

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

ALBERT BARBER, JR., *et al.*,

Plaintiffs

v.

TOMMY BICE, in his official capacity  
as State Superintendent of Education, *et  
al.*,

Defendants.

Civil Action No.  
2:13-CV-00296-RDP

OPPOSED

**EXHIBIT B**



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
 BIRMINGHAM DIVISION**

**CRAIG WITHERSPOON,**

**Plaintiff,**

**v.**

**SAMUETTA DREW, et al.,**

**Defendants.**

**CIVIL ACTION NO.:  
 CV 2012-000936 HLB**

**STATE OF ALABAMA BOARD OF  
 EDUCATION, DR. THOMAS R. BICE,  
 in his capacity as State Superintendent  
 of Education, LUTHER STRANGE, in  
 his capacity as Attorney General of the  
 State of Alabama,**

**Plaintiffs,**

**v.**

**BIRMINGHAM CITY BOARD OF  
 EDUCATION, EDWARD MADDOX,  
 President, Birmingham City Board  
 of Education, ALANA W. EDWARDS,  
 Vice President Birmingham City Board  
 of Education, et al.,**

**Defendants.**

**CIVIL ACTION NO.:  
 CV 2012-902271 EAF**

**FINDINGS OF FACT**

The above referenced matters came on for hearing before the undersigned on August 1, 2012, and on August 2, 2012, having been previously consolidated by Order entered in both cases due to the interrelated issues raised in each case. The Court heard the *ore tenus* testimony of EDWARD MADDOX, SAMUETTA DREW, DR. CRAIG

WITHERSPOON, DR. CRAIG POUNCEY and DR. THOMAS R. BICE and accepted into evidence and reviewed multiple exhibits offered by the parties herein, as well as, all pertinent and applicable statutes related to and touching upon the allegations and assertions made herein.

1. Defendants, EDWARD MADDOX and SAMUETTA DREW, are aware that under Alabama law, the State Board of Education ("SBOE") has general control and supervision over the public schools of this State. (*Rough Trial Transcript* ("Tr.") at 32, 126-127.); *Ala. Code* § 16-3-11 (1975).

2. Defendant, EDWARD MADDOX, is also aware that the State Superintendent of Education ("SSOE") may review actions of City Boards in matters relating to finance and other matters seriously affecting the public interest. He is also aware that in such matters, the order of the SSOE is binding. (Tr. at 32.); *Ala. Code* § 16-4-8 (1975).

3. Defendant, EDWARD MADDOX, is also aware that the Birmingham Board of Education ("BBOE") is not free to disregard, defy, or ignore orders or directives of the SSOE.

4. For students enrolled in the Birmingham School System, the continued accreditation of the schools in the District is of paramount importance. Earlier this year, Plaintiff School SUPERINTENDENT DR. CRAIG WITHERSPOON ("WITHERSPOON") initiated the process for system-wide accreditation of all the schools in the Birmingham District. (Tr. at 247.)

5. If Birmingham schools were to lose their accreditation, Birmingham high school graduates would be ineligible for various college scholarships, loans, and grants. They would be denied admission to many of the nation's better institutions of higher learning. (Tr. at 247, 248.) Effectively, if the Birmingham City Schools are not accredited, many of its students will be ineligible and unable to go to college.

6. The Governance and Leadership category is the second most important of the five accreditation standards utilized by AdvancED, the accrediting arm of the Southern Association of Secondary Colleges and Schools. (WITHERSPOON's Request for Judicial Notice, Attachment "B," at 1-4.)

7. Lack of governance and stability have long plagued the Birmingham School System. In the last twelve (12) years, the Birmingham School System has employed five (5) superintendents. (State School Board Exhibit ("State Exh.") 17 at 15.) The superintendent turn-over rate for Birmingham School System is the highest in the State. Tr. at 369. This lack of stability in leadership has a direct relationship to the financial condition of the Birmingham School system. It adversely affects public confidence in the system Tr. at 369, 370. A new superintendent would have difficulty in implementing a financial recovery plan as required by the SBOE. Tr. at 371, 372.

