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April 13, 2009

Stephen Townsend  
Clerk of the Supreme Court of New Jersey  
Hughes Justice Complex  
25 W. Market Street  
P.O. Box 970  
Trenton, NJ 08625-0970

**Re: Abbott v. Burke, Dkt. No. 42,170**


Dear Mr. Townsend:

Enclosed for filing, please find an original and nine copies of a motion by Dollar\$ and Sense, an association of 40 historically high achievement school districts which has previously been granted leave to appear as amicus curiae, for leave to file the accompanying brief and make oral argument as amicus curiae. In support of this motion, Dollar\$ and Sense will rely on Point I of the accompanying brief.

As indicated by the certification of service attached to the motion, we have served copies on all parties and known amici.

Please conform the extra copies and return them to the courier.

I thank you for your time and attention in this matter.

Yours truly,  
  
Stephen Eisdorfer, Esq.

Enc.

cc: Richard Snyder  
all counsel

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 42,170

RAYMOND ARTHUR ABBOTT, et al,  
Plaintiffs,

vs.

FRED G. BURKE et al,  
Defendants.

CIVIL ACTION

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BRIEF OF AMICUS CURIAE DOLLAR\$ AND SENSE  
IN SUPPORT OF MOTION TO APPEAR AS AMICUS CURIAE  
AND  
IN RESPONSE TO OPINION/RECOMMENDATIONS OF THE SPECIAL MASTER

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Amicus Curiae Dollar\$ and Sense ("D & S") submits this brief both in support of its motion for leave to appear as amicus curiae and in substantive response to the report submitted by Special Master Peter Doyne, JSC, to the Court, Opinion/Recommendations To The Supreme Court, March 24, 2009 (hereinafter "Recommendations").

POINT I

DOLLAR\$ AND SENSE, WHICH WAS PREVIOUSLY PERMITTED TO APPEAR AS AMICUS CURIAE IN THIS MATTER, SHOULD AGAIN BE PERMITTED TO APPEAR IN THAT CAPACITY BECAUSE IT CAN PROVIDES THE COURT WITH A POINT OF VIEW AS TO THE FINDINGS AND RECOMMENDATIONS OF THE SPECIAL MASTER THAT IS DIFFERENT FROM THAT OF THE PARTIES AND AFFECTS THE PUBLIC INTEREST.

Dollar\$, and Sense (D & S) is an association of historically high achievement school districts—mostly classified by the Department of Education as District Factor Grouping I or J. It currently has more than 40 supporting school district members. The Court permitted D & S to appear as amicus curiae in connection with the motions by the State and the low income plaintiffs for summary determinations as to constitutionality of the School Funding Reform Act of 2008 ("SFRA"), L. 2007 c. 260 (codified primarily at N.J.S.A. 18A:7F-44 et seq.). In the Court's order appointing Judge Doyne as special master and referring the matter to him to hold hearings and to make findings and conclusions, the Court directed the special master to:

conduct a plenary hearing to develop a full and complete evidential record that addresses the factual contentions raised by the parties and amici curiae before this Court. [Abbott v. Burke, 196 N.J. 544,568 (2008) (emphasis added).]

To assist the special master in performing this task, D & S participated in pre-trial proceedings and filed a pre-trial brief. With the accommodation of the plaintiffs, it presented the testimony of superintendents of two member school districts-- Patrick Fletcher and Roy Montesano--on the success of DFG I & J districts in providing a high quality education to low income children, the costs of providing education in those districts, and the relationship of those costs to the funding system established by the SFRA. Finally, it submitted proposed findings of fact and conclusions of law to the special master.

Throughout these proceedings, D & S has offered the courts a unique perspective--one based upon first hand knowledge and actual experience--as to the actual educational costs of districts that are succeeding in providing high quality education to school children in 2009, including low income school children. But for the testimony provided by Superintendents Fletcher and Montesano, the record is devoid of evidence on this point.

