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RAYMOND ARTHUR ABBOTT, ET
AL.,

PLAINTIFFS,

v.

FRED G. BURKE, ET AL.,

DEFENDANTS.

SUPREME COURT OF NEW JERSEY
DOCKET NO.

CIVIL ACTION

**NOTICE OF MOTION TO REOPEN
AND ENFORCE THE COURT'S
DECISIONS IN ABBOTT XX AND
ABBOTT XXI**

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Sirs:

PLEASE TAKE NOTICE that Kingsway Regional School District, by its counsel Brett E.J. Gorman, Esquire of the law firm of Parker McCay, P.A., hereby moves in the Supreme Court of New Jersey to Reopen and Enforce this Court's Orders in Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX") and Abbott v. Burke, 206 N.J. 332 (2011) ("Abbott XXI") for the reasons set forth in the Brief and Appendix filed in support of this motion.

Should the Court grant this Motion to Reopen, Movant requests that this Court issue a Brief Scheduling Order so that Movant and all necessary or intervening parties are given the opportunity to fully brief and argue the issues raised herein.

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By 
BRETT E.J. GORMAN, ESQUIRE
COUNSEL

Dated: February 10, 2017

SUPREME COURT OF NEW JERSEY
DOCKET NO.

RAYMOND ARTHUR ABBOTT, ET AL.,

PLAINTIFFS,

V.

FRED G. BURKE, ET AL.,

DEFENDANTS.

CIVIL ACTION

ON MOTION TO REOPEN AND
ENFORCE ABBOTT XX
AND ABBOTT XXI

BRIEF AND APPENDIX ON BEHALF OF THE KINGSWAY
REGIONAL SCHOOL DISTRICT IN SUPPORT OF ITS
MOTION TO REOPEN AND ENFORCE THIS COURT'S
DECISIONS IN ABBOTT XX AND ABBOTT XXI

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PRELIMINARY STATEMENT

The Constitution of New Jersey obligates the State to provide each school child with a thorough and efficient public education. To that end, the School Funding Reform Act of 2008 ("SFRA") was enacted to make the distribution of state aid to all of New Jersey's public schools fair, transparent, equitable and certain. This Court has already ruled in Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX") and Abbott v. Burke, 206 N.J. 332 (2011) ("Abbott XXI") that the SFRA, and the funding formula set forth therein, provides New Jersey students with the thorough and efficient public education which the Constitution requires.

This Motion is filed by Kingsway Regional School District ("Kingsway") to reopen and enforce the Supreme Court's decisions in Abbott XX and Abbott XXI to correctly distribute school funding pursuant to the SFRA. Failure by the State to correctly calculate and distribute school funding has deprived the students of Kingsway of 1.6 million dollars in state aid.

This has occurred because in the years since the SFRA was enacted the annual State Budget has consistently shortchanged certain school districts, including Kingsway, by not providing the amount of state aid which they should have received. Instead of calculating and distributing state aid at the appropriate funding levels, the State has bypassed the funding levels

required by the SFRA formula by way of a "budgetary hold harmless" provision which "amends" the SFRA by maintaining each school district's funding level at no less than the district received from the State in the prior year.

It is submitted that by repeatedly bypassing the SFRA funding formula with its *ultra vires* "budgetary hold harmless" provision, the State has entered into an improper and unconstitutional budgetary scheme which values the education of some New Jersey students more than the education of other students. This disparate treatment is not limited to the Abbott school districts (now called "SDA Districts"), but affects all public school districts. As previously noted, Movant Kingsway, a non-SDA district, has been shortchanged \$1.6 million in school funding this year alone.

Accordingly, Kingsway now seeks to reopen Abbott XX and Abbott XXI and requests this Court's enforcement of its prior decisions in order to make it explicit and clear that the State has the constitutional obligation to provide funding to both the SDA and non-SDA districts in accordance with the formula set forth in the SFRA. Kingsway further requests that the Court find, in light of its prior decisions, that the SFRA fulfills that constitutional obligation, and that the "budgetary hold harmless" provision which the State has consistently used to bypass the SFRA is therefore unconstitutional.

The purpose of Kingsway's Motion is not to allow one district, or even just a few districts, to receive more than their fair share of school funding. Rather, Kingsway simply asks that the Court ensure that the State complies with its own Constitution and duly-enacted laws, so that the State will calculate and distribute the available, correct state aid funds to all of the public school districts in New Jersey, not just the SDA districts, in accordance and in proportion with the funding formula set forth in the SFRA.

