RAYMOND ARTHUR ABBOTT, et al., Plaintiffs, v. FRED G. BURKE, et al., Defendants.	SUPREME COURT OF NEW JERSEY DOCKET NO. 078257 CIVIL ACTION

Plaintiffs' Brief in Opposition to Review of the State's Motion for Relief and Modification of Abbott XX and Abbott XXI

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PRELIMINARY STATEMENT

The State Defendants ("State") have filed with this Court a Motion for Relief and Modification of Abbott XX and Abbott XXI. ("State's Motion"). The Court directed the parties to address whether it is appropriate to file that Motion with the Supreme Court "in the first instance."

The State first asks to be relieved of its solemn promise, enshrined in Abbott XX, to operate the funding formula in the School Funding Reform Act of 2008 ("SFRA") in the Plaintiffs' or "Abbott" districts in exchange for vacating this Court's prior remedial orders. But unlike past occasions when the Court has reviewed State compliance with the Abbott remedial directives, the State's Motion offers no alternative funding remedy designed to ensure a thorough and efficient education for Plaintiff school children. The State merely asserts that SFRA's implementation should be discontinued while the Executive and Legislature develop a "new" wholly undefined "system for providing education" to be adopted at some indeterminate future date. To the extent the State desires legislative changes to New Jersey's public education system, it is free to do so at any time without this Court considering the State's unprecedented request to jettison the SFRA funding remedy upheld as constitutional in Abbott XX.

In this litigation, the Court has established clear standards for determining the appropriateness of review of an application by the State to be relieved of a prior remedial funding order in Abbott districts. The State's Motion, without question, fails to meet those threshold standards.

The State's Motion also calls on the Court to assume the role of a super-legislature by granting the Commissioner of Education ("Commissioner") unlimited discretion to override statutes and collective negotiation agreements not because they are unconstitutional, but because they allegedly are "impediments" to the State's current set of preferred education policy objectives. This requested relief invites the Court to ignore bedrock principles of separation of powers and conduct a wide-ranging evaluation of the efficacy of education policy and collateral labor laws. The Court in Abbott XXI firmly rebuffed the State's attempt to use this litigation to circumvent the constitutionally-prescribed legislative process. It should do so again now. The Legislature is the appropriate forum for consideration of the State's present contentions about policy judgments and the wisdom of duly-enacted statutes.

Even a cursory examination of the State's Motion reveals that the claims made and relief sought are entirely inappropriate for the Court's consideration in the first instance. The Motion, therefore, should be denied.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

In 1990, this Court held that the State had failed to provide a thorough and efficient education as required by N.J. Const. art. VIII, §4, ¶1 to the Plaintiff class of school children in poorer urban or "Abbott" districts. Abbott v. Burke, 119 N.J. 287 (1990) (Abbott II). The Court's ruling, supported by "persuasive" proofs at trial, id. at 357, was based on an evidentiary record establishing "monumental" disparities in education funding, programs, and needs between the Abbott and affluent districts. Id. at 369. The Court concluded that the constitutional deprivation in Abbott districts was "clear, severe, extensive, and of long duration." Id. at 385.

To address the violation, the Court imposed upon the State a two-part constitutional remedy: provide adequate funding for regular education and supplemental programs responsive to Plaintiffs' special needs and extreme disadvantages. Id. at 295, 385. Subsequently, the Court concluded that two State funding formulas - the Quality Education Act ("QEA") and the Comprehensive Education Improvement and Financing Act ("CEIFA") - were inadequate to ensure Plaintiffs a constitutional education. Abbott v. Burke, 136 N.J. 444, 446-47, 452-53 (1994) ("Abbott III"); Abbott v. Burke, 149 N.J. 145, 153, 169-177,

[1] Because the facts and procedural history are inextricably intertwined, they are presented together in this brief.

180-86 (1997)("Abbott IV"). In Abbott IV, the Court ordered the State to provide Abbott districts regular education funding at "parity" with affluent districts and supplemental programs as an "interim remedy" until the State enacted a constitutionally adequate funding formula. Id. at 189.

