RAYMOND ARTHUR ABBOTT, et al., Plaintiffs, v. FRED G. BURKE, et al., Defendants.	SUPREME COURT OF NEW JERSEY Docket No. 078257 Civil Action

THE COMMISSIONER'S BRIEF IN SUPPORT OF THE COURT'S AUTHORITY TO HEAR HER MOTION TO MODIFY THE COURT'S ORDERS IN ABBOTT XX AND ABBOTT XXI, AND APPENDIX

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PRELIMINARY STATEMENT

In response to a motion filed by the Commissioner of the Department of Education (the "Commissioner"), this Court asked the parties to address the appropriateness of this Court hearing the motion in the first instance. The pending motion is the latest application in thirty years of litigation in which this Court addressed New Jersey's struggle to meet its obligation to provide a "thorough and efficient system of free public schools" for the thirty-one School Development Authority Districts ("SDA Districts," formerly known as "Abbott Districts").

A host of statutory and contractual obstacles to improvement of underperforming districts has prevented more than a generation of students in our most at-risk districts from achieving an adequate education, and the Commissioner has asked this Court for specific relief to address and overcome these obstacles - the very same goals repeatedly addressed by this Court in the twenty-one Abbott decisions. The primary relief requested in the pending motion is to grant the Commissioner discretion to effect specific, targeted and meaningful changes to achieve better results for the students. The motion primarily requests authority for the Commissioner to waive certain statutory requirements and specific provisions of collective negotiation agreements in particular SDA Districts that impede the achievement of a thorough and efficient education.

Jurisdiction over the Commissioner's motion is proper and appropriate in this Court because (1) the Court has historically exercised jurisdiction over issues arising under the constitutional guarantee of a thorough and efficient system of education; (2) the nominally adverse party has itself repeatedly invoked the Court's jurisdiction over such issues; (3) the Commissioner is seeking to modify this Court's Orders in Abbott XX and Abbott XXI, and no trial level court has jurisdiction to modify those Orders, so it would be futile to bring this request for relief to any lower court; (4) the Commissioner has the expertise and best opportunity to accomplish real results - reducing the disparity in educational outcomes in the SDA Districts; and (5) there is no reasonable likelihood that Legislative action can or would achieve the requested results.

It is universally accepted that having effective teachers is the most important in-school factor to closing the achievement gap for K-12 children. The best hope for achieving performance gains among the urban poor districts, therefore, is the elimination of impediments to attracting and maintaining the most effective teaching staff and of restrictions that deny districts the opportunity to utilize a full complement of tools to achieve a thorough and efficient education. Provisions such as the LIFO requirements of the Tenure Act, severe contractual limitations on the contact hours between teachers and students (e.g., in Camden only 4 ¾ hours per 7 hour school day, limiting

school periods to 50 minutes regardless of the subject needs), and so forth, elevate -- in a manner unique to teachers and enjoyed by no other profession or industry -- collective negotiation agreements and seniority rules over the education of children. These laws and labor agreements unconstitutionally stand in the way of providing a "thorough and efficient system of free public schools" to students in the SDA Districts. In their submission to the Court, Plaintiffs nowhere contest the fact (supported by nationally recognized experts and research studies) that these impediments exist. Actually, we would have expected the Plaintiffs to have joined in the Commissioner's application, given Plaintiffs' mission and their long-standing pursuit of a better education for the SDA District children. Instead, Plaintiffs seek to defer this matter to the Legislature, thus relegating thousands of students to additional years of a constitutionally inadequate education.

Furthermore, Plaintiffs distort the Commissioner's motion, claiming wrongly (as has also been mistakenly reported in the media) that the motion's purpose is to have this Court find the SFRA unconstitutional or deny funding to the SDA Districts. No such relief is requested. The primary relief requested is non-monetary, consistent with the many non-monetary measures ordered by this Court throughout the Abbott litigation. The Court has long acknowledged that money alone cannot drive success in the SDA Districts. As demonstrated in the Commissioner's motion

papers, despite the expenditure of nearly one hundred billion dollars in the SDA Districts, the performance disparity between students in the SDA Districts and their peers elsewhere remains. The only monetary relief requested is simply to maintain the current funding levels while the Executive and Legislature determine whether - in concert with the implementation of the reforms sought in the Commissioner's motion - funds can be spent more effectively and efficiently, an approach that this Court has previously adopted.

