



<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
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## MELVIN WYNS

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1 [TRANSCRIBER'S NOTE: MR. LANG IS OUT OF MICROPHONE  
2 RANGE MAKING IT VERY DIFFICULT AT TIMES TO DECIPHER  
3 WHAT HE IS SAYING.]

4 THE COURT: All right, so we're on the  
5 record. This is the continuing matter of Alcantara, et  
6 al vs. David Hespe, New Jersey DOE, etcetera.

7 So, your appearances, please?

8 Oh, I should put our docket number which is  
9 EDU 11069-14.

10 All right, so, petitioners?

11 MR. LANG: Arthur Lang for petitioners.

12 MS. JENSEN: Good morning, Your Honor, Deputy  
13 Attorney General Lauren Jensen on behalf of the State  
14 Respondents. Also with me from my office are Deputy  
15 Attorney General Geoffrey Stark and Jennifer Hoff, and  
16 at counsel's table is a representative of the Depart-  
17 ment of Education, Susan Ecks (phonetic).

18 THE COURT: Is there a reason why you can't  
19 sit up here or you don't want to sit up here, Ms. Ecks?

20 MS. ECKS: Oh, I just didn't want to -- I can  
21 if you prefer.

22 THE COURT: Well, it's up to you. Okay. And  
23 who else do you have Mr. Lang, with you? Anybody?

24 MR. LANG: I have a witness, Mr. Melvin Wintz  
25 and participant Paul Tractenberg is here.



1 THE COURT: Same thing, do you wish to sit up  
2 by counsel table or are you happy back there --

3 MR. TRACTENBERG: Oh, no, Your Honor, my  
4 under-standing is that as a participant I can play only  
5 a limited role and my testimony is being taken --

6 THE COURT: I understand, but just in case it  
7 was, you know, up to you.

8 All right, and --

9 MR. INZELBUCH: Good morning, Michael  
10 Inzelbuch.

11 THE COURT: Appearing for?

12 MR. INZELBUCH: Participant for Lakewood.

13 THE COURT: All right. All right, so, and  
14 Mr. Grossman sent a letter -- is he totally out of this  
15 case or is he just out for today?

16 MR. LANG: I think he is out -- nothing -- it  
17 has nothing to do with the case, it's just he's  
18 retiring.

19 THE COURT: He was helping --

20 MR. LANG: Yes, but he -- he retired.

21 THE COURT: Okay. And of course we have --  
22 there's Ms. Prapas who is very good counsel and I'm  
23 sorry that she's not with us anymore.

24 All right, so, Mr. Lang, it's your witness.

25 MR. LANG: I'd like to call (out of microphone

1 range) --

2 THE COURT: Okay. Mr. Wyns, you can -- I  
3 don't know if you wish to get up or you could just --  
4 wherever you're comfortable, as long as the mike -- you  
5 can get to the mike.

6 MR. WYNS: Okay, I'm good.

7 THE COURT: Oh, perfect, okay.

8 MR. WYNS: Thank you.

9 THE COURT: So can you raise your right hand,  
10 please?

11 M E L V I N W Y N S, PETITIONER'S WITNESS, SWORN.

12 THE WITNESS: I do.

13 THE COURT: All right, just state your name.

14 THE WITNESS: Melvin, M-E-L-V-I-N, Wyns,  
15 W-Y-N-S.

16 THE COURT: All right, thank you. All right,  
17 Mr. Lang.

18 DIRECT EXAMINATION BY MR. LANG:

19 Q And let me just get some background informa-  
20 tion; what is your date of birth?

21 A 12/21/1945.

22 Q And your education starting with college?

23 A A Bachelors degree in economics from the  
24 University of Illinois.

25 Q And what is your work background after

1 college?

2 A After college I started working in 1970 with the  
3 Department of Education, Division of Finance. I was  
4 there for 31 years.

5 After I retired from the Department of Education I  
6 spent four years at the Trenton Board of Education as  
7 their school business administrator, board secretary.

8 After I left Trenton I had a consulting LLC  
9 through October of last year when I dissolved the  
10 company with the intention to retire.

11 Q Your work -- Trenton in an Abbott District?

12 A Yes, it was.

13 Q What did you -- you worked for the state for  
14 31 years, from the beginning starting I guess in 19 --  
15 what was it, 1970?

16 A 1970.

17 Q What were your different roles when you  
18 worked for the state, what were your jobs?

19 A Initially I was an auditor accountant trainee in  
20 1970. Ultimately when I left the department after  
21 having spent 31 years, the entirety of which was in the  
22 Division of Finance I was the director of the Office of  
23 School Finance for the -- I believe it was the last 13  
24 years before I retired from the Department of  
25 Education.

1 Q What did you do in your role as the director  
2 of School Finance for those 13 years?

3 A I was responsible for all of the major state  
4 school aid programs. I believe at that time there were  
5 27 school aid programs and our office was responsible  
6 for implementing all of those programs, making deter-  
7 minations of school aid allocations for all of the  
8 school districts in the state, making sure that they  
9 received timely payment of auditing, any -- and at that  
10 time during that 31 year period that I was at the  
11 department the department was organized quite  
12 differently than what it is presently. There were a  
13 lot of ancillary responsibilities with regard to school  
14 budgeting. There were, let's say, many fewer of us  
15 than there are now in the Division of Finance, so we  
16 kind of did everything, you know.

17 The exception I would say as to what I was not  
18 responsible for would be the federal aid programs, if I  
19 had to shewn (phonetic) out one area of responsibility  
20 that was not mine, but everything that was really state  
21 kind of fell under our office at that time.

22 Q These programs that you supervised, were they  
23 programs that were designed for T&E or (out of micro-  
24 phone range) education?

25 A That was the intention is that the school aid --

1 the major school aid programs, not all of them, but the  
2 major school aid programs were those designed to  
3 provide funding for districts to provide a thorough and  
4 efficient education.

5 Also during my tenure at the department there were  
6 many court decisions, you know, challenging the  
7 implementation of various school funding formulas, some  
8 of which I participated in as a witness for the state  
9 in terms of explaining, you know, how programs worked  
10 and so on, and so, yes, I mean, the programs were  
11 intended to provide thorough and efficient education  
12 funding for school districts.

13 Q Since you've retired from working with the  
14 state what have you done in your consulting firm?

15 A I've done work for various school districts and  
16 municipalities in New Jersey dealing with a variety of  
17 school funding issues, a good part of my work has been  
18 with regional school districts dealing with various  
19 regionalization issues. I've testified in court on  
20 several administrative procedures involving regional-  
21 ization. I -- aside from my consulting work I also  
22 appeared as an expert witness in the Abbott 20 and the  
23 Abbott 21 proceedings before the special master for the  
24 Education Law Center. So a variety of funding issues.

25 The testimony in the two Abbott cases did involve

1 the present school funding law, the school funding  
2 reform act, so it's like a cross -- kind of cross  
3 spectrum of various things.

4 Q Did the Supreme Court -- what -- what was the  
5 purpose of this special master in Abbott 20 and Abbott  
6 21?

7 A Well, in Abbott 20 the plaintiffs, which were the  
8 -- the 31 poor urban school districts were challenging  
9 the facial constitution -- of the school funding reform  
10 act and the Supreme Court delegated the responsibility  
11 to hear the details, I guess, to the -- a special  
12 master, Judge Joyne (phonetic) as an expert for the  
13 plaintiffs. In that case I think it had to do -- my  
14 testimony was as an expert on Abbott budgeting  
15 processes.

