

STATEMENT OF EDUCATION LAW CENTER
PROPERTY TAX CONVENTION TASK FORCE

October 29, 2004

Thank you for the invitation to present the position of Education Law Center on the proposal for a constitutional convention on property taxes. For over 30 years, ELC has advocated for New Jersey's poor and minority children, and children with special needs, for an equal and adequate education under our State constitution. I appear today on their behalf and, in particular, the 350,000 preschool to twelfth grade students who attend our high poverty urban preschools and K-12 schools. As you know, ELC represents these children in the landmark *Abbott v. Burke* case.

Changing our constitution, whether by ballot amendment or through a convention, is an extreme step, one that should only be undertaken to address a fundamental flaw in the constitution itself, and only as a last resort.

Article VIII, section 4 of our constitution mandates that the Legislature "shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years."

Our current system of funding and delivering public education is driven by this "T&E" clause. Regrettably, there is considerable rhetoric – unsupported by facts – that our system of "T&E" is so flawed that a constitutional convention should be authorized to change it.

Consider the following evidence:

First, New Jersey schools, unlike the rest of the nation, are, for the most part, funded at a level adequate to provide high quality education to its students. In 2003-04, New Jersey spent on average \$9,849 per pupil, only \$500 per pupil below what we spend in our most educationally successful districts, the DFG "I&J" districts. And, by almost every measure of performance, we have one of the best overall public school systems in the United States, so this investment is yielding great dividends to the economic and civic vitality of our State.

In other words, New Jersey does not "spend too much" on education.

Second, New Jersey is one of a very small group of states that adequately and equitably funds the education of its poor and minority students. A recent report by Education Trust shows that the funding gap between the highest and lowest poverty school districts **and** between the highest and lowest minority districts has been eliminated in New Jersey. We are also singled out, along with

Massachusetts and Minnesota, as providing extra dollars to districts serving high concentrations of poor students. In contrast, states such as Pennsylvania, New York, California and Connecticut all under-fund their high poverty and minority schools, with the gaps in Pennsylvania and New York among the worst.

New Jersey is a leader among the states in assuring that all children, regardless of community wealth, family income or race, have adequate resources to support a high quality education. We should take pride that unequal school funding – a scourge on the national landscape – is no longer tolerated in our State.

Third, New Jersey is one of a few states providing substantial state support for K-12 facilities construction. In response to the Abbott ruling, the Legislature wisely implemented a statewide program delivering billions in state aid to support local capital projects even in the most affluent communities, providing real property tax relief along the way.

Finally, our current method of school financing does place too much reliance on the property tax to pay for our education, but not in all communities. On average, suburban and middle-income districts have school tax rates in excess of the equalized state average. Because state aid to these districts has been flat for many years, the percentage of state aid in their education budget has dropped.

However the good news is that, as a result of the Abbott rulings, most of New Jersey's poorest communities now have strong state support for their budgets, providing some relief from the crushing municipal burden on the property tax.

And there's more good news. Clearly, the problem of property tax over-reliance in some communities is not of constitutional dimension. In fact, the Legislature had an opportunity to fix this problem last June. We wouldn't be here today talking about a Convention if the Legislature had allocated the \$800 million generated by the "millionaires tax" to increase the state share of school budgets in districts with high school tax rates. Instead, they gave it away in rebates, which do nothing to structurally lower property taxes.

So, if this were California, where a constitutional amendment -- Proposition 13 -- has substantially weakened what was one of our nation's premier public school systems, then we should have a convention. But this is New Jersey, and thankfully, our constitution has taken us in exactly the opposite direction. While California's public schools are now among the nation's worst, our schools overall are arguably the best, with a real, substantial effort underway to improve education in the urban schools serving our poorest, most vulnerable children.

Lastly, a constitutional convention is a direct threat to the remedial measures ordered by the Supreme Court in the Abbott case to ensure a constitutional education for poor and minority students in our cities.

It is hard to fathom how anyone could openly advocate this position.

As good as New Jersey's public schools are, they remain deeply segregated by race and economics. As was true forty years ago, most black, Latino and poor students attend school in a small number of districts, predominately those covered by the Abbott rulings. Our public schools remain one of the most segregated in the United States, despite the fact that the 1947 constitution added a provision expressly outlawing racial segregation in the schools. Yet, for decades now, we've done nothing to increase racial and economic diversity in our schools.

The vindication of the Abbott students right to a "thorough and efficient" education under our constitution must be seen against this stark backdrop. While state policies consign minority and poor students to "separate," mostly urban schools, the Abbott remedies represent an unprecedented effort to ensure those students at least receive an education comparable to the education provide in our most successful, suburban schools. And there is mounting evidence of progress and improvement in the Abbott schools.

This is why Abbott is widely recognized to be the most important education court ruling since *Brown v. Board* fifty years ago.

So a constitutional convention threatens more than "T&E." It is a threat to the most basic civil right guaranteed in our constitution – the right of all children to an education, a right deemed fundamental by our Supreme Court. That right is even more precious since there is no right to an education in the United States Constitution.

And the convention threatens more than this fundamental right. It threatens the historic effort – started over thirty years ago – to enforce that right and make that right real for minority and poor children, those citizens of our state who, lacking political power, faced no alternative but to seek recourse in the courts.

In 1997, the Supreme Court in Abbott described what the "T&E clause" means:

"Our constitution requires that public school children be given the opportunity to receive a thorough and efficient education. That constitutional vision irrefutably presumes that every child is potentially capable of attaining his or her place as a contributing member in society with the ability to compete effectively with other citizens and to succeed in the economy. The wisdom giving rise to that vision is that both the child and society benefit immeasurably what that potential is realized."

The future of our children – indeed of our state – depends on us sustaining and strengthening, not changing or weakening, this constitutional vision.