Plaintiffs virtually ignore the threshold jurisdictional question this Court posed and instead focus on the substantive merits of the Commissioner's motion. Undoubtedly, this is because sixteen of the twenty-one Abbott decisions were the result of motions to modify, clarify or in aid of litigants' rights, eight of them initiated by Plaintiffs. This Court repeatedly acknowledged its primacy in addressing the constitutional guarantee to the State's most vulnerable and disadvantaged children, so that they "will not be left out or left behind," Abbott V, recognizing that "[f]or a child growing up in the urban poverty of an Abbott district, that promise is the hope of the future." Abbott VIII. Therefore, this Court retained jurisdiction over issues concerning the constitutional mandate to provide a thorough and efficient system of public education for all children and should exercise that jurisdiction in the first instance on this application as well.

ARGUMENT

IT IS APPROPRIATE AND NECESSARY FOR THIS COURT TO ENTERTAIN IN THE FIRST INSTANCE THE COMMISSIONER'S MOTION TO MODIFY THE COURT'S ABBOTT XX AND ABBOTT XXI ORDERS

A. This Court has Repeatedly Acknowledged Its Primacy in Addressing the Guarantee of a Thorough and Efficient Education in the Abbott v. Burke Litigation

The proposed modifications to this Court's Orders in Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX") and Abbott v. Burke, 206 N.J. 332 (2011) ("Abbott XXI"), are essential to ensuring that the children residing in the SDA Districts receive a thorough and efficient education. The history of Abbott v. Burke makes clear that, often at Plaintiffs' request, this Court consistently recognized its role in determining whether SDA District students received their constitutionally required thorough and efficient education and, if not, in implementing the necessary remedies. This Court explained in Abbott XX:

> For several decades, this Court has superintended the ongoing litigation that carries the name Abbott v. Burke. The Court's one goal has been to ensure that the constitutional guarantee of a thorough and efficient system of public education becomes a reality for those students who live in municipalities where there are concentrations of poverty and crime. Every child should have the opportunity for an unhindered start in life - and opportunity to become a productive and contributing citizen in our society.

Abbott XX, supra, 199 N.J. at 174.

This Court previously acknowledged that the very relief sought by the Commissioner, i.e. the removal of statutory and

contractual provisions where they impede the constitutional guaranty of a thorough and efficient education, would be an appropriate Abbott remedy. Abbott v. Burke, 119 N.J. 287, 388 (1990) ("Abbott II"). In Abbott II, the State argued that the educational deficiencies in certain districts "are related to mismanagement … there has been incompetence, politics, and worse in the operation of some urban districts" - whereas Plaintiffs argued that funding deficiencies were the cause. Id. at 381. Although the Court did not accept the State's argument as a basis for denying a funding remedy, ibid., the Court nonetheless held:

> We find the evidence of the importance of competent management to the quality of education substantial. While the State has pointed to mismanagement as one of the causes of the failure of education in the poorer urban districts, it has not complained of the lack of statutory power to redress it. If there is any such lack and if it impairs the constitutional obligation, that matter would be judicially cognizable. Our power to require a thorough and efficient education is not limited to a money remedy.

Id. at 388 (emphasis added).

Here, the Commissioner has presented a substantial factual record demonstrating that SDA District children are not receiving a thorough and efficient education - notwithstanding the expenditure of $100 billion in State aid over the past thirty years. Without acknowledging the persistent and vast achievement gap demonstrated in the Commissioner's moving

papers, Plaintiffs shrug off the SDA District students' plight by pointing to marginal and isolated instances of educational improvement in certain SDA Districts.[1] Pb6. The Abbott litigation has always been about ensuring that a student's educational opportunities do not depend on his or her zip code and Plaintiffs completely ignore this key point.