16 In Abbott 21 in this third year, the 1011 school  
17 year which would've been the third year of the  
18 implementation of the school funding reform that the  
19 law was underfunded by the legislature and the  
20 plaintiffs challenged that under funding. Again, the  
21 Supreme Court delegated the responsibility to hear the  
22 details of that case to the same judge, Judge Joyne, as  
23 the special master. I testified as the expert on that  
24 case and I believe it was as an expert on the -- the  
25 school funding reform act.

1 Q Is that 2008?

2 A That testimony -- my testimony I believe was  
3 actually in 2010.

4 Q No, I meant the school funding reform act of  
5 2008.

6 A Oh, 2008, yes, you're correct.

7 Q I have your C.V. here and I've listed it as  
8 Exhibit 75, I'm sure you're familiar with it. Is there  
9 anything you'd like to add to it?

10 (P-75 marked for  
11 Identification)

12 A No, not at this point. I believe it's up to date.

13 MR. LANG: Your Honor, I'd like to qualify Mr.  
14 Melvin Wyns as a school funding expert.

15 THE COURT: Any questions?

16 MS. JENSEN: No, Your Honor.

17 THE COURT: All right, so, any objection?

18 MS. JENSEN: No, Your Honor.

19 THE COURT: All right, then he'll be accepted  
20 as an expert in school funding.

21 BY MR. LANG:

22 Q Are you -- are you -- have you been following  
23 the school funding laws since you've retired from the  
24 Department of Education?

25 A Yes. All of the testimony that I just referenced

1 that I gave in Abbott 20 and 21 was subsequent to my  
2 retirement from the Department of Education and  
3 subsequent to the enactment of the school funding  
4 reform act of 2008, and as I indicated, I left the  
5 department in 2001, so, yes.

6 Q And since then have you been keeping up to  
7 date on the legislative enactments and the school  
8 funding --

9 A Yes, I do. Part of that is my own curiosity to  
10 see how things are proceeding. Much of that through  
11 the end of last year was because I had my own  
12 consulting company and coincidentally I had a consult-  
13 ing agreement with the Lakewood Board of Education from  
14 January through June of this year, so, I have  
15 necessarily kept up with, you know, all of the  
16 information, the latest iterations let's say of the  
17 school funding reform act.

18 Q How long -- when did you start becoming  
19 involved or becoming familiar with the -- the funding  
20 in Lakewood?

21 A Well, I -- I believe it was July 18, 2003. I'm  
22 going from memory that date, but I know it was 2003,  
23 but I believe it was July 18<sup>th</sup>.

24 Q So at that time were you -- did you have any  
25 roles as consultant or --



1 A Yes, I was consultant for the Lakewood Board of  
2 Education. They reached out to me. Initially, my  
3 responsibilities -- at that time they had an annual  
4 school election. The tax levy was repeatedly voted  
5 down. My initial contact really had to do with to --  
6 after a budget defeat at that time, then the board was  
7 obligated to go to the township counsel and the town-  
8 ship counsel could set the tax levy, so I was to be an  
9 intermediary in that process. It didn't work well but,  
10 you know, that was my initial responsibility the first  
11 time I was contacted.

12 Q And have you written papers in the past  
13 before this year concerning the school funding in  
14 Lakewood?

15 A Yeah, on at least three occasions in the past, I  
16 believe in 2003 I wrote two papers concerning issues  
17 with the current school funding law at that time and I  
18 later did a follow up in 2008 after the enactment, I  
19 believe it was in November of 2008 regard -- after the  
20 enactment of the school funding reform act and which I  
21 identified that an earlier problem remained with the  
22 new law.

23 Q So it would be fair to characterize your --  
24 well, let me just ask straight out; so, do you under-  
25 stand what's happening up to date in Lakewood?

1 A I know what's happening, yeah, with Lakewood in  
2 great deal. I -- you know, between 2003 and the  
3 current year, and I don't recall an exact count but I  
4 would say in six to eight of those school years in that  
5 period I had a consulting contract with Lakewood so I  
6 was repeatedly assisting Lakewood on various fiscal  
7 issues and many of them dealt with the school funding  
8 formula and its impact on Lakewood. Not all of them,  
9 but many of the issues, you know, related to the school  
10 funding act.

11 Q Are you under contract with Lakewood right  
12 now?

13 A No.

14 Q I want to show you the May 7<sup>th</sup> letter written  
15 by Mr. (out of microphone range) -- this is Exhibit --  
16 this is Exhibit 68. And everyone has it in their  
17 packet. Have you seen this before?

18 (P-68 marked for  
19 Identification)

20 A Yes.

21 Q What is it?

22 A This is a copy of Mr. Forney's letter dated May 7,  
23 2018 to the superintendent of the Lakewood School  
24 District in which they are approving a 28 million and  
25 182 thousand 90 dollar grant of -- actually it's a

1 state aid advance, \$28,182,090 for the current 2018-  
2 2019 school year.

3 Q Is it your testimony that this letter is or  
4 this copy of this letter is what it purports to be?

5 A When you say what it purports --

6 Q Well, is this the letter written by Mr.  
7 Forney?

8 A This is the -- yeah, this is a copy of the same  
9 document I've seen previously.

10 MR. LANG: Your Honor, I'd like to admit this  
11 into evidence.

12 THE WITNESS: Well, why don't we just wait  
13 until after cross examination.

14 MR. LANG: Okay, all right. Okay.

15 THE COURT: Unless is there any objection?

16 MS. JENSEN: No, Your Honor, we have no  
17 objection.

18 THE COURT: All right, so it'll be admitted.

19 (P-68 received in  
20 Evidence)

21 BY MR. LANG:

22 Q Now so what is the -- again, what exactly  
23 does the letter say?

24 A The letter, with regard to the 2018-19 school  
25 budget for Lakewood provides additional revenue to the

1 Lakewood School District of \$28,182,090 in the form of  
2 a state aid advance, sometimes referred to as a loan to  
3 the Lakewood Board of Education for the purpose of  
4 providing -- or enabling the Lakewood School District  
5 to provide a thorough and efficient education to its  
6 students. This would be additional money beyond what  
7 is provided in the School Funding Reform Act, it would  
8 be subject to -- let me say they could only do this  
9 because Lakewood has a physical monitor in place. Only  
10 districts with physical monitors are stutorially  
11 eligible to receive state aid advances, and under that  
12 same authorizing statute there's a condition that funds  
13 can only be provided if it's necessary for the  
14 provision of a thorough and efficient education. That  
15 fact has to be certified by the Commissioner to the  
16 State Treasurer before the State Treasurer can  
17 authorize the funding, so this is clearly money that's  
18 needed for the district to provide a thorough and  
19 efficient education for the '18-'19 school year based  
20 on a finding at this point by Deputy Assistant  
21 Commissioner which then the Commissioner is obliged to  
22 request the State Treasurer for. The Commissioner has  
23 to certify to the State Treasurer that it's necessary  
24 for T&E, so this -- yeah, and the other significant  
25 thing about this letter is actually the date, May 7<sup>th</sup>.



1 A -- which is the May 7<sup>th</sup> letter and in the May 7<sup>th</sup>  
2 letter there's an indication from Mr Forney that the  
3 \$28,182,090 is so that Lakewood could balance its 2018-  
4 19 school budget, okay?

5 Subsequent to May 7, 2018 when the Appropriations  
6 Act was approved for the 2018-19 school year the  
7 funding that was in place in Lakewood as of May 7<sup>th</sup> was  
8 reduced under the Appropriations Act by \$1,566,821  
9 which means they would've had another shortfall of  
10 \$1,566,821 shortfall, okay? At that time Lakewood was  
11 notified that -- that they couldn't raise taxes on  
12 account of this 1.5 million dollar shortfall, they  
13 could not raise taxes, and they had a choice of cutting  
14 the budget or applying for emergency aid and the  
15 emergency aid would be granted to districts that were  
16 in fiscal distress.