PROCEDURAL HISTORY

This Court is, of course, thoroughly familiar with the procedural history of this matter, since its inception in the 1980's, and Movant shall not burden the Court with a lengthy repetition of an already well-known chronology.

Over the course of more than three decades, through the series of Abbott v. Burke decisions, this Court has repeatedly addressed how the State should meet its constitutional obligation to provide a thorough and efficient education for New Jersey public school students.

In Abbott v. Burke, 100 N.J. 26 (1985) ("Abbott I"), the Court reviewed the Public School Education Act of 1975, finding that Act unconstitutional insofar as it was applied to certain school districts known as the Abbott districts. In Abbott v. Burke, 119 N.J. 287, 385 (1990) ("Abbott II"), this Court held that the 1975 Act "must be amended or new legislation passed, to assure that poorer urban districts' educational funding is substantially equal to that of property-rich districts."

In response, the Legislature enacted the Quality Education Act of 1990 and later the Comprehensive Education Improvement and Financing Act of 1996, both of which the Court found unconstitutional as applied to the SDA districts in Abbott v. Burke, 136 N.J. 444, 446-47 (1994) ("Abbott III") and Abbott v. Burke, 149 N.J. 145, 201 (1997) ("Abbott IV"), respectively.

In Abbott IV, the Court also directed the Commissioner of Education to create a plan for the State to assist the SDA districts in meeting their educational needs. While the plan was being devised, the Court imposed a "parity remedy" which required the State to increase the funding provided to the SDA districts to the "equivalent to the average per-pupil expenditure" in certain non-SDA districts. Id. at 224.

In Abbott v. Burke, 153 N.J. 480, 527 (1997) ("Abbott V"), this Court accepted the Commissioner's recommendation for "whole school reform", and then spent the next decade in lawsuits ("Abbott VI" through "Abbott XIX") regarding the ongoing implementation of the Abbott V Order.

Following the enactment of the School Funding Reform Act of 2008 ("SFRA"), the Court found in Abbott v. Burke, 199 N.J. 140, 175 (2009) ("Abbott XX") that the complex formula by which funding amounts to the districts was calculated under the SFRA "is a constitutionally adequate scheme" for the State to provide a thorough and efficient education. In light of the then-anticipated funding to be provided under the SFRA, the Court in Abbott XX relieved the State from its previously issued remedial orders, including the "parity remedy" which had been ordered by the Court in Abbott IV.

Finally, in Abbott v. Burke, 206 N.J. 332, 376 (2011) ("Abbott XXI"), this Court ordered the State, which had failed

to provide school districts with the state aid called for by the SFRA, to calculate and provide funding to the SDA Districts in accordance with the SFRA formula.

On or about September 15, 2016, the State filed a Motion to re-open Abbott XX and Abbott XXI and requested that, *inter alia*, the Court relieve the State of its obligation to fund the SDA Districts in accordance with the SFRA. Kingsway was recently authorized by its Board of Education to intervene in that Motion and seek relief from this Court in regard to improperly calculated funding for non-SDA school districts as set forth infra. However, the State's Motion was denied in its entirety by this Court on January 31, 2017.

Accordingly, Kingsway Regional School District instead files this Motion to Reopen Abbott XX and Abbott XXI and to seek Supreme Court enforcement of the constitutionally required formula for calculation of funding for non-SDA school districts under the SFRA.

STATEMENT OF FACTS

The School Funding Reform Act was passed in 2008 as a way to ensure that the State's distribution of school funding to the hundreds of public school districts across New Jersey was fair, transparent, equitable and certain. The amount of state aid to which each district was entitled was calculated through a complex formula which took into account such factors as enrollment, special education needs and economic demographics.

This Court has already ruled in Abbott XX and Abbott XXI that not only does the SFRA, and the funding formula set forth therein, provide New Jersey students with the thorough and efficient public education which the Constitution requires, but the Legislature's failure to distribute state aid to the thirty-one (31) school districts formerly known as "Abbott" districts (now known as "SDA Districts") in accordance with the SFRA was a violation of those students' fundamental constitutional right to a thorough and efficient education. Accordingly, in Abbott XXI this Court ordered the State to calculate and provide school funding to the SDA Districts in accordance with the SFRA formula.

Unfortunately, in the years since Abbott XXI, although the State may have obeyed the letter of the Court's directive, it has consistently ignored the spirit of the Court's decision.