The Commissioner has further demonstrated that the reasons for the constitutional deficiencies in the SDA Districts vary by district, but include exposure to sub-par teachers, insufficient teaching time, and other factors, such as the inability to implement proven literacy programs. The Commissioner has further identified statutory and contractual provisions that impede the SDA Districts' abilities to cure these deficiencies, such as the LIFO provision of the Tenure Act and certain CNA provisions. Plaintiffs improperly reduce these constitutional impediments to mere "policy matters" that they claim are "collateral," Pb16, ignoring the evidence presented in the Commissioner's moving papers - including certifications from two nationally recognized experts - showing the extreme and imminent

[1] For instance, Plaintiffs extol the graduation rate in Asbury Park which rose from 66% to 73% in 2016, but ignore the fact that this is 20 percentage points lower than in non-SDA Districts, where 92.9% of students graduated in the 2014/2015 school year. Certification of Peter Schulman at ¶ 4 (Exhibit A). While they argue that PARCC scores improved in the 2015/2016 school year, they ignore the achievement gaps among minorities and economically disadvantaged students that remain wide and "just staggering." Hannan Adely and Dave Sheingold, School Testing Shows Gains, The Record, 11/3/16.

damage these constitutional impediments are causing to the SDA District children. As this Court acknowledged in Abbott II, the removal of these statutory and contractual impediments when they impair the constitutional obligation to provide a thorough and efficient education is "judicially cognizable" and within this Court's "power to require a thorough and efficient education." Abbott II, supra, 119 N.J. at 388. Moreover, it is necessary to fulfill this Court's "one goal," Abbott XX, supra, 199 N.J. at 174, in the Abbott v. Burke litigation - to protect the SDA District children's constitutionally protected right to a thorough and efficient education. The relief sought is both necessary and appropriate for this Court to consider.

Indeed, considering this Court's history in the Abbott v. Burke cases, the primacy of the constitutional mandate and the negative effect that continued delay would have on another generation of SDA students, this Court is the only practical forum to address the pending issues. More than thirty years of Abbott v. Burke litigation has consistently demonstrated the Court's deep understanding of the urgency and extreme importance of ensuring that the children in the SDA Districts receive a constitutionally adequate education. On eight occasions, Plaintiffs themselves came directly to this Court advocating for the children in the SDA Districts to obtain a "thorough and efficient" education, acknowledging that this Court was the

proper forum to which to bring constitutional issues with respect to public education in the SDA Districts.

As early as 1990, the Court stressed that "[w]hatever the cause, these schools are failing abysmally, dramatically, and tragically," Abbott v. Burke, 119 N.J. 287, 302 (1990) ("Abbott II"), and that "this failure must be remedied." Id. at 322. In Abbott II, the Court initially directed the Legislature to amend or pass new legislation "so as to assure that poorer urban districts' education funding is substantially equal to that of property-rich districts." Id. at 385. The Court acknowledged that "[t]he Legislature may devise any remedy, including one that completely revamps the present system, in terms of funding, organization, and management, so long as it achieves a thorough and efficient education as defined herein for poorer urban districts." Id. at 387. In reaching this holding, this Court specifically stated that "[o]ur power to require a thorough and efficient education is not limited to a money remedy." Id. at 388.

Four years later, in Abbott III, the Court rejected the Legislature's first attempt to pass new legislation (Quality Education Act ("QEA")). Abbott v. Burke, 136 N.J. 444, 446 (1994) ("Abbott III"). Acknowledging "our power is not limited to a money remedy," the Court declined to exercise that broader power citing "the State's record, and its strong commitment to

public education" and gave the Legislature another chance to pass acceptable legislation. Ibid.

Three years later, in 1997, the Court rejected the Legislature's second attempt to comply with Abbott II and declared the Comprehensive Educational Improvement and Financing Act ("CEIFA") unconstitutional as applied to the SDA Districts. Abbott v. Burke, 149 N.J. 145, 153 (1997) ("Abbott IV"). The Court emphasized the "inescapable reality of a continuing profound constitutional deprivation that has penalized generations of children." Id. at 201. Explaining that while the "wait and see approach" of allowing the other branches to cure the educational shortcomings is "preferred in constitutional jurisprudence," the Court concluded that "[i]in light of the constitutional rights at stake, the persistence and depth of the constitutional deprivation, and in the absence of any real prospect for genuine educational improvement in the most needy districts, that approach is no longer an option." Ibid.

The Court directed parity funding, but also ordered that "the Commissioner use his statutory and regulatory authority to ensure that the increased funding that we have ordered today be put to optimal educational use … That injunction is both necessary and appropriate to assure the efficacy of monetary relief." Abbott IV, supra, 149 N.J. at 194. The Court recognized the limitations of the funding remedy and declared

"[o]nly comprehensive and systemic relief will bring about enduring reform." Id. at 202. Plaintiffs sought this relief, declaring to this Court: "Once again, Plaintiffs have no recourse except this Court, as the "last-resort guarantor" of their constitutional rights." Da1-3.

