

**RAYMOND ARTHUR ABBOTT, et al.**  
**Plaintiffs,**

v.

**FRED G. BURKE, et al.,**  
**Defendants.**

SUPREME COURT OF NEW JERSEY

DOCKET NO. 42,170

CIVIL ACTION

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**BRIEF OF [PROPOSED] *AMICUS CURIAE*, THE NEW JERSEY  
URBAN MAYORS' ASSOCIATION**

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## STATEMENT OF INTEREST

The New Jersey Urban Mayors' Association is a group composed of twenty-six mayors representing urban municipalities throughout New Jersey. The Association works to address a host of policy issues that present unique challenges for urban communities and the Association has been particularly active on issues of education equity. To that end, members of the Association have testified before the New Jersey Board of Education on matters related to *Abbott* implementation, and the Association has hosted conferences to address implementation challenges related to school construction and early childhood education participation – with the goal of enhancing effective implementation and facilitating collaboration with the Department of Education.

Nineteen members of the Association are mayors of municipalities that are designated “Abbott districts,” including the mayors of: Asbury Park (Mayor Kevin Sanders); Bridgeton (Mayor James Begley); Camden (Mayor Gwendolyn Faison); East Orange (Mayor Robert L. Bowser); Elizabeth (Mayor J. Christian Bollwage)<sup>1</sup>; Hoboken (Mayor David Roberts); Irvington (Mayor Wayne Smith); Jersey City (Mayor Jerramiah Healy); Millville (Mayor James Quinn); Newark (Mayor Cory A. Booker); New Brunswick (Mayor James Cahill); Neptune (Mayor Randy Bishop); Orange (Mayor Mims Hackett, Jr.); Passaic (Mayor Samuel Rivera); Paterson (Mayor Jose Torres); Perth Amboy (Mayor Joseph Vas); Plainfield (Mayor Sharon Robinson-Briggs); Pleasantville (Mayor Ralph Peterson); and Trenton (Mayor Douglas H. Palmer).

These nineteen “Abbott mayors” have a significant and unique interest in the outcome of this matter, since the new funding formula at issue (“SFRA”) here will cause

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<sup>1</sup> The Mayor of Elizabeth is not participating in or endorsing this brief.

significant budget shortfalls in the coming years – as demonstrated in Plaintiffs’ principal brief and supporting certifications. These shortfalls will detrimentally impact the Abbott districts’ ability to provide a thorough and efficient education to their students, unless they are somehow able to increase local education funding to fill the gaps.

Yet, *Abbott v. Burke*, 119 N.J. 287, 355-56 (1990) (“*Abbott II*”) explicitly instructs that the State may not implement a funding formula that depends on the ability of poorer urban municipalities to themselves raise more money in order to provide a thorough and efficient education to their students. The *Abbott II* holding was based on this Court’s recognition that New Jersey’s poorer urban municipalities suffer from “municipal overburden” – a socio-economic phenomenon in which a municipality has relatively low property values against which the local tax is assessed, yet must spend disproportionately high portions of its tax revenue on essential municipal services such as police, fire, social services to address its residents’ greater level of need because of problems such as high poverty, unemployment, crime rates. As amicus, the Association would provide this Court with factual information not otherwise provided by the parties, and which demonstrates that today – as in 1990 – the Abbott districts continue to experience the socio-economic conditions that result in municipal overburden.

For example, the Association will provide the Court with information demonstrating that the Abbott districts take in disproportionately low tax revenues, due to low property values, prevalence of tax abatements, and high rates of foreclosure. Likewise, the Association will demonstrate that the districts continue to spend disproportionately more of their tax revenues on essential municipal services and therefore cannot divert substantially more property tax revenue to education. Moreover,

the Association will also provide this Court with information that demonstrates why the Abbott districts are compelled to spend so much more on municipal services, *i.e.*, because of high poverty rates, high crime rates, and high unemployment rates that plague their communities.. Finally, the Association will demonstrate that it would be unjust to require Abbott districts to raise taxes to close the anticipated budget shortfalls created by SFRA, since the tax burden already falls disproportionately on the low-income residents of those districts, and because doing so would encourage residents and business to move elsewhere – thus further shrinking the tax base and causing the Abbott districts to suffer further economic decline.

Because of the conditions described, the Association will argue that the State has presented the Abbott districts with a “Hobson’s Choice”: either raise local property taxes to increase school funding (thus increasing the tax burden of a low-income group that already pays disproportionately high property taxes and encouraging individuals and businesses to leave these communities); divert more of their existing tax revenues to fund education (and thus spend less on other essential municipal services); or allow budget shortfalls to grow (and thus allow the resulting funding disparities to deprive students of a thorough and efficient education). Of course, this choice is not only untenable – constructing a funding formula that relies on such a choice contravenes the essential holding of *Abbott II*. For this reason, and those set forth in the principal brief, the New Jersey Urban Mayors’ Association seeks to participate as amicus to urge this Court to deny the State’s motion.



## PRELIMINARY STATEMENT

As Plaintiff's principal brief and accompanying certifications make clear, the School Funding Reform Act of 2008, P.L. 2007, c. 260 (January 13, 2008) ("SFRA") will result in significant budget shortfalls for the Abbott districts, with projections showing that over the next three years the gap in regular education funding between Abbott districts and their more affluent counterparts will widen drastically.<sup>2</sup> By implementing a funding formula that will require the Abbott districts to raise additional local revenue to close the gap, the State has ignored the stark reality that poorer urban municipalities cannot meaningfully increase their education spending because they continue to take in disproportionately less tax revenue (due to lower property values, large numbers of tax abatements, and skyrocketing foreclosure rates), and spend disproportionately more on essential municipal services (due to higher crime, poverty, and unemployment rates) than the rest of the State. The existence of these socio-economic conditions in poorer urban areas – which leads to a phenomenon known as "municipal overburden" – was central to this Court's holding in *Abbott v. Burke*, 119 N.J. 287 , 386, 388 (1990) ("*Abbott II*"), that New Jersey's ability to provide a thorough and efficient education to all children may not turn on a poorer district's ability to raise more local money for education.