17 This October 26, 2018 letter indicates that the  
18 department approved Lakewood's emergency aid request  
19 for \$1,566,821 so that the budget would remain in  
20 balance, and they would not have to make reductions, so  
21 this money, along with the 28 million dollars, which --  
22 to a total very near 30 million dollars shows the  
23 additional funding that the state provided beyond the  
24 School Funding Reform Act to provide thorough and  
25 efficient education for Lakewood students in the

1 current school year.

2 Q That 30 million was just for this school  
3 year, is that what --

4 A Just for the current school year, yes.

5 MR. LANG: Your Honor, are we going to wait  
6 until after testimony to ask if I could admit things  
7 into evidence or should I ask now?

8 THE COURT: Is there any objection to this  
9 letter?

10 MS. JENSEN: No, Your Honor.

11 THE COURT: Okay, so admitted.

12 (P-81 received in  
13 Evidence)

14 MR. LANG: Okay. And that was exhibit 81.

15 BY MR. LANG:

16 Q So -- so concerning the original -- okay, let  
17 me -- so that's the -- that's the current school year.  
18 Let me show you P-74 which deals with previous school  
19 years. This is P-74.

20 (P-74 marked for  
21 Identification)

22 A P-74, again, this is a letter I have seen, this is  
23 the letter from the State Treasurer to then  
24 Commissioner David Hespe -- or, actually, a letter to  
25 the Treasurer from Commissioner David Hespe in which

1 he's requesting 4.5 million dollar state aid advance  
2 for Lakewood for the purpose of providing a thorough  
3 and efficient education to Lakewood students for the  
4 fiscal year 2014-2015.

5 Now there also is attached -- and I don't know  
6 where the -- P-74 there are actually two other letters  
7 for P-74.

8 Q Are they all in there?

9 A There's three letters in there.

10 Q Yeah, okay, so --

11 A I've seen all of them, but there's a letter, also,  
12 June 23, 2016 to the Acting State Treasurer from  
13 Commissioner Hespe where he's requesting a state aid  
14 advance of \$5,640,183 for Lakewood, again, for the  
15 provision of a thorough and efficient education to  
16 Lakewood students, and then there's a letter dated  
17 November 9, 2017, again from the State Treasurer.

18 In this case it's Commissioner Harrington  
19 requesting funding, another state aid advance for  
20 Lakewood of \$8,522,678. In this case it's for the  
21 2017-18 school year, again, it's certifying to the  
22 State Treasurer, the department finds that this  
23 advanced payment is necessary to ensure the provision  
24 of a thorough and efficient education which is a  
25 statutory requirement for them to provide state



1 advances.

2 Q Okay, so then --

3 A All of these letters taken together with the May  
4 7, 2018 letter show that there had been four such  
5 advances to Lakewood and all under the statute as being  
6 necessary for the provision of a thorough and efficient  
7 education in four different fiscal years, the most  
8 recent one being by far the largest amount.

9 MR. LANG: Is there -- accept exhibit 74 into  
10 evidence?

11 MS. JENSEN: No objection.

12 MR. LANG: Okay.

13 (P-74 received in  
14 Evidence)

15 BY MR. LANG:

16 Q In your opinion what's happening? Why is  
17 Lakewood constantly in need of these loans?

18 A Well, these letters clearly tell me that the  
19 School Funding Reform Act has not and is not working in  
20 Lakewood. It's not providing adequate resources for  
21 Lakewood to provide a thorough and efficient education  
22 which, while it may have been the intention of the  
23 statute, it isn't happening in Lakewood and the  
24 Department has need to intervene -- has been able to  
25 intervene fortuitously, I guess, for Lakewood because

1 there's a fiscal monitor. I don't know what would  
2 happen if there were no fiscal monitor in place, but  
3 fortuitously they've had a fiscal monitor, the State  
4 has been able to intervene and provide these state aid  
5 advances in various fiscal years to enable Lakewood to  
6 provide, hopefully, a thorough and efficient education.

7 Q Now the 4.5 million to 5. something million,  
8 the 8.5 million to 28 million, do these have to be  
9 repaid, and how do they have to be repaid?

10 A Well, as I said, the provision of that same  
11 statute requires, because they are state aid advances,  
12 this is an advance of future state aid and the require-  
13 ment in the statute is that they be repaid over a ten  
14 year period out of future state aid, so, in effect,  
15 what is occurring, you're robbing Peter to pay Paul,  
16 and so Lakewood's present students can have a thorough  
17 and efficient education, they're taking money away from  
18 future students.

19 I think, in my opinion, on the faulty premise that  
20 future students won't have those same T&E needs,  
21 frankly, because you're taking future state aid, which  
22 is an unknown amount of money, which may not be there,  
23 or likely not -- will not be there in this instance,  
24 will be -- you know, will be used to repay these loans.  
25 These are not grants, this is money that Lakewood has

1 to give back to the state and is presently in part  
2 already paying back to the state, I think to the tune  
3 of, in the current year, over 3 million dollars, so 3  
4 million dollars of the money its receiving, they're  
5 turning around and paying it back to the state.

6 So it's -- you know, it's a clear indication to me  
7 that the School Funding Reform Act has not and is not  
8 working in Lakewood, it is not doing what it was  
9 intended to do.

10 Q Now you mentioned that you've dealt with  
11 Lakewood since 2003. Has the state provided Lakewood  
12 -- the Lakewood School District with supplemental  
13 financial assistance before these -- before, I believe,  
14 it was 2014-15, that first loan?

15 A Yes, in -- in lesser amounts. I think -- I want  
16 to say beginning in 2004-05 for four year and I think  
17 this was partially through my efforts at that time,  
18 because I think I gave the Lakewood the idea that  
19 through budget footnote language, "You might be able to  
20 get some additional money from the state," and we did  
21 for four years through budget footnote language in the  
22 Annual Appropriations Act received additional state aid  
23 as a line item in the state budget of a million  
24 dollars, so, those were grants, so maybe 2004-05, '05-  
25 '06, '06-'07, and '07-'08 it was originally to be for

1 three years, but because of language in the  
2 Appropriation Act that simply gave districts the amount  
3 of money that they had in the prior school year, you  
4 know, they actually ended up being four years, so in  
5 lesser amounts, yes, there's been additional special  
6 appropriations for Lakewood, even years ago.

7 Q Those previous --

8 A Under prior school funding laws, yes.

9 Q Those special appropriations back in the  
10 previous decade --

11 A Yes?

12 Q Were they just for extra programs or -- or  
13 because Lakewood needed it to balance the budget?

14 A Well, I think they were convinced, I can remember  
15 meeting with Commissioner Librera at the time in the  
16 Governor's Office and representatives of the Governor's  
17 Office, we met specifically about Lakewood's fiscal  
18 issues and the problem with the existing school funding  
19 formula at that time because of Lakewood's  
20 demographics, and Commissioner Librera clearly  
21 indicated to me at the time that they understood the  
22 problem, so we had to convince -- let's say we had to  
23 convince persons within the, you know, the Governor's  
24 Office and at the Department of Education that there  
25 really was a problem with Lakewood. They assisted us

1 -- I think they believed us, I think they were  
2 convinced we presented the right information to them.

3 The only thing I can tell you is the money was  
4 forthcoming. I don't think they did that out of the  
5 goodness of their hearts, you know, so I think they  
6 were convinced it was needed, and that there were --  
7 you know, the demographics in Lakewood, as unique as  
8 they are, were providing problems relating to school  
9 funding. What's that -- I'm now talking fourteen years  
10 ago.

