

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF ADA

IDAHO SCHOOLS FOR EQUAL	)	Case No.: CVOC-90-94008
	)	
EDUCATIONAL OPPORTUNITY, et. al.,	)	DECISION AND ORDER RE: STATUS OF
	)	PENDING MOTIONS
Plaintiffs,	)	
	)	
vs.	)	
	)	
THE STATE OF IDAHO,	)	
	)	
Defendant	)	

---

This case is currently before the Court as a result of the need to clarify the status of the pending litigation and its effect on all pending motions. This Decision and Order will address the Court’s understanding of the place where this litigation is currently in light of the prior Decision filed December 21, 2005 and the subsequent Orders of the Idaho Supreme Court. Because the views of counsel vary widely and, because ultimately, the questions can only be answered by the Idaho Supreme Court, this Decision and Order will be certified so that either party may appeal. However, there are two points that the Court needs to make at the outset:

1. It is abundantly clear that the Supreme Court has affirmed this Court’s Findings of Fact and Conclusions of law and has arrived at a final decision that the current system of funding Idaho schools is unconstitutional. The Supreme Court has reached a final conclusion that Article IX, § 1 of the Idaho Constitution which imposes upon the Legislature the duty of the legislature “to establish and maintain a general, uniform and thorough system of public, free common schools” is not satisfied by the current school funding system. The Supreme Court has deferred further action for legislative review and action since, ultimately, the Legislature is

the only body under our system of government which can create a new and adequate legislative structure for the system of school funding. The Supreme Court expressly rejected the State's mootness argument. The Opinion of December 21, 2005 is final.

2. The Idaho Supreme Court did not have before it and did not address in the December 21<sup>st</sup> Opinion whether the courts will impose any interim remedies to address hazardous situations in the time period before the Legislature acts to remedy the deficiencies noted in the Supreme Court's Opinion or to engage in further fact finding preliminary to any interim remedy. While the Opinion is final, the case is not over. It is well within the Supreme Court's authority to allow the Legislature time to fashion a new system of school funding.

### **I. Recent Procedural History.**

This complex case has a procedural long history which need not be addressed extensively in this Decision. It was tried before the District Court over an extended period of time based upon this directive of the Idaho Supreme Court in *Idaho Schs. For Equal Educ. Opportunity v. State*, 132 Idaho 559, 976 P.2d 913 (1998) (ISEEO III) :

We remand the case to the trial court. On remand, the trial court shall conduct a trial or other appropriate proceeding to determine whether the Legislature has provided a means to fund facilities that provide a safe environment that is conducive to learning. When the trial court has done so, it shall make its decision granting or denying relief. We do not express any opinion at this time about the appropriate relief that should be granted if the trial court decides that Plaintiffs are entitled to relief.

132 Idaho at 568. The Supreme Court held that the Legislature has the express constitutional duty to provide a means for school districts to fund facilities which offer a "safe environment conducive to learning." *Id.* at 560, 563. The trial court had two responsibilities: first, to examine

the existing system of school funding, and, secondly, if it was unconstitutional, to address any “appropriate relief.” The trial court was directed to focus on the *system* of school funding to determine if the constitutional mandate was satisfied. A lengthy trial was held addressing the first part of the remand’s instruction to examine the existing system. This Court found that the system of educational funding did not satisfy the Legislature’s constitutional duty to provide a “thorough” education in a “safe environment conducive to learning.” Specifically, this Court found that:

While many Idaho schools are able to scrape the resources together to provide a safe environment that is conducive to learning, there is a gap in the funding mechanism. Schools, primarily in rural areas, with a declining tax base and a struggling economy have no readily available resource to provide funding for major repairs and, particularly, to replace dangerous buildings in any reasonable period of time. The poorest districts have no hope of providing a thorough education in a safe environment conducive to learning. Some of the legislation passed in 2000 did narrow the gap, but there is still a gap. The exact mechanism to close this gap is a legislative determination. There must be some mechanism for districts which cannot reasonably be expected to assume further debt to meet critical safety needs.

The Findings of Fact and Conclusions of Law were partial at the time they were entered since the questions relating to problems with the Silver Valley schools had not been addressed yet because the parties were still engaging in discovery. The Findings of Fact and Conclusions of Law were also partial because this Court declined to address the plaintiffs’ request for relief at the time of the entry of the Findings of Fact and Conclusions of Law in order to allow the Legislature time to meet its constitutional duties.

Subsequently, the Court began a process of a series of additional trials and finally came to the conclusion that the most efficient means, in cost and judicial economy, to fashion a remedy which would allow some type of interim relief was to appoint a master to help refine and narrow the issues and advance the case. Obviously, the process of gathering information had the benefit of giving more time to the Legislature to act while not providing an indefinite amount

of time. Moreover, the prospect of interim relief created an incentive for the Legislature to craft its own legislative solution, something no court would or could do. Interim relief is often essential to spur a party to action. While over sixteen years of back-and-forth litigation is not an inspiring example of “action,” the case has advanced significantly since 2000 and there would be great benefit if it would advance to the point where the Legislature would address the limitations of the school funding system and adopt any of a number of possible, very satisfactory solutions. During the remedy phase, the State sought to prohibit further fact finding through the use of the master and sought and obtained a writ of prohibition freezing all ongoing activity. In order to seek clarification from the Idaho Supreme Court, the Findings of Fact and Conclusions of Law were certified to the Idaho Supreme Court by this Court.

