AMERICAN CONSTITUTIONALISM
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Supplementary Material

Chapter 10: The Reagan Era—Equality/Equality Under Law

Abbott, et al. v. Burke, et al., 119 N.J. 287 (NJ 1990)

Raymond Arthur Abbott was one of many children attending inner-city public schools in New Jersey who filed a class action lawsuit against Fred Burke, the state commission of education. Their suit claimed that the way New Jersey financed public education violated numerous provisions of the state constitution. The lawsuit bounced around the New Jersey court system for more than five years, as different justices attempted to determine whether the plaintiffs had complied with all state administrative procedures before litigating their constitutional claims. Finally, after the state commission of education declared that New Jersey's funding scheme was constitutional, the Supreme Court of New Jersey permitted the plaintiffs to appeal directly to that tribunal.

Abbott was just one episode in the law struggle for equal educational funding in New Jersey (and many other states). School finance litigation in New Jersey began with a state supreme court decision in Robinson v. Cahill *(1970). That decision held that the existing school funding scheme, which relied heavily on local property taxes, violated the state constitution. The legislature eventually responded with a significantly new system of school finance that shifted part of the tax burden from localities to the state, transferred additional funds to poorer school districts, and created new systems for monitoring low-income districts. Initially, however, the legislature refused to pass the tax increases necessary to fund the new plan. This led to a judicial order to close the state's schools in 1976. The legislature responded by imposing the first income tax in the state. In* Abbott v. Burke *(1981) the state supreme court refused to declare unconstitutional the basic design of New Jersey's new school financing laws.*

In Abbott v. Burke *(1990), known as* Abbott II*, the Supreme Court of New Jersey declared the school financing law unconstitutional as that measure actually functioned in the poorest districts in the state. Chief Justice Wilentz's opinion for the Court held that New Jersey was not providing the constitutionally mandated adequate education for public school children in poorer districts. What is the source of this right to an adequate education? How does Wilentz determine this right was violated? Why does he believe courts are the appropriate institution to order relief? Is he right that the New Jersey court system must set minimum standards for public education?*

The Abbott *cases represented a second generation of school finance litigation. These cases considered state programs adopted at great political cost that shifted school funding from local districts to a more centralized basis in order to provide greater educational equality. In* Abbott II*, the court elaborated the constitutional standard with which justices in New Jersey and in other states had struggled during the 1970s and 1980s. In doing so, the court shifted legal attention away from the disparities in school spending across districts and toward the quality of education and the educational achievement in the worse-off districts. In particular, the court emphasized that educational adequacy required that every student be equipped to act in his role as citizen and participate in the labor market on an equal basis. This standard combined a concern with identifying minimum substantive requirements for public education with comparing the relative performance of rich and poor districts across a wide range of educational features. In doing so, Wilentz also focused on student needs as well as what the state was providing to different students. Treating students equally might mean extra funding for some to compensate for their disadvantages.*

Abbott II *initiated a new round of dialogue between the New Jersey court and the legislature. The legislature responded to* Abbott II *in 1990, but that act was struck down by the court in 1994. In the meantime, Governor Jim Florio lost his bid for reelection largely because of his support for tax and spending reform necessary to address the court's decisions. The Supreme Court of New Jersey in 1996 declared a further set of laws inadequate. In* Abbott V *(1998), the court specified the series of actions the state had to take to bring the system into compliance with the justice's interpretation of the state constitution. These actions included new entitlement programs for preschool, after-school care, and summer school.*

CHIEF JUSTICE WILENTZ delivered the opinion of the Court.

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In order to pass on plaintiffs' contention, we must once again, in the context of this case, define the scope and content of the constitutional provision. That definition is critical to our determination of a remedy. While precision in such definition is desirable, certain considerations suggest caution against constitutional absolutism in this area. First, what a thorough and efficient education consists of is a continually changing concept. . . . "what seems sufficient today may be proved inadequate tomorrow, and even more importantly that only in the light of experience can one ever come to know whether a particular program is achieving the desired end." Second, whatever the content of a thorough and efficient education may be, the question of what must be done to achieve it is debatable, as this case well illustrates. Third, embedded in the constitutional provision itself, at least in its construction thus far by this Court, are various objectives and permissible outcomes—equality, uniformity, diversity, and disparity—that may require, if they are to be allowed, a continued general definition of the constitutional mandate.