11 Q So, am I correct to say that this problem  
12 could go on for a while?

13 A Oh, yeah.

14 MS. JENSEN: Objection, Your Honor.

15 MR. LANG: Oh, okay.

16 MS. JENSEN: It's a leading question.

17 MR. LANG: Okay.

18 BY MR. LANG:

19 Q So has this problem been going on for a  
20 while?

21 MS. JENSEN: Objection, I'm sorry, it's still  
22 a vague question, I mean.

23 MR. LANG: Okay.

24 THE COURT: For a while? For about how long?

25 BY MR. LANG:

1 Q Okay. Was the problem then based on the  
2 demographics, just like today?

3 A Well, I had identified -- I referred in my  
4 responses previously to the fact I had written various  
5 papers for Lakewood and I pointed out problems with,  
6 again, this was prior to SFRA, to the school funding  
7 formula that specifically related to Lakewood's unique  
8 demographics.

9 I also indicated that I had written a position  
10 paper for Lakewood in 2008, just after the new school  
11 funding law was enacted, which is -- was the present  
12 school funding law, and pointed out that the problem,  
13 one major problem with Lakewood's demographics had not  
14 been addressed by SFRA and that problem remains, you  
15 know, today. So, yeah, the problems predate SFRA and  
16 they remain today, and they were a result of Lakewood's  
17 unique demographics. And as seen, I think, you can  
18 significantly, in my opinion, look at the May 7<sup>th</sup> letter  
19 and you can look at 28 million compared to the amounts  
20 in the prior state aid advances and readily conclude  
21 that the situation is worsening in Lakewood, that the  
22 shortfall between what the School Funding Reform Act  
23 would provide and what is required is getting larger  
24 which means, in my opinion, that the situation is  
25 worsening, and worsening quickly.

1 Q What are Lakewood's unique demographics?

2 A The -- there are several; rapid population  
3 increases --

4 MS. JENSEN: I object to this, Your Honor.  
5 I'm sorry, Mr. Wyns' been qualified as an expert on  
6 school funding, not necessarily on demographics.

7 MR. LANG: Well --

8 THE COURT: Go ahead, Mr. Lang.

9 MR. LANG: Well, when you apply state formula  
10 there's -- this has to deal with the state formula.

11 THE COURT: I'm going to permit the question.

12 THE WITNESS: Okay. The demographics, and  
13 I've identified, okay, the rapid population increases  
14 and the fact that the -- the student population is only  
15 six -- the student population, the public school  
16 student population in Lakewood is only -- is currently  
17 below six percent of the total population, whereas, in  
18 a typical school community in New Jersey it would be  
19 about 16 percent of the school population. Attached to  
20 that is the large non public school population. The --  
21 the 41 percent of the population in Lakewood, according  
22 to the census, is below the age of 18. That compares  
23 to 22 percent on a state-wide basis, so the school age  
24 population is much larger in Lakewood, yet, only six  
25 percent of that school age -- well, six percent of the

1 total population is in the public schools, so, if you  
2 accompany that large population increase also with  
3 large increases in property value, and large increases  
4 of income, property value and income, those large --  
5 and those are problems with property value and income  
6 are the problem I identified way back in 2003, again in  
7 2008, and they've only worsened because of the rapid  
8 population increases and the substantial property value  
9 and income increases which is in Lakewood which are  
10 disproportionate to what is happening elsewhere in the  
11 state are they negatively impact the school aid  
12 formula.

13 The largest school aid calculation is equalization  
14 aid. Equalization aid is the wealth based formula  
15 under the School Funding Reform Act, okay? In that  
16 wealth based formula the wealth is determined based on  
17 increases, you know, based upon property value and  
18 income, so, Lakewood, which means that their equaliza-  
19 tion aid, which is supposed to be the largest category  
20 of aid in most school districts is disappearing. It  
21 will soon, I predict in the next school year, or  
22 certainly no later than the school year after the next  
23 school year will be zero. Lakewood would be left as a  
24 consequence of recent amendments to the School Funding  
25 Reform Act with only two categorically aids.



1           The equalization aid will be gone, adjustment aid  
2           is no -- is no longer permitted. They will only be  
3           left with the two categorical aids, special education  
4           categorical aid and security categorical aid, so, most  
5           of Lakewood's school aid will be gone in two years.  
6           They'll only have the two categorical aides left which  
7           means, in my opinion, that this additional assistance,  
8           30 million dollars, more money is going to be needed  
9           beyond the School Funding Reform Act.

10           I predict next year, perhaps as much as 43 to 45  
11           million will be needed. Certainly they would need 30  
12           million dollars at a minimum just to sustain the  
13           present level without considering any enrollment  
14           changes, without considering any additional demand  
15           because of additional non public students requiring  
16           special education services. They would need at least  
17           30 million, so there's going to be a number beyond 30  
18           million, perhaps as high as 43 or 45 million of special  
19           assistance that will be needed in the form of another  
20           state aid advance.

21           It's my understanding that the only thing that the  
22           State can do at present under the law is to offer these  
23           state aid advances. There's no ability for the state  
24           to provide grants, so, we're in this cycle where  
25           they're going to receive -- continue to pay, you know,

1       rob Peter to pay Paul, continue to have to repay this  
2       money back out of future -- it's a nonsensical approach  
3       and it can only lead to disaster because at some point  
4       they'll run -- the ability to pay the money will be  
5       gone because the amount that they have to pay back, if  
6       this goes on for will be all of the aid, or, you know,  
7       most of the aid that they're receiving in the future.  
8       It's -- it's -- it's kind of a nonsensical cycle that  
9       we're in and, you know, something needs to be done.

10           Q     Well, you mentioned that -- aid will be gone  
11       in a year or two, adjustment aid is gone, and you also  
12       said that for sure -- if I quote you right, whatever  
13       was needed last year is going to be needed this year,  
14       and most likely -- what was the number 40? What was  
15       the number --

16           A     I said it could be as high as 43 to 45, that's my  
17       estimate. It certainly is at least 30 million just to  
18       maintain the present spending level without any cost  
19       increases, without any demand because of additional  
20       students, public and non public, you would need at  
21       least 30 million, so we're looking ahead to '19-'20  
22       fiscal year is some number bigger than 30 million again  
23       as a loan, okay? It could, you know, and part of the  
24       problem is some of their present small amount of  
25       equalization aid, which is only about two -- 2. some

1 million dollars is going to disappear, okay? And some  
2 of the adjustment aide, in theory, that they should be  
3 receiving is going to disappear under, you know, so  
4 what funding they're getting presently because of the  
5 amendments to the statute is going to be reduced, so  
6 that number is definitely going to be something larger  
7 than 30 million; 43 to 45, in my opinion when you  
8 consider additional enrollment, additional demand for  
9 non public school student services, but certainly  
10 another large advance.

11 Q Do you know how much Lakewood already owes as  
12 of right now?

13 A In excess -- the principle amount, my understand-  
14 ing, if you take of the four existing advances together  
15 is over 40 million dollars. It averages, you know, ovr  
16 a ten year period, four million dollars a year, you  
17 know, is coming out of their aid to repay the state. I  
18 think the number in the current year is -- the budgeted  
19 number is slightly over three million, but the three  
20 million is not considering any of this which they  
21 would've have, any of the 28 million which they'd have  
22 to start repaying next year or so, let's say they -- so  
23 let's say ten percent of 28, so let's say that's  
24 another 2.8 so maybe next year it's five, you know, I  
25 don't know the exact schedule, but let's say over a ten

1 year period, 40 million dollars worth of loans, four  
2 million a year, roughly, so, you know, and another year  
3 of that, you know, add three more million, if I'm right  
4 about it, it's at least 30 million. Add another three  
5 then that, you know, that four year may become seven --  
6 a seven year, you know, another 30 million means you'll  
7 have 70 million dollars of loans being paid back, so  
8 you can see how in a couple of years of that process,  
9 because the grants are not an option for the state at  
10 this point, and quite frankly, if Lakewood did not have  
11 a fiscal monitor in place loans wouldn't be an option  
12 and there'd be a shortfall, let's say at this point and  
13 30 million dollars absent a fiscal monitor, where -- I  
14 don't know what would happen.