8. The operating costs of Birmingham City School System are considerably out of line. Its excess costs are in its staffing of its Central Office and support personnel, its facilities and operations, and its underutilization of schools. (State Exh. 17 at 5.) The following are examples of such disproportionality:

- Shelby County, with 28,432 students, employs 622 support personnel. Montgomery County has 915 support personnel for its 31,368 students. On the other hand, the Birmingham City School System has 1,020 support personnel for 25,005 students. *Id. at 7.*
- Each Shelby County coordinator/director/supervisor/manager (“director”) serves 125 students, while each Madison County director serves 146 students. Each Montgomery County director serves 36 students. But in Birmingham, there is a director for every 20 students! *Id. at 9.*
- Birmingham pays \$855.00 per student in operations and maintenance costs per student, while similar costs for each Shelby County student is \$622.00. Similar costs for each Montgomery County student are \$400.19. *Id. at 1.*

9. The School Fiscal Accountability Act, *Ala. Code* § 16-13A-1 *et seq.*, (“Accountability Act”) requires SSOE, DR. THOMAS R. BICE to oversee the financial integrity of local boards of education, and the State Chief Education Financial Officer (SCEFO) Dr. Craig Pouncey, to assist in this oversight. *Ala. Code* §§ 16-13A-1 to 1-13A-13; §16-13A-2 (1975). In addition, the Accountability Act requires local boards of education to provide the SCEFO certain financial reports, including an annual projected budget. *Ala. Code* §16-13A-6, 7. In addition, local boards must establish and maintain a minimum reserve fund equal to one month’s operating expenses. *Ala. Code* §16-13A-9.

10. At the end of Fiscal Year (“FY”) 2011, the SCEFO determined that 31 of Alabama’s 134 school systems did not have the required minimum reserve fund equal to one month’s operating expenses. (State Exh. 1.) The Birmingham City School System was one of those that did not meet the requirement.

11. The BBOE began the 2011- 12 school year with a monthly reserve balance of approximately \$6.5 million. *Id.* According to SCEFO Dr. Pouncey, because the BBOE

lost approximately 800 students in the 2011- 12 school year, for the 2012- 13 school year the BBOE's allocation of state funds will be cut by approximately \$4.5 million. Taking into account this revenue deduction, the BBOE's actual monthly reserve balance was only approximately \$2 million. (State Exh. 17 at 3.)

12. In FY 2012, the BBOE's monthly operating expenses were approximately \$17 million. (State Exh.1 at line 114.) Because the BBOE is required to maintain a monthly reserve balance of \$17 million, and because its monthly reserve balance was only approximately \$2 million, the BBOE was approximately \$15 million short of the monthly reserve balance required by Ala. Code §16-13A-9 (1975). *Id.*

13. On February 13, 2012, SCEFO Dr. Pouncey met with representatives of the 31 non-compliant boards. The purpose of this meeting was to help the local boards prepare plans to build and maintain the required minimum reserve fund. *See* State Exh. 2. A local board that does not have the required reserve balance, or does not have an approved plan to build and maintain a reserve, cannot receive State funds, according to the SCEFO. Consequently, it is literally essential for a non-compliant board to act promptly to adopt and implement a financial recovery plan. Otherwise, the SBOE will be unable to fund public education in the local school system.

14. Pursuant to his authority under the Accountability Act, the SCEFO required each of the 31 non-compliant local school boards to submit by April 2, 2012, a draft plan in the nature of a broad outline. Ala. Code §16-13A-9(a) (1975). The draft plans were the first step in an interactive and collaborative process whereby the local boards and the SCEFO's office would develop a unique financial recovery plan for each local board.

Each financial recovery plan was required to be approved by the State Department of Education and passed as a resolution by the local school board. *Id.*

15. The resolutions were due by May 31, 2012. (State Exh. 2.) The SCEFO had the authority to vary this deadline as needed by local school boards. However, the late May deadline was intended to give local school boards ample time to implement their plans over the summer, well in advance of the August start of the 2012- 13 school year.

16. Defendant, EDWARD MADDOX, is the President of the BBOE. Although he owns and rents out a duplex house at 914 53<sup>rd</sup> Street North, in the City of Birmingham, he has actually resided for more than a decade at 5440 Carrington Circle, in the City of Trussville, Alabama. (Tr. at 79-87.) The Court does not credit his testimony that he and his wife separated eight years ago. (Tr.at 13.)

17. Defendant, SAMUETTA DREW, is the Chief Operations Officer for the Birmingham School System. (Tr. at 96.) She is directly responsible for the operation of seven (7) departments including: athletics, child nutrition, facilities and maintenance, information technology, safety and security, and transportation. (Tr. at 106.) She could not recall the name of the other department over whose operations she has responsibility. (Tr. at 106, 107.)

18. Defendant, SAMUETTA DREW, has an earned Master's degree, but she has not earned the status of Educational Specialist. (Tr. at 99.) She has not taken courses towards a doctoral degree since 1999. (Tr. at 98, 100.) She has never served as a school superintendent. (Tr. at 103.) In her view, it is not important for a superintendent of a school system the size of Birmingham to have had prior experience as a

superintendent. (Tr. at 105.) She has no experience in monitoring the financial condition of the Birmingham School System. (Tr. at 123, 124.)