As discussed in detail below, the New Jersey Urban Mayors' Association urges this Court to recognize that the conditions which contribute to municipal overburden continue to plague the Abbott districts, and that the State's failure to consider this reality requires that its motion be denied and SFRA be declared unconstitutional.

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<sup>2</sup> Plaintiff's Brief, Cert. of Melvin L. Wyns, *passim*; Cert. of Margaret E. Goertz, 17-21.

## ARGUMENT

### I. **ABBOTT DISTRICTS CONTINUE TO EXPERIENCE CONDITIONS THAT CONTRIBUTE TO MUNICIPAL OVERBURDEN: THEY COLLECT LESS TAX REVENUE, AND MUST SPEND DISPROPORTIONATELY MORE ON ESSENTIAL SERVICES, RENDERING THEM INCAPABLE OF MEANINGFULLY INCREASING LOCAL EDUCATION SPENDING.**

#### A. **Municipal Overburden Was A Crucial Component Of This Court's Original *Abbott II* Decision, Including Its Remedial Decree.**

In *Abbott II, supra* at 355, this Court recognized that municipal overburden is a common characteristic in poorer urban municipalities, and is created by disproportionately low property values against which the local tax is assessed, versus a high level of government need for essential municipal services such as police, fire, social services, and sanitation. *Accord Robinson v. Cahill*, 69 N.J. 133, 169-70 (1975) (recognizing that for urban districts, increasing local financing of their public school systems was infeasible due to conditions that overburdened their resources). Because tax rates in these districts are, as a result of this imbalance, already “well above the average,” this Court recognized that raising property taxes would be “unthinkable.” *Abbott II, supra* at 355-57. The Court also recognized the self-perpetuating nature of the municipal overburden trap: affected areas cannot simply tax themselves out of trouble because “further taxation may actually decrease tax revenues by diminishing total property values” and causing businesses to relocate – thereby further shrinking the tax base and perpetuating the problem. *Id.* at 356. In light of the Court’s conclusion that municipal overburden effectively prevents districts from raising substantially more money for education, it held that any constitutional funding formula must “consider the problem of municipal overburden in these poorer urban districts and, as such, “cannot depend on

how much a poorer urban school district is willing to tax.” *Id.* at 386; *accord* at 388 (reiterating this principle and directing that “any new funding plan will consider the problem of municipal overburden in these poorer urban districts”).

Despite the State’s suggestions to the contrary, almost twenty years after *Abbott II*, the poorer urban districts designated “Abbott districts” continue to suffer from the socio-economic conditions that result in municipal overburden: tax bases remain anemic because of low property values, widespread tax abatements, and high foreclosure rates; yet spending on essential municipal services remains disproportionately high due to such factors as high rates of poverty, unemployment and crime. The result – then as now – is that the district must impose such high tax rates that any substantial increases are “unthinkable.” In short, this Court’s conclusion eighteen years ago that “municipal overburden . . . effectively prevents districts from raising substantially more money for education,” *id.* at 357, remains an apt characterization of the Abbott districts today.

**B. Abbott Districts Take In Disproportionately Less Property Tax Revenue And, Thus, Have Less Money Available For Education.**

Because their tax base is so limited, poor urban municipalities simply cannot raise sufficient revenue to cover all necessary services without imposing crushing tax burdens on their residents. Low property values, large tax abatements, and rising foreclosure rates all contribute to the crumbling of the tax base in the Abbott districts.

1. Abbott Districts Collect Less Tax Revenue Because They Continue To Have Lower Property Values.

The *Abbott II* Court identified low property values as a key characteristic of municipal overburden. *Id.* at 355. As in 1990, the picture remains bleak for property values in the Abbott districts: as of 2005, 26 out of the 31 Abbott districts were ranked in

the bottom 20% of New Jersey's municipalities, in terms of equalized property value per capita, with 12 of these districts (Trenton, Camden, Paterson, Orange, East Orange, West New York, Salem, Passaic, Irvington, Union City, Bridgeton and Gloucester) ranked among the bottom 5% in the State.<sup>3</sup> Of course, the lower a municipality's property value, the smaller its tax base – and so the higher its taxes must be in order to raise the same amount of revenue its wealthier counterparts can collect at lower rates. The continued prevalence of depressed property values in the Abbott districts begins to explain why poorer urban municipalities have tax rates high that they are “effectively prevent[ed] . . . from raising substantially more money for education,” *Abbott II, supra*, at 357 – which is precisely what SFRA would require them to do.

2. Abbott Districts Collect Less Property Tax Revenue Because They Offer Large Numbers of Property Tax Abatements.

Social scientists now recognize that a more recent phenomenon compounding the problem of municipal overburden in New Jersey's poorer urban municipalities is the significant concentrations of tax-abated properties, which decrease the amount of taxable property, thereby decreasing the amount of property tax revenue municipalities can collect.<sup>4</sup> Despite their drawbacks, however, abatements have been encouraged by the New Jersey Legislature because they purportedly facilitate urban revitalization by luring

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<sup>3</sup> See David Listokin and Matthew Camp, Local Public Finance Database (Rutgers Center for Urban Policy Research 2007), at <http://policy.rutgers.edu/reports/cupr/LPFDB%20v23v.xls>; see also Steve Manas, Rutgers Database Expands Knowledge of Local Public Finance, Rutgers Focus, Feb. 21, 2007, at <http://news.rutgers.edu/focus/issue.2007-02-20.0978858197/article.2007-02-21.4984375873> (noting data compiled from New Jersey Department of Community Affairs, Division of Local Government Services; the New Jersey Department of Education; and U.S. Census sources).