15 Q Now you mentioned that these loans have to  
16 come out of future state aid and you also said that  
17 some were 40 million they owe now, next year you said  
18 that in your opinion it's going to be 30 million but  
19 more likely 43 million, your testimony. Is it  
20 conceivable that there won't be enough state aid at all  
21 --

22 MS. JENSEN: Objection, Your Honor.

23 MR. LANG: Okay.

24 BY MR. LANG:

25 Q How is it possible -- is it possible --

1 A Well, it's possible mathematically if we let this  
2 process continue -- continue, you know, if -- if some-  
3 thing isn't done in Lakewood to address the fact that  
4 the School Funding Reform Act is not doing what it's  
5 supposed to be doing, which is providing adequate  
6 revenues for the district to provide a thorough and  
7 efficient education on its own, okay? Remember, that's  
8 why these loans are here, because SFRA is not doing  
9 what it's supposed to be doing, providing adequate  
10 revenues for the district to provide a thorough and  
11 efficient education for its students. That was the  
12 intention of the statute, it's not happening;  
13 therefore, and again I say luckily for Lakewood that  
14 they have a fiscal monitor, they're getting assistance,  
15 but -- and, you know, so if a fiscal monitor remains in  
16 place in Lakewood and this process is allowed to  
17 continue for another year, or two, or three, then  
18 mathematically it's possible that, yeah, the state aid  
19 that's supposed to be used for providing children with  
20 a thorough and efficient education will all be used --  
21 it's just a -- you know, it's just how long do we --  
22 does the state allow this process to continue?

23 If nothing happens, then mathematically, yeah, if  
24 you stretch it out long enough it's possible all of the  
25 state aid would go for paying right back to the state

1 and none of it would go for T&E.

2 Q Is it possible that it -- would it even be  
3 enough?

4 MS. JENSEN: Objection, calls for speculation,  
5 Your Honor.

6 THE COURT: Well, he is an economist, so I'll  
7 let you draw whatever conclusion you wish to draw.

8 THE WITNESS: The -- well, it's possible --  
9 the state aid is not going to grow, okay? The recent  
10 amendments, there's -- there's two significant events  
11 that occurred after May 7, 2018 that negatively impacts  
12 school aid in Lakewood, so, with the idea that these  
13 loan amounts will disappear, or the necessity for loans  
14 will go away because state aid is somehow going to  
15 increase, that the state aid situation is going to get  
16 better, that's just not true because there's two events  
17 happened after May 7, 2018 that tell me that the state  
18 aid circumstance in Lakewood is going to worsen, okay?

19 The first was the Appropriations Act  
20 language, okay, that for the '18-'19 fiscal year, which  
21 is only for the '18-'19 school year, okay, you can see  
22 that their aid was reduced by 1.5 million. Keep in  
23 mind that the decision that you need -- needed 28  
24 million was premised on a state aid amount which has  
25 now been lessened by 1.5 million which is why they gave

1 them emergency aid for 1.5 million.

2 Through budget footnote language in the  
3 Appropriations Act, what they did is they effectively  
4 -- beginning in the '18-'19 fiscal year eliminated  
5 adjustment aid which is an aid that Lakewood, for the  
6 first time qualified for in 2018-19, but then they took  
7 it away for fiscal year '18-'19.

8 Then Chapter 67 laws of 2018, which amended  
9 the School Funding Reform Act, it did two things, two  
10 things, only one of which negatively impacted the --  
11 Lakewood. They removed adjustment aid permanently, so  
12 not only are you not going to get in '18-'19, okay,  
13 we've eliminated that as a category of aid completely  
14 in the future, so there are going to be no adjustment  
15 aid forthcoming in the future.

16 They also removed the state aid cap which in  
17 theory said if your aid was being capped under school  
18 aid there's no longer a cap, Lakewood's aid was not  
19 being capped so that, you know, had no impact on  
20 Lakewood, so, if you look at the fact that adjustment  
21 aid has been permanently eliminated and the fact that  
22 their equalization aid will disappear next year or the  
23 year after, you can readily conclude that Lakewood is  
24 not getting state aide increases. Probably in the -- I  
25 would say in the next year or two they'll have small

1 decreases, after that it'll level off around the  
2 present year's level, but to expect that there's going  
3 to be substantial -- more state aid to offset the need  
4 for the state aid advances, that is not going to  
5 happen.

6 Q What about -- that wasn't what I asked. What  
7 I meant to ask was, would there be enough state aid to  
8 even repay back the loans?

9 A Well, we don't know, it depends on how long the  
10 loan process is allowed to continue.

11 If, you know, if it continues three more years,  
12 and let's say, you know, that's a hundred -- let's say  
13 that's 100 million dollars more of loans, now common  
14 sense says, okay, if you're allowed to go on for three  
15 more years and you have 140 million dollars of loans,  
16 and that's 14 million dollars a year out of 23 million  
17 dollars in state aid, then that's telling you that most  
18 of your state aid is going right back to the state. If  
19 it goes on five more years, I mean, you know, yeah, if  
20 you run it on five more years all of the state aid is  
21 going to be gone. You know, the point is, it's at a  
22 ridiculous point now that for me saying that that  
23 should be allowed to continue, I can't fathom that  
24 because you get to the ridiculous circumstance that,  
25 yeah, they won't have any state aid, you know.



1 Q Could Lakewood just authorize a referendum to  
2 raise taxes?

3 A No, they can't, they can't because under the  
4 present statutes -- there's a two percent tax levy  
5 increase. Lakewood is already raising and has been  
6 doing that in all of the recent years the maximum  
7 amount that they're allowed to raise under that two  
8 percent tax levy increase law, and they cannot -- by  
9 statute they cannot have a referendum to provide money  
10 except where things which are not required for T&E.

11 The statute says that you can only have a  
12 referendum beyond the two percent cap amount if it's  
13 not required for T&E, so this idea that they can raise  
14 the, you know, additional money that they need for T&E  
15 they can't, the law doesn't allow them to do that, so,  
16 you know, it's a Catch-22 situation. You can't raise  
17 more for T&E than you are presently. The school  
18 funding law is not working and not providing you the  
19 revenue you need to provide T&E. As a consequence you  
20 need these state aid advances which have to be repaid  
21 out of future state aid and when you do that you're  
22 robbing Peter to pay Paul, it's kind of a ridiculous  
23 cycle which in my opinion needs to be addressed some-  
24 how.

25 You know, the examples get ridiculous if you

1 stretch this out too many more years into the future.

2 Q Does the SFRA -- apply to Lakewood?

3 MS. JENSEN: Objection, Your Honor.

4 THE COURT: Isn't that a conclusion I'm  
5 supposed to come to?

6 MR. LANG: Well, he's an expert.

7 THE COURT: In economics.

8 BY MR. LANG:

9 Q Okay, is Lakewood's problem, under the  
10 current statutory framework, is there any way that  
11 Lakewood's problem can be fixed?

12 A It would require legislative action. The  
13 legislature would need to -- to -- it can only be fixed  
14 -- there's no action that I'm aware of that the  
15 Department of Education can take administratively other  
16 than to approve the state aid advances to -- which  
17 would allow Lakewood to continue to provide a thorough  
18 and efficient education to its students, but if you  
19 discount that loan process, there's no other action  
20 that the department can take administratively to  
21 address the defects that exist in the School Funding  
22 Reform Act due to Lakewood's demographics other than  
23 action by the legislature. They've got to fix the  
24 problem. There's -- you know, the department I would  
25 argue, they're doing everything they can to assist

1 Lakewood. The question in my mind is whether this is  
2 the appropriate mechanism under the constitution to --  
3 whether this is appropriate under the constitution for  
4 this to be the means to provide T&E funding on a  
5 continuing basis to a school district.