In the State Budgets for 2014-2015 and 2015-2016, the

Legislature stated:

Notwithstanding the provisions of any law or regulation to the contrary, each district shall receive no less of a total State aid amount payable for the [current] school year than the sum of the district's total State aid amount payable for the [prior] school year for the following aid categories:

(2014-2015 State Budget, Ma48; 2015-2016 State Budget, Ma61).

In the State Budget for 2016-2017 the Legislature similarly provided:

Notwithstanding the provisions of any law or regulation to the contrary, a district's 2016-2017 allocation of the amounts hereinabove appropriated for Equalization Aid, Educational Adequacy Aid, Adjustment Aid, Preschool Education Aid, School Choice Aid, Security Aid, Special Education Categorical Aid, Supplemental Enrollment Growth Aid, Transportation Aid, Under Adequacy Aid, PARCC Readiness, Per Pupil Growth Aid, Professional Learning Community Aid, and Host District Support Aid shall be as set forth in the February 2016 State Aid notice issued by the Commissioner of Education.

(2016-2017 State Budget, Ma4).

Accordingly, as it has since the 2013-2014 State Budget, (State Budget 2013-2014, Ma32 to Ma44), the Legislature has repeatedly adopted an improper school funding procedure developed by the Commissioner of Education to determine the amount and level of school funding for school districts. Moreover, the Legislature adopted by reference the February 2016 State Aid Notice issued by the Commissioner which effectively

"amended" the SFRA by including in effect a "budgetary hold harmless" provision that maintained the funding levels for every public school district from the prior school year, but ignored the funding calculation requirements set by the SFRA. (See, 2016-2017 State Budget, Ma4; NJDOE 2016-2017 State Aid Summaries, Ma26 to Ma31).

The impact of this legislative "end run" around the SFRA upon school districts throughout New Jersey has been severe and profound. Kingsway, just one of the many affected districts, lost in a single school year more than \$1.6 dollars (or 18.3%) of what its state aid would otherwise have been under the SFRA. Below is the breakdown of funding, as outlined by the Commissioner, for the Kingsway district:

DISTRICT NAME	GOVERNOR'S PROPOSED FY17 TOTAL K-12 AID	ESTIMATED LEGISLATURE'S MODEL FY17 TOTAL K-12 AID*	DIFF FROM GOV'S PROPOSED	% DIFF. FROM GOV'S PROPOSED
KINGSWAY REGIONAL	8,866,900	10,490,855	1,623,955	18.3%

(Ma18).

Those funds, which were guaranteed to Kingsway through the SFRA, should have been earmarked for the education of Kingsway's students.

The effect of the "budgetary hold harmless" provision, which improperly disregards the SFRA, has been compounded by its implementation in each successive State Budget since at least

the 2013-2014 school year. The reduction in funding for Kingsway and other similarly situated public schools throughout the State has resulted in disparate treatment of New Jersey students, with some school districts severely underfunded while other districts are overfunded, regardless of their actual need or the SFRA funding formula.

This calculation and funding has resulted in an ongoing violation of the State's constitutional obligation to provide all New Jersey students with a thorough and efficient education. The current funding regimen improperly and disparately impacts non-SDA districts such as Kingsway, who the State chooses to disregard, to instead focus upon the SDA districts. All the while, the interests of the 560 non-SDA Districts go unrepresented.

Therefore, the Kingsway Regional School District respectfully submits this application to reopen the Abbott v. Burke decisions (XX and XXI), so that the funding formula of the SFRA may be enforced by this Court and the financial interests of the non-SDA districts may be protected.

ARGUMENT

I. THE SUPREME COURT IS EMPOWERED TO ORDER REMEDIAL LEGISLATIVE ACTION WHEN THE LEGISLATURE HAS VIOLATED THE CONSTITUTIONAL REQUIREMENT TO PROVIDE A THOROUGH AND EFFICIENT EDUCATION TO PUBLIC SCHOOL STUDENTS

Nearly forty years ago, in Camden v. Byrne, 82 N.J. 133 (1980), this Court considered whether the terms of previously enacted statutes which required that state funds be expended could be effectively "overruled" by the Legislature's failure to subsequently fund those statutes through the Budget. The Court in Camden v. Byrne noted that "even though certain of these statutes purport to 'dedicate' state revenues for a particular purpose, the Legislature has the inherent power to disregard prior fiscal enactments." Id. at 147. This Court therefore found that the judiciary cannot compel the Legislature to make an appropriation "even where a statutorily-defined substantive right to the monies is established...." Id.