In Abbott V, the Court accepted and ordered almost all of the Commissioner's proposed substantive changes, which were essentially a complete overhaul of the educational system in the SDA Districts. Abbott v. Burke, 153 N.J. 480, 525-26 (1998) ("Abbott V"). The Abbott V Order was sweeping and detailed, and was not confined to funding issues. For example, schools were required to implement a reading program which was comprised of 90-minute periods, tutoring sessions, and regular assessments, id. at 494-95, to implement professional development programs for teachers and create various job positions, id. at 496 & 509-13, to reduce class size to 21 students, id. at 498, and to implement preschool and full day kindergarten. Id. at 508.

In issuing the Abbott V Order, the Court reiterated the goal of its remedies in the Abbott v. Burke cases:

> We must reach the point where it is possible to say with confidence that the most disadvantaged school children in the State will not be left out or left behind in the fulfillment of that constitutional promise. Success for all will come only when the roots of the educational system - the local schools and districts, the teachers, the administrators, the parents, and the children themselves - embrace the educational opportunity encompassed by these reforms.

Abbott V, supra, 153 N.J. at 528.

Over the next eleven years, in Abbott v. Burke, 163 N.J. 95 (2000) ("Abbott VI") through Abbott v. Burke, 196 N.J. 451 (2008) ("Abbott XVII"), the Court heard and resolved a dozen disputes concerning the implementation of the Abbott V Order. Notably, many of the Court's resulting Orders protected the SDA District students' rights to a thorough and efficient education by requiring substantive changes in the schools, similar to the relief sought by the Commissioner now. For instance, in Abbott VI, the Court required the Department of Education to amend its regulations to impose more stringent certification requirements for preschool teachers, Abbott VI, supra, 196 N.J. at 111, and to reduce the size of preschool classes. Id. at 112-13. The Court acted in Abbott VI in response to Plaintiffs' request, even after expressly divesting itself of jurisdiction. Plaintiffs then argued: "If the interests of the Abbott children are to 'remain prominent, paramount and fully protected,' id. 153 N.J. at 528, only the Court's intervention once again can accomplish that objective." Da4-6.

In Abbott VIII, Plaintiffs sought another substantive Order from this Court concerning the State's implementation of the preschool program. Abbott v. Burke, 170 N.J. 537, 540 (2002) ("Abbott VIII"). This Court acknowledged that

> only when no other remedy remains should the courts consider the exercise of day-to-day control over the Abbott reform effort. That said, we must never forget that a 'thorough and efficient system of free public schools' is the promise of participation in the American dream. For a child growing up in the urban poverty of an Abbott district, that promise is the hope of the future.

Id. at 562. The Court then ordered further substantive educational reforms, including directing the State to complete a final draft of substantive education standards for preschools by the following year, id. at 449, an order for the DOE to work with school districts to develop corrective action plans when preschool enrollment is lower than expected, id. at 552, and an order that the State provide sufficient funding so that properly certified teachers are employed in preschools. Id. at 555-56. In making this ruling, the Court stressed that its intervention was required to ensure the expeditious implementation of the educational reforms, in time for the following school year, id. at 543 & 562, because "[w]hen three- and four-year-old children are denied the opportunity to attend a quality preschool, the advantages of early exposure to that educational experience are irretrievably lost." Id. at 543.

In Abbott XX, this Court declared that the School Funding Reform Act ("SFRA") was constitutional, if fully funded, and relieved the State from the Court's prior remedial Orders set forth in Abbott V and its progeny. Abbott XX, supra, 199 N.J. at 175. The Court stated that, to replace its remedial orders

with the SFRA, the State had to "demonstrate that the concerns that compelled the Court to resort to judicially crafted remedies have been overcome." Id. at 148. "On the basis of the record before us, we conclude that the SFRA is a constitutionally adequate scheme." Id. at 175. However, the Court acknowledged that "[t]here is no guarantee that SFRA will achieve the results desired by all." Ibid. The Court also acknowledged that "a state funding formula's constitutionality is not an occurrence at a moment in time; it is a continuing obligation." Id. at 146.