6 It was my understanding, based on my understanding  
7 of prior court decisions, and my testimony in prior  
8 Abbott cases that the School Funding Law, the School  
9 Funding Reform Act was intended to be a unitary act, it  
10 was intended to meet the constitution -- you know, in  
11 itself, by itself was intended to -- to meet the  
12 constitutional obligation to provide a thorough and  
13 efficient education, and it's also my understanding  
14 that -- because I was one of the authors of the Quality  
15 Education Act, which was a prior school funding law  
16 subsequently found unconstitutional and I wrote most of  
17 it and I know I was found unconstitutional because it  
18 relied in part upon discretionary action and then the  
19 court decision finding a law that I wrote a large part  
20 of, the court said, "You could not rely on  
21 discretionary action to meet the T&E obligation," so,  
22 the discretionary action, subjective discretionary  
23 action in awarding these state aid to me does not  
24 fulfil the T&E mandate.

25 My understanding of how I understand T&E is that

1 the obligation is continuing, it needs to be -- the  
2 obligation of T&E funding is a continuing obligation.  
3 It is predictable to provide -- predictable -- the  
4 predictability has to do with the district's ability to  
5 do appropriate budget planning.

6 When you don't know until May 7<sup>th</sup>, the last day  
7 before your budget is supposed to be set what funding  
8 you're going to get, which was the case this last year  
9 where it was 28 million dollars awarded on the last  
10 day, you can't do appropriate planning. It should be  
11 formulaic, it should not be subjective and  
12 discretionary action. T&E should not be premised on  
13 discretionary subjective action.

14 I argue that that's exactly what the state aid  
15 advances are. You don't know what you're getting, it's  
16 based on a subjective determination by the officials at  
17 the Department of Education. It's -- it's unpredict-  
18 able. I just said I don't know what the amount for  
19 next year is going to be. I said it's going to be  
20 something larger than 30, it may be 43 or 45 million.  
21 Today I don't think anyone at DOE could tell you, you  
22 know, what that number is going to be, so it's not  
23 predictable, it's not continuing. The decision, you  
24 know, you don't know it's continuing until the decision  
25 is made. It's discretionary, they can approve them or

1 they -- they don't have to approve them.

2 To me that's not the way that the constitutional  
3 mandate is supposed to be met. The intention was that  
4 it be met clearly in Abbott 20 that's what the state  
5 testified to was a unitary funding formula which on  
6 itself was supposed to provide adequate resources to  
7 enable all districts in New Jersey, including Lakewood,  
8 to provide a thorough and efficient education. It is  
9 not in Lakewood.

10 Clearly, the acknowledgment and the statements by  
11 state officials that this money is necessary for a  
12 thorough and efficient education in Lakewood is a clear  
13 indication to me that the School Funding Reform Act has  
14 not done what it's supposed to do in Lakewood, and  
15 continues to not do, and I would argue will not in the  
16 future do what it's supposed to do, and only worsen  
17 because of the recent amendments in Chapter 67, things  
18 will remain the same, they will worsen and the solution  
19 is legislative action.

20 MR. LANG: I have no further questions.

21 THE COURT: All right, thank you. Do you need  
22 a break?

23 THE WITNESS: Oh, no, I'm fine.

24 MS. JENSEN: I could use a few minute break,  
25 Your Honor.

1 THE COURT: You could use a few minute break?  
2 All right, so we'll take a short recess.

3 (BRIEF RECESS)

4 THE COURT: All right, so we're back on the  
5 record.

6 MS. JENSEN: Your Honor, we have no cross  
7 examination for Mr. Wyns.

8 THE COURT: All right, thank you. All right,  
9 you're finished, you're excused.

10 THE WITNESS: Thank you.

11 THE COURT: Or maybe I do have a question.

12 THE WITNESS: Oh, yes, Your Honor.

13 BY THE COURT:

14 Q So what would you recommend if you could  
15 change the formula? What would you suggest?

16 A If I was going to change the formula --

17 Q This is just out of curiosity.

18 A -- obviously, the changes would have to, in my  
19 opinion -- in my opinion address the things in the  
20 formula letter -- letter being negatively impacted by  
21 Lakewood's unique demographics and there's two  
22 provisions, in my opinion, which need to be addressed;  
23 the special education, Your Honor, is funded under two  
24 formulas in school funding reform. It's partially  
25 funded through the equalization aid formula, and it's

1 partially funded through special education categorical  
2 aid, okay?

3 The enrollments that are used for special  
4 education in those two formulas are only inclusive of  
5 public school enrollments. There's no consideration  
6 for non public students, and the fact that Lakewood is  
7 required by both state and federal law to provide  
8 special education services for non public students in  
9 the school aid formula. The school aid formula only  
10 deals with public school students, so special education  
11 funding, both in the equalization aid formula and in  
12 the special education categorical formula would need to  
13 be addressed so that some provision is made to provide  
14 funding to Lakewood for all of those required special  
15 education services.

16 The other defect, in my opinion, and this is the  
17 one that I initially spoke about in 2003 and 2008 is  
18 the fact Lakewood's demographics, wealth I said is  
19 based upon demographics, primarily property value and  
20 income, so the larger your property value and income,  
21 the lower your school aid, and relative to your public  
22 school population, relative to your public school  
23 population.

24 So if you're looking at relative wealth per public  
25 school student because of the large population increase

1 in Lakewood, and the large increase in property value,  
2 and the large increase in income, Lakewood's local  
3 share in the school aid equalization aid formula is too  
4 large, okay? It's too large because the district  
5 appears to be disproportionately wealthy, and when I  
6 say "disproportionately," I'm saying relative to that  
7 small relative school aid population, only six percent  
8 of, you know, the total population, so I would deal  
9 with the components of the equalization aid formula  
10 which would be the adequacy budget calculation. I  
11 would include more money in there in the adequacy  
12 budget calculation for special education, more money  
13 within the special education categorical formula for  
14 special education; primarily because of the require-  
15 ments under federal and state law attached to providing  
16 special education services for a large non public  
17 school population.

18 And the other component of the equalization aid is  
19 adequacy budget minus local share, equals equalization  
20 aid, so I would increase the adequacy budget. I would  
21 somehow control the increase in the local share so that  
22 they would receive more equalization aid, so demo-  
23 graphics attached to property value, income, and  
24 special education enrollment I think would all have to  
25 be addressed.



1 I mean, there's multiple ways, you know, the  
2 legislature could do whatever, you know, in their  
3 opinion they think is -- is necessary but if you're  
4 dealing with just the school aid equation I think you  
5 would look at those formulas and those components and  
6 find ways to tweak them somehow.

7 THE COURT: All right, so, no other  
8 questions, I assume?

9 MS. JENSEN: I have just a couple -- couple  
10 follow up questions, Your Honor --

11 THE WITNESS: Surely.

12 MS. JENSEN: -- just on the special education  
13 aspect.

14 THE WITNESS: Yes, yes.

15 CROSS EXAMINATION BY MS. JENSEN:

16 Q So under the IDEA public school students are  
17 entitled to a free appropriate public education; do you  
18 understand that?

19 A You said public school students?

20 Q Yes.

21 A Yes.

22 Q But non public school students are not  
23 entitled to a free appropriate public education; are  
24 you aware of that?