19. The respective roles of the BBOE and the Superintendent of the Birmingham School System are set forth in Board Policy No. 1020. (Tr. at 45.) The BBOE's primary function is to deal with broad questions of policy. The superintendent is responsible for the effective administration and supervision of the entire school system.

20. Meetings of the BBOE are governed by *Robert's Rules of Order*. (Tr. at 46) (Witherspoon Exh. 9.) According to Section 9 of *Robert's Rules of Order*: A special meeting (or *called meeting*) is a separate session of a society held at a different time from that of any regular meeting, and *convened only to consider one or more items of business specified in the call of the meeting.*" *Id.*, (emphasis added.) Defendant, EDWARD MADDOX, is aware of Section 9 of *Robert's Rules of Order*. (Tr. at 46, 47.)

21. Under Birmingham School Policy 1120, "Notice of all special meetings shall be given to the members of The Board at least 48 hours prior to the time stated for the meeting to convene. Such notice shall indicate the purpose of said special meeting, *and items considered at such meetings shall be limited to those listed on the agenda.*" (WITHERSPOON Exh. 3.) (emphasis added.) Defendant, EDWARD MADDOX, is aware of this policy. (Witherspoon Exh. 3.) (Tr. at 47, 48.)

22. Defendant, EDWARD MADDOX, is aware that the BBOE is not free to violate or disregard its own policies. (Tr. at 46.)

23. Pursuant to an Employment Agreement ("the Contract") effective March 22, 2010, DR. WITHERSPOON was appointed by the BBOE as the Superintendent of the Birmingham City School System. (WITHERSPOON Exh. 10.)

24. Unless the BBOE provides to DR. WITHERSPOON a notice of its intent to renew the contract by April 1, 2013, the Contract will expire on June 30, 2014. (WITHERSPOON Exh. 10 at. 9.)

25. Upon sixty (60) days' notice to DR. WITHERSPOON, by a vote of the majority of the Board, the BBOE may, without cause, terminate the contract by payment of his base salary and benefits due for the remainder of the Contract. (WITHERSPOON Exh. 10 at 7, § 15.)

26. The contract does not mention, and does not contemplate, administrative leave as a substitute for the sixty (60) days' notice. (WITHERSPOON Exh. 10.) (Tr. at 215.)

27. DR. WITHERSPOON is in charge of the day-to-day operations of the Birmingham City School system. (Tr. at 218.)

28. DR. WITHERSPOON regularly communicates with BBOE members. He has set aside the third Friday of each month for Board members to meet with him; he has never refused to meet with Board members. (Tr. at 19, 218.) (WITHERSPOON Exh. 11.) According to SSOE DR. BICE, there is widespread community support for DR. WITHERSPOON. Tr. at 604.

29. Under BBOE policy, an individual Board member has a duty, among other things, to refrain from individual efforts to influence school operations in such matters as

employment, promotion and purchase; and, after votes are taken, to accept the will of the majority vote in all cases and give support to the resulting Board policy in accordance with the best interests of the system. (WITHERSPOON Exh. 12.) (Tr. at 219.)

30. After DR. WITHERSPOON assumed his office, defendant, EDWARD MADDOX, leaned heavily on him to abort existing plans to build a new Hayes Elementary school, and instead to build a new Hayes High School. (Tr. at 17-18.) Because the proposed change would have cost \$43 million, DR. WITHERSPOON wisely resisted the change. (Tr. at 220-224.)

31. At the time DR. WITHERSPOON assumed his office, plans to construct a new Parker High School were well underway. These plans included the demolition of the old 1927 high school building, and because of this DR. WITHERSPOON did not seek BBOE approval of a demolition contract from the BBOE as requested by Board Member Emanuel Ford ("Member Ford"). Unable to persuade DR. WITHERSPOON to make a recommendation to the BBOE, Ford then brought a lawsuit against DR. WITHERSPOON in the Jefferson County Circuit Court, *Ford v. Witherspoon*, CV 2011 01792. Although the Circuit Judge initially granted a Temporary Restraining Order ("TRO"), after the TRO dissolved, the Circuit Court denied Member Ford's Motion for a Preliminary Injunction. (WITHERSPOON Exh. 13.) Member Ford ultimately dismissed his lawsuit. *Id.* (Tr. at 225, 226.)

32. Sometime since the beginning of this year, five members of the BBOE, including defendant, EDWARD MADDOX, Vice-President EDWARDS, Members FORD, TYRONE BELCHER, and DR. VIRGINIA VOLKER ("the Five") have met,

telephonically and otherwise, and made a decision to terminate DR. WITHERSPOON's Contract. By the end of March 2012, defendant, SAMUETTA DREW, had knowingly become a participant in the plan to terminate DR. WITHERSPOON. (Tr. at 132-136.)