In March 2008, the State applied to this Court for a declaration that the just-enacted SFRA, N.J.S.A. 18A:7F-43 to 63, satisfied the requirements for a thorough and efficient education. It also sought relief from the Abbott IV remedial order for parity and supplemental program funding. After remanding to a special master "for development of an evidential record," Abbott v. Burke, 196 N.J. 544, 565 (2008)("Abbott XIX"), the Court, on May 28, 2009, granted the State's motion, finding the SFRA constitutional and allowing the formula to be applied statewide. Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX"). The Court explicitly conditioned SFRA's approval on the State (1) providing school funding aid "at the levels required by SFRA's formula each year;" and (2) conducting the three-year "mandated review of the formula's weights and other operative parts" based on "full" formula implementation. Id. at 146, 174.

Following a $1.1 billion reduction in SFRA's funding in the FY2011 Appropriations Act, Plaintiffs, in June 2010, filed a Motion in Aid of Litigants' Rights seeking to enjoin the State from providing funding for 2010-11 at levels below that required

by the SFRA formula. After remanding to a special master, this Court enforced compliance with Abbott XX's requirement for SFRA's continuing operation by directing the State to (1) provide funding to Abbott districts "in accordance with the SFRA formula;" and (2) undertake the required three-year reexamination and adjustment to keep the formula operating "optimally and as intended in future years." Abbott v. Burke, 206 N.J. 332, 376 (2011) ("Abbott XXI").

On December 17, 2012, the Commissioner issued the State's first triennial Education Adequacy Report ("2012 Report"), as required by Abbott XX and the SFRA. N.J.S.A. 18A:7F-46(b). The 2012 Report recommended sharp reductions in SFRA's education cost for low income ("at-risk") pupils and Limited English Proficiency ("LEP") pupils.[2] On January 14, 2012, pursuant to N.J.S.A. 18A:7F-46b, the Legislature passed Assembly Concurrent Resolution No. 134 rejecting the 2012 Report, finding that the State had not shown any empirical evidence to support reducing the formula costs for these pupils. ACR-134, available at

[2] Abbott districts currently enroll over 275,000 students, 20% of the statewide total. 75% of these students are poor or "at-risk" and 14% are LEP pupils. The Abbott districts educate 40% of all at-risk pupils and 56% of all LEP pupils statewide. See Abbott XX, 199 N.J. at 168 (finding that "SFRA's funding to Abbott districts for at-risk students satisfies the constitutional standard"). Demographic data available at http://www.state.nj.us/education/data/ (last visited Oct. 28, 2016).

www.njleg.state.nj.us/bills/BillView.aspt (last visited Oct. 28, 2016).

In March 2016, the Commissioner issued the second triennial Education Adequacy Report ("2016 Report"). The 2016 Report again recommended reductions in SFRA's education cost for at-risk and LEP pupils. On March 11, 2016, the Legislature passed Senate Concurrent Resolution No. 131, finding the Commissioner presented no "evidence to support the reductions based on the [SFRA] formula's operation in the preceding three years." SCR-131 also directed that SFRA's at-risk and LEP pupil weights remain at the current higher levels. SCR-131, available at http://www.njleg.state.nj.us/bills/BillView.asp (last visited Oct. 28, 2016).

The Abbott districts continue "to show measurable educational improvement," Abbott XIX, 196 N.J. at 549, in achievement levels, graduation rates and other outcomes.[3]

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[3] See, e.g., Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up, National Institute for Early Education Research at http://nieer.org/publications/latest-research/abbott-preschool-program-longitudinal-effects-study-fifth-grade-follow (finding that by fourth or fifth grade, children who attend two years of high quality Abbott Preschool are, on average, three-quarters of an academic year ahead of students who did not attend)(last visited Oct. 28, 2016); Building a Grad Nation: Data Brief: Overview of 2013-14 High School Graduation Rates, Civic Enterprises at http://www.gradnation.org/report/2016-building-grad-nation-data-brief (finding that between 2001 and 2010, the high school graduation rate in Abbott districts increased 12% compared to a 4% increase in all other districts, and in 2014, three Abbott

On September 16, 2016, the State filed the present Motion for Relief and Modification of Abbott XX and Abbott XXI, seeking to (1) immediately discontinue further implementation of the Abbott XX SFRA funding remedy; and (2) vest the Commissioner with discretion to waive or override statutory provisions and terms of collective negotiation agreements that he believes may "impede" delivery of a thorough and efficient education. On October 5, 2016, the Court directed Plaintiffs to respond to the State's Motion by addressing "whether it would be appropriate for this application to be filed with the Supreme Court in the first instance." Plaintiffs file this brief pursuant to the Court's directive.