Finally, any definition of the constitutional obligation must operate in an area where confrontation between the branches of government is not only a distinct possibility but has been an unfortunate reality. . . . That potential confrontation concerns one of the most important functions of government—education—and involves substantial public funds, implicates the taxing power, and is potentially of a continuing nature. The Legislature's role in education is fundamental and primary; this Court's function is limited strictly to constitutional review. The definition of the constitutional provision by this Court, therefore, must allow the fullest scope to the exercise of the Legislature's legitimate power.

The initial construction of the thorough and efficient clause was permeated by the concept of equality. . . . What that equality meant, while not precisely defined, was indicated in several ways. First, in deciding that the statute then in place was unconstitutional as not affording a thorough and efficient education, we relied solely on the disparity of funding, *i.e.*, on the fact that the dollars spent on education per pupil varied from one district to another. . . .

Rather than on equality, our decision was based on the proposition that the Constitution required a certain level of education, that which equates with thorough and efficient; it is that level that *all* must attain; that is the *only* equality required by the Constitution. Embedded in our observation that if the lowest level of expenditures per pupil constituted a thorough and efficient education, then the constitutional mandate would be met, was the clear implication that no matter how many districts were spending well beyond that level, the system would be constitutional. . . . [T]he clear import is not of a constitutional mandate governing expenditures per pupil, equal or otherwise, but a requirement of a specific substantive level of education. Equality of expenditures per pupil could not have been constitutionally mandated when we recognized the right of districts to spend more to address students' special needs (the "need for additional dollar input to equip classes of disadvantaged children for the educational opportunity") and disclaimed any intent to deprive the State of the power to "authorize local government to go further" than "the constitutionally mandated education" and "to tax to that further end." Our only condition was that such excess "not become a device for diluting the State's mandated responsibility."

. . . [O]ur holding in *Robinson v. Cahill I* (NJ 1970) was clear and formed the basis for our holding in *Robinson V*: a thorough and efficient education requires a certain level of educational opportunity, a minimum level, that will equip the student to become "a citizen and . . . a competitor in the labor market." The State's obligation to attain that minimum is absolute—any district that fails must be compelled to comply. If, however, that level is reached, the constitutional mandate is fully satisfied regardless of the fact that some districts may exceed it. In other words, the Constitution does not mandate equal expenditures per pupil . . . .

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The Legislature acted in response to *Robinson IV*. In addition to defining and providing for the achievement of a thorough and efficient education through administrative measures, it provided a new funding mechanism to finance the substantive education defined in the Act as constituting "thorough and efficient." It firmly placed responsibility on the State to assure achievement of the thorough and efficient level in every district. It did so, however, through a scheme that continued to allow disparity in both dollars per pupil and educational content. Indeed, while the statute was sustained as facially constitutional, the doubts and qualifications expressed by some members of the Court suggested the inevitability of the litigation now before us. We reaffirmed the concept of a constitutionally required level of education, equivalent to thorough and efficient, and the corresponding power to exceed that level; but we gave no further content to the warning that any excess spending must not dilute the constitutional obligation. We spoke in the context of a statute that guaranteed continuation of substantial disparities among school districts in educational expenditures per pupil. Despite the certainty of those disparities, we held the statute facially constitutional and awaited the day of its return when it would be attacked as applied.

The change of focus from the dollar disparity in *Robinson I* to substantive educational content in *Robinson V* is clear; it was the main theme underlying the Court's determination that the Act was constitutional. Noting at the outset that for the first time we had before us a statute that defined the constitutional obligation, provided for its implementation through both state and local administration, required that implementation to be monitored, directed the State to compel compliance where that monitoring revealed deficiencies, and provided a funding mechanism to achieve the constitutional goal, we observed that the state's school-aid provisions "must be considered, not in comparative isolation, but as part of the whole proposal formulated by the Legislature." *Robinson V* . . . .

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The clear thrust of our decision was to render equal dollars per pupil relevant only if it impacts on the substantive education offered in a given district. Compliance with the constitutional mandate was to be determined on a district-by-district measurement, and if money was a factor in the district's failure, the remedy was not to change the statute but to implement it by forcing the district to spend more or by supplying further state funds. . . .

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[In *Abbot I*] we added a new element of considerable relevance to this case. We said, in effect, that the requirement of a thorough and efficient education to provide "that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market," meant that poorer disadvantaged students must be given a chance to be able to compete with relatively advantaged students. The Act and its system of education have failed in that respect, and it is that failure that we address in this case.