D & S seeks leave to appear again before this Court for the purpose of commenting upon the report of the special master and addressing the constitutionality of the SFRA on the basis of

this unique perspective. This perspective is likely to be of particular assistance to the Court for two reasons. First, it is central to the legal standard established by this Court, which necessarily requires that State to establish the actual cost of providing a "thorough and efficient" education to children in the "Abbott" districts and to prove that the SFRA assures those districts the funds necessary to support those costs. Abbott v. Burke, 196 N.J. 544, 568 (2008). Second, it is critical to understanding the significance of the report of the special master. As analyzed below, that report, although lengthy and detailed, glosses over the fact that the State provided no evidence as to what real school districts actually spend to provide a "thorough and efficient" education, but has merely relied on theoretical models of what purely hypothetical districts might, could, or should spend. Indeed, the special master expressly disregards all evidence as to what actual school districts spend. Far from supporting the conclusion that the SFRA is constitutional, the special master's findings, which accurately describe the State's proofs, show that the State has failed to meet its burden of proof. Indeed, the record before the special master demonstrates that, given the structure of the SFRA, there are no proofs that the State could have offered that would satisfy the State's constitutional burden.

For these reasons, Dollar\$ and Sense respectfully urges the Court to grant it leave to appear as amicus curiae, file this brief, and make oral argument.

## POINT II

AS REFLECTED IN THE FINDINGS OF THE SPECIAL MASTER AND RECORD BELOW, THE STATE HAS FAILED TO MEET ITS BURDEN OF PROOF TO SUSTAIN THE CONSTITUTIONALITY OF THE SFRA AND DISSOLUTION OF THE INJUNCTION REQUIRING PARITY IN EXPENDITURES BETWEEN ABBOTT DISTRICTS AND DFG I & J DISTRICTS

In Abbott v. Burke, 119 N.J. 287 (1990) (Abbott II), this Court held that, in the absence of a statutory school finance scheme that otherwise assures all children in poor, urban school districts (since known as "Abbott" districts) the "thorough and efficient" education mandated by N.J. Const. art. VIII, §4, ¶1, those districts must be assured at least parity in spending with the so-called DFG I and J districts, the state's most affluent and historically highest achieving school districts. Abbott II, 119 N.J. at 384-86. The Court reaffirmed this standard in Abbott v. Burke, 136 N.J. 444 (1994) (Abbott III) (striking down the so-called Quality Education Act), and again in Abbott v. Burke, 149 N.J. 145 (1997) (Abbott IV) (striking down the so-called Comprehensive Educational Improvement and Financing Act).

In Abbott IV, this Court established the standard that the State must meet to demonstrate that a statutory school finance

scheme that does not assure this parity satisfies the State's constitutional obligations:

We acknowledged in Abbott II, *supra*, that the Legislature may choose "to equalize expenditures per pupil for all districts in the State at any level that it believes will achieve a thorough and efficient education, and that level need not necessarily be today's average of the affluent suburban districts." 119 N.J. at 387, 575 A.2d 359; *see supra* at 156-157, 693 A.2d at 422-423. Thus, if it can be convincingly demonstrated under CEIFA or by amendatory legislation or administrative regulation that a substantive thorough and efficient education can be achieved in the SNDs by expenditures that are lower than parity with the most successful districts, that would effectively moot parity as a remedy. Moreover, if the State could, as implicitly authorized by CEIFA, specifically identify those elements of DFG I & J budgets that represent genuine inefficiencies or excesses and demonstrate that they are truly unnecessary to the achievement of a thorough and efficient education, as evidenced by student performance and achievement of the content standards, it then may consider those expenditures in the funding calculation. [Abbott IV, 149 N.J. at 196.]

In its most recent decision, this Court reaffirmed these holdings, but re-emphasized that "our prior decisions and orders did not preclude experimentation and consideration of alternative approaches to an equitable and constitutional funding approach," provided that it satisfies the constitutional standards enunciated in those decisions. Abbott v. Burke, 196 N.J. 544, 564 (2008). The Court placed on the State the burden of proving

[T]hat SFRA's funding formula provides sufficient resources to enable the Abbott districts, with their special needs in respect of the at-risk pupils

entrusted to their care, to deliver a thorough and efficient education, as defined by the Core Curriculum Content Standards. [Abbott, 196 N.J. at 568.]