33. The evidence adduced by the Defendants does not disclose or warrant any cause for the termination of DR. WITHERSPOON's Contract. From the absence of such evidence, the Court infers that there is no cause for the termination of his contract. Quite to the contrary, the termination of his contract at the present time and under the present circumstances would be rather prejudicial to the Birmingham School System.

34. The first regular meeting of the BBOE for the month of April, 2012, was scheduled for April 10, 2012. But on April 4, 2012, defendant, EDWARD MADDIX, caused to be sent a notice of a called meeting for 4:00 o'clock p.m. on Good Friday, April 6, 2012. DR. WITHERSPOON's Contract was the only agenda item for the meeting. THE FIVE had planned to terminate DR. WITHERSPOON's Contract at that meeting. (Tr. at 20.)

35. When various citizens learned of the Good Friday meeting and what they considered the reason for the meeting, they demonstrated in front of the BBOE offices; large numbers of citizens called and e-mailed defendant, EDWARD MADDIX, requesting that the meeting be cancelled. (Tr. at 21.) Defendant, EDWARD MADDIX, then cancelled the called meeting.

36. On April 9, 2012, the BBOE submitted its initial draft financial recovery plan. (State Exh. 2.)

37. At its regular meeting of Tuesday, April 10, 2012, the agenda was amended to include a discussion of DR. WITHERSPOON'S Contract. (State Ex. 4 at 1.) The "Community Voice" portion then ensued, with statements from various citizens. *Id.* at 2. The majority of the speakers encouraged the BBOE to renew DR. WITHERSPOON'S Contract for at least another two (2) years. These included both black and white parents; business, civic, and foundation leaders and alliances; the Chief Executive Officer of Alabama AT&T; the head of the Greater Birmingham Foundation; the President of the Birmingham City Council; and the Mayor of the City of Birmingham. The Birmingham City Council unanimously adopted a resolution urging the BBOE to renew DR. WITHERSPOON'S contract, and most of its members personally appeared at the meeting. *Id.* at 2-4.

38. Following the Community Voice session of the meeting, BBOE member W. J. MAYE, JR. moved to extend DR. WITHERSPOON'S Contract by three (3) years. THE FIVE voted "nay," and the motion failed. *Id.* at 4. Board members BRIAN GIATTINA, PHYLLIS WYNNE, APRIL M. WILLIAMS, and W. J. MAYE ("Member MAYE") voted in favor of the motion. *Id.*

39. Defendant, EDWARD MADDOX, then himself made a motion to terminate DR. WITHERSPOON'S Contract in sixty (60) days, and place him on administrative leave immediately. The motion was seconded by Vice-President EDWARD'S. *Id.* Member MAYE then challenged defendant, EDWARD MADDOX'S, right to make a motion while presiding. *Id.* at 5. On advice of Board Counsel, Defendant, EDWARD MADDOX'S, motion and second were withdrawn. *Id.*

Defendant, EDWARD MADDIX, subsequently made the statement, "Y'all left me hanging." *Id.* at 9.

40. The Court finds that defendant, EDWARD MADDIX's, "y'all" reference was to the other three members of THE FIVE: BELCHER, VOLKER, and FORD.

41. Following other business, SBOE member Richardson addressed the audience. She expressed her elation with the vision reflected in the establishment of academies and Pre-K programs in all the schools. She concluded by noting that she and SSOE DR. BICE had observed the meeting, and she wanted the audience to know "that we will be going back to Montgomery, on tomorrow, to determine the relationship between the Alabama State Department of Education and the Birmingham City School System." *Id.* at 9.

42. BBOE Member WYNNE then made a motion that the BBOE be investigated for violations of the Open Meetings Act by certain BBOE members, particularly in view of defendant, EDWARD MADDIX's, statement, "y'all left me hanging." *Id.*, p. 9.

43. Vice-President EDWARDS responded: "Wait a minute. Thank you, Ms. Wynne, thank you for finally calling for an investigation of the Board. I would actually like to make a motion to terminate the Superintendent's contract in sixty (60) days and place him on administrative leave immediately, for sixty (60) days, with pay." *Id.* BBOE Member WILLIAMS challenged the motion, maintaining that it was out of order. BBOE Board Attorney agreed that the motion was out of order. *Id.* There was no further discussion of DR. WITHERSPOON's Contract at the April 10, 2012, meeting.