25 A I understand that they're not -- and I don't know

1 about the word "Free appropriate public education," but  
2 my understanding of IDEA is they're not entitled to the  
3 same services as public school students.

4 Q And are you aware that school districts  
5 receive a federal IDEA funds for services that are  
6 required to be provided by the IDEA?

7 A I'm aware but under the federal IDEA law that  
8 you're referencing, those funds are -- that funding is  
9 intended to be supplemental -- it cannot supplant local  
10 funding, so it would be a violation of federal law to  
11 use IDEA money to replace things that should be funded  
12 by the School Funding Reform Act because the federal  
13 requirement is supplement, not supplant.

14 Q Well, the IDEA funds are provided to cover  
15 IDEA required services.

16 A But -- no, not to provide, to supplement.  
17 Supplement and provide is a big difference.

18 Q (Out of microphone range)

19 A IDEA funds are -- under federal law are  
20 supplementary to, and in fact, in Abbott 20 federal  
21 funding came up as an issue, and --

22 Q I'm sorry, I'm sorry, Mr. Wyns, I think not  
23 the question that I asked you. So under the IDEA  
24 school districts receive IDEA funds which also have a  
25 proportionate share that's designated for non public

1 school student services; do you understand that?

2 A Correct. I -- I understand that, yes.

3 Q Okay. And then school districts also receive  
4 under state law Chapter 192 funds for 192 services that  
5 are required; do you understand that?

6 A Those funds --

7 Q Just a "yes" or "no," please, Mr. Wyns.

8 A I don't think "yes" or "no" is a fair answer.

9 Q Do school districts --

10 A Those funds are supplementary to federal law. If  
11 you go on the state website --

12 Q Mr. Wyns -- can you please answer the  
13 question that I asked?

14 A -- it says that 192 fund -- I administered those  
15 programs.

16 Q Mr. Wyns --

17 THE COURT: Mr. Wyns, just answer the  
18 question.

19 THE WITNESS: Yes, they received them.

20 BY MS. JENSEN:

21 Q And districts also received Chapter 193  
22 funds, correct?

23 A 193?

24 Q Yes.

25 A 193, yes.

1 Q Yes, okay. Thank you.

2 MS. JENSEN: I have no more questions, Your  
3 Honor.

4 THE COURT: All right, thank you. Mr. Lang,  
5 anything else?

6 MR. LANG: No.

7 THE COURT: All right, thank you.

8 THE WITNESS: Thank you very much, Your  
9 Honor.

10 THE COURT: Okay, thank you. All right, do  
11 you need to take a minute with your witness or shall we  
12 continue?

13 UNIDENTIFIED MALE: Do you need to escort (out  
14 of microphone range)

15 MR. LANG: Oh, he's not allowed to stay?

16 THE COURT: He's allowed to stay if he wants  
17 to stay. I don't have a problem with him staying.

18 MR. WYNS: Yeah, I'm just going to listen.

19 THE COURT: Okay. All right, so we'll go off  
20 the record for a minute.

21 (BRIEF RECESS)

22 THE COURT: All right, so, Mr. Lang indicated  
23 he's finished with his witnesses and the state still  
24 has a pending motion for dismissal, and we have the  
25 opposition from the petitioner and I think I had

1 indicated that after the testimony of Mr. Wyns that  
2 you'd be able to comment briefly and you can do it  
3 orally or in writing, so what's your preference?

4 MR. STARK: It's our understanding that the  
5 court would like to hear from us orally and briefly and  
6 so we're prepared to do that, assuming Mr. Lang has  
7 rested then we'll proceed.

8 THE COURT: Mr. Lang, you've rested, correct?

9 MR. LANG: Yes, Your Honor.

10 THE COURT: All right, so we're ready to  
11 proceed then?

12 MR. STARK: Yes, Your Honor.

13 THE COURT: Are you ready, too, Mr. Lang?

14 MR. LANG: Yeah.

15 THE COURT: Okay, very good. All right, so  
16 I'll hear from Mr. Stark.

17 MR. STARK: Your Honor, just very briefly, the  
18 motion that we filed was premised on the arguments that  
19 petitioners have not demonstrated that the students  
20 that they represent are the students of the district as  
21 a whole are experiencing a constitutional deprivation  
22 of a thorough and efficient education.

23 Nothing presented in the testimony here today  
24 changes our assessment of that of their case.

25 As the witness testified in his opinion, the

1 department is doing everything it can to continue --  
2 his words, to continue to provide a thorough and  
3 efficient education to the children of Lakewood Public  
4 Schools, and again, in his opinion, the legislature  
5 should add, but again, you know, he stated on several  
6 occasions that the department is doing everything it  
7 can to continue to assist Lakewood in providing a  
8 thorough and efficient education, and so based upon  
9 that, that does not change the argument that we  
10 presented in our motion and we believe that the motion  
11 to dismiss should be granted.

12 THE COURT: All right. Thank you.

13 MR. STARK: Thank you.

14 THE COURT: All right, Mr. Lang?

15 MR. LANG: Your Honor, are we arguing just on  
16 the record as a supplement or is this oral argument on  
17 the motion to dismiss right now?

18 THE COURT: We've already had that pretty  
19 much.

20 MR. LANG: Oh, we did? Oh, okay, all right.

21 THE COURT: We did, so -- am I right? I  
22 recall that we had argument on that.

23 MR. STARK: Yes.

24 MR. LANG: Yeah, we discussed the motion in  
25 August.

1 THE COURT: Yes.

2 MR. LANG: Okay.

3 THE COURT: So now this is really just  
4 because we supplemented the record with Mr. Wynn's  
5 testimony, anything else that you would like to say in  
6 addition to what you've already said and included in  
7 your briefs.

8 MR. LANG: Well, I just want to say in  
9 addition that -- that what we need out of this court,  
10 what we're looking for out of this court is facts and  
11 findings since we understand that the legislature, that  
12 it's ultimately that the court, and the commissioner  
13 administratively, this situation can't be fixed. What  
14 we're looking for is recommendations and that's the  
15 history of school funding litigation, going all the way  
16 back to Robinson -- well, added, actually, it was in  
17 the OAL first and then in Bacon (phonetic), and I don't  
18 -- I'm not familiar with other cases that challenged a  
19 school funding formula, but it starts out in the OAL.  
20 The OAL makes findings, facts and findings, and passes  
21 it onto the commissioner and then either the  
22 commissioner makes a recommendation to legislature or  
23 not, then it goes to the Superior Court.

24 But it is true, we understand that admini-  
25 stratively there's -- there's nothing that could be

1 done at this point and that's exactly what we're saying  
2 that -- that we're in a situation where -- that without  
3 -- without the loans there wouldn't be -- there would  
4 be absolutely not even anything close to a thorough and  
5 efficient education. Loans are only there in order to  
6 ensure a thorough and efficient education. That's  
7 almost an admission -- that is an admission, the  
8 statute only allows the loans because of thorough and  
9 efficient education. (Out of microphone range) five  
10 days of witnesses to say, "What's going on with  
11 Lakewood?" even with the loans. Without the loans, I  
12 mean, the situation would be a lot worse.

13 But the -- we're challenging the statute.  
14 The statute is the statute capable of providing funding  
15 for a thorough and efficient education in Lakewood.  
16 I mean, this whole notion of -- of loans filling in the  
17 gap for what Mr. Azzara, the state monitor, and Mr.  
18 Shafter testified was an absolute bare bones budget  
19 that that somehow meets the constitutional standard,  
20 that's -- it just boggles the mind, I don't think this  
21 was the intent of the constitution.