As outlined above, the State can demonstrate the constitutionality of a school funding mechanism that provides funding for the Abbott districts at some level other than parity with DFG I & J meet this burden in either of two ways. First, the State can seek to demonstrate by "convincing" evidence that "specifically identified" elements of DFG I & J budgets "represent genuine inefficiencies or excesses and demonstrate that they are truly unnecessary to the achievement of a thorough and efficient education, as evidenced by student performance and achievement of the content standards." Alternatively, the State can seek to demonstrate by "convincing" evidence 1) the cost of providing a substantive thorough and efficient education for students in the "Abbott" districts and 2) that the school funding mechanism assures that level of educational expenditures in those districts.

Before the special master, the State has not pursued the first course. It has not attempted to mount a systematic critique of expenditures by DFG I & J or to prove that that "specifically identified" elements of DFG I & J budgets "represent genuine inefficiencies or excesses and demonstrate that they are truly unnecessary to the achievement of a thorough and efficient education, as evidenced by student performance and

achievement of the content standards." Rather, the State has pursued the second alternative.

As presented by the State, a central feature of the SFRA is the establishment of a new "educational adequacy" standard for school expenditures. This involves the establishment of a "base per pupil amount," which is supposed to be "the cost per elementary pupil of delivering the core curriculum content standards and extracurricular and co-curricular activities necessary for a thorough and efficient education." N.J.S.A. 18A:7F-45 (definition of "base per pupil amount"); 18A:7F-49 (determination of "base per pupil amount"); 18A:7F-46(b) (periodic submission to the Legislature of an "Educational Adequacy Report" reporting the "base per pupil amount" for review and ratification). The "base per pupil amount" is then the basis for the calculation of an "educational adequacy budget" for each school district, based upon its resident enrollment. N.J.S.A. 18A:7F-51.

This "educational adequacy budget" is determinative of key elements of state aid levels and also of permissible local expenditures. It determines how much "equalization aid," N.J.S.A. 18A:7F-53, and "educational adequacy aid," N.J.S.A. 18A:7F-58(b); the State distributes to the school district. It is also determinative of the district's required local share, i.e., the portion of its expenditures it must raise through

local school tax levies. N.J.S.A. 18A:7F-5(b) (required local share for districts not receiving equalization aid); 18A:7F-6(a) (power of Commissioner of Education to require additional expenditures to reach "educational adequacy budget").

Finally, and not least important, it is determinative of permissible increases in school expenditures, N.J.S.A. 18A:7F-5(d), and increases in local school tax levies, N.J.S.A. 18A:7F-38.

As set forth by the State's own witnesses, the State did not establish the level of the adequacy budget or any of the kinds of aid whose amount depends upon the adequacy budget on basis of the expenditures of any actual school districts or group of school districts. It did not, for example, seek to identify school districts that were successful in providing a "thorough and efficient" education and utilize their level of expenditures as a base. Rather, the State went through a sequential thought-exercise, involving several small group meetings and reports from various out-of-state consultants, in which it developed theoretical budgets for hypothetical districts, not based upon actual expenditures by any real districts or groups of real districts. K. Attwood, 2 Tr. 32-57, Report on the Cost of Education, Ex. D-2, A Formula for Success, Ex. D-12; Davy, 2 Tr. 109-111, 112. The State's own consultants acknowledged that they had made no effort to validate these

theoretical budgets by comparison to, or analysis of, expenditures by actual school districts in New Jersey. Picus, Tr. 96-97; Loeb, Tr. 42, 47; Monk, Tr. 66.

In his report, the special master carefully, and, for the most part, accurately, describes the process by which the State formulated the "educational adequacy standard" and the various aid formulas based upon the "educational adequacy standard." Recommendations at pp. 16-28. As described by the special master, the State's formulation of the "educational adequacy standard" was not based upon actual expenditures by any district or group of districts, and was not validated by comparison with actual expenditures by real districts in New Jersey or groups of such districts. Id.

Based upon his account of formulation of the "educational adequacy standard" as set forth in the State's evidence, the special master recommends that the State has met its burden of proof. This recommendation, however, misunderstands the legal significance of the State's proofs. Constructing a theoretical budget for a hypothetical district through a thought-exercise that has no basis in actual expenditures by real school districts does not "convincing" establish the cost of providing a thorough and efficient education for students generally or for poor students in urban school districts in particular. The State's process provides no "convincing" demonstration that

these numbers bear any relationship to any educational reality in New Jersey,

Thus, far from supporting the his recommendation, the findings of the special master compel the conclusion that the State has failed to meet its burden of proof.