On December 21, 2005, the Idaho Supreme Court entered its decision in *Idaho Schools For Equal Educational Opportunity v. State, (ISEEO V)*, \_\_\_Idaho \_\_\_\_, 129 P. 3d 1199 (2005) affirming the Findings of Fact and Conclusions of Law of this Court and specifically holding that “the current funding system is simply not sufficient to carry out the Legislature's duty under the constitution.” The Supreme Court, while making reference to the remedial phase in its recitation of the procedural background of the case was very clear that it was not addressing anything with regard to the remedial phase in its December 21, 2005 Opinion because “...they concern the remedial phase of the litigation and are raised in another appeal pending before this Court.” Opinion, pg. 5.

Both this Court and the Supreme Court have repeatedly recognized that only the Legislature can ultimately address the constitutional deficiencies of the current system of school funding. This Court, in its Findings of Facts and Conclusions of Law, noted the constitutional duty which is placed upon the Legislature to construct and maintain a thorough and adequate system of school funding. No other branch of government is similarly charged under the Idaho Constitution. The Legislature is the only branch of government which can create and maintain a

thorough and adequate system of statewide public education. Likewise, the Idaho Supreme Court in its December 21<sup>st</sup> Decision, while pointing out the variety of legislative tools available to meet the Legislature's duty under Article IX of the Idaho Constitution, recognized that ultimately there is no substitute for the Legislature in designing a system of school funding. It has never been the role of any court to write legislation. However, it is the recognized duty of the courts to interpret the Constitution and, if necessary, to fashion appropriate remedies. The Idaho Supreme Court affirmed the Findings of Facts and Conclusions of Law. At the end of its Opinion, the Court said: “[a]t this juncture, we will not remand the case to the district court, but will retain jurisdiction to consider future legislative efforts to comply with the constitutional mandate to provide a safe environment conducive to learning so that we may exercise our constitutional role in interpreting the constitution and assuring that its provisions are met.” Opinion, p. 14.

On March 22, 2006, a Remittitur was issued declaring that the December 21<sup>st</sup> Opinion was now final. The Remittitur contained the customary directive that the trial court is to comply with the directive of the Opinion, “if any action is required” and deferred costs and fees to later action. Since the Opinion itself said that the Court was retaining jurisdiction to “consider future legislative effort,” it was the opinion of this Court that no immediate action was required.

In May, a number of motions were filed. Unfortunately, the Court received the State's Motion for Entry of Partial Judgment and Opposition to Plaintiffs Motion to Set Trial Date for Remedial Phase of this Case, Waiver of Oral Argument” of May 26, 2006 before there was any indication in the Docket Sheet or from the Clerk's Office that a Motion by Plaintiffs for Court to Set Trial Date for Remedial Phase of this Case and Brief” had been filed the day before. Because no oral argument was requested, pursuant to the Court's authority under Idaho Rule of Civil Procedure 7(b)(3)(D), the Court simply denied the State's Motion and indicated that the “Supreme Court had retained jurisdiction.” Since the plaintiffs had filed a motion, the Court will

address the State's opposition in this Decision. However, the State's proposed Partial Judgment does not fairly summarize the Supreme Court's Opinion and would be rejected in any event. Thereafter, the plaintiffs filed "Plaintiffs' Request for Oral Argument and Reply Brief in Opposition to Trial Setting filed by the State of Idaho" asserting that the Idaho Constitution, Art 1 § 18, mandated that a speedy remedy be afforded to the plaintiffs who had prevailed before the Supreme Court and asserting that the remedial phase should resume. The State filed an additional opposition to the plaintiffs' request for oral argument. Thereafter, the plaintiffs filed a Motion for a ruling on their costs and attorney fees, a Motion to Declare HB 743 an inadequate remedy and requesting an opportunity to present testimony. The State then filed a Motion opposing all pending motions for lack of jurisdiction and requesting a stay against further motions. The plaintiffs filed a "Request for Judicial Notice" at the end of September, 2006. In light of the number of motions filed, the Court set a status hearing to discuss whether further action could or should be scheduled.

## **II. Analysis.**

The Supreme Court affirmed this Court's Findings of Fact and Conclusions of Law entered February 5, 2001. This Court declined to address the remedy in those Findings, instead, the Court deferred to the Legislature to develop an appropriate legislative scheme which would meet its constitutional responsibility to "establish and maintain a general, uniform and thorough system of public, free common schools." Idaho Constitution Article IX, § 1. The only issue before the Idaho Supreme Court in the December 21<sup>st</sup> Opinion was the review of the Findings of Fact and Conclusions of Law. The Supreme Court has before it one aspect of this Court's remedial phase, the use of a special master, which it is addressing in a separate appeal. It has retained jurisdiction to give the Legislature the opportunity to come up with a workable legislative solution to what is ultimately a legislative problem.

