the longer students are exposed to inadequate teaching, the worse they perform.
- Teacher certification, experience, retention, and test performance measure quality of teaching...quality of teaching correlates with student performance.

Key Idea: South Carolina provides deficient teaching because of the inability to attract and retain qualified teachers

Are Facilities Safe and Adequate?

● Dangerous facilities?

YES

● Unhealthy facilities?

YES

● Crowded facilities?

YES

● Inadequate labs and libraries?

YES

● Is technology old and/or unsupported by adequate training?

YES

Key Ideas:

- Inadequate and unsafe facilities are yet another factor in attracting and retaining qualified teachers
- Eliminating immediate hazards (while it must be done) is not the same as creating an environment conducive to learning.

Are Children Receiving/Realizing Adequate Educational Opportunities

Drop out rates:



Key Idea:

- People who do not graduate typically are not prepared for productive citizenship.
- Drop out rates serve as useful measures of school's abilities to motivate learning
- Drop out rates of this magnitude are symptomatic of systemic failure

The State's Myth #1: "Oh Well, We Provided The Opportunity, The Child Just Chose Not To Participate"

The state cannot blame the student

- Adequate educational opportunities must be placed within the reach of all students even those from poor rural districts with solid economic deficits
- South Carolina has consistently said that all of her children can learn

Key Ideas:

- The "choice" to drop out correlates with poor academic performance, racial minority status, and concentrated poverty
- South Carolina cannot give up on these children

What Do The Test Results Show?

Below basic percentages

Allendale
59% Math
50% Eng

Dillon 2
44% Math
40% Eng

Florence 4
52% Math
50% Eng

Hampton 2
66% Math
50% Eng

Jasper
63% Math
52% Eng

Lee
60% Math
50% Eng

Marion 7
51% Math
44% Eng

Orangeburg 3
52% Math
39% Eng

Key Idea: This does not count the alarming number of children who drop out and do not take the test.

What Do The Test Results Show?

- South Carolina is consistently failing to provide her neediest students with the constitutionally mandated adequate opportunity to acquire
 - The ability to read, write, and speak the English language
 - And knowledge of mathematics

Key Idea:

- With 4-6 out of 10 children failing to test at grade level...
 - And 4-6 out of every 10 children failing to graduate from high school...
 - Can the State seriously claim its children are being provided the constitutionally guaranteed educational opportunity to which they are entitled?

The State's Myth #2: Poor Student Performance Is Caused By Poverty And We Can't Do Anything About That

- Does the State seriously argue that deprived children, poor children, can't learn?
- The Court has no constitutional mandate to weigh alternative spending on other social needs
- The Court has a duty to determine whether South Carolina is providing children with the opportunity for an adequate education

Key Idea: The Court must not accept the premise that rural children in South Carolina come to her schools uneducable and unfit to learn.

The State's Myth #3: Comparable Funding - If We Provide Average Per Pupil Funding, That Must Be Enough

- The State's premise seems to be that some expenditure level is "enough," **without deference** to student need, local costs, the actual quality of instructional inputs, and the real quality by results achieved, or historical deficits in funding.

The real question before the court is whether children are receiving a Constitutionally adequate educational opportunity - regardless of comparable funding.

The State's Myth #4: "Poor student performance is caused by local mismanagement, its not our fault."

- The State has the Constitutional mandate.
- The State has delegated certain to local government entities.
- The local government groups are agents of the State.
- The State remains responsible if the failures of local agents sabotage the measures by which it secures for its children their constitutionally mandated rights.

Key Ideas:

- The State can't blame the kids.
- The State can't blame the poor families.
- The State can't blame the districts.
- And the State can't arbitrarily say we've done enough.

This is a case about South Carolina's continuing neglect of her children ...

"Today [education] is a principal instrument in awakening the child to cultural values, in preparing him for later professional training and helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

U.S. S. Ct. 1954

Brown v. Board of Education

The time has come for the dream of those courageous parents who signed the petition in *Briggs v. Elliot* to be realized in South Carolina.

- If not now, when?
- If not us, who?

The majesty of law, the glory of the Constitution requires us to do our duty here and now.

"Let justice roll down like waters and righteousness like an ever flowing stream."

Let South Carolina Realize Her Dream...

That No Child Be Cast Aside

That No Child Be Left Behind

That All Her Children Be Provided
The Opportunity to Reach Their
God Given Destiny

Let South Carolina Realize Her Dream.