The special master's misunderstanding of the legal significance of the State's proofs is exemplified by his decision to give no weight to the testimony of Dr. Bruce Baker. Dr. Baker, whom the special master acknowledged to be a national expert in school finance, provided a detailed critique of the process by which the State formulated the "educational adequacy standard" focusing, inter alia, on its lack of a "reality check"—a basis in actual expenditures by real school districts. He identified important respects in which the hypothetical district utilized by the State was unlike actual school districts in New Jersey and in which the assumptions underlying the State's theoretical budget conflicted with the experience of actual school districts. Baker, Tr. 55-56, 89-93, 96-105, 147-52.

The report of the special master acknowledges Dr. Baker's critique of the State's methodology. Recommendations at pp. 34-37. The report does not find that the Dr. Baker's critique is erroneous or that the State has adequately rebutted it. Instead, with a disparaging comment, the report summarily

dismisses Dr. Baker's critique as mere "statistics."

Recommendations at 38.<sup>1</sup> Dr. Baker's critique, however, highlights the essential gap in the State's proofs. The State has not proven the "educational adequacy standard," or any features of the SFRA which make use of the "educational adequacy standard," is grounded in the actual cost of providing a thorough and efficient education to students in New Jersey.

The record is replete with evidence of the relationship of "adequacy budgets" to actual school expenditures. A dozen witnesses testified as to the actual experience of schools districts in funding public education and the relationship between the costs experienced by those districts and SFRA funding mechanism, including the "educational adequacy standard." Recommendations at 64. The special master summarily dismissed the testimony of these witnesses and his report makes no findings based upon it. Recommendations at 67.

What this evidence makes clear, however, is that the "educational adequacy standard" has no relationship to the

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<sup>1</sup> As one of the grounds for disregarding the testimony of Dr. Baker, the special master points out that he did not have access to the deliberations of the third set of small group meetings which were part of the State's process for formulating the "educational adequacy standard." Recommendations at 36-37. The State, however, did not assert or seek to prove that this phase of process involved any analysis of the actual costs of any real school district or group of school districts. In light of that fact, the special master's decision to disregard Dr. Baker's testimony cannot properly be justified on this basis.

reality of the cost of education in New Jersey. It does not represent a consensus of view of educational decisionmakers. The SFRA "adequacy budget," computed by the Department of Education based upon the "educational adequacy standard," for 2008-09 is below the level of actual expenditures for 2007-08 for 383 of the 595 school districts in the state. Montesano, 2 Tr. 6, Ex. P-157, pp. 12A-20A.

D & S will not attempt here to summarize the testimony of all of these witnesses. The testimony of the two superintendents of DFG I and J districts is, however, illuminating and worthy of the Court's particular consideration. The superintendents were Dr. Roy Montesano of the Ramsey school district and Patrick Fletcher of the River Dell Regional School District, both classified by the State as within DFG I.

In considering the relationship of "adequacy budgets" computed on the basis of the "educational adequacy standard" with expenditures in DFG I and J districts, including Ramsey and River Dell, it is important to keep in mind that these districts are highly successful in providing a "thorough and efficient" education to their students. Not only are they successful at providing a "thorough and efficient" to their general student population, they are disproportionately successful in providing a "thorough and efficient" to their low income students. Although these cannot serve as templates for the "Abbott"

districts<sup>2</sup>, they are illuminating examples of districts whose expenditures do actually enable them to purchase the staff, programs and facilities that provide a "thorough and efficient education.

#### **Educational outcomes**

- As measured the by the State Department of Education's various assessment tests<sup>3</sup>, the educational programs and services provided by DFG I and J districts enable their students to achieve at a higher level than students in other school districts. Fletcher, Tr. 61-62, 66-67, Ex. P-133.
- In particular, as measured the by the State Department of Education's various assessment tests, the educational programs and services provided DFG I and J districts enable their "economically disadvantaged" students, as defined the State, to achieve at a higher level than "economically disadvantaged" students in other school districts. Fletcher, Tr. 62-63, 66-67, Ex. P-133.