<sup>4</sup> See Henry Coleman, James W. Hughes, and David Kehler, *Fiscal Responsibility*, The Fund For New Jersey Issue Report, 2001, at 22 (hereafter “*Fiscal Responsibility*”).

developers with tax incentives.<sup>5</sup> Because of the perceived importance of abatements to revitalization, New Jersey's poorer cities have seen an increase in exempted properties despite an overall statewide trend of reducing the percentage of tax exempt properties.<sup>6</sup> Of the 566 municipalities in New Jersey, nine Abbott districts were ranked in the bottom 25 municipalities when measuring the percentage of taxable property – those districts being Camden, New Brunswick, Trenton, Bridgeton, Elizabeth, Jersey City, Newark, West New York and East Orange.<sup>7</sup> In these nine Abbott districts, the percentage of real property that is not subject to property taxes as a result of abatements ranges from 35% of all property in East Orange to a shocking 55% of all property in Camden. By contrast, the State-wide average for non-taxable property is 13%, as of the last census.<sup>8</sup>

If SFRA is implemented, the Abbott districts will be faced with an untenable choice: either reduce the number of abatements – and thus lose the contribution to urban revitalization they bring – in order to increase local revenues to help fund schools, or continue to provide large numbers of abatements, to the detriment of school funding and the quality of education provided their students. This untenable choice illustrates the injustice of SFRA: it forces struggling municipalities to choose between the future of

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<sup>5</sup> See N.J. Stat. § 54:4-3:139(j)-(k) (tax abatements will “remov[e] the fear of overly high tax burdens” and thereby “encourag[e] both the provision of affordable housing and general urban redevelopment”); Prof. Donald A. Krueckeberg, *Free New Jersey: The Burden of Property Tax Exemptions* (New Jersey Policy Perspective, Dec. 2004), at [http://www.njpp.org/rpt\\_freenj.html](http://www.njpp.org/rpt_freenj.html) (hereinafter “Krueckeberg, *Free New Jersey*”).

<sup>6</sup> Krueckeberg, *Free New Jersey*.

<sup>7</sup> See Newark Star-Ledger, *New Jersey By The Numbers*, at <http://www.nj.com/news/bythenumbers/> (hereinafter “*New Jersey By The Numbers*”) (to reach relevant query page, click “Property Taxes,” then “Rank Towns,” then “Percent of land that is taxable”). This data was compiled by the Star-Ledger from government sources, including the state Division of Local Government Services. See *New Jersey By The Numbers* (click “Property Taxes,” then “Rank Towns,” then “About this data”). All data from this source reflects 2007 data, the most recent available from the Star-Ledger compilation.

<sup>8</sup> See Krueckeberg, *Free New Jersey*, tbl. 1.

their communities and the future of their children. As *Abbott II* held, imposing such a choice is unconstitutional.

3. Abbott Districts Collect Less Property Tax Revenue Because They Have Disproportionately High Foreclosure Rates.

As the Court is no doubt aware, New Jersey is experiencing the impact of the national subprime mortgage crisis. That issue is relevant here because the corresponding high rates of foreclosures have depressed poorer urban municipalities' property base and, thus, decreased their tax revenues – leaving those municipalities with far less revenue available with which to fund their schools.<sup>9</sup>

This link between foreclosures and the decline in tax revenues has been keenly felt in many of the Abbott districts, where foreclosure rates are significantly higher than the State average. In 2005-2006, for example, New Jersey experienced a foreclosure rate of 6.95 foreclosures per every 1,000 owner-occupied households.<sup>10</sup> By contrast, in Camden, the 2005-2006 rate was more than four times that number, at 26.81 foreclosures per every 1,000 owner-occupied households, while Newark's foreclosure rate during the same time period was almost five times the State-wide average, at a staggering 34.69

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<sup>9</sup> See generally Joshua Zumbrun, *A Subprime Schooling*, Forbes.com, Apr. 2, 2008, available at [www.forbes.com](http://www.forbes.com) (Mayor Douglas Palmer of Trenton, President of U.S. Conference of Mayors, cautioning that falling revenues caused by high foreclosure rates will negatively affect municipalities' ability to fund their schools).

<sup>10</sup> This data was provided by The Reinvestment Fund, a group nationally recognized for its research on foreclosure rates in New Jersey. The State-wide data will be released in a forthcoming report that will be available to the public at [www.trfund.com](http://www.trfund.com). The Reinvestment Fund relies upon data provided by "Realty Trac," a service widely considered the most comprehensive public database tracking foreclosure rates nationwide (as discussed in n.12, *infra*, the United States Congress relies upon Realty Trac data). Realty Trac issues quarterly and annual reports on foreclosure rates, broken down by State, available at [www.realtytrac.com](http://www.realtytrac.com).

foreclosures per every 1,000 owner-occupied households.<sup>11</sup> As a result of these astounding foreclosure rates, both Camden and Newark appear on the list of the fifty metropolitan areas with the highest foreclosure rates in 2006, nationwide.<sup>12</sup>

