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April 24, 2006

Re: *Campaign for Fiscal Equity, et al. v. State of New York, et al.*,
New York County Index No. 111070/93

Stuart M. Cohen
Clerk of the Court
Court of Appeals of the State of New York
20 Eagle Street
Albany, New York 12207-1095

We write in brief reply to the State Defendants' letter of April 21 opposing our request for a calendar preference and an expedited briefing schedule. The letter is yet another effort in the State's long campaign to preclude or delay the judicial resolution of Plaintiffs-Appellants' constitutional claims. And once again, the State's lawyers make claims that are belied by the actions of their clients.

During the 13 year course of this litigation, the State has repeatedly sponsored arguments to this Court and the lower courts that reflect a complete disregard for the actual policies, statements and actions of the State's officials outside of the courtroom. Thus, the State has claimed in this Court and the lower courts that:

- All is well in the New York City public school system despite the contrary findings of the Board of Regents, the Legislature, numerous independent commissions and countless other observers who, for decades, have provided an unrebutted chronicle of gross and systemic resource inadequacies and educational failure.
- Educational failure in the New York City schools can be explained by the socioeconomic backgrounds of the City's children, even though it is the official policy of this state that all children can learn if they are provided with sufficient resources.
- The children of this state are entitled to only an eighth-grade education, rather than a meaningful high school education, even though no appointed or elected official of this state has supported this ridiculous claim, which was actually denounced by the defendant Governor when it was adopted by the Appellate Division.

Now, in opposing our efforts to have this litigation promptly resolved, the State continues to proceed as if its litigation strategies can be concocted without any regard to what has happened in the real world. First, the State claims that it has complied with *CFE II* and the Appellate Division order that is the subject of this appeal, since the new state budget includes increases in operating funds for New York City. The public record makes clear, however, that the increases were not part of any plan to meet the Court's mandate, but simply reflect the continued application of the discredited "shares" approach to state aid: The increase for New York City is once again approximately 38% of the statewide increase and no one outside of the courtroom has claimed that it is the result of any needs assessment or multi-year plan. Indeed, no elected or appointed official other than the State's lawyers have pretended that the current budget satisfies *CFE II*. To the contrary, the state's legislative leaders have acknowledged that they have not met the *CFE II* mandate.

Moreover, the State's suggestion that modest increases since *CFE II* that have done little more than meet inflation are evidence of compliance is inconsistent with (1) the State's admission in the proceedings below that, despite these increases, it was *not* in compliance, and (2) the Governor's request for an additional \$4.7 billion in funding for the New York City's schools. It is not surprising, therefore, that all of the nine judges and referees below agreed that that State was not in compliance.

Second, the State claims that it determined that the additional expenditure required to meet the *CFE II* mandate is \$1.93 billion, rather than the range of \$4.7 billion to \$5.63 billion determined by the Appellate Division. The State says that this difference is evidence of a "fundamental" error that will require extensive briefing. There is, of course, a threshold question as to whether this part of the Appellate Division's decision is even appealable. (All six lower court judges rejected the State's factual claim on this issue.) In any event, the truth is that the Appellate Division properly ignored the \$1.93 billion amount because it was a figure that the State adopted for the first time in the proceedings below; it was not the result of any determination of actual need. No state official could explain the origin of the \$1.93 billion figure and the authors of the study from which it was supposedly derived refused to appear in the proceedings below. The facts concerning the \$1.93 billion figure are easily discerned from the filings and opinions below. Thus, even if this issue can be properly raised on appeal, it certainly can be adequately addressed on the abbreviated schedule that we have proposed.

Finally, we do not seek, as the State claims, to have this case returned for extensive proceedings in the lower courts. To the contrary, we believe that a prompt and clear order from this Court will provide the Legislature and the Governor with the direction necessary to end this litigation finally, without the need for further proceedings.

In short, the State's letter of April 21 provides no basis to deny our request for a calendar preference and an expedited briefing schedule. The letter continues the State's 13-year campaign to oppose any judicial effort to remedy violations of the Education Article

Stuart M. Cohen

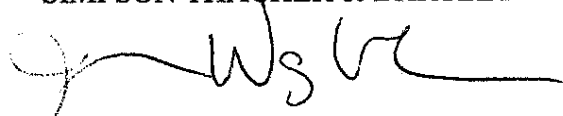
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through delay and denial. But this issue was settled by the Court in *CFE I* and *CFE II*. The public interest will be served by promptly and clearly holding the State to its constitutional duty.

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

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Joseph F. Wayland

MICHAEL A. REBELL ASSOCIATES

A handwritten signature in black ink, appearing to read 'Michael A. Rebell', written over the printed name.

Michael A. Rebell

Attorneys for Plaintiffs-Appellants
The Campaign for Fiscal Equity, Inc., et al.

cc: Denise A. Hartman
Bruce B. McHale