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districts had graduation rates equal to or above the state graduation rate, which is the third highest in the nation and the highest rate for states with diverse student populations)(last visited Oct. 28, 2016); "Asbury Sees Gains in Parcc," Asbury Park Press, October 6, 2016 at http://www.app.com/story/news/education/asbury-park-schools/2016/10/05/asbury-sees-gains-parcc/91555516/(Special Assistant Commissioner Bari Erlichson cites the "remarkable" improvement in Asbury Park's graduation rate which rose from 66 percent in 2015 to 73 percent in 2016)(last visited Oct. 28, 2016); Strategic Plan: 2016-19 Newark Public Schools at http://www.nps.k12.nj.us/blog/mdocs-posts/2016-19-strategic-plan/ (stating that "between 2011 and 2015, four-year graduation rates improved by nearly 10 percentage points" and that "in 2014-15, median Student Growth Percentiles, which measure the growth a student has made compared to other students who started the year at approximately the same level of proficiency, were up 8 points in math and 9 in English language arts from the previous year," id. at 7)(last visited Oct. 28, 2016).

ARGUMENT

THE STATE'S MOTION FAILS TO MEET THE THRESHOLD STANDARDS FOR REVIEW OF ABBOTT REMEDIAL ORDERS AND, THEREFORE, IS INAPPROPRIATE FOR FILING WITH THIS COURT IN THE FIRST INSTANCE

The State asks to be relieved of the Court's remedial order in Abbott XX for continuing implementation of the SFRA in Abbott districts without offering any alternative constitutionally-compliant formula to replace that remedy. The State also seeks to modify the "Abbott remedies" through an order vesting the Commissioner with unfettered discretion to waive any statutory provision or term of a collective negotiation agreement he believes may pose an "impediment" to a thorough and efficient education. State's Br. at 5, 83, 93. As we explain, the State's Motion fails to satisfy the threshold standards to accept for review the Court's existing order to remediate the constitutional violation in Abbott districts.

A. THE STATE OFFERS NO BASIS TO VACATE THE ABBOTT XX ORDER REQUIRING CONTINUING IMPLEMENTATION OF THE SFRA FUNDING REMEDY

The State asks this Court to vacate its "previously ordered remedy" of providing funding to Abbott districts "in accordance with" the "terms" of the SFRA formula. State's Proposed Order, at 5. The State also asks to freeze funding "at current levels" while the Legislature and Executive develop "a new system for providing education" to be implemented by the 2017-18 school

year. Id. at 5. The State neither addresses nor attempts to satisfy the well-established threshold standards for this Court to accept for review in the first instance the Abbott XX order for SFRA's continuing implementation.

First, this Court has made it abundantly clear that, whenever the State "request[s] to be relieved from compliance with this Court's prior remedial orders," Abbott XXI, 206 N.J. at 350, the State bears the burden of demonstrating it has in place a new funding mechanism that will be adequate to provide Plaintiffs a constitutional education. Most recently, when the State applied for review of the SFRA's constitutionality and relief from the interim parity and supplemental funding remedies ordered in Abbott IV, the Court held that:

> . . . the burden is on the State to prove that SFRA's formula provides sufficient resources to enable the Abbott districts, with their special needs in respect of the at-risk pupils entrusted to their care, to deliver a thorough and efficient education, as defined by the Core Curriculum Content Standards . . .

Abbott XIX, 196 N.J. at 568-69. Because the State met its burden of showing that the SFRA "satisfie[d] the requirements" of the Education Clause, N.J. Const. Art. VIII, §4, ¶1, the Court directed the State to implement the formula statewide as a replacement for the prior remedial funding orders in Abbott districts. Abbott XX, 199 N.J. at 145-47, 175.

The State now asks to be relieved from further implementation of the SFRA formula upheld as constitutional in Abbott XX. Id. at 147, 171, 175 (finding the SFRA was "painstakingly" developed and, as enacted by the Legislature, provides the funding necessary for Plaintiffs to "achieve a thorough and efficient education" as "measured against the delivery" of the State's Core Curriculum Content Standards ("CCCS")). In seeking to vacate Abbott XX's SFRA funding remedy, the burden of proof rests squarely upon the State "as it has been each time the State has advanced a new funding program that it has asserted to be compliant with the thorough and efficient constitutional requirement." Abbott XIX, 196 N.J. at 565-66. The State's Motion contains no showing that the State has met its burden of having a new funding plan in place that would serve as a constitutionally-compliant replacement for the SFRA formula. Even worse, the State fails to acknowledge that it - and not Plaintiffs - is obligated to satisfy this threshold condition for triggering Court review of the SFRA remedy.

