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Attorneys for Montgomery Township
Board of Education
Our File No.: 120

RAYMOND ARTHUR ABBOTT, et al.,	:	SUPREME COURT OF NEW JERSEY
Plaintiffs,	:	DOCKET NO.: 42,170
v.	:	CIVIL ACTION
FRED G. BURKE, et al.,	:	
Defendants.	:	CERTIFICATION OF
	:	STEPHEN R. FOGARTY, ESQ.

I, STEPHEN R. FOGARTY, ESQ., being of full age, upon oath depose and say:

1. I am an attorney with Fogarty and Hara, Esqs., attorneys for the Montgomery Township Board of Education (hereinafter referred to as the "Board"). I make this Certification in support of the Board's motion for leave to appear as amicus curiae in the above-captioned proceeding, pursuant to Rule 1:13-9. The Board's appearance in this matter

will assist the Court in reaching a resolution of the issues presented and will not prejudice any party.

2. On May 28, 2009, this Court issued its decision in Abbott v. Burke, 199 N.J. 140, 145-46 (2009) (Abbott XX), in which the Court held that the school funding formula contained in the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -63, satisfies the requirements of the thorough and efficient education clause of the New Jersey Constitution. However, this Court premised its holding on two "caveats": (1) that the State would continue to provide school funding aid for the 2008-2009, 2009-2010, and 2010-2011 school years at the levels required by the SFRA's funding formula, and (2) that the State would conduct a mandated review of the formula after three years of implementation and make any necessary adjustments. Id. at 146. This Court stated: "With that understanding, SFRA may be implemented as it was designed, as a state-wide unitary system of education funding." Id. at 147.

3. As this Court explained in Abbott XX, the core of the SFRA's funding formula is the adequacy budget, which is based upon a community's wealth and ability to provide funding through local resources. Id. at 153. The adequacy budget is composed of four categories of aid: 1) a base aid amount for elementary, middle, and high school students, 2) additional weights for at-risk and limited English proficiency students, 3) two-thirds of

costs for special education, and 4) all costs for speech only special education. Ibid. A district's local fair share is the amount the district is required to contribute to support its adequacy budget. Id. at 155.

4. The Montgomery Township School District (hereinafter referred to as the "District") is a kindergarten through 12th grade school district in Somerset County, New Jersey. Based on various socioeconomic factors, the New Jersey Department of Education (hereinafter referred to as "DOE") classified the District under District Factor Group (DFG) "J," denoting that the District is among the state's most affluent school districts.

5. Despite its classification under DFG J, the District has long been provided with state aid levels insufficient to meet the requirements of the SFRA funding formula. The Certification of the District's business administrator, Thomas M. Venanzi, sets forth the amounts of state aid received by the District and is enclosed herewith.

6. For the 2009-2010 school year, the DOE was to provide the District with \$5,320,850 in state aid. As a result, the District's local taxpayers would pay over their local fair share by \$3,645,409, as calculated by the SFRA formula. At the same time, the District spent at a level that was \$5,687,111 below

its adequacy budget, as defined by the formula, for the 2009-2010 school year.

7. On March 16, 2010, the Governor announced state aid levels for the 2010-2011 school year, and, on March 19, 2010, the DOE issued notifications of state aid levels to individual districts to assist them in preparing and adopting their 2010-2011 budgets. According to the state aid levels issued by the DOE, the District will receive \$1,871,805 in state aid for the 2010-2011 school year, a reduction from the previous year's state aid in the amount of \$3,449,045 or approximately sixty-five percent (65%), and a per pupil reduction of approximately \$650.

8. Under the District's original budget proposal, the DOE's proposed state aid for the 2010-2011 school year, would have placed the District over its local fair share by approximately \$3,335,212 and under its adequacy budget by approximately \$139,377. However, these figures have changed to the further detriment of the District, because its proposed budget was defeated in the April 2010 election. As a result of the Commissioner's further reductions in the tax levy for the 2010-2011 school year, the District will pay over its local fair share by approximately \$1,255,414 and spend under its adequacy budget by approximately \$2,219,175. Thus, the District continues to receive state aid at levels that overburden its

taxpayers and are insufficient to meet the adequacy levels established under the SFRA formula.