Local data reveals that other Abbott districts have also been disproportionately harmed by the foreclosure crisis. For example, while the 2005-2006 foreclosure rate in Union County was just under 11 foreclosures per every 1,000 owner-occupied units, Plainfield saw more than three times as many forecloses, with 36.34 foreclosures per 1,000 owner-occupied units. Elizabeth fared only slightly better, with a rate of 32.56 foreclosures per 1,000 owner-occupied units. Paterson has also experienced disproportionately high foreclosure rates: the 2005-2006 Passaic County average was just over eight foreclosures per 1,000 owner-occupied units, while Paterson's foreclosure rate was more than three times higher, with 25.5 foreclosures per 1,000 owner-occupied units.<sup>13</sup> Similarly, in Essex County, the foreclosure rate in 2005-2006 was just under 13.5 foreclosures per every 1,000 owner-occupied unit, while the foreclosure rates in Irvington, Orange, and East Orange were each more than double that number, at 32.4, 31.8, and 31.52 foreclosures in every 1,000 owner-occupied units, respectively.<sup>14</sup> A recent ranking of the ten municipalities with the highest 2005-2006 foreclosure rates in

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<sup>11</sup> See The Reinvestment Fund, *Newark Foreclosure Study, Preliminary Findings*, Dec. 5, 2005, at 5 (unpublished report, final report forthcoming, on file with Seton Hall Law School, Center for Social Justice) (hereafter "*Newark Foreclosure Study*").

<sup>12</sup> See Joint Economic Committee of the United States Congress, *Sheltering Neighborhoods From The Subprime Foreclosure Storm*, Apr. 11, 2007, at 19 (App. A "Metropolitan Areas With Highest Foreclosures"), available at [http://jec.senate.gov/index.cfm?FuseAction=Reports.Reports&ContentRecord\\_id=C780213F-7E9C-9AF9-761D-FD7E597B5CFE](http://jec.senate.gov/index.cfm?FuseAction=Reports.Reports&ContentRecord_id=C780213F-7E9C-9AF9-761D-FD7E597B5CFE) (click on "Subprime Foreclosure Storm") (hereafter "*Subprime Foreclosure Storm*") (relying on data from Realty Trac Foreclosure database).

<sup>13</sup> *Id.*

<sup>14</sup> See *Newark Foreclosure Study*, *supra*, at 4-5.

New Jersey revealed that eight of the ten are Abbott districts: Plainfield, Newark, Irvington, Orange, East Orange, Camden, Paterson, and Elizabeth.<sup>15</sup>

The social science community and federal government alike have begun to recognize massive declines in property values caused by the foreclosure crisis – an effect known as “spillover” – and the corresponding decline in the municipal tax base.<sup>16</sup> For example, a report released by the Joint Economic Committee of the United States Congress concluded that the high incidence of foreclosure in New Jersey will result in a State-wide cumulative loss of property value of more than \$5.9 billion, with a corresponding estimated loss of local property taxes totaling over \$92.9 million.<sup>17</sup> Based on the foreclosure data discussed above, it would seem obvious that the loss in property taxes would be disproportionately felt by New Jersey’s poorer urban areas, where foreclosures occur at double and even triple county-wide averages.

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<sup>15</sup> *Id.*

<sup>16</sup> See Keith Ernst, Li Wei, and Ellen Schloemer, *Subprime Spillover*, Center for Responsible Lending, Nov. 13, 2007, available at [www.responsiblelending.org/issues/mortgage/research/subprime-spillover.html](http://www.responsiblelending.org/issues/mortgage/research/subprime-spillover.html).

<sup>17</sup> See Joint Economic Committee of the United States Congress, *State-by-State Figures: Foreclosure and Housing Wealth Losses, Impact of Subprime Foreclosures on Home Equity, Property Values and Property*, Apr. 10, 2008, available at [http://jec.senate.gov/index.cfm?FuseAction=Reports.Reports&ContentRecord\\_id=392cb915-9c45-fa0d-5a46-f61f6e619381&Region\\_id=&Issue\\_id](http://jec.senate.gov/index.cfm?FuseAction=Reports.Reports&ContentRecord_id=392cb915-9c45-fa0d-5a46-f61f6e619381&Region_id=&Issue_id); see also *Subprime Foreclosure Storm*, *supra* at 15 (discussing the lost property taxes that result from high foreclosure rates); accord *The Mortgage Crisis: Economic and Fiscal Implications For Metro Areas*, report prepared for The United States Conference of Mayors by Global Insight, Nov. 26, 2007, at 2, 5, available at <http://www.usmayors.org/metroeconomies/1107/report.pdf>; Wei Li, Keith Ernst, Kathleen Keest, and Ellen Schloemer, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners*, Center for Responsible Lending, Dec. 2006, available at [www.responsiblelending.org](http://www.responsiblelending.org) (hereafter “*Losing Ground*”); *The Impact of Court-Supervised Modifications on Subprime Foreclosures, New Jersey*, Center for Responsible Lending, Feb. 22, 2008 (discussing spillover effect impact).



That intuitive conclusion is born out by the available data, which demonstrates that foreclosed properties drag down the cumulative value of houses in the surrounding area: in lower-income neighborhoods, each foreclosure lowers property values on the surrounding block by approximately 1.44%.<sup>18</sup> For example, the spillover effect of foreclosures in Camden has resulted in a decline in neighboring property values in the surrounding 1/8 of a mile measured at \$1,850.<sup>19</sup> The situation in Newark is worse: every foreclosure results in a decline of \$3,453 in neighboring property values in the surrounding 1/8 of a mile.<sup>20</sup>

These numbers underscore the fact that, due to the foreclosure crisis, New Jersey's poorer urban areas are experiencing a rapid decline in property values that has, and will continue to, decrease their property base, thus drastically limiting the tax revenue available for education in those municipalities. This harsh economic reality, which poorer urban areas disproportionately suffer, will indisputably render the Abbott districts incapable of making up for the budget gaps created by SFRA.