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<sup>2</sup> DFG I and J districts do not have to perform their tasks under conditions of high concentrations of poverty, crime, unemployment, drug use, other unfavorable social conditions, or in intense competition for limited local tax revenues with overburdened municipal and county governments. Low income students make up only a small proportion of their student populations and are not necessarily typical of low income students in "Abbott" districts.

<sup>3</sup> Including the Fourth Grade Assessment of Skills and Knowledge (NJASK), the Eighth Grade Assessment of Skills and Knowledge (NJASK), and the Eleventh Grade High School Proficiency Assessment (HSPA).

- Students in both the River Dell and Ramsey school districts achieve at high levels by comparison with students in other school districts in the state. Fletcher, Tr. 29; Montesano, 1 Tr. 137-38.

**Comparison of adequacy budget with levels of actual school expenditures for DFG I and J districts**

- The SFRA "adequacy budgets" for 2008-09 is below the level of actual expenditures for 2007-08 for 103 of the 127 DFG I and J school districts in the state--81.1%. Fletcher, Tr. 54, 58, Ex. P-131. For all DFG I & J districts spending over the "adequacy budgets," the average (mean) difference between the "adequacy budget" for 2008-09 and actual budgeted expenditures for 2007-08 is \$3,358,413. Calculation from Ex. P-131.
- The SFRA "adequacy budgets" for 2008-09 is below the level of actual expenditures for 2007-08 for 30 of the 43 DFG I and J school districts in the state that are k-12 districts--69.8%. Fletcher, Tr. 54, 59, Ex. P-132. For DFG I & J districts that operate K-12 school systems and are spending over the "adequacy budget," the average (mean) difference between the "adequacy budget" for 2008-09 and actual budgeted expenditures for 2007-08 is \$5,339,020. Calculation from Ex. P-132.

**Comparison of adequacy budget with levels of actual school expenditures for the Ramsey and River Dell school districts**

- For example, for Ramsey School District, a DFG I district, the difference between the "adequacy budget" for 2008-09 and actual budgeted expenditures for 2007-08 is approximately \$6.2 million--\$1,997 per pupil. Montesano, 1 Tr. 129, 143, Ex. P-157 p. 10A.
- The State requires school districts that are budgeting expenditures over the "adequacy budget" to analyze and explain to the SDOE and the public the fiscal and educational significance of the difference between budgeted expenditures and the "adequacy budget." Montesano, 1 Tr. 120-36, Ex. 157 p. 10A.
- The difference between what a DFG I or J district, such as Ramsey, currently spends and what it would spend if it were operating at the "adequacy budget" level is significant in terms of educational programs and services. It includes smaller class sizes for both high achieving and low achieving students, increased electives at the middle school level including additional "world languages," a readiness kindergarten program, a greater level of extra-curricular and co-curricular programs, an additional child study team, and an additional part-time high school guidance counselor. Montesano, 1 Tr. 134-35, Ex. P-157, p. 10A.

- Put in terms of what would have to be eliminated to operate the school district at the "adequacy budget" level, the difference involves:

Elimination of all athletic and co-curricular programs	\$864,015.00
Elimination of all Basic Skills/remedial programs;	\$905,185.00
Cutting of one full Child Study Team resulting in major loss of student services	\$350,000.00
Elimination of all educational media services	\$1,171,197.00;
Twenty five percent reduction in budget for operation of plant services resulting in major personnel losses and potential safety of our students	\$1,032,936.00;
Elimination of four supervisory positions resulting in major loss in instructional progress and student achievement	\$142,605.00
Elimination of all teacher training and support programs	\$142,605.00
Further reduction of 20 teaching positions	\$1,273,529.00
Montesano, 1 Tr. 154, 2 Tr. 6, Ex. P-157.	

- These differences do not involve "frills." They are expenditures necessary for the Ramsey School District to carry out its core mission of providing a "thorough and efficient" school system for all its students. Most of these differences directly affect the District's ability to "deliver the core curriculum content standards and extracurricular and extracurricular and co-curricular

activities necessary for a through and efficient education" as mandated by the SFRA. Montesano, 1 Tr. 151, 153-54, 2 Tr 6, Ex. P-157.