Issues similar to that before us today have been litigated in various state courts. . . . Their resolution has depended on the court's interpretation of the state's constitutional education provision and/or the state's equal protection doctrine. These state constitutional claims, the underlying contentions and facts, although presenting great variety of detail, are remarkably similar to those facing us: an educational funding system that depends on a combination of state and local taxes producing disparity of expenditures in the face of inverse disparity of need. Fourteen of the states have rejected both constitutional claims; six, including New Jersey, have held the state system of financing education invalid under the state education article, while rejecting or declining to reach equal protection claims; three determined that the existing system violated both claims, and one that the system violated only equal protection.

Almost invariably the remedy extended no farther than the observation that the Legislature will presumably revise the system to conform with the Court's decision, the Court frequently reserving jurisdiction in order to impose a judicial remedy if the Legislature failed to act.

Very few of the cases have a factual record that even begins to approach that before us. None has the unique attribute of this case: an educational funding system specifically designed to conform to a prior court decision, having been declared constitutional by the Court but now attacked as having failed to achieve the constitutional goal. In short, we are the only state involved in a second round on this issue.

The command of our thorough and efficient clause is strong and clear, but to the extent that further interpretation is required, to the extent that questions of conformance to the constitutional command exist, and difficult questions remain open, we cannot look out of state for an answer—it must be found through the interpretation of our own Constitution, with the aid of the parties and the numerous *amici* who have participated in this case.

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[W]e do not believe a thorough and efficient education in the poorer urban districts "can realistically be met" by reliance on the system now in place. While local taxation no longer has the same impact, it is still significant. More than that, however, we believe that because of the complex factors leading to a failure of thorough and efficient in the poorer urban districts, including disparity of expenditures, we are no more likely ever to achieve thorough and efficient than we believed we could by relying on local taxation in *Robinson I*. Combined with these disparities of wealth and expenditure are the much more serious disparities of educational need, students in the poorer urban districts dramatically disadvantaged compared to their peers in the affluent suburbs. These intractable differences of wealth and need between the poorer and the richer, and the "discordant correlations" within a poorer district between its students' educational needs and its ability to spend, are more than the present funding system can overcome. The failure has gone on too long; the factors are ingrained; the remedy must be systemic. The present scheme cannot cure it.

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We have decided this case on the premise that the children of poorer urban districts are as capable as all others; that their deficiencies stem from their socioeconomic status; and that through effective education and changes in that socioeconomic status, they can perform as well as others. Our constitutional mandate does not allow us to consign poorer children permanently to an inferior education on the theory that they cannot afford a better one or that they would not benefit from it.

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The State claims there is now such a "viable criterion" for measuring thorough and efficient; indeed, that is the heart of the State's case when it so strenuously opposes the significance of plaintiffs' disparity measurements. It claims simply that a thorough and efficient education in fact exists regardless of the disparity of expenditures.

The proof of substantive educational content has several sources: the Act itself, the rules and regulations of the Board and the Commissioner, the Commissioner's implementing actions, and the evidence of the education that actually takes place in the district—through curriculum plans, course offerings, studies, reports, evaluations, and observations. These proofs differentiate this case from *Robinson I*.

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We conclude that although the monitoring function may have been designed to measure and achieve a thorough and efficient education, in practice it has not accomplished that goal. In part because resource issues were avoided, it operated largely as a self-improvement system. Beyond a few state mandated courses, the local board could approve any curriculum it chose or, presumably, could afford. The Commissioner evaluated neither its adequacy to the children's needs, nor its relationship to a thorough and efficient education. Nor did he evaluate the quality of any offering. When monitors visited classes, they did so to verify that the teacher was using a local board-approved lesson plan.

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We are unable to conclude that most districts are failing to deliver the educational opportunity required by our State Constitution. There are various elements to that conclusion. In a narrow procedural sense, it reflects our belief that the burden is on the plaintiffs to show that a thorough and efficient education is not being delivered; it represents our conclusion that when the State, through the Legislature and its administrative agency, has conscientiously attempted to achieve a level of education and the State's agency says it has been achieved, some deference must be accorded to that determination. It further embodies our conclusion that all of these factors are sufficient evidence to preclude a finding of constitutional deprivation based solely on expenditure disparity. Most of all it reflects our firmly held belief that before this Court concludes that there is a constitutional failure despite the legally-authorized

certification of the Commissioner to the contrary, the Board's conclusion to the contrary, and the Legislature's efforts to achieve it, the proofs must be compelling. Before this Court voids the statute, overrules the Board and the Commissioner, and orders the Legislature to provide a new system, the constitutional failure must be clear. As to most districts of the state, it is not. But as to some—the poorer urban districts—it is glaringly clear.