\* \* \*

As demonstrated above, the combination of low property values, widespread tax abatements, and soaring foreclosure rates create a situation in which Abbott districts collect disproportionately less property tax revenue than wealthier municipalities. The State's suggestion that the districts can simply raise more money to cover the shortfalls that will be created by SFRA is thus belied by the data, which shows that the Abbott

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<sup>18</sup> See *Losing Ground*, *supra* at 24; accord *Subprime Foreclosure Storm*, *supra* at 15. That number is much lower for more affluent neighborhoods, where property values are lowered 0.9% with each foreclosure. See *Subprime Foreclosure Storm*, at 15.

<sup>19</sup> See *Subprime Foreclosure Storm*, *supra* at 29 (App. C: *Impact of Foreclosures on Local Home Prices*).

<sup>20</sup> *Id.*

districts cannot compete with the spending capacity of their more affluent neighbors. *Abbott II* instructs that they should not have to.

**C. Poorer Urban Municipalities Must Spend More Of Their Tax Revenue On Non-Education Essential Municipal Services, And Thus Have Less Money Available For Education Funding.**

As this Court recognized in *Abbott II*, *supra* at 355, and as discussed in detail below, poorer urban districts must spend a much higher proportion of the tax revenue they collect to pay for essential municipal services, such as police, fire, sanitation, and social services. Of course, this ineluctable reality – which the State seems to disregard for the purposes of this litigation – leaves many Abbott districts with disproportionately less tax revenue with which to fund their schools than is available to affluent districts.

An examination of the total share of property taxes that the Abbott districts use to pay for non-education essential municipal services (hereafter, “municipal services”) demonstrates that the Abbott districts must spend far more of their property taxes on these municipal services than do other districts in New Jersey. For example, according to a recent *Star Ledger* report compiling official data from the New Jersey Department of Education and the Division of Local Government Services, 24 of the 31 Abbott districts spend 40% or more of their property tax revenues on municipal services – with 15 of those Abbott districts spending 50% or more on municipal services:<sup>21</sup>

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<sup>21</sup> See *New Jersey by the Numbers*, *supra* (follow “Property Taxes” hyperlink; then follow “Taxes in Your Town” hyperlink). The remaining seven districts are Burlington City, Vineland, Hoboken, New Brunswick, Long Branch, Neptune Township, and Salem City. *Id.*

**More than 50%**

**40% to 49%**

<ul style="list-style-type: none"><li>● <u>68%</u>: Orange</li><li>● <u>65%</u>: East Orange</li><li>● <u>60%</u>: Irvington, Passaic</li><li>● <u>59%</u>: Elizabeth, Plainfield</li><li>● <u>57%</u>: Union City</li><li>● <u>56%</u>: Pleasantville</li><li>● <u>55%</u>: Asbury Park, Trenton, Camden, Paterson, Perth Amboy</li><li>● <u>53%</u>: Keansburg</li><li>● <u>51%</u>: West New York</li></ul>	<ul style="list-style-type: none"><li>● <u>49%</u>: Gloucester City</li><li>● <u>47%</u>: Bridgeton</li><li>● <u>46%</u>: Jersey City, Newark</li><li>● <u>42%</u>: Garfield, Pemberton</li><li>● <u>41%</u>: Phillipsburg</li><li>● <u>40%</u>: Millville, Harrison</li></ul>
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By contrast, of the 32 largest non-Abbott municipalities in New Jersey – those with a population of 40,000 or above as of 2006<sup>22</sup> – only two (North Bergen and Hackensack) spent 40% or more of their property taxes on municipal services; of the rest, only five spent more than 25% on municipal services:<sup>23</sup>

**25% or less**

**26% to 40%**

<ul style="list-style-type: none"><li>● <u>12%</u>: Cherry Hill</li><li>● <u>14%</u>: Bridgewater, Evesham, Mount Laurel, Howell</li><li>● <u>17%</u>: East Brunswick, South Brunswick</li><li>● <u>20%</u>: Franklin, Middletown, Old Bridge, Washington Township</li><li>● <u>21%</u>: Woodbridge, Piscataway, Wayne</li><li>● <u>22%</u>: Jackson, Hamilton</li><li>● <u>23%</u>: Manchester, Sayreville, Parsippany-Troy Hills, Dover</li><li>● <u>25%</u>: West Orange, Edison, Berkeley, Brick</li></ul>	<ul style="list-style-type: none"><li>● <u>26%</u>: Clifton</li><li>● <u>27%</u>: Lakewood</li><li>● <u>35%</u>: Bloomfield, Union</li><li>● <u>36%</u>: Bayonne</li></ul>
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The State has suggested that it is by choice that the Abbott districts spend so much of their property tax revenues on non-education municipal services – and that they

<sup>22</sup> See Population estimates provided by the New Jersey Department of Labor & Workforce Development, *Estimates for Municipalities*, available at <http://www.wnjin.state.nj.us/OneStopCareerCenter/LaborMarketInformation/lmi02/mcd/mcdest06.xls>.

<sup>23</sup> *Id.* Unfortunately, the Star Ledger does not list the municipal expenditures of Toms River, although that municipality does have a population over 40,000.

could spend more on education if they wished to do so. This Court's decision in *Abbott II*, *supra* at 355-57, rejected precisely this argument and recognized that the State's poorest urban districts are compelled to spend a disproportionately large amount of their tax revenues on non-education services because of the greater needs of their residents. As discussed below, the situation is no different today, since the Abbott districts continue to face socio-economic challenges far greater than their more affluent counterparts.