In Abbott XXI, this Court confirmed that its ruling in Abbott XX was intended to continue the educational goals of its prior Abbott Orders - to ensure a thorough and efficient education for the SDA District children: "When the Court permitted the substitution of our prior orders, which remedied a constitutional violation with the State's alternative of SFRA funding, it did not alter the constitutional underpinnings to the replacement relief." Abbott XXI, supra, 206 N.J. at 360. With its remand, the Court made it clear that the core issue in the Abbott litigation was not whether the SDA Districts received a certain amount of money, but "whether school funding through SFRA, at current levels, can provide for the constitutionally mandated thorough and efficient education for New Jersey school children." Id. at 357.

Moreover, this Court did not divest itself of jurisdiction in either the Abbott XX or Abbott XXI cases, and it is therefore reasonable to conclude that this Court continues to have jurisdiction over the Abbott cases, to ensure a thorough and efficient education is provided within the SDA Districts. As described above, throughout the last thirty years, this Court issued numerous Orders modifying its prior Orders in response to motions either by the Commissioner or by Plaintiffs.

Thus, the Court's Abbott v. Burke decisions demonstrate that this Court has taken responsibility for determining whether SDA District children are receiving a thorough and efficient education and, if not, for ordering a remedy designed to cure the constitutional deprivation. This Court has always remained cognizant of the separation of powers doctrine, as illustrated in Abbott II and Abbott III, where it gave the Legislature two chances and seven years to devise a statute which would provide a thorough and efficient education to the SDA District students. However, as the Court acknowledged in Abbott IV, when children's constitutional rights to an adequate education are at stake, the "wait and see" approach is no longer appropriate and the Court must act substantively to protect these rights. Abbott IV, supra, 149 N.J. at 202.

Moreover, to the extent that Plaintiffs argue that the Commissioner's requested relief would itself violate the separation of powers doctrine, their substantive argument is

misplaced. Not only do Plaintiffs fail to address the jurisdictional question posed by this Court, they also ignore the established deference that the other branches of government must pay to the Commissioner's exercise of judgment and discretion. See, e.g., In re Proposed Quest Academy Charter School of Montclair Founders Group, 216 N.J. 370, 389 (2013) ("[i]n making predictive or judgmental determinations, … case law has recognized the value that administrative expertise can play in the rendering of a sound administrative determination"); See also Abbott IV, supra, 149 N.J. at 224. The Commissioner's request that the Court permit her, in limited and necessary circumstances, to circumvent certain contractual and statutory impediments to a thorough and efficient education for children in specific SDA Districts fits squarely within her role as Commissioner of Education and, consistent with separation of powers, is entitled to deference from the other branches.

As a result, it is wholly appropriate for this Court to hear the Commissioner's application and to grant the relief requested because the modification of the prior Abbott v. Burke orders is necessary to protect the SDA District children's constitutional rights to a thorough and efficient education.

B. Plaintiffs' Argument that the Commissioner's Relief "Must be Reserved for a Different Forum" Lacks Merit and Would only Harm the SDA District Children

Despite the focus in the Abbott litigation of ensuring that SDA District students receive a thorough and efficient

education, Plaintiffs urge this Court to ignore the serious and urgent problems identified in the Commissioner's moving papers and defer this issue to "a different forum," namely the Legislature. Pb16. Plaintiffs offer no basis for this suggestion, which would be an exercise in futility that would only result in years of delay and further harm to another generation of SDA District children.

Plaintiffs have previously complained of the futility of obtaining legislative assistance to provide for a thorough and efficient education for children in the SDA Districts. In Abbott XVIII, Plaintiffs conceded that a thorough and efficient education for SDA children "is unlikely to happen without this Court's immediate intervention" and this Court is the appropriate forum to insure that the children in SDA Districts receive a thorough and efficient education. Da7-9. Plaintiffs cannot in good faith challenge the jurisdiction of this Court to hear the pending motion. While the Commissioner is confident that the Executive and Legislative branches can work constructively towards devising a more efficient and effective funding approach, there is no reason to believe that referring this issue to the Legislature now, as advocated by Plaintiffs, will result in sufficiently expeditious relief. Instead, the status quo will persist and thousands of students will continue to languish for years and be deprived of their constitutionally mandated thorough and efficient education.