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The primary basis for our decision is the constitutional failure of education in poorer urban districts. The record demonstrates beyond debate that a thorough and efficient education does not exist there. Our conclusion that the constitutional mandate has not been satisfied is based both on the absolute level of education in those districts and the comparison with education in affluent suburban districts.

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[T]the level of education offered to students in some of the poorer urban districts is tragically inadequate. Many opportunities offered to students in richer suburban districts are denied to them. For instance, exposure to computers is necessary to acquire skills to compete in the workplace. In South Orange/Maplewood school district, kindergarteners are introduced to computers; children learn word processing in elementary school; middle school students are offered beginning computer programming; and high school students are offered advanced courses in several programming languages or project-oriented independent studies. Each South Orange/Maplewood school has a computer lab.

By contrast, many poorer urban districts cannot offer such variety of computer science courses. While Princeton has one computer per eight children, East Orange has one computer per forty-three children, and Camden has one computer per fifty-eight children. . . .

Science education is deficient in some poorer urban districts. Princeton has seven laboratories in its high school, each with built-in equipment. South Brunswick elementary and middle schools stress hands-on, investigative science programs. However, many poorer urban districts offer science classes in labs built in the 1920's and 1930's, where sinks do not work, equipment such as microscopes is not available, supplies for chemistry or biology classes are insufficient, and hands-on investigative techniques cannot be taught. In Jersey City and Irvington, middle school science classes are taught without provision for laboratory experience. . . .

The disparity in foreign-language programs is dramatic. Montclair's students begin instruction in French or Spanish at the pre-school level. In Princeton's middle school, fifth grade students must take a half-year of French and a half-year of Spanish. Most sixth graders continue with one of these languages. . . . In contrast, many of the poorer urban schools do not offer upper level foreign language courses, and only begin instruction in high school. Jersey City starts its foreign language program in the ninth grade; Paterson begins it at the tenth grade. Most Jersey City high schools offer only two languages . . . .

Music programs are vastly superior in some richer suburban districts. . . .

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Physical education programs in some poorer urban districts are deficient. While many richer suburban school districts have flourishing gymnastics, swimming, basketball, baseball, soccer, lacrosse, field hockey, tennis, and golf teams, with fields, courts, pools, lockers, showers, and gymnasiums, some poorer urban districts cannot offer students such activities. In East Orange High School there are no such sports facilities; the track team practices in the second floor hallway. . . .

Many of these poorer urban districts are burdened with teaching basic skills to an overwhelming number of students. They are essentially "basic skills districts." In 1985, 53% of Camden's children received remedial education; in East Orange, 41%; in Irvington, 30%. By contrast, only 4% of the students in Millburn school district received remedial education.

Legislature's appropriations for renovation of deteriorating school buildings and construction of new facilities, although substantial, do not approach the estimated $3 billion needed for a complete upgrade of the school facilities in this state. Many poorer urban districts operate schools that, due to their age and lack of maintenance, are crumbling. These facilities do not provide an environment in which children can learn; indeed, the safety of children in these schools is threatened. . . . In contrast, most schools in richer suburban districts are newer, cleaner, and safer. They provide an environment conducive to learning. They have sufficient space to accommodate the childrens' needs now and in the

future. While it is possible that the richest of educations can be conferred in the rudest of surroundings, the record in this case demonstrates that deficient facilities are conducive to a deficient education.

Thorough and efficient means more than teaching the skills needed to compete in the labor market, as critically important as that may be. It means being able to fulfill one's role as a citizen, a role that encompasses far more than merely registering to vote. It means the ability to participate fully in society, in the life of one's community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends. As plaintiffs point out in so many ways, and tellingly, if these courses are not integral to a thorough and efficient education, why do the richer districts invariably offer them? The disparity is dramatic. Alongside these basic-skills districts are school systems offering the broadest range of courses, instruction in numerous languages, sophisticated mathematics, arts, and sciences at a high level, fully equipped laboratories, hands-on computer experience, everything parents seriously concerned for their children's future would want, and everything a child needs. In these richer districts, most of which have some disadvantaged students, one will also find the kind of special attention and educational help so badly needed in poorer urban districts that offer only basic-skills training. If absolute equality were the constitutional mandate, and "basic skills" sufficient to achieve that mandate, there would be little short of a revolution in the suburban districts when parents learned that basic skills is what their children were entitled to, limited to, and no more.