- Similarly, for River Dell Regional School District, a DFG I district, the difference between the "adequacy budget" for 2008-09 and actual budgeted expenditures for 2007-08 is approximately \$2.8 million--\$1,862 per pupil. Fletcher, Tr. 29, 41.
- The \$2.8 million difference between the "adequacy budget" and its actual expenditures enables River Dell to pay for school nurses, educational media services, athletics, co-curricular, and maintenance to support the infrastructure. It also enables River Dell to pay for other support programs for its students such as student assistance counselor, guidance services, and remedial programs for students who are failing to achieve at the satisfactory levels on a various performance assessments. Fletcher, Tr. 41-42.
- These expenditures are necessary to enable River Dell to provide a "thorough and efficient" education for its students. Fletcher, Tr. 42.
- These are the very staff, programs and services that enable River Dell to provide a quality education to its students: a relatively small class size; educational media services (libraries); counseling services for students that help them

in a social and emotional; remediation for students that need additional services in order to continue to perform well.

Fletcher, Tr. 30.

- To the extent that the SFRA requires districts such as Ramsey and River Dell to reduce their expenditures to "adequacy budget levels, it will make it impossible for them to deliver a "thorough and efficient" education to their students.

Fletcher, 31 41-42; Montesano, Tr. 151, 153-54, 2 Tr. 6, Ex. P-157.

This uncontradicted evidence refutes any claim by the State that the theoretical "adequacy budgets" equal the actual cost of providing a "thorough and efficient" education to students in New Jersey.

In sum, the evidence before the special master--both as reflected in his factual findings where he made such findings and in the record where he did not make such findings--demonstrates that the State has not borne its burden of proof to sustain the SFRA.

Unless and until the State formulates a school funding mechanism that actually satisfies the constitutional standard established by this Court, the Court's prior injunction must remain in place.

### POINT III

#### **THE COURT SHOULD REJECT THE REMEDY RECOMMENDED BY THE SPECIAL MASTER.**

In his report, the special master concludes that the SFRA may not provide sufficient funds to the "Abbott" districts over the next several years to enable them to provide a "through and efficient" education. Recommendations at p. 82. He recommends, however, that the SFRA should be permitted to go into force subject to a court-imposed requirement that that State make supplemental funding available to "Abbott" districts upon application. Recommendations at pp. 82-83.

This Court should reject this recommendation for at least two reasons. First, the special master's conclusion that the SFRA may not provide sufficient funds to the "Abbott" districts to enable to them to provide a "thorough and efficient" education itself demonstrates the failure of the State to bear its burden of proof as to the constitutionality of the SFRA. Second, and no less important, permitting the SFRA to operate on an interim basis for an extended period of time creates the risk that the State will back New Jersey's school districts into "parity" without actually assuring sufficient funds to enable the Abbott districts to provide a "thorough and efficient" education.

As outlined above, the SFRA's statutory "educational adequacy" standard for school expenditures is substantially below the current level of expenditures by DFG I and J districts, and, indeed, below the level of expenditures for most school districts in New Jersey. Combined with SFRA's stringent restrictions on increases in school expenditures and on increases in local school tax levies, the expenditure standard will have the long term practical effect of driving the expenditure level of high achievement DFG I and J districts down toward the "adequacy budget" level. While this may ultimately reduce the disparity in expenditures between DFG I and J districts and the "Abbott" districts, it will do so only at the price of denying all children the constitutionally mandated "thorough and efficient" education.

The SFRA imposes limitations on both increases in local school expenditures, L. 2007 c. 260, §28, amending N.J.S.A. 18A:7A-5, and increases in local school tax levies, L. 2007 c. 260, §62, amending N.J.S.A. 18A:7F-38. As to local school expenditures, the statute provides that, subject to certain narrowly defined adjustments, the school district's budget may not exceed the previous year's budget by more than 2.5 percent or the percentage increase in the Consumer Price Index. N.J.S.A. 18A:7F-5(d)(1). This limitation itself means that a school budget buys less and less each year. Typically 85

percent of school budgets are devoted to salaries and benefits of teachers and other staff. The salaries of teachers naturally increase as they move up the salary scale with years of service. Health benefits also increase, historically at rates more than three times higher than the maximum statutory rate for increases in school expenditures.<sup>4</sup> School budgets must increase faster than this rate to provide the same staff, facilities, services and programs from year to year.