Second, the State proffers no facts, nor even a scintilla of relevant evidence, that might warrant this Court to entertain the State's request to discontinue the SFRA funding remedy. The State offers no evidence that Abbott XX's SFRA remedy has been ineffective or no longer can provide Plaintiffs the resources necessary for a constitutional education. Even more troubling,

the Motion is utterly devoid of facts that would support abandoning a funding remedy determined to be "a fair and equitable means designed to fund the costs of a thorough and efficient education, measured against delivery of the CCCS," in Abbott districts. Abbott XX, 199 N.J. at 172.[4]

Third, the State's request to end implementation of the SFRA remedy is a direct repudiation of the "quid pro quo" offered by the State -- and accepted by this Court -- in Abbott XX. Abbott XXI, 206 N.J. at 355. In exchange for relief from the prior remedial orders for parity and supplemental funding, the Court accepted the State's representation that it would operate the SFRA formula "as a state-wide unitary system of education funding." Abbott XX, 199 N.J. at 147. The Court, in accepting that exchange, also made clear that the SFRA's constitutionality "is not an occurrence at a moment in time; it is a continuing obligation." Id. at 146 (emphasis added).

This Court did not hesitate to enforce that continuing obligation when the State "did not deliver the quid pro quo" by intentionally and substantially reducing SFRA's funding in Abbott districts in FY 2011. Abbott XXI, 206 N.J. at 359-61. Surely, if this Court "did not authorize the State to replace the parity remedy with some underfunded version of the SFRA,"

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[4] The State's motion is even more remarkable in light of the concession that it has not fully funded the SFRA since FY2009. State's Br. at 32, n. 9.

id. at 360, then there is simply no logical or persuasive basis to even contemplate the State's request to abruptly halt SFRA's operation without presenting a remedial replacement.

Fourth, the State fails to offer -- or even identify -- any alternative funding remedy for Abbott districts that would replace the SFRA formula if the Abbott XX order were vacated, not to mention a formula that might conceivably pass constitutional muster under the Court's prior Abbott rulings. The State merely asserts that it wants to cease operating the SFRA altogether, and freeze funding at current levels, while the Legislature and Executive "develop" a "new system for providing education" for the 2017-18 school year. Proposed Order at 5; State's Br. at 94. The State proffers no information on this "new system" of education, nor mentions if the new system will include a funding formula designed to serve as a constitutionally-compliant alternative to the SFRA remedy. While this Court invited the other branches to devise a suitable alternative funding remedy to replace the interim parity and supplemental funding orders, Abbott IV, 149 N.J. at 202, the Court has never allowed nor suggested that the State could be released from implementation of a constitutionally-approved funding remedy without offering any alternative to take its place.

Fifth, and as further evidence of the inappropriateness of filing its Motion with this Court in the first instance, the State must, at a minimum, secure legislative enactment of any alternative funding remedy before making application to this Court for review of Abbott XX's funding order. This is precisely what the State did after the SFRA's enactment. Abbott XIX, 196 N.J. at 549. Indeed, on each prior occasion, the Court has reviewed funding statutes after they were enacted as a remedy for the constitutional violation in Abbott districts. Abbott III, 136 N.J. at 446 (QEA); Abbott IV, 149 N.J. at 167-68 (CEIFA). Here, the State unabashedly asks to be relieved from implementing Abbott XX's SFRA remedy based on nothing more than raw conjecture that the other branches may develop a wholly undefined "new system" of education before the 2017-18 school year. Proposed Order at 5; State's Br. at 6, 94.