. . . The State's conclusion is that basic skills are what they need first, intensive training in basic skills. We note, however, that these poorer districts offer curricula denuded not only of advanced academic courses but of virtually every subject that ties a child, particularly a child with academic problems, to school—of art, music, drama, athletics, even, to a very substantial degree, of science and social studies. . . .

In saying this we disparage neither these districts' decision to focus on remedial training, nor the State testing requirements that may have prompted this focus. But constitutionally, these districts should not be limited to such choices. However desperately a child may need remediation in basic skills, he or she also needs at least a modicum of variety and a chance to excel.[1]

Equally, if not more important, the State's argument ignores the substantial number of children in these districts, from the average to the gifted, who can benefit from more advanced academic offerings. Since little else is available in these districts, they too are limited to basic skills.

The level of substantive education is proven by plaintiffs through other indicators. Plaintiffs have selected what are sometimes regarded as strong indicators of educational quality, and have measured them among districts. Teacher ratios (the number of teachers per 1,000 pupils), the average experience of instructional staff, their average level of education, all have been documented in chart after chart.

As to each one of these indicators, the poorer urban districts suffer by comparison to the rich. Indeed, although the incremental showing is far from dramatic, teacher ratios, experience, and education consistently improve as the districts' property wealth, per pupil expenditure, socioeconomic status or other similar factor improves. . . . Here we deal only with disparity—we do not find that one instructor per fifteen students, twenty students, or thirty students is necessary for a thorough and efficient education. Nor do the experts even agree on the significance of the quantity of staff, the experience of staff, or the staffs' educational background. We are satisfied, however, that these indicators support the conclusion that the absolute quality of education in the poorer urban districts is deficient.

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[1] Beyond this, recent scholarly discussion has focused heavily on the need for individualized instruction tailored to children's different needs and development patterns, experimental learning—ranging from scientific experiment to poetry writing—that responds to and develops children's curiosity, and interventions that address the hostile attitudes minority children may bring to a system often perceived as "white" and alien. Much of this research suggests that schools may fail to build on the knowledge and skills poor and minority children bring to school, strengths often different from those of white, middle class children of the same age. . . . As judges rather than educators or social scientists, we are in no position to assess the value of these approaches or the place they should be given relative to more traditional book and workbook exercises. Nevertheless, it seems clear to us that experimentation is needed to reverse the staggering failure of our poorer urban districts, and that experimentation itself requires money [footnote by the Court].

. . . Disparity exists, therefore, between education in these poorer urban districts and that in the affluent suburban districts; it is severe and forms an independent basis for our finding of a lack of a thorough and efficient education in these poorer urban districts—these students simply cannot possibly enter the same market or the same society as their peers educated in wealthier districts.

This record shows that the educational needs of students in poorer urban districts vastly exceed those of others, especially those from richer districts. The difference is monumental, no matter how it is measured. Those needs go beyond educational needs; they include food, clothing and shelter, and extend to lack of close family and community ties and support, and lack of helpful role models. They include the needs that arise from a life led in an environment of violence, poverty, and despair. Urban youth are often isolated from the mainstream of society. Education forms only a small part of their home life, sometimes no part of their school life, and the dropout is almost the norm. There are exceptions, fortunately, but substantial numbers of urban students fit this pattern. The goal is to motivate them, to wipe out their disadvantages as much as a school district can, and to give them an educational opportunity that will enable them to use their innate ability.

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The record evidence of the quality of education in poorer urban districts and the desperate needs of their students clearly indicates that a significantly different approach to education is required if these districts and their students are to succeed. Furthermore, there is a wealth of material outside of the record to the same effect. The nation has come to recognize the education of the urban poor as a most difficult and important problem. While opinions concerning the methods, approaches, and techniques differ concerning their effectiveness, their advantages and disadvantages, there is solid agreement on the basic proposition that conventional education is totally inadequate to address the special problems of the urban poor. Something quite different is needed, something that deals not only with reading, writing, and arithmetic, but with the environment that shapes these students' lives and determines their educational needs.

Obviously, we are no more able to identify what these disadvantaged students need in concrete educational terms than are the experts. What they don't need is more disadvantage, in the form of a school district that does not even approach the funding level that supports advantaged students. They need more, and the law entitles them to more.