44. In separate remarks at the April 10, 2012 meeting, BBOE Members WYNNE, FORD, VOLKER, and GIATTINA invited the State Board of Education to investigate BBOE. *Id.* at 9-12.

45. On April 12, 2012, the SBOE adopted a "Resolution for An Investigative Review of the Governance of the Birmingham City Board of Education." The Resolution found that the BBOE "has, over the course of recent weeks and months, engaged in a pattern of decision making, action, and inaction that has impeded or prevented implementation of plans, initiatives, and programs designed to meet the Birmingham Board's financial and fiduciary obligations under State law and to ensure the provision of appropriate educational services to 25,000 students." The Resolution also found that "these circumstances have eroded public and parental confidence in the Birmingham School System, have created and compounded community division and controversy, and have threatened to exacerbate a long-term trend of declining enrollment in the Birmingham School System." (WITHERSPOON Exh. 2.)

46. Based on these findings, the SBOE authorized the SSOE to conduct an investigation and review, and to resolve all disputes and matters under his authority conferred by the applicable provisions of the Alabama education statutes. Following the completion of his review and investigation, and his findings and orders based thereon, the SSOE was directed to provide copies of his report to the SBOE, the BBOE, and to law enforcement authorities, if and as appropriate. (WITHERSPOON Exh. 2.)

47. On April 12, 2012, SSOE DR. BICE wrote to defendant, EDWARD MADDOX, notifying him of the SBOE Resolution. The April 12, 2012 letter gave the

following directives to defendant, EDWARD MADDOX: 1) the BBOE should not interrupt or interfere with the SSOE's investigation or the administrative or educational functions of the SSOE; 2) the BBOE should not, without the proper written approval of the SSOE, initiate or approve any adverse personnel action at the senior executive level during the SSOE's investigation; and 3) without prior consultation with the SSOE or his designees, the BBOE should not approve any non-routine administrative or financial transaction. (WITHERSPOON Exh. 1.) The April 12 letter also notified defendant, EDWARD MADDOX, that the SSOE reserved his right to modify or set aside any conflicting action, order, or decision of the BBOE. *Id.*

48. Although he testified to the contrary, the Court finds that the defendant, EDWARD MADDOX, fully understood that the April 12, 2012 letter prohibited him and the other BBOE members from attempting to terminate DR. WITHERSPOON's Contract without the prior approval of SSOE BICE, and that SSOE BICE had the authority to set aside any action purporting to terminate the Contract.

49. Defendant, EDWARD MADDOX, and his attorneys understood that under the directives of the April 12, 2012 letter, the BBOE was not authorized to approve the hiring of an additional attorney, since such engagement would be a "non-routine" financial transaction.

50. Dr. Edward Richardson, former SSOE and retired President of Auburn University, was appointed by SSOE DR. BICE to lead the investigation team on behalf of the SBOE. He and his team appeared and commenced their work in Birmingham within a week of the sending of the April 12, 2012 letter.

51. SSOE DR. BICE met with the BBOE on April 19, 2012, and explained the purpose of his investigation. He discussed the financial condition of the BBOE, and the separate work the SBOE was doing, along with SCEFO Dr. Pouncey's assistance and oversight, in an effort to bring the BBOE into compliance with the Accountability Act.

52. As of April, 2012, the BBOE retained both in-house counsel (Africa Parchman) and outside (Waldrep, Stewart & Kendrick, LLC) legal counsel. Nonetheless, at its meeting of April 24, 2012, the BBOE voted to hire Frederic A. Bolling as additional outside counsel. (State Exh. 8.)

53. SSOE DR. BICE subsequently wrote to the BBOE and explained that its decision to hire additional counsel was in violation of his April 12, 2012, directive not to undertake or approve any non-routine administrative or financial transaction without prior consultation with SSOE DR. BICE or his designee. (State Exh. 9.) He directed the BBOE to suspend the hiring of additional outside counsel "until appropriate consultation with me or my designee occurs." *Id.*

54. The BBOE ignored SSOE DR. BICE and his April 12, 2012, directive; the appropriate and required consultation with the SSOE never occurred.

55. On April 24, 2012, the BBOE approved the initial draft recovery plan. (State Exh. 21.)

56. Throughout April and May, 2012, DR. WITHERSPOON and his staff, BBOE members, and SCEFO Pouncey and his staff worked to create a Financial Recovery Plan that could be approved. Dr. Pouncey met with the BBOE on April 18, 24,

and May 21, 2012, to discuss the specifics of the Financial Recovery Plan. (State Exh. 8, 9, and 10.)