Pursuant to SFRA, if a district seeks approval for a budget that is greater than the "adequacy budget," the ballot question now must include the following statement:

Your school district has proposed programs and services in addition to the core curriculum content standards adopted by the State Board of Education. Information on this budget and the programs and services it provides is available from your local school district.

N.J.S.A. 18A:7F-5(d)(10). This statement must appear on the ballot, regardless of whether it is true.

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<sup>4</sup> Although the statutory limitation on increases in school tax levies excludes increases in the cost of health benefits, N.J.S.A. 18:7F-38(a)(1), the limitation on school expenditures does not have any such exclusion. N.J.S.A. 18A:7F-5(d)(1).

Over the past six years, the cost of health benefits to New Jersey employers generally has increased at an average rate of 9.4 percent a year. The cost per employee has doubled over that period. New Jersey State Business and Industry Association, 2008 Health Benefits Survey (April 29, 2008) reprinted at [http://www.njbia.org/news\\_news\\_080429.asp](http://www.njbia.org/news_news_080429.asp) (accessed June 25, 2008).

If the budget is voted down, the municipal governing body establishes the budget. If the budget fixed by municipal governing body is greater than the state "adequacy budget," the school board is stripped of the remedy mandated by this Court in Board of Education of East Brunswick v. Township Council of East Brunswick, 48 N.J. 94 (1966). It is barred from appealing the municipal governing body's actions on the grounds that the reduced budget is inadequate to provide a "thorough and efficient" education. N.J.S.A. 18A:7F-5(e)(1). That reduced budget then becomes the base for restrictions in increases in the school budget for the following year.

The school district may submit a separate budget proposal to the voters for additional expenditures. That separate budget, however, cannot include any programs or services that were included in the previous year's budget. It thus cannot be used to keep up with rising costs. Extraordinarily, it cannot include any "new programs or services necessary for students to achieve the thoroughness standards" set under the SFRA. N.J.S.A. 18A:7F-5(d)(9).

The practical effect of these restrictions is to force the expenditures by DFG I and J districts down over time toward the state "educational adequacy" level, regardless of whether doing so impairs their ability to provide a high quality education or a "thorough and efficient" education.

As to local school tax levies, the statute provides that, subject to certain narrowly defined adjustments and exclusions, the percentage increase in local school tax levies cannot exceed 4 percent. N.J.S.A. 18A:7F-38(a)(1). However, for districts whose expenditures are above the statutory "adequacy budget" level and whose prior year tax levy was greater than its statutory minimum "local share"--as is typical in DFG I and J districts<sup>5</sup>--the permissible increase in school tax levies is reduced by any increase in state aid in excess of two percent or the percentage increase in the CPI. N.J.S.A. 18A:7F-38(a)(2)<sup>6</sup>

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<sup>5</sup> See NJ Department of Education, 2008-2009 Revised District State Aid Profiles reprinted at <http://www.state.nj.us/education/sff/profiles/revised/> (accessed June 25, 2008).

<sup>6</sup> By way of illustration, as set forth in its 2008-2009 Revised District State Aid Profile, the school tax levy for the Ramsey Borough School District for 2007-2008 was \$40,527,656. This is the base for the four percent cap levy.

For Ramsey, the "educational adequacy" budget for the 2008-2009 school year is \$35,441,092. Its minimum local share is \$34,360,001. Thus, its expenditures exceed the "educational adequacy budget" and its school tax levy exceeds the minimum local share. The district is therefore subject to state aid offset.

Ramsey receives state aid, primary for special education. Because its expenditures are above the "educational adequacy" level, any increase in state aid is capped at 10 percent. N.J.S.A. 18A:7F-47(d). Its capped increase in state aid is \$246,261. Since this increase exceeds two percent, its school levy cap is thus further reduced by the "excess" over 2 percent, which equals \$197,008.