9. Further compounding the District's school funding problems, on February 11, 2010, the Governor signed Executive Order 14 and thereby impounded \$1,888,238 in 2009-2010 state aid, a figure representing the amount of anticipated surplus funds which the District had knowingly built up through a purchasing freeze and set aside for future budgetary cycles. As such, the District will be forced to plug a significant budgetary gap for the 2011-2012 school year, but it will be impossible to fill this gap given the massive reduction in state aid for 2010-2011.

10. In response to the impoundment of state aid, the District conducted a comparative analysis which showed that the it was one of only fourteen districts across the state that was 1) spending under its adequacy budget by more than ten percent (10%), 2) paying over its local fair share, and 3) had ten percent (10%) or more of its 2009-2010 state aid impounded. In fact, the District had approximately thirty-five and one-half percent (35.5%) of its state aid withheld for 2009-2010.

11. On or about June 8, 2010, David G. Sciarra, Esq., of the Education Law Center (hereinafter referred to as the "ELC") filed a Notice of Motion in Aid of Litigants' Rights (hereinafter referred to as the "ELC's motion") on behalf of the

Abbott Plaintiffs. The ELC's motion seeks to enjoin the State Defendants 1) from providing school funding aid to districts for the 2010-2011 school year in an amount less than the aid levels required by the provisions of the SFRA, as mandated by Abbott XX, and 2) from conducting the three-year review of the SFRA formula until such time as the State can determine that the formula has been fully implemented as intended, designed, and enacted.

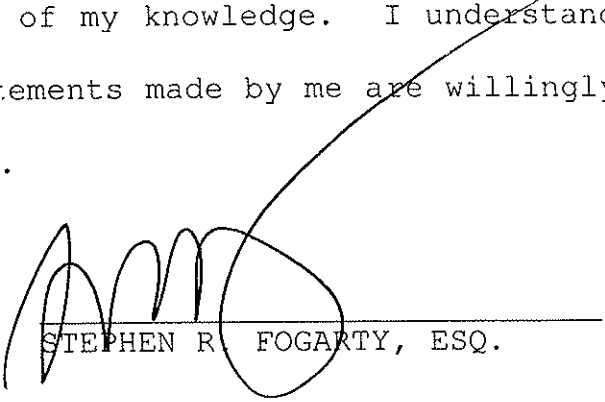
12. The primary issue raised through the ELC's motion is whether the State's failure to provide school funding aid at the levels required by the SFRA's funding formula for the 2010-2011 school year violates this Court's explicit mandate in Abbott XX. Since the levels of state aid proposed for 2010-2011 by the DOE differ significantly from the amounts required by the funding formula for nearly every school district statewide, the ELC's motion presents an issue of substantial public interest.

13. In its brief and the certifications submitted in support thereof, the ELC focuses primarily on the effect of the DOE's proposed state aid reductions on high needs districts, including Abbott Districts. The DOE's 2010-2011 school funding levels, however, affect all school districts statewide. The District's socioeconomic status as a DFG J district will provide the Court with a different perspective on the effects of the reduction in 2010-2011 state school funding aid.

14. The Board also has a special interest in supporting the ELC's motion as amicus curiae, because these issues will impact the District to a greater degree than other school districts across the state, given the District's unique situation as a J-classified district that has fallen below its adequacy budget while simultaneously being forced to overburden its taxpayers at a level above their local fair share, as calculated by the funding formula.

15. For the reasons stated above, the District's participation as amicus curiae will assist the Court in the resolution of the issues raised by the ELC's motion. No party will be unduly prejudiced by the District's participation.

I hereby certify that the foregoing statements made by me are true and correct to the best of my knowledge. I understand that if any of the foregoing statements made by me are willingly false, I am subject to punishment.



STEPHEN R. FOGARTY, ESQ.

DATED: July 2, 2010