57. By May 31, 2012, the BBOE's Financial Recovery Plan was complete. SCEFO Pouncey and DR. WITHERSPOON presented the plan to the BBOE. The presentation showed the BBOE ways in which it could save operating funds -- for example, by closing certain schools or reducing the number of non-certified support employees -- the BBOE could establish the statutorily required \$17 million reserve fund, and without diminishing the BBOE's educational mission. The Financial Recovery Plan was to be implemented over two years, with \$13 to \$14 million in savings occurring during the 2012 - 13 school year, and the balance realized in the 2013 -14 school year. (State Exh. 17.)

58. The Birmingham City School System was the only one in the State which failed in its obligation to submit a Financial Recovery Plan to the SBOE by May 31, 2012.

59. A called meeting was scheduled by the BBOE for June 5, 2012, to consider an act on the May 31, 2012, Financial Recovery Plan. (State Exh. 18.) On the recommendation of DR. WITHERSPOON, BBOE Member WILLIAMS moved to approve the Financial Recovery Plan. THE FIVE voted against the Motion, and the Financial Recovery Plan failed for want of a majority vote. (State Exh. 18.)

60. At the next regular meeting of the BBOE on June 12, 2012, all of the BBOE members present voted to adopt the Financial Recovery Plan. (State Exh. 19 at 7.)

The plan adopted by the BBOE did not include the implementation aspect, *i.e.*, it did not identify the specific individuals who would be affected by implementation of the plan.

61. Due to the BBOE's continued opposition to and defiance of SSOE DR. BICE's authority, both to require a Financial Recovery Plan and to investigate reports of BBOE's governance problems, on June 14, 2012, the SBOE adopted a resolution authorizing SSOE DR. BICE to appoint a person to provide on-site oversight of the day-to-day operations of the BBOE, and to advise and assist with the BBOE's implementation of the Financial Recovery Plan. The Resolution further authorized SSOE DR. BICE, in the event that a Financial Recovery Plan was not approved by the BBOE at its meeting of June 26, 2012, to intervene into and assume direct control of the fiscal operation of the BBOE, and further to appoint a Chief Financial Officer to manage the financial operations of the BBOE towards the end of restoring the system to a sound financial condition. (State Exh. 22.)

62. DR. WITHERSPOON and his staff, assisted by SCEFO Dr. Pouncey and his staff, prepared the implementation phase of the plan and presented it for approval by the BBOE at its meeting of June 26, 2012. The implementation phase (*i.e.*, "Personnel Actions Associated with Reduction in Force") was *not approved* by the BBOE. This time, BBOE Vice-President Edwards broke ranks with THE FIVE, and voted in favor of the implementation phase of the Financial Recovery Plan. But with an abstention by BBOE Member WILLIAMS, four of THE FIVE voted against the plan and only three voted in its favor. Thus, the passage of the implementation phase failed for lack of a majority vote.

63. SSOE DR. BICE then intervened, pursuant to Ala. Code §16-6B-4, and appointed Dr. Richardson as the Chief Financial Officer ("CFO") for purposes of the intervention.

64. As part of the intervention, SSOE DR. BICE required that the proposed agenda for any meeting of the BBOE be submitted to and approved by him prior to any such meeting.

65. During the week of July 9, 2012, defendant, EDWARD MADDOX, announced a specially called meeting for Tuesday, July 17, 2012 at 6:00 p.m., at Carver High School. Prior to the meeting, a proposed agenda including consideration of the Financial Recovery Plan, was sent to SSOE DR. BICE. This agenda was approved by him. The proposed agenda, however, did not include as an agenda item any action on DR. WITHERSPOON's Contract.

66. Before the July 17, 2012 meeting, THE FIVE and defendant, SAMUETTA DREW, met, in person or by telephone, and agreed to proceed with the firing of DR. WITHERSPOON and the instatement of defendant, SAMUETTA DREW, as Interim Superintendent, with full knowledge of the prohibition against their taking any such personnel actions.

67. When defendant, EDWARD MADDOX, convened the July 17, 2012 meeting, only then did he add DR. WITHERSPOON's Contract as an agenda item. The newly-added item was approved by a majority of the members of the BBOE.

68. On motion of defendant, EDWARD MADDOX, seconded by BBOE Vice-President EDWARDS, THE FIVE then voted to terminate DR. WITHERSPOON, effective

immediately, with sixty (60) days of administrative leave. THE FIVE, joined by BBOE Member WILLIAMS, then voted to employ defendant, SAMUETTA DREW, as the Interim Superintendent.

69. Defendant, EDWARD MADDOX, then ordered DR. WITHERSPOON to leave the meeting platform and for defendant, SAMUETTA DREW, to take his place on the auditorium stage. CFO, Dr. Edward Richardson, went to the floor microphone and started speaking, but defendant, EDWARD MADDOX, told him that he was out of order and summoned Security Officers to remove him from the microphone. (State Exh. 25 at 4.)