Plaintiffs also misconstrue this Court's dictum in Abbott XXI by ignoring the context, where the Court rejected the State's "collateral defense" that it should not be required to provide additional funding to SDA District schools because statutes such as the Tenure Act and certain CNA provisions were causing the provided funding to be spent inefficiently. Abbott XXI, supra, 206 N.J. at 366-67. The constitutional implications of the impediments as applied in the SDA Districts were not raised before this Court and therefore were not rejected. Ibid. Moreover, this Court's comments were made based on a record that was admittedly incomplete in regard to this topic due to the limited scope of the remand. Id. at 383. The Special Master, Judge Doyne, specifically commented that he was not asked to examine "the wisdom of 'last in, first out' in the reduction of teaching positions," ibid., and noted that various issues arose during the hearing, including "the viability and advisability of tenure, how future contracts with teachers should best be addressed, required time to teach on a daily basis …" and that while these issues "are all worthy of review and consideration … [they] … are beyond the narrow ambit of this remand." Id. at 466.

C. Plaintiffs Mischaracterize the Commissioner's Requested Relief with Respect to Funding and Improperly Argue the Substantive Merits While Ignoring the Court's Question

Much of Plaintiffs' brief argues against a blatantly mischaracterized version of the Commissioner's requested relief with respect to funding. Plaintiffs inaccurately claim the Commissioner is seeking "to simply abandon [her] constitutional obligations to Plaintiff school children." Pb13. To the contrary, the primary goal of the Commissioner's motion is to give her the substantive tools that she needs to ensure that she can provide a thorough and efficient education to the SDA District children.

With regard to funding, the Commissioner is simply asking the Court to maintain the status quo, as this Court has done previously,[2] and to keep funding at the levels approved by the Legislature. Current state education funding provides almost 90% of SFRA formula funding, including billions of dollars to SDA Districts. For FY2017 alone, the State provided more than $5 billion just to the thirty-one SDA Districts. Certification of Kevin Dehmer at Exhibit A. In addition, since 2001, per-pupil spending in the SDA Districts has steadily increased and, as of the 2014/2015 school year, SDA-Districts were spending

[2] Abbott v. Burke, 172 N.J. 294, 297-98 (2002) ("Abbott IX") (allowing one-year relaxation of certain Abbott IV and Abbott V requirements); Abbott v. Burke, 177 N.J. 596, 598 (2003) ("Abbott XI") (relaxing funding requirements for 2003/2004 school year); Abbott v. Burke, 187 N.J. 191, 195 (2006) ("Abbott XV") (directing Abbott Districts to resubmit budgets consistent with revenue sources in the Governor's proposed budget).

thousands of dollars more per pupil than non-SDA Districts. Id. at Exhibit B. Further, the level of aid provided by the State has remained unchallenged by Plaintiffs since Abbott XXI. The Commissioner is simply seeking to continue this course until a better system is devised that can achieve the constitutional mandate.

CONCLUSION

For the foregoing reasons, it is essential that the Supreme Court hear this matter in the first instance and modify the Abbott XX and Abbott XXI Orders so as to enable the SDA District students to receive a thorough and efficient education.

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APPENDIX

RAYMOND ARTHUR ABBOTT, ET AL., Plaintiffs-Movants v. FRED G. BURKE, ET AL., Defendants-Respondents	SUPREME COURT OF NEW JERSEY CIVIL ACTION DOCKET NO:

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION IN AID TO LITIGANTS' RIGHTS

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INTRODUCTION

Plaintiffs return to this Court profoundly disappointed. Following this Court's explicit decree in Abbott v. Burke, 136 N.J. 444 (1994) ("Abbott III"), hope was high that the legislative and executive branches would respond by fully and finally vindicating the rights of disadvantaged children to a thorough and efficient education. Plaintiffs worked tirelessly with these branches to try to realize this hope.

It is now crystal clear that Plaintiffs' hope was misplaced. Once again, Plaintiffs have no recourse except this Court, as the "last-resort guarantor" of their constitutional rights. The "Comprehensive Educational Improvement and Financing Act of 1996" ("CEIFA" or "the Act"), passed by the Legislature on December 19, 1996, and signed by the Governor the next day, so patently fails to address the remedial requirements, first established in Abbott v. Burke, 119 N.J. 287 (1990) ("Abbott II"), and then reaffirmed in Abbott III, that this Court is left with no choice but to act quickly and decisively if Plaintiffs' rights are to be met by the 1997-98 school year, the firm deadline fixed in Abbott III.