State-wide poverty and unemployment data provide a telling illustration of the greater needs that Abbott districts must meet – and help explain why they have no choice but to spend more of their tax revenue on non-education services. According to a survey conducted by the U.S. Census Bureau in 2006, only 8.7% of all New Jerseyans had been living below the poverty level for the prior 12 months.<sup>24</sup> Yet, residents of Abbott districts experience poverty at rates that far surpass the statewide average:<sup>25</sup>

- In Camden, the poverty rates are the highest in the State, with 35.6% of that city's population living below the federal poverty level in 2006 – more than four times the State average;
- Three out of every ten East Orange residents lived below the federal poverty level in 2006 – more than three times the State average;
- In Newark, Paterson, and Passaic, 23-26% of all residents lived below the federal poverty line in 2006 – between two-and-a-half and three times the State average;

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<sup>24</sup> U.S. Census Bureau, American Community Survey, New Jersey data (2006), *available at* <http://www2.census.gov/acs2006/Tables&Profiles&Subjecttables/New%20Jersey/New%20Jersey.xls> (click on "Poverty Status in the Past 12 Months").

<sup>25</sup> The following statistics come from U.S. Census Bureau, American Community Survey, New Jersey County data (2006), *available at* <http://www2.census.gov/acs2006/Tables&Profiles&Subjecttables/New%20Jersey/County%20Subdivision%20Level/>. To find data for each of the cities mentioned, select the spreadsheet for that city, then click the link for "Poverty Status in the Past 12 Months."

- In Trenton and Jersey City, approximately 20% of the population lived below the federal poverty line in 2006 – more than double the State average; and
- In Union and Elizabeth, 16-17% of the residents lived below the federal poverty line, an amount that pales in comparison to some of the other Abbott districts – but still almost double the State average.

Of course, a poorer tax base limits the property taxes a municipality can collect.

Along with the problem of high poverty rates, the Abbott districts are also disproportionately plagued with high levels of unemployment – a condition that further reduces the amount of tax revenue that the districts can collect. In 2006, the State-wide unemployment rate for people over the age of 16 was 6.3%.<sup>26</sup> Yet, during the same year, the cities of Camden, Trenton, East Orange, and Newark all had at least twice the statewide unemployment rate, at 15.8%, 14.9%, 14.6%, and 12.5%, respectively.<sup>27</sup> Other Abbott districts are also disproportionately affected by high unemployment rates: in Jersey City, nearly one out of every ten individuals was unemployed; in Elizabeth 8.5% were unemployed, and in Union City 8.7% were unemployed in 2006.<sup>28</sup> Even though New Jersey as a whole boasts one of the nation's lowest poverty rates,<sup>29</sup> according to a recent Brookings Institution study, New Jersey's cities are lagging behind the rest of the

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<sup>26</sup> U.S. Census Bureau, American Community Survey, New Jersey data (2006), *available at* <http://www2.census.gov/acs2006/Tables&Profiles&Subjecttables/New%20Jersey/New%20Jersey.xls> (click on "Employment Status").

<sup>27</sup> U.S. Census Bureau, American Community Survey, New Jersey County data (2006), *available at* <http://www2.census.gov/acs2006/Tables&Profiles&Subjecttables/New%20Jersey/County%20Subdivision%20Level/> (select the spreadsheet for each respective city, then click the link for "Employment Status").

<sup>28</sup> *Id.*

<sup>29</sup> *See* U.S. Census Bureau, American Fact Finder, Percent of People Below Poverty Level in the Past 12 Months (For Whom Poverty Status is Determined): 2006, *available at* [http://factfinder.census.gov/servlet/GRTTable?\\_bm=y&\\_box\\_head\\_nbr=R1701&-ds\\_name=ACS\\_2006\\_EST\\_G00\\_&-\\_lang=en&-format=US-30&-CONTEXT=grt](http://factfinder.census.gov/servlet/GRTTable?_bm=y&_box_head_nbr=R1701&-ds_name=ACS_2006_EST_G00_&-_lang=en&-format=US-30&-CONTEXT=grt) (ranking New Jersey as having the fourth-lowest poverty rate among all states and the District of Columbia).

country and continue to experience economic hardship because of unemployment and concentrated poverty.<sup>30</sup>

Not surprisingly, the municipalities with higher poverty and unemployment rates also higher crime rates as well. It is simply beyond dispute that New Jersey's poorer urban municipalities are faced with disproportionately high crime rates: in 2005, the major cities, including Newark, Jersey City, Elizabeth, Paterson, Camden, and Trenton, had 11% of the state's population, but accounted for 23% of the crime.<sup>31</sup>

Abbott districts generally have higher crime rates than non-Abbott districts, even after accounting for population differences. For example, Clifton, a non-Abbott district, has about as large a population as Trenton, yet Clifton's crime index is less than two-thirds that of its counterpart.<sup>32</sup> And although Irvington, an Abbott district, and Bayonne, a non-Abbott district, are similarly populated, Irvington's crime index is more than four times that of Bayonne.<sup>33</sup> The crime rate disparity is even greater when the severity of crime is considered: during the last decade, 38% of all violent crime in New Jersey occurred in six Abbott districts – Newark, Jersey City, Elizabeth, Paterson, Camden, and Trenton.<sup>34</sup> Most telling is that approximately half of the state's murders took place in

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<sup>30</sup> *Restoring Prosperity: The State Role in Revitalizing America's Older Industrial Cities, State Profile: New Jersey*, The Brookings Institution (2007), available at [http://www.brookings.edu/reports/2007/~media/Files/rc/reports/2007/05metropolitanpoli cy\\_vey/20070520\\_oicNJ.pdf](http://www.brookings.edu/reports/2007/~media/Files/rc/reports/2007/05metropolitanpoli cy_vey/20070520_oicNJ.pdf).

<sup>31</sup> Jonathan Miller, *The Good and the Bad of Crime Statistics*, N.Y. Times, Aug. 13, 2006, at 14NJ.