Among other things, this provision guarantees that any increase in state aid that a DFG I or J district might receive have little impact on its actual permitted expenditures. Almost all of it is lost in the reduction in the local school tax levy cap.

In theory, a district can apply to the Commissioner of Education for a waiver. By statute, however, a district that applies for a waiver surrenders to the Commissioner substantial control of its budget and of decisions as to staff, facilities, programs and services that are affected by its budget. N.J.S.A. 18A:7F-39. This provision seems better designed to deter waiver requests than to assure that districts can obtain the funds necessary to provide a high quality education.

A district may submit a separate budget proposal to the voters to exceed the school tax levy cap. Again, the separate budget proposal may not include "any programs or services necessary for students to achieve the core curriculum content standards." N.J.S.A. 18A:7F-39(c)(1). Such a separate budget proposal can be adopted only by a supermajority--60 percent of the votes cast. N.J.S.A. 18A:7F-39(c).

Here, too, the practical effect of these restrictions is to force the expenditures by DFG I and J districts down over time toward the state "educational adequacy" level, regardless of whether doing so impairs their ability to provide a high quality education or a "thorough and efficient" education.

It should be emphasized that the effect of these restrictions is cumulative. As a result their impact increases

over time. Over the short run, their impact may be small.<sup>7</sup>  
Over the long run, their impact grows relentlessly.

The SFRA phases-in these restrictions in a manner that obscures their long-term impact. For the period from 2008-2009 to 2011-2012, only the school tax levy cap provisions apply. N.J.S.A. 18A:7F-40. After that, the vise is squeezed tighter: both the school tax levy cap and the school expenditure limitations apply.

It may be that, ultimately, these provisions of the SFRA will reduce the disparities in expenditures between DFG I and J districts, such as those represented by Dollar\$ and Sense, and the "Abbott" districts. It will do so, however, only at the expense of depriving New Jersey's historically high achievement districts of the ability to deliver the quality education which the Court has set as the constitutional benchmark for funding for the "Abbott" districts. This violates the State's constitutional obligations to the public school students in both the historically high achievement districts and in the "Abbott" districts.

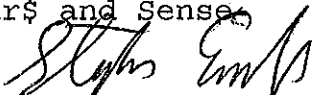
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<sup>7</sup> Indeed, if the State were to fail to provide an adequate allocation of education aid to the Abbott districts, there would surely be large short term disparities in expenditures between the Abbott districts and the DFG I and J.

CONCLUSION

For all the foregoing reasons, Dollar\$ and Sense respectfully urges the Court to permit it to appear as amicus curiae. It further respectfully suggests that the Court should properly conclude that the State has not borne its burden of proof to sustain the constitutionality of the School Funding Reform Act and should therefore continue the injunction requiring that the State maintain parity in expenditures between "Abbott" districts and DFG I and J districts.

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Dated: April 13, 2009

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SUPREME COURT OF NEW  
JERSEY  
DOCKET NO.: 42,170

RAYMOND ARTHUR ABBOTT, et al,  
Plaintiffs,

vs.

FRED G. BURKE et al,  
Defendants.

CIVIL ACTION

NOTICE OF MOTION FOR LEAVE  
TO FILE BRIEF AND MAKE ORAL  
ARGUMENT AS AMICUS CURIAE

TO:

CLERK OF THE SUPREME COURT OF NEW JERSEY

ALL COUNSEL ON THE ATTACHED SERVICE LIST

Dollar\$ and Sense, an unincorporated association of 35  
school districts, hereby moves in the above entitled for leave  
to file briefs, including the accompanying brief, and make oral  
argument as amicus curiae.

In support of this motion, the movant relies upon the Point  
I of the accompanying brief.

HILL WALLACK LLP  
Attorneys for Dollar\$ and Sense


By:   
Stephen Eisdorfer, Esq.

Dated: April 13, 2009

CERTIFICATION OF SERVICE

I certify that I served copies of the attached motion and accompanying brief by hand delivery to the Attorney General and counsel for plaintiffs this day and upon all amici this day by mailing copies to them at the addresses shown on the attached service list.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Stephen Eisdorfer

Dated: April 13, 2009

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