Plaintiffs recognize that the judicial decision and remedial order sought on this Motion, while well within this Court's authority, are not — and should not be — routinely granted. Yet, as has occurred before in the state's 25 years of school finance litigation, we face again a moment of constitutional truth. This latest legislative venture will not move us forward into a new era of constitutional compliance, as the State predicts. In fact, CEIFA will not even maintain the current, unconstitutional level of educational disparity endured by the state's poorest and least advantaged students. It will instead

CONCLUSION

Plaintiffs return again to this Court for vindication of their rights under the Education Clause, after twenty-three years of unconstitutional responses by the State. Throughout this ordeal, children in poor urban schools still do not have educational opportunity available to their more affluent peers, as mandated by this Court, nor will they unless this Court intervenes once again. In seeking the immediate judicial intervention, which includes a determination that CEIFA is unconstitutional as applied to poor urban districts, along with entry of a the proposed remedial Order to assure immediate compliance, Plaintiffs cannot state their position more clearly or succinctly than Chief Justice Hughes' forceful pronouncement in Robinson IV, 69 N.J. at 146-47:

> The need for immediate and affirmative action at this juncture is apparent, when one considers the confrontation existing between legislative action...and constitutional rights.

Respectfully submitted,

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Dated: 6/6/97

RAYMOND ARTHUR ABBOTT, ET AL., Plaintiffs, vs. FRED G. BURKE, ET AL., Defendants.	SUPREME COURT OF NEW JERSEY CIVIL ACTION Docket No.

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The State's actions during this past year have placed the Court at a constitutional crossroads. If the interests of the Abbott children are to "remain prominent, paramount, and fully protected," id, 153 N.J. at 528, only the Court's intervention once again can accomplish that objective. As the last resort guarantor of constitutional rights, this Court must act, and act now, not only to protect the Abbott children but also to maintain the integrity of its own processes.

CONCLUSION

For the reasons stated above, plaintiffs respectfully request that the Court grant their Motion to compel the State's compliance with its commitments and the Court's directives on preschool education, and enter an appropriate order, as requested by plaintiffs,' award plaintiffs counsel fees, and provide such other relief as may be necessary to ensure prompt and vigorous enforcement of Abbott V remedial measures.

Respectfully submitted,
EDUCATION LAW CENTER

By: _____
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Attorney for Plaintiffs

Dated: 7/30/99

Plaintiffs' Brief, dated April 12, 2007

RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs-Movants,

vs.

FRED G. BURKE, ET AL.,

Defendants-Respondents

SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

CIVIL ACTION

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION IN AID OF LITIGANTS' RIGHTS

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On the Brief:

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Despite these repeated requests and detailed reports, the Legislature has failed to take action to appropriate or authorize the necessary funding. While the funding issue remains unresolved, Plaintiffs are forced to remain in dilapidated, overcrowded, and constitutionally inadequate schools, where their health, safety, and welfare are compromised daily. An Abbott student starting school in 2000 in a building slated for major repairs will spend her school years in an unsafe or unhealthy building if those repairs are not made before next year. This is unlikely to happen without this Court's immediate intervention.

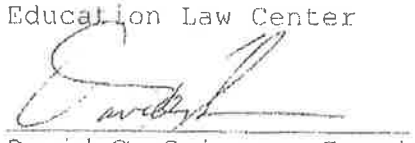
In 1998 and 2000, this Court took the first steps in remedying the State's constitutional violation by requiring the Commissioner to provide and secure from the Legislature funds to undertake necessary school construction projects in the Abbott districts, including health and safety repairs. As this Court recognized in its December 2005 Order, Abbott XIV, 185 N.J. at 613, much work has been accomplished, but many more projects remain to be completed in order to ensure full constitutional compliance. Now there is no alternative for the Plaintiffs other than to request that the Court take the next step and compel the State and Legislature to provide additional funding before another generation of Abbott children is forced to endure their school years in facilities that fail to meet this Court's constitutional mandates for a thorough and efficient education.

CONCLUSION

For the reasons stated above, the State Defendants are now in clear violation of this Court's prior Abbott school facilities mandates, and its constitutional obligation to ensure children in the Abbott districts attend school in facilities that are safe, not overcrowded and educationally adequate. Plaintiffs respectfully request the Court grant their Motion to compel the State and Legislature's compliance with these facilities mandates and constitutional requirements by entering an appropriate order, as requested by Plaintiffs, and provide such other relief as may be appropriate.

Respectfully submitted,

Education Law Center

By: 

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Dated: April 12, 2007