<sup>32</sup> State of New Jersey, Division of State Police, Uniform Crime Reporting Unit, Uniform Crime Report § 6 at 108 (2006), at <http://www.state.nj.us/njsp/info/ucr2006/pdf/2006-sect-6.pdf>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 104, 106.

those six cities.<sup>35</sup> Camden, an Abbott district, is the state's most dangerous community and one of the nation's as well – in 2007, the number of murders rose an astounding 31% from the previous year.<sup>36</sup>

In response to these high crime rates, the Abbott districts have been forced to spend far more on police than more affluent municipalities.<sup>37</sup> Last year, Newark spent \$536.30 per person on police expenditures. Camden has less than half the population of Newark, yet its law enforcement budget was nearly as high as Newark's in 2007, at \$510.64 per resident. Trenton must also spend enormous amounts on law enforcement, at \$443.35 per resident. By contrast, non-Abbott municipalities do not spend nearly as much on law enforcement: for example, Bridgewater budgeted only \$192.89 per person on law enforcement in 2007, while Mahwah, Livingston, and Morristown each budgeted \$321.40, \$308.51, and \$316.30 per person, respectively. This data clearly substantiates

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<sup>35</sup> *Id.*

<sup>36</sup> Associated Press, *Murders Down in Newark, Up in Camden – In Paterson, the Number of Killings Holds Steady* at 15, *The N.J. Record*, Jan. 1, 2008.

<sup>37</sup> The per-capita police expenditure figures in this paragraph were calculated by dividing the amount of police expenditures by the total population in each municipality. The non-Abbott municipalities were chosen because their itemized budgets were publicly available, they are not in rural areas, and because they are not among the wealthiest municipalities in the State, in terms of residents' annual incomes. All budget data is from the 2007 fiscal year, with the exception of Camden. Since Camden's 2007 itemized budget was not publicly available, 2006 figures were used. The following budgets are publicly available; where links are to 2008 budgets, they include 2007 figures: Newark (<https://index.ci.newark.nj.us/dsweb/View/Collection-18898>); Camden (2006 budget in parts, at <http://ci.camden.nj.us/departments/20060324141043218.pdf>, [http://ci.camden.nj.us/departments/20060324145415277%20\(4\).pdf](http://ci.camden.nj.us/departments/20060324145415277%20(4).pdf), and <http://ci.camden.nj.us/departments/20060324114138529.pdf>); Bridgewater (<http://www.bridgewaternj.gov/docs/2007Budget.pdf>); Mahwah (<http://www.mahwahtwp.org/Documents/2008%20BUDGET1.pdf>); Livingston (<http://www.livingstonnj.org/budget-intro04-21-08.pdf>); and Morristown (<http://www.townofmorristown.org/pdfs/mayor/ExecutiveBudget2008.pdf>). The Trenton budget was obtained directly from that municipality and is on file with Seton Hall Law School Center for Social Justice. All population figures are from 2006. Population source: *New Jersey by the Numbers*, *supra*.

what this Court noted long ago – police expenses in the Abbott districts are exceptionally high due to the “high level of government need” faced by the those municipalities. *Abbott II, supra* at 355.

In sum, high crime, poverty, and unemployment rates disproportionately affect the Abbott districts and therefore require the districts to spend more of their tax revenues on essential municipal services such as police and social services. The above data confirms the continued relevance of this Court’s observation in *Abbott II* that “the social and economic pressures on these . . . poorer urban districts [] are so severe that tax increases in any substantial amount are almost unthinkable,” 119 N.J. at 356-57 – even for education.

**D. As Predicted, Residents In Abbott District Pay More Taxes.**

Social scientists who study the problem of municipal overburden recognize that high property taxes are often “a signal of the extent of fiscal stress among local governments in New Jersey.”<sup>38</sup> An examination of the data from 2005-2006 demonstrates that the tax burden falls disproportionately on low-income individuals and households<sup>39</sup> – a fact that disproportionately affects Abbott districts, since residents in those districts are disproportionately low-income, as discussed above.

The property tax burden in New Jersey is measured annually by the Department of the Treasury, Division of Taxation, using the equalized property tax rate, as measured by the amount of taxes paid per \$100 of property value.<sup>40</sup> A property tax rate of \$3.00

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<sup>38</sup> See Henry Coleman, *Fiscal Stress: It’s Not Just A Big City Problem*, July 2002, at 5-6, available at [http://www.njpp.org/rpt\\_fiscalstress](http://www.njpp.org/rpt_fiscalstress) (hereafter “*Fiscal Stress*”).

<sup>39</sup> See *Fiscal Responsibility, supra* at 21.

<sup>40</sup> See *Fiscal Stress, supra* at 4; accord State of New Jersey, Department of Treasury, Division of Taxation, *2005-2006 Annual Report*, 2006 Appendix [continued on page 17]



per \$100 of property value is generally considered very high.<sup>41</sup> Data from the Division of Taxation's 2005/2006 Annual Report demonstrates that residents in Abbott districts pay disproportionately high property taxes:

- In Essex County, three municipalities have property tax rates over \$3.00 per \$100 of property value, and all three are Abbott districts: Irvington, at \$3.610; Orange at \$3.680; and East Orange at a crushing \$4.190.<sup>42</sup>
- In Cumberland County, Bridgeton – also an Abbott district – is one of only two municipalities with a property tax rate over the \$3.00 mark and, at \$3.620, has the highest property taxes in the county.<sup>43</sup>
- In Mercer County, Trenton is one of only two municipalities have property taxes over the \$3.00 mark and, at \$3.690, it has the highest property taxes in the county.<sup>44</sup>
- In Salem County, Salem – the only Abbott district in the county – is one of three municipalities that tax at over \$3.00 per \$100 of property value and, at \$4.020, has the highest property tax rates in the county.<sup>45</sup>
- In Atlantic County, only three municipalities taxed at a rate of more than \$3.00 per \$100 of property value, and one of the three is Pleasantville, an Abbott district.<sup>46</sup>

The data thus demonstrates the unfortunate reality that New Jersey's low-income families pay a higher share of their total income to property taxes: while residents earning \$193,000 to \$571,000 paid only 3.2% of their incomes to property taxes in 2002, those earning \$19,000 to \$34,000 paid 4.1%, and those earning less than \$19,000 in the same

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A-1 to A-7, ("2005 General and Effective Property Tax Rates By Municipality") (hereafter "Division of Taxation, *Annual Report*").