Finally, the relief the State seeks on this Motion of ending SFRA's implementation in future years would leave the Plaintiffs remediless, i.e., with no measure to provide constitutionally adequate funding in their districts. The State proposes to simply abandon its constitutional obligations to Plaintiff school children. Such an unprecedented step would consign the Plaintiffs to an education devoid of a funding remedy to ameliorate "a continuing profound constitutional violation that has penalized generations of children" in their

districts. Abbott IV, 149 N.J. at 201-02. The State's request that the Court relinquish its role "as the designated last resort guarantor of the Constitution's command" for a thorough and efficient education, Robinson v. Cahill, 69 N.J. 133, 154 (1975) ("Robinson V"), and its obligation to remediate constitutional violations of that fundamental right, should be rejected outright. Id. at 147 (courts must provide a remedy for unconstitutional education); Abbott IV, 149 N.J. at 198(directing relief to avoid delay in addressing the constitutional violation in Abbott districts); Abbott XXI, 206 N.J. at 363 (noting that Plaintiffs, as "designated victims of constitutional deprivation" and having "secured judicial orders granting them specific, definite, and certain relief," should not have to beg the other branches for "the full measure of their education funding").

In sum, the State has failed to meet the threshold standards for Court consideration of its request to be relieved of Abbott XX's order for continuing implementation of the SFRA funding remedy in Abbott districts.[5]

[5] Denial of the State's Motion would reaffirm the State's "continuing obligation" to implement the SFRA, Abbott XX, 199 N.J. at 146, to ensure Abbott districts "receive funding commensurate with a level that allows the provision of a thorough and efficient education" in 2017-18 and future years. Abbott XXI, 206 N.J. at 371.

B. THE STATE OFFERS NO BASIS FOR THE COURT TO ASSUME THE ROLE OF A SUPER-LEGISLATURE AND CONSIDER THE PROPRIETY OF CURRENT STATUTES THE STATE ASSERTS MAY IMPEDE ITS PREFERRED POLICY OBJECTIVES

The State also asks the Court to "amend the Abbott remedies" by giving the Commissioner "authority to remove contractual and statutory restrictions that he finds to be standing in the way" of the "ability" to provide a constitutional education in "particular" districts, including reforms to the length of the school day, teacher scheduling, and the requirements for teacher layoffs. State's Br. at 66, 72-73. This requested relief seeks to interject the judiciary into the Legislature's prerogatives without showing that the statutes are unconstitutional, but by merely asserting they are "impediments" to the State's preferred education policy objectives. See, e.g., State's Br. at 83. The State offers no basis for this extraordinary invitation to violate separation of powers.

First, the State's assertion that existing education policies pertaining to collective negotiation agreements and the teacher layoff statute are in need of reform because they may be "impediments" to a thorough and efficient education far exceeds the scope of this litigation. This claim is strikingly similar to that made by the State in defense of its "conscious and calculated decision to underfund the SFRA formula when enacting the FY 2011 Appropriations Act." Abbott XXI, 206 N.J. at 359,

366-367 (explaining the State's challenge to "the efficacy of existing tenure laws, teacher evaluation methods and collective bargaining agreements"). As the Court then stated, in language equally applicable to the present motion, the State's concerns about these policy matters are "collateral" at best to the Abbott XX order for SFRA's continuing implementation. Id. Clearly, such policy matters are well beyond the scope of the constitutional violation and remedies prescribed throughout the course of this litigation, remedies singularly focused on ensuring adequate funding to enable Plaintiffs to achieve the CCCS.[6]

Second, any policy reforms to collective negotiation agreements and teacher layoff rules, which the State claims may be of help in some districts, "must be reserved for a different forum," specifically the Legislature. Abbott XXI, 206 N.J. at 367. As the Court in Abbott XXI correctly observes, these types of reforms implicating the robust "debate regarding how best to transform the educational system" are policy issues reserved for the Legislature. Id. Despite the explicit instruction that the

[6] The State supports this extraordinary request with certifications from two State-employed district superintendents who describe a variety of teacher contract issues never litigated in this case. While their concerns may inform the legislative policy-making process, they are wholly inappropriate for consideration by the Court in this litigation. And see Abbott XXI, 206 N.J. at 367 (noting State "should tend its own house" in districts under State supervision).

judicial branch is not the proper forum for consideration of changes to education policy, the State again asks this Court to endorse its preferred reforms without any showing that it attempted to achieve those reforms through the legislative process in the first instance. Thus, as in Abbott XXI, the State's proffer of such reforms is, yet again, "simultaneously premature and laggard." Id. The State cannot co-opt the Abbott litigation "into a vehicle to obtain an indication of some judicial approval for collateral labor law and education policy reforms that are, as-yet, unadopted by the Legislature." Id.