However, in subsequent decisions, this Court has also made it abundantly clear that there are exceptions to this general rule that the decision regarding how to disburse state funds is to be left to the Legislature, for example, when the Budget adopted by the Legislature resulted in a violation of a constitutional right.

In Abbott XX, this Court was presented with the apparent conflict between the constitutional mandate that all State

expenditures must be accounted for with an appropriate provision in that fiscal year's Budget and the constitutional mandate that the "Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." N.J. Const. Art. VIII, § IV, par. 1.

Thereafter, in Abbott XX this Court concluded that "as far as it is possible to predict the effect of SFRA's design, it meets the constitutional mandate." Abbott v. Burke, supra, 199 N.J. at 169.

In Abbott XXI, this Court found that the students in question (those attending school districts formerly called "Abbott districts") had been "victims of a violation of constitutional magnitude for more than twenty years". Abbott v. Burke, supra, 206 N.J. at 340. The Court therefore concluded, in light of "the severity of their constitutional deprivation, that class of pupils was determined to be deserving of special treatment from the State." Id.

The general limitation upon the judiciary to not interfere with ordinary fiscal decisions made by the Legislature is not applicable when a proposed Budget, through its inadequate appropriations, results in a violation of the constitutional right enjoyed by all New Jersey students to a thorough and

efficient education. Id at 342. As this Court reasoned:

[T]he State argues that we must defer to the Legislature because the legislative authority over appropriations is plenary pursuant to the Appropriations Clause of the Constitution. Although it is true that past decisions of this Court have recognized the Legislature's authority to work a modification of other statutes through the adoption of an annual appropriations act a different question is presented here. The State seeks, through the legislative power over appropriations, to diminish the Abbott pupils' right to funding required for their receipt of a thorough and efficient education after representing to this Court that it would not do so in order to achieve a release from the parity remedy requirement. In such circumstances, the State may not use the appropriations power as a shield from its responsibilities.

Id. at 342.

The Court in Abbott XXI thereafter concluded that remedial orders were necessary to "provide the education funding and services required to ameliorate the pupils' constitutional deprivation." Id. at 332. As a result, this Court ordered that the Legislature take remedial actions to guarantee a "thorough and efficient education":

We hold that the Appropriations Clause creates no bar to judicial enforcement when, as here, 1) the shortfall in appropriations purports to operate to suspend not a statutory right, but rather a constitutional obligation, 2) which has been the subject of more than twenty court decisions or orders defining its reach and establishing judicial remedies for these plaintiffs for its breach, 3) where the harm being visited is

not some minor infringement of the constitutional right but a real, substantial, and consequential blow to the achievement of a thorough and efficient system of education to the plaintiff pupils of the Abbott districts, and 4) where the formula the State has underfunded was one created by the State itself, and made applicable to the plaintiff pupils of Abbott districts, in lieu of prior judicial remedies, by this Court on application by the State based on specific representations that the statutory scheme of SFRA would be fully funded at least as to the Abbott pupils, and fully implemented as to those districts.

Id. at 342-43.

In the instant matter, this Court is again presented with the issue of school districts facing fiscal shortfalls and substantial harm to its students due to the Legislature's inadequate budgetary appropriations.

Just as the SDA Districts in Abbott XX and XXI were underfunded by a State Budget which effectively eviscerated the SFRA, so too has Kingsway, and the hundreds of other non-SDA districts in New Jersey, been consistently provided with less state aid than they would otherwise have received through the State's failure to follow the funding rates set forth in the SFRA. Once again, the State bypassed the SFRA through the adoption of an *ultra vires* "budgetary hold harmless" provisions, which ignored the funding formula enacted in the SFRA.

The Legislature's deliberate shortcomings negatively impact

all public school districts (both SDA and non-SDA) and deprive a substantial number of New Jersey students of their constitutional right to a thorough and efficient education¹.

The Supreme Court has clearly established that the judiciary has the authority to intervene and order corrective action to remedy a constitutional violation of the right to a thorough and efficient education. It is respectfully submitted that when the Legislature fails to include adequate educational appropriations in a Budget, as it has for nearly a decade, the intervention of this Court is not only permissible, but is also necessary, to ensure that the State meets its constitutional obligation to provide New Jersey students with a thorough and efficient education.