<sup>41</sup> See *Fiscal Stress*, *supra* at 4.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*, App. A-3.

<sup>44</sup> *Id.*, App. A-4.

<sup>45</sup> *Id.*, App. A-6.

<sup>46</sup> See Division of Taxation, *Annual Report*, App. A-1.

year paid an astounding 5.6% of their income to property taxes.<sup>47</sup> Sadly, but not surprisingly in light of this data, New Jersey is ranked as having the ninth highest taxes on the poor out of all the states, as measured by total taxes paid in 2003.<sup>48</sup>

These numbers make all too clear the ineluctable truth that the Abbott districts simply cannot be asked – as the State has done in adopting SFRA – to pay higher taxes in order to equitably fund their schools, since the tax burden already falls disproportionately on the residents of those districts.

**E. SFRA Would Create An Economic “Downward Spiral” For Abbott Districts.**

The State suggests that the districts should just raise more revenue if they want to increase education funding beyond what will be provided under SFRA. Not only is the possibility of doing so “unthinkable,” as this Court first recognized in *Abbott II*, *supra* at 357, the result would be disastrous as a practical matter. Raising taxes in poorer urban municipalities decreases the incentive to live or maintain businesses there, thus shrinking the tax base and rendering the districts even less capable of raising tax revenues. *Id.* at 355 (“[F]urther taxation may actually decrease tax revenues by diminishing total property values by diminishing total property values, either directly because of the tax-value relationship, or indirectly by causing business and industry to relocate to another municipality.”).<sup>49</sup> In that event, of course, the situation for those who remain would only worsen: “Because public service costs do not decline in proportion to the loss of

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<sup>47</sup> See *Who Pays? A Distributional Analysis of the Tax Systems in All 50 States* (2d ed.), Institute on Taxation and Economic Policy, Jan. 7, 2003 (“New Jersey State & Local Taxes in 2002”), available at [www.itepnet.org/wp2000/nj%20pr.pdf](http://www.itepnet.org/wp2000/nj%20pr.pdf) (click on “State-by-State results only,” and then “New Jersey”).

<sup>48</sup> *Id.* (click on “Full Report”) (*State & Local Taxes Hit Poor & Middle Class Far Harder Than The Wealthy*, graphic *The Ten States with the Highest Taxes on the Poor*), at 11.

<sup>49</sup> *Accord Fiscal Stress*, *supra* at 2-4.

population and businesses, the remaining taxpayers face higher tax bills for reduced services.”<sup>50</sup> Forcing residents to pay more for less predictably induces more of them to leave, thereby perpetuating the cycle. “In other words, the worse it gets, the less desirable a place the municipality becomes; then as more people and businesses depart, the capacity only lessens and the results get worse.”<sup>51</sup>

By forcing municipalities already overburdened with taxation to pay more to achieve equitable funding levels, the effect of SFRA will be essentially to turn back the clock two decades – returning poorer urban municipalities to the pre-*Abbott II* days of forcing their residents to pay even higher taxes for lower-quality education. And given the predictable cycle discussed above, raising taxes will lead to the shrinking of the tax base, which in turn will require further tax hikes – creating a trap from which the municipalities cannot possibly extricate themselves. The residents of New Jersey’s poorest cities cannot afford to pay higher taxes, nor can the State allow the children of these cities to fall so far behind once again. Indeed, this Court’s prior decision in *Abbott II* forbids the State from implementing a funding formula which results in either scenario.

### CONCLUSION

As discussed herein, SFRA will force the Abbott districts to face a Hobson’s choice: spend more of their existing tax revenues on education, or raise property taxes. But, as discussed above, the Abbott districts cannot compete with the education spending of more affluent districts because they necessarily take less in property tax revenue, due to lower property values, the prevalence of tax-abatements, and high foreclosure rates. The Abbott districts cannot spend more of their existing property tax revenues on

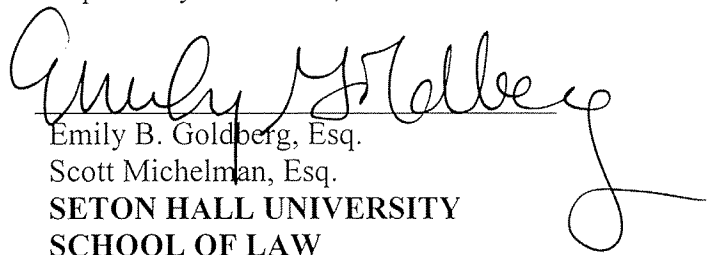
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<sup>50</sup> *Fiscal Stress, supra* at 2.

<sup>51</sup> *Fiscal Stress, supra* at 2.

education because they must spend disproportionately on essential municipal services that are needed to address high rates of poverty, unemployment and crime. Finally, the districts must not be forced raise property taxes, not only because *Abbott II* forbids the State from requiring that result, but because the property tax burden already falls disproportionately on residents of Abbott districts, and raising taxes any further would cause both people and businesses to leave – thus further shrinking the property tax base. The only lawful and just outcome is to reaffirm the *Abbott II* holding, remind the State that it may not rely on the ability of municipally-overburdened districts to raise more money in order to achieve a thorough and efficient education and, accordingly, declare SFRA unconstitutional.

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