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It is clear to us that in order to achieve the constitutional standard for the student from these poorer urban districts—the ability to function in that society entered by their relatively advantaged peers—the totality of the districts' educational offering must contain elements over and above those found in the affluent suburban district. If the educational fare of the seriously disadvantaged student is the same as the "regular education" given to the advantaged student, those serious disadvantages will not be addressed, and students in the poorer urban districts will simply not be able to compete. A thorough and efficient education requires such level of education as will enable all students to function as citizens and workers in the same society, and that necessarily means that in poorer urban districts something more must be added to the regular education in order to achieve the command of the Constitution. Such added help is in theory afforded now through categorical aid, consisting of additional funds to address special needs, aid for such things as compensatory education, bilingual education, education for students who are developmentally disabled, or visually handicapped. The problem, however, is that this categorical aid is added to a budget that is already significantly less than the comparable budgets of richer districts. When added to that regular budget of the poorer urban district, it fails to bring even equality of expenditure dollars between districts, and certainly does not provide the help needed to address these students' disadvantages.

We realize our remedy here may fail to achieve the constitutional object, that no amount of money may be able to erase the impact of the socioeconomic factors that define and cause these pupils' disadvantages. We realize that perhaps nothing short of substantial social and economic change affecting housing, employment, child care, taxation, welfare will make the difference for these students; and that this kind of change is far beyond the power or responsibility of school districts. We have concluded,

however, that even if not a cure, money will help, and that these students are constitutionally entitled to that help.

If the claim is that additional funding will not enable the poorer urban districts to satisfy the thorough and efficient test, the constitutional answer is that they are entitled to pass or fail with at least the same amount of money as their competitors.

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We find that in order to provide a thorough and efficient education in these poorer urban districts, the State must assure that their educational expenditures per pupil are substantially equivalent to those of the more affluent suburban districts, and that, in addition, their special disadvantages must be addressed.

We find that the constitutional deficiency is a product of the Act as applied to these poorer urban districts; that the Board and the Commissioner cannot, even at full funding, achieve a thorough and efficient education in these districts under the present Act.

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The Act must be amended, or new legislation passed, so as to assure that poorer urban districts' educational funding is substantially equal to that of property-rich districts. "Assure" means that such funding cannot depend on the budgeting and taxing decisions of local school boards. Funding must be certain, every year. The level of funding must also be adequate to provide for the special educational needs of these poorer urban districts and address their extreme disadvantages.

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We decline to rule on plaintiffs' state equal protection claim. The core of their argument is that wealth-based disparity is causing educational disparity. They contend, in effect, that what they consider the fundamental right of education is affected by the property wealth of the school district, that the system in reality consists of a classification of students that determines their level of education by a characteristic not only irrational but suspect, the property wealth of the districts they live in, and that there is no compelling State interest to justify the classification. We referred in *Robinson I* to the monumental governmental upheaval that would result if the equal protection doctrine were held applicable to the financing of education and similarly applied to all governmental services. We need not deal with those implications, for the remedy afforded in this opinion, although not based on equal protection, substantially mitigates plaintiffs' equal protection claim.

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Measured by any accepted standard, New Jersey has been generous in the amount of money spent for education. We currently spend more dollars per student for education than almost any other state. Given that fact, this Court could not conclude that the State has failed to provide for a thorough and efficient education in all school districts. To so conclude would mean that our State Constitution has invented a standard so different from, and substantially higher than, the rest of the country that even though we spend almost the most, constitutionally that is not enough. The dilemma is that while we spend so much, there is absolutely no question that we are failing to provide the students in the poorer urban districts with the kind of an education that anyone could call thorough and efficient.

There is another perspective. Our citizens and our government are obviously dedicated to education and generous towards our children, otherwise we would not spend that much. There are other reasons for this level of spending, however. The need is great and the money is there. We are the second richest state in the nation. Therefore, while the relatively high level of our present expenditures must give us pause, it must also be viewed in the light of our needs and our wealth.

After all the analyses are completed, we are still left with these students and their lives. They are not being educated. Our Constitution says they must be.

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This record proves what all suspect: that if the children of poorer districts went to school today in richer ones, educationally they would be a lot better off. Everything in this record confirms what we know: they need that advantage much more than the other children. And what everyone knows is that—as children—the only reason they do not get that advantage is that they were born in a poor district. For while we have underlined the impact of the constitutional deficiency on our state, its impact on these

children is far more important. They face, through no fault of their own, a life of poverty and isolation that most of us cannot begin to understand or appreciate.

. . . The Act is unconstitutional as applied to poorer urban districts.