**II. THE SUPREME COURT SHOULD INVALIDATE THE HOLD
HARMLESS PROVISION OF THE BUDGET BECAUSE THAT
PROVISION VIOLATES THE CONSTITUTIONAL REQUIREMENT
OF A THOROUGH AND EFFICIENT EDUCATION SYSTEM**

The underfunding of public schools in the State Budget is not a recent development, it is a recurring problem which has

¹ The impact on local school districts caused by the SFRA underfunding is magnified by the two percent (2%) percent limit imposed by the State upon local governments seeking to increase their annual property tax. School districts whose SFRA funding was decreased by more than two percent face a "double whammy" - the loss caused by an unconstitutional underfunding of their State aid coupled with the legal inability for those districts to attempt to recoup that loss through local taxes.

been taking place since at least the 2013-2014 school year. Also, while this Court found in Abbott XX that "as far as it is possible to predict the effect of SFRA's design, it meets the constitutional mandate" to provide students with a thorough and efficient public education, Abbott v. Burke, supra, 199 N.J. at 169, nevertheless, only two years after that decision, the Supreme Court again addressed the Legislature's disregard for the SFRA because the then-current Budget had once again severely underfunded the SDA districts. Accordingly, in Abbott XXI this Court again found that the Legislature's failure to sufficiently fund the Abbott districts was a constitutional violation of sufficient magnitude to warrant judicial intervention.

Unfortunately, history seems to be repeating itself, and the Court is here once more presented with a virtually identical set of facts: the State hiding behind the Budget as a pretext to shirk its constitutional obligation to provide New Jersey students with a thorough and efficient education and bypassing the SFRA with a "budgetary hold harmless" provision that maintains the same level of funding which each school district received from the State during the prior year.

It is understood by Kingway that many services across the State of New Jersey have been cut due to fiscal constraints since the economic crisis of 2008. But as was clearly stated by the Supreme Court in Abbott II, "the State may not use the

appropriations power as a shield from its responsibilities." Abbott, supra, 206 N.J. at 342. Arguably, the obligation to provide New Jersey students with a thorough and efficient education is the paramount financial obligation of the State.

In Abbott XX this Court viewed the educational rights of New Jersey students to be of such importance that those rights were superior to the State's right to set the Budget. It is submitted that this rationale should apply to Kingsway students as well.

The funding factors and considerations that were contemplated in the SFRA have been set aside by the State for now five years. Consequently, the State has been providing state aid to school districts as though the 2013-2014 school year was frozen in time. The "budgetary hold harmless" funding provision, which ignores the intent of the SFRA to fund districts based upon their current circumstances and needs, now arbitrarily and disparately funds districts regardless of their circumstances or actual need. While for many districts funding has increased, what the State has not been taking into account are the fluctuations of district populations, the increases and decreases in property values, the increases and decreases of at-need student populations and the multitude of other considerations that were contemplated by the Legislature and are encompassed in the complex calculation of funding under the

SFRA.

Instead, the funding floor set by the "budgetary hold harmless" provision has prohibited any change in state aid which would address the changing needs of school districts. Indeed, under the State's "budgetary hold harmless" provision some districts have actually been overfunded, receiving more funding from the State than they would have been provided if the funding formula of the SFRA had been applied, even though the needs of those districts may have, in some instances, significantly decreased since the previous year.

The "budgetary hold harmless" provision, which simply adopts whichever current funding decisions are made by the Commissioner of Education, is both needlessly rigid and carelessly arbitrary - "zombie" funding which takes no account of the provisions of the SFRA, actual needs or conditions of a school district and results in constitutional deprivations throughout the state. It is submitted that underfunding school districts by millions of dollars is unconstitutional *per se*; but underfunding some school districts by millions of dollars while overfunding other school districts not only invalidates the constitutionally compliant SFRA, but has created a deficit in the education of public school students in this State.

Thus, it is submitted by Kingsway, the inconsistencies in the current state funding of school districts under the State's

"budgetary hold harmless" provision are not only unconstitutional, but are also demonstrably arbitrary and capricious and may even be considered discriminatory. The effect of this improper "budgetary hold harmless" procedure is that the education of some students is more valued than the education of other students. While Kingsway is not attacking any other school district's right to funding, it only asks that the funding follow the constitutionally approved formulas set forth in the SFRA. For it cannot be reasonably maintained that some students are entitled to 100% of their school funding while other students are not.

Just as this Court would not permit the State to hide behind the Budget to underfund Abbott districts, so too should this Court prevent the State from shirking its constitutional duty to provide all New Jersey public school students, whether they attend an SDA district or a non-SDA district, with a thorough and efficient education funded by the State in accordance with the SFRA.