22 That's all I have to say.

23 THE COURT: Mr. Tractenberg?

24 MR. TRACTENBERG: Yes. Your Honor, I think  
25 Mr. Wyns' testimony has dramatically reenforced the



1 core unconstitutionality which the petitioners have  
2 asserted, and I want to just by way of background say I  
3 actually participated in the hearings which led to  
4 Administrative Law Judges, Judge LeFelt's 600 page  
5 opinion in Abbott and that opinion was clearly premised  
6 not on the belief that the Administrative Law Judge or  
7 the commissioner had the authority to correct the  
8 unconstitutionality, but was a mechanism to create a  
9 record which would ultimately inform the courts if it  
10 came to the courts or the legislature and I think  
11 that's on a much smaller and more specialized scale.

12           Essentially, the charge that I understand  
13 that you have in this case is to find facts and make  
14 recommendations to the commissioner which bear on the  
15 constitutionality of the statute as applied to  
16 Lakewood, not to anybody else, I want to emphasize, and  
17 I think as I argued and Mr. Wyns really reenforced when  
18 we last presented argument before Your Honor, the  
19 commissioner's repeated certifications, which underlay  
20 the loans that the state has provided, clearly  
21 demonstrate that without those loans Lakewood is unable  
22 to provide a thorough and efficient education. That's  
23 the statutory predicate for this advanced state aid  
24 really loans. And it's irrelevant whether with the  
25 loans Lakewood isn't able to provide a thorough and

1 efficient education or not.

2           The commissioner himself and herself have  
3 certified four times, at least, that without the loans  
4 Lakewood is unable to provide a thorough and efficient  
5 education to its students, which to me means  
6 inescapably that the application of SFRA to Lakewood  
7 adds up to an unconstitutional situation, partly at  
8 least corrected by the loans, and as Mr. Wyns  
9 testified, that's really the limit of what the  
10 executive can do under the current state of the law,  
11 but I -- I also want to underscore something Mr. Wyns  
12 testified to which is that lynchpin for the  
13 commissioner to have that authority with regard to  
14 Lakewood is the presence of state monitors in Lakewood.

15           If the state monitors were removed, Lakewood  
16 would be left without the benefit under the existing  
17 statutory structure of those loans which I think, best  
18 case scenario, make the difference between a manifestly  
19 unconstitutional system of education lacking and  
20 thorough and efficient education, and one that might  
21 crawl over the margin and become thorough and  
22 efficient.

23           I can't imagine the state will present a case  
24 which suggests that without the loans the funding that  
25 Lakewood gets under SFRA is sufficient to provide a

1 thorough and efficient education. That would mean the  
2 state is challenging the commissioner's certifications  
3 which I don't believe it will do.

4 So I think the core issue before you, Your  
5 Honor, I would submit, is whether there's evidence that  
6 the Lakewood School District and its students is denied  
7 the opportunity to provide a thorough and efficient  
8 education under SFRA funding and I think certainly Mr.  
9 Wyns' testimony was I thought powerfully on point and I  
10 think so with the earlier presentations.

11 THE COURT: All right, thank you.

12 MR. INZELBUCH: I say it in short, I say it in  
13 brief, someone who has represented or sued, but  
14 represented the students of Lakewood for the last 29  
15 years, as I said many times, I'm not even sure why this  
16 case has gone on.

17 The people all the way towards the window,  
18 three Deputy Attorney Generals, I don't believe have  
19 said once that the current statute is constitutional.

20 What I OPRA'd, which we now have as P-74,  
21 which for some reason was never here and now is, as Dr.  
22 -- Mr. Tractenberg and Mr. Lang have stated, there's no  
23 question in front of you. The commissioner after  
24 commissioner has said to you, or said to Lakewood,  
25 "There's not sufficient funds for T&E," so I am not

1 even sure why this wasn't dismissed summarily in  
2 Lakewood or Mr. Lang's, or the petitioner's favor  
3 because this is an admission that no one has  
4 challenged.

5 As far as -- then you get all these loans,  
6 you don't get -- in a certain way I say thank God we  
7 have state monitors because they themselves who get  
8 paid by Lakewood, but authorized by the state, have  
9 said there's not enough money, so, I remember you once  
10 coming down from your chambers with a bunch of typed  
11 questions and I remember the reaction, in my perception  
12 to those questions, was, "Yay, she's going to dismiss  
13 this."

14 There's no need to dismiss this, I believe.  
15 What I believe is needed here is simply a finding where  
16 no one is in dispute, no one here is in dispute that  
17 but for the loans there would be no T&E. So I don't  
18 think this should be considered a -- even poised as  
19 that, but it shouldn't be whether Dear Judge Scarola is  
20 going to summarily dismiss. No. Judge Scarola is  
21 going to say, as Mr. Wyns said, as Mr. Lang just said,  
22 "You have no authority to change the status quo." We  
23 can see that, but you do have the ability, like was  
24 done in Abbott to say, based on the testimony of Mr.  
25 Wyns, which I might add there was no cross examination

1       except for a few minuscule questions about special ed  
2       which this court is intimately familiar with how it  
3       works, but P-74, P-81, P-68 all tell us there's not  
4       enough money in Lakewood, and the very people telling  
5       us that are the people, three DAG's clients called the  
6       Department of Ed.

7               The only last thing I want to add with those  
8       three or four last questions asked by the DAG of Mr.  
9       Wyns, and you can take judicial notice since you are  
10      the Judge on most of those cases, that there is a large  
11      36,000 plus non public population. The DAG is correct  
12      that if you are a non public student your only source  
13      is IDEA Part B and 192, 193 and she forgot 226. But  
14      once those students, which this court has seen day in  
15      and day out in published decisions, once those students  
16      have significant impairments Dave Duffit (phonetic)  
17      becomes David and applies to the public school for  
18      public funding, and there is not sufficient funding,  
19      and IDEA does not cognizant any district where there's  
20      a sleeping lion of 36,000 public -- non public kids  
21      that become public overnight when they need help, so  
22      please don't dismiss, please conclude, conclude finally  
23      which has been concluded by the Department of Ed for  
24      how many years; yes, you can't change a legislation,  
25      but here are my recommendations; Lakewood is not

1 getting T&E as acknowledge by the state.

2 Thank you.

3 THE COURT: All right, thank you very much.

4 All right, so, thank you. I guess we don't  
5 need tomorrow's testimony then? Or tomorrow's day?  
6 Everybody has a free day? All right. So I appreciate  
7 it. Thank you, Mr. Wyns, for coming in here today and  
8 thank you, everybody.

9 MS. JENSEN: Thank you, Your Honor.

10 {Whereupon, the proceedings were adjourned.}

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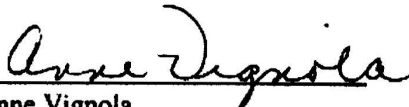
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1 STATE OF NEW JERSEY}

2 COUNTY OF MERCER }

3  
4 I, Anne Vignola, assigned transcriber, do  
5 hereby affirm that the foregoing is a true and accurate  
6 transcript of the proceedings in the matter of Leonor  
7 Alcantara, Individually and as Guardian ad Litem for  
8 E.A., et al. versus David Hespe, Commissioner of  
9 Education, New Jersey State Board of Education and New  
10 Jersey Department of Education, bearing Docket Number  
11 EDU 11069-14, heard on December 18, 2018 before the  
12 Office of Administrative Law Court.

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15 Anne Vignola  
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A/D/T CERTIFICATION

I, Carla Nale, AD/T #520, certified transcriber, do hereby affirm that the foregoing is a true and accurate proofread transcript in the matter of Leonor Alcantara, Individually and as Guardian ad Litem for E.A., et al. versus David Hespe, Commissioner of Education, New Jersey State Board of Education and New Jersey Department of Education, bearing Docket Number EDU 11069-14, heard on December 18, 2018 before the Office of Administrative Law Court.

  
Carla Nale, AD/T# 520