70. DR. WITHERSPOON left the platform, and he and his wife departed from the auditorium. After assuming DR. WITHERSPOON's place, defendant, SAMUETTA DREW, then made an acceptance speech. The meeting proceeded with defendant, SAMUETTA DREW, acting as the BBOE Interim Superintendent. *Id.*

71. Dr. Edward Richardson was subsequently called to speak on the Financial Recovery Plan. While doing so, he passed a letter from SSOE DR. BICE to be hand-delivered by a Security Officer to defendant, EDWARD MADDOX, as he presided. Defendant, EDWARD MADDOX, opened the letter and read its relevant part:

"I have reviewed all the critical items on the Agenda and fully expect that they will be executed tonight. Any action taken to the contrary is hereby overturned and revoked pursuant to the legal authority provided to me and consistent with the mandates of the State Board of Education."

State Exh. 27.

72. Shortly after sending the letter to BBOE Attorney Frederic A. Bolling, defendant, EDWARD MADDOX, interrupted Dr. Richardson's presentation and abruptly moved to recess the meeting. BBOE Member WILLIAMS seconded the motion; and THE FIVE, along with BBOE Member WILLIAMS, voted to recess the meeting until Friday, July 20, 2012. (State Exh. 25 at 5.)

73. The Court finds that at the time defendant, EDWARD MADDOX, recessed the meeting, he was aware that SSOE DR. BICE had overridden the BBOE's purported termination of DR. WITHERSPOON's Contract.

74. The BBOE never voted on a Financial Recovery Plan during its meeting of July 17, 2012.

75. DR. WITHERSPOON came back to the Carver High School campus after the July 17, 2012 meeting. He was assured by SCEFO Dr. Pouncey and CFO, Dr. Richardson that he was still the BBOE Superintendent; that the purported contrary action of the BBOE had been overturned by SSOE DR. BICE. Tr. at 233.

76. Between the time that DR. WITHERSPOON left the Carver High School campus on the night of July 17, 2012, and the time he came to his office at the BBOE Central headquarters before 7:00 a.m. the following day, defendant, EDWARD MADDOX, and defendant, SAMUETTA DREW, had changed the locks and entry codes to the building. When DR. WITHERSPOON was allowed by a Security Officer to come into his office, he noticed that his name had been removed from his office door and the key/code to his office had been changed. He was unable to retrieve his briefcase and other personal belongings from his office. TR. at 235-239.

77. Defendant, SAMUETTA DREW, also changed the locks on the room in the BBOE's Central Office where the SBOE's investigation and intervention team's computers and other items were located. Like DR. WITHERSPOON, the State investigators were also denied access to their offices. Defendant, SAMUETTA DREW, offered no explanation for why she did not simply lock the room, rather than change the locks on the doors of the room, in order to secure the State team's belongings.

78. Unable to access his office, DR. WITHERSPOON came to his attorney's office, where his briefcase was delivered approximately four (4) hours later. Tr. at 239

79. DR. WITHERSPOON filed this action on July 18, 2012. After a hearing in which Defendants' attorney participated, a Temporary Restraining Order "(TRO)" was issued by Judge J. Scott Vowell and became effective on the posting of a bond in the amount of \$10,000.00. The TRO restrained defendant, EDWARD MADDOX, and defendant, SAMUETTA DREW, from denying DR. WITHERSPOON access to the BBOE buildings and from impeding or otherwise interfering with DR. WITHERSPOON's performance of his duties as Superintendent of the Birmingham City School System.

80. Incredibly, defendant, EDWARD MADDOX, his counsel Frederic A. Bolling, and BBOE Member WILLIAMS travelled to the SBOE offices in Montgomery on July 18, 2012, where they sought to make a deal with SSOE DR. BICE. Defendant, EDWARD MADDOX, and his Counsel proposed that if SSOE DR. BICE would allow the BBOE to terminate DR. WITHERSPOON's Contract, the BBOE would approve the implementation of Financial Recovery Plan. Predictably, for one whose designated

representative had publicly been so thoroughly insulted and humiliated the night before, SSOE DR. BICE declined the offer of defendant, EDWARD MADDOX. Tr. at 610 – 617.