Moreover, the Executive, working diligently with the Legislature, secured a major reform of the laws governing the tenure, evaluation and dismissal of New Jersey teachers in 2012. See Teacher Effectiveness and Accountability for the Children of New Jersey Act, N.J.S.A. 18A:6-117 ("TEACHNJ"). In signing this "sweeping, bipartisan overhaul of the oldest tenure law in the nation," the Governor announced:

> The legislation transforms the existing tenure system to now provide powerful tools to identify effective and ineffective teachers, strengthen the supports available to help all teachers improve their craft, and, for the first time, tie the acquisition, maintenance, and loss of tenure to a teacher's effectiveness in the classroom.

"Governor Chris Christie Signs Revolutionary Bipartisan Tenure Reform Legislation Into Law," Aug. 6, 2012, available at

http://www.state.nj.us/governor/news/news/552012/approved/20120806c.html (last visited Oct. 28, 2016).

In its Motion, the State candidly acknowledges the TEACHNJ reform "has been a valuable tool to eliminate less than effective teachers" and, while "new" and in the early stages of implementation, has the "laudatory" objective to "improve teaching practice for all teachers, support struggling teachers, and remove individuals who are unable to improve their poor teaching skills..." See Certification of Kimberley Harrington, ¶4. If the State now believes further reform of the policies in TEACHNJ is needed, the State should return to the Legislature to seek amendatory legislation.

Third, the State improperly asks for what amounts to an advisory opinion on the constitutionality of the "last in first out" (LIFO) portion of the Tenure Act, State's Br. at 76-80, as well as on the efficacy of preferred reforms that have not been adopted by the Legislature. State's Br. at 71-73.[7] However, as the State well knows, this Court does not give advisory opinions. Abbott XIX, 196 N.J. at 551. The Court has long held

[7] The State also asks for "confirmation of [the Commissioner's] authority to effectuate governmental education policy," State's Br. at 70, by overriding collectively negotiated agreements to accomplish the policy reforms identified on this Motion. State's Br. at 74-76. This request seeks nothing more than this Court's advice on matters consigned by the Legislature to the collective negotiation process. No controversy presently exists in this litigation regarding such matters in Abbott districts.

that "we will not render advisory opinions or function in the abstract." Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 107 (1971), citing New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 240 (1949).

Finally, the relief sought by the State - a judicial order granting the Commissioner discretion to override education policy statutes and collective negotiation agreements - would clearly violate longstanding principles of separation of powers. Such relief would give the Commissioner, an executive branch official, unlimited power to repeal, amend or otherwise modify provisions of an education statute duly enacted by the Legislature and terms of employment collectively negotiated under state labor laws. See N.J. Const., art. III, §1, ¶1 (mandating that powers belonging to one branch cannot be exercised by another).

Furthermore, the discretionary power sought by the State would be boundless, as the Commissioner could veto any statutory provision or term in a collective negotiation agreement whenever he - and he alone -- decides eliminating such provisions and terms may "help" provide a thorough and efficient education. State's Br. at 83. As this Court has held, the constitution's command for separation of powers is designed to "prevent the concentration of unchecked power in the hands of one branch." In re Advisory Committee on Professional Ethics Opinion 705, 192

N.J. 46, 54 (2007) (quoting David v. Vesta Co., 45 N.J. 301, 326 (1965); see also Knight v. City of Margate, 86 N.J. 374, 388 (1981). A judicial allocation of this "unchecked power" to the Executive over all education policy laws and collectively negotiated agreements would significantly alter the balance of power between the governmental branches, a clear and unquestionable violation of the separation of powers doctrine.[8]

CONCLUSION

For the reasons stated above, the State's Motion is clearly inappropriate for filing with the Supreme Court in the first instance. Plaintiffs, therefore, respectfully request that the Motion be denied.

Respectfully submitted,
EDUCATION LAW CENTER

Dated: November 3, 2016 By: _____
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[8] In asking the Court to venture into the education policy arena, the State relies upon the trial court ruling in Connecticut Coalition v. Rell, No. CV-145037565-S (Sept. 7, 2016). See, e.g., State's Br. at 92. The Connecticut Supreme Court has certified an interlocutory appeal of that ruling by both parties. Id. at HHD CV-14-5037565-S (Sept. 20, 2016).