III. THE SUPREME COURT IS EMPOWERED TO REOPEN ABBOTT XX AND XXI AND ORDER REMEDIAL ACTION WHEN THE STATE CREATES A CONSTITUTIONAL VIOLATION OF THE RIGHT TO A THOROUGH AND EFFICIENT EDUCATION

Upon the Court's consideration of this application, the question may arise in regard to why Kingsway seeks to reopen and enforce this case before the Supreme Court, rather than file a

separate proceeding at the trial level or with the Commissioner of Education.

As noted above, this Court has the ability, and arguably the duty, to reopen and take action when the Legislature violates the constitutional right of New Jersey students to a thorough and efficient education by failing to make adequate appropriations through the Budget. The Supreme Court has the authority, in such situations, to order the Legislature to take remedial actions to correct the constitutional deficiency. In fact, this Court has already done precisely that over the course of the thirty-plus years of litigation in the Abbott cases, and most recently in Abbott XX and XXI.

Those decisions were within the context of the SDA Districts. However, the budgetary modifications sought by Kingsway in this application in regard to non-SDA districts are neither so unrelated nor novel that they would warrant a needless repetition at the administrative or a lower judicial level. It simply makes no sense to mechanically require Kingsway to proceed through the trial or administrative process, then the appellate level, when those budgetary modifications and the underlying arguments are so similar to the Abbott cases. This Court alone is uniquely able to consider and address the State's budgetary process and the SFRA at this time. It is submitted that proceeding at a trial or administrative level, resulting in an appeal to the Appellate

Division, would be an unnecessary and inappropriate waste of judicial time and effort.

In this case, trial court and Appellate Division review of the Abbott v. Burke cases would simply not be a sound use of judicial time and resources. Moreover, appeal to the Commissioner of Education who engaged in the now challenged school funding protocols and the operation of the "budgetary hold harmless" provision would not be appropriate or useful in this case.

It is submitted that neither the Legislature nor the Commissioner of Education should be permitted to ignore the Abbott XX and XXI cases and the constitutional requirement to provide all New Jersey students a thorough and efficient education. It is submitted that the Legislature has abdicated its responsibility to correctly fund all public schools in conformance with the formula set forth in the SFRA, confirming the Commissioner of Education's decisions and "budgetary hold harmless" provision that have disregarded the funding formula enacted in the SFRA.²

² It is respectfully requested that in the alternative, should this Court decline to exercise its authority to directly address and invalidate the State and/or Commissioner's improper actions, that the matter be assigned to a Special Master (or other authority as the Court sees fit) for a determination in regard to the applicability of the SFRA to the State's constitutional obligation to students in the 560 non-SDA districts.

CONCLUSION

This Court has already held that the SFRA was designed for all students (not just disadvantaged students), and that the SFRA must be permitted to work as designed:

This funding formula was designed to operate as a unitary whole and, in order to achieve its beneficial results, it must be allowed to work as it was intended. The many layers of costs that were factored into the base per-pupil amount, the added weights, and the many types of additional aid that are provided in order to transition districts to SFRA's funding levels, are all designed to provide sufficient resources and at the same time to incentivize fiscal efficiency. As designed under SFRA's funding scheme, all districts will benefit from the formula's insistence on predictability and transparency in budgeting, and accountability, and, at the same time, at-risk children across the state will benefit.

Abbott XX, supra, 199 N.J. at 173 (Emphasis added).

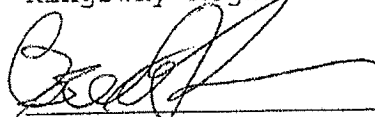
Corrective intervention by this Court, under these circumstances, is warranted and necessary to invalidate the State's improper budgetary process, which relies upon an *ultra vires* "budgetary hold harmless" provision to bypass the SFRA. This Court should direct the State to fully implement the SFRA in all school districts so that the budgetary appropriations conform with the requirements of the SFRA.

In the final analysis, Kingsway is simply asking that this Court, once again, continue to protect the students of New

Jersey. Requiring the State to comply with the SFRA for all public school districts will provide every student in New Jersey with the thorough and efficient education that those students are guaranteed under the State Constitution.

For the reasons set forth herein, Kingsway respectfully requests that this Court reopen and enforce its prior decisions in Abbott XX and Abbott XXI to recognize that the State bears a constitutional obligation to provide all students, regardless of whether those students attend a SDA District or a non-SDA District, with a thorough and efficient education. The State should be directed to provide state aid to all school districts in accordance with the SFRA, without the "budgetary hold harmless" provision set forth in the Commissioner of Education's state aid decisions and the Legislature's budgets.

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