81. Two days after the *Witherspoon* action was filed, the SBOE, SSOE DR. BICE, and Alabama Attorney General Luther Strange (“the State Plaintiffs”) filed an action against the BBOE and its members in their official capacities. The State Plaintiffs also secured a Temporary Restraining Order prohibiting Defendants from acting in the following ways:

- interfering with the implementation of a financial recovery plan,
- interfering with any other decision or actions deemed necessary and appropriate by the SSOE to ensure that the Birmingham School system opens in a timely and orderly manner,
- interfering with the SSOE’s and his staff’s unfettered access to the offices of the BBOE and their computers and files, and
- taking any action inconsistent with DR. WITHERSPOON’s continuing to serve as the Superintendent of the Birmingham City School System.

82. SSOE DR. BICE presided at a called meeting of the BBOE on July 24, 2012.

At that time, the BBOE again failed to implement a Financial Recovery Plan. SSOE DR. BICE then overrode the vote and approved the Financial Recovery Plan for implementation. Tr. at 567.

83. If SSOE DR. BICE had not overridden the BBOE’s inaction on a Financial Recovery Plan, as of September 15, 2012, *state and federal funds for the operation of Birmingham City Schools would likely have been withheld!* Tr. at 378, 379. The loss of these funds would have shut down the operation of the Birmingham School system. As

SCEFO Dr. Pouncey testified: "All of the employees would ... be without jobs. Students would be locked in the homes or on the street." (Tr. at 380.)

84. Defendant, EDWARD MADDOX, and his usual allies, who together make up THE FIVE, on the BBOE are yet determined to terminate DR. WITHERSPOON's Contract as quickly as possible. (Tr. at 19.) The Court finds that defendant, EDWARD MADDOX, speaks for THE FIVE on issues related to DR. WITHERSPOON. In the view of THE FIVE, DR. WITHERSPOON has already been given the required sixty (60) day notice of termination. *Id.* The State Board of Education, State Superintendent of Education, DR. THOMAS R. BICE, and this Court are all that prevents them from achieving their goal.

85. The Temporary Restraining Order specifically forbids defendant, EDWARD MADDOX, and his officers, agents, employees, attorneys and those in active concert or participation with them who receive actual notice of the TRO from interfering with DR. WITHERSPOON in the performance of his duties as Superintendent of the Birmingham City School System. Defendant, EDWARD MADDOX, testified that he read the TRO, but he did not understand that it forbade him from interfering with DR. WITHERSPOON in the performance of his duties. Tr. at 70, 72. The Court does not credit that testimony. It finds instead that defendant, EDWARD MADDOX, fully understood that the Court Order prohibited him from interfering with DR. WITHERSPOON.

86. The very next day after the TRO issued, defendant, EDWARD MADDOX, sent an e-mail to DR. WITHERSPOON, warning him that:

“Until further notice and/or final order from the Court the Board will respect the authority of the Court. Accordingly, we expect the same respect of local authority from you during your time as court-determined superintendent. Specifically you should understand that it is a board’s expectation that you will not retaliate against any employee of this board. I specifically refer you to Alabama Code Section 16-12-15, which provides that you will see that all regular appointees of the City Board of Education devote their entire time to their duties. This mandate cannot be followed if employees are placed on administrative leave, your retaliation for their following board directives. I trust that professionalism will prevail.”

Witherspoon Exh. 6; Tr. at 75, 76.

87. At the time defendant, EDWARD MADDOX, sent this warning to DR. WITHERSPOON, he had not received a retaliation complaint from defendant, SAMUETTA DREW, or anyone else when he sent this admonition to DR. WITHERSPOON. Tr. at 76, 77.

88. Defendant, EDWARD MADDOX’s, July 19, 2012, e-mail to DR. WITHERSPOON was, at best an effort to micromanage the operation of the Birmingham School System; and, at worse, a violation of the TRO issued by the Court.

89. As the Court has already judicially noticed, Governance and Leadership is the second of five standards utilized by the regional accrediting association for the accreditation of schools. August 6, 2012, Order at 2. As the Court has also judicially noticed, the district accreditation process for Birmingham school system has been halted by the accrediting agency precisely because of ongoing concerns over governance issues.

90. Defendant, EDWARD MADDOX, has been specifically cautioned in an official Letter of Concern that *his* “current actions could be considered outside the roles and responsibilities of the board (e.g. micromanagement) and could put [his] school

system's current and future accreditation in jeopardy." WITHERSPOON's Request for Judicial Notice, Attachment "A."

91. Unless abated, the governance issues posed by THE FIVE members of the BBOE may well jeopardize the district accreditation of Birmingham School System. The denial of such accreditation would be devastating, specifically to the children served by the Birmingham School System and to the City of Birmingham generally.

**DONE and ORDERED** this 13<sup>th</sup> day of August, 2012.

  
**HOUSTON L. BROWN**  
**CIRCUIT JUDGE**