

RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs-Movants,

vs.

FRED G. BURKE, ET AL.,

Defendants-Respondents

SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

CIVIL ACTION

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

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INTRODUCTION

Plaintiffs seek this Court's immediate intervention to ensure State compliance with the explicit directives for remediating deplorable and outmoded school facilities in the Abbott districts in Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V") and Abbott v. Burke, 164 N.J. 84 (2000) ("Abbott VII"). As the record on this Motion unquestionably demonstrates, the State is now in default of its constitutional obligation to fund facilities improvements in the Abbott districts, necessitating an appropriate remedial order directing the State to determine and seek additional facilities funding from the Legislature.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

A. THE ABBOTT FACILITIES MANDATES

In Abbott v. Burke, 149 N.J. 145 (1997) ("Abbott IV"), this Court was faced with "accounts of crumbling and obsolescent schools" that "inundate[d] the record." Id. at 186. Based on voluminous evidence of "dilapidated, unsafe, and overcrowded facilities," the Court concluded that capital deficiencies were among "the most significant problems" facing the Abbott districts. Id. In so finding, the Court reaffirmed its prior holding, in Abbott v. Burke, 119 N.J. 287, 390 (1990) ("Abbott II"), that "adequate physical facilities are an essential component of [the] constitutional mandate [for a thorough and efficient education]." Id. Further, the Court ruled, capital improvements are fundamental to the efficacy of the entire framework of Abbott remedial measures, all of which have necessary space requirements. Abbott IV, 149 N.J. at 187-88 ("We cannot expect disadvantaged children to achieve when they are relegated to buildings that are unsafe and often incapable of housing the very programs needed to educate them").

In Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V"), the Court again recognized the "grave state of disrepair" of Abbott school buildings, and underscored the fact that the deplorable physical facilities "have a direct and deleterious impact on the education available to the at-risk children." Id. at 519. The Court also reaffirmed that "[t]he State's constitutional obligation under the thorough and efficient clause, N.J. Const.

Art. VIII, §4, includes the provision of adequate school facilities." Id. at 519-20.

To address these "deplorable conditions," the Court explicitly directed the State to fund "the complete cost" of "remediating the infrastructure and life cycle deficiencies that have been identified in the Abbott districts," as well as "the construction of any new classrooms needed to correct capacity deficiencies." Id. at 524 (emphasis added). Any funding formula that fails to cover the complete facilities' cost "will not comport with the State's constitutional mandate to provide facilities adequate to ensure a thorough and efficient education." Id. (emphasis added). The Court also noted that the State's facilities proposal was "based on the premise that the State would fund 100% of 'approved costs.'" Id.

Further, the Court directed the Abbott districts to complete five-year facilities management plans, later renamed "Long Range Facilities Plans ("LRFP"), along with enrollment projections, by January 1999, and architectural blueprints by the fall of that year. Abbott V, 153 N.J. at 521. The Court set "spring of 2000" as the date to commence construction. Id. Lastly, because "projected cost estimates" were speculative, the Court declined to "impose dollar restrictions" on funding. Id. n.8.

Subsequently, in Abbott v. Burke, 164 N.J. 84 (2000) ("Abbott VII"), the Court reaffirmed that the State is obligated to fully fund all of the facilities improvements needed in the Abbott districts. Id. at 88 (holding that the