The Findings of Fact and Conclusions of Law were certified to the Supreme Court pursuant to I.R.C.P. 54(b) which allows a trial court to certify as a final appealable judgment some but not all of the issues or claims before it in a case. The certification of part, but not all of a case, requires the trial court to make “an express determination that there is no just reason for delay” and permits an entry of a judgment on an aspect of a case. While appeals of some but not all claims in a case are not favored, a trial court has the discretion to award a 54(b) certificate after weighing the need for an immediate appeal against the burden of piecemeal appeals. *American Foreign Ins. Co. v. Reichert*, 140 Idaho 394, 399, 94 P.3d 699, 704 (2004), citing *Bishop v. Capital Financial Services*, 109 Idaho 866, 868, 712 P.2d 567, 569 (1985). ‘Rule 54(b) operates only when there are in the action multiple claims of which at least *one* has been adjudicated. Only after this determination does the district court have authority to go on to determine whether it intends its ruling upon part of the claims to be final as to them or only interlocutory.’” *Thorn Creek Cattle Ass'n, Inc. v. Bonz*, 122 Idaho 42, 45, 830 P.2d 1180, 1183 (1992), citing *Glacier Gen. Assurance Co. v. Hisaw*, 103 Idaho 605, 608, 651 P.2d 539, 542 (1982) (emphasis in original). In this case, it became very clear that nothing productive would result until the Supreme Court could review the Findings of Fact and Conclusions of Law and make its own determination. The Supreme Court has ruled and it has retained jurisdiction to evaluate for itself whether future legislative efforts are sufficient to address the problems identified in the Opinion of December 21<sup>st</sup>, 2005.

When a 54(b) certificate is issued on a partial judgment then the trial court loses all jurisdiction over the entire action, except as provided in Rule 13 of the Idaho Appellate Rules. I.R.C.P. 54(b)(2). Under Idaho Appellate Rule 13, the trial court may only undertake a limited number of activities when a case has gone up on a I.R.C.P. 54(b) certification. The Motions filed by the Plaintiffs do not fall within the areas in which the trial court may act. While the Supreme

Court did refer the initial question over the constitutionality of HB 403 back to the district court pursuant to I.A.R. 13.4, it has clearly indicated its desire to retain jurisdiction over the case.

For all of these reasons, the Court will not address either the plaintiffs' or defendant's motions and will not set a trial date for any aspect of the remedial portion of this case. I do not interpret the December 21<sup>st</sup> Opinion as stating that the Supreme Court has somehow abandoned the plaintiffs without any remedy. The plaintiffs prevailed. They have established that the system of school funding in Idaho is unconstitutional and must be changed. It is entirely within the authority of the Supreme Court to decide that it would like to give the Legislature additional time to meet its constitutional obligations. The Supreme Court pointed to a number of creative options. It also expressed its confidence that the Legislature can and will address the Court's determination. While the decision that the current system of funding is unconstitutional is indeed final, obviously, no court has yet addressed whether the remedies which the Legislature will choose to meet its responsibilities are sufficient. The Supreme Court rejected the State's argument that the case was moot because of changes since the time of the 2001 Findings of Fact and Conclusions of Law. The Supreme Court closed its Opinion clearly and firmly:

In adopting Article IX, the citizens of Idaho placed their trust in the collective wisdom, creativity, and expertise of our legislators, and we do the same. We are firmly convinced the Legislature will carry out its constitutional duties in good faith and in a timely manner. At this juncture, we will not remand the case to the district court, but will retain jurisdiction to consider future legislative efforts to comply with the constitutional mandate to provide a safe environment conducive to learning so that we may exercise our constitutional role in interpreting the constitution and assuring that its provisions are met. We affirm the district court's conclusion that the current method of funding as it relates to school facilities is unconstitutional and we award costs on appeal to the Respondents.

The Supreme Court has retained jurisdiction. It has not deprived the plaintiffs of any remedy nor has it suggested that the Legislature need not address the system of funding.<sup>1</sup> Interim

---

<sup>1</sup> At the status conference, the State's counsel responded to a question by this Court about whether it would advise the Legislature that it should make any changes to the system of school funding. Counsel for the State replied that

remedies may need to be fashioned to make sure that children are going to school in safe buildings which are “conducive to learning.” It is not credible that, after all of this time, that the Supreme Court has somehow abandoned Idaho school children. To the extent that both the plaintiffs and the defendant seem to suggest that this is a fair interpretation of the Supreme Court’s Opinion and Remittitur, this Court disagrees. The parties should re-read the Opinion. The Supreme Court indicated a desire to give the Legislature time to act. The Supreme Court has consistently and firmly acted with respect to every single appeal in this litigation. It has been consistent throughout in holding that the Legislature cannot simply ignore its constitutional duty which is imposed by the plain language of Article IX § 1 of the Idaho Constitution. However, because the Idaho Supreme Court has retained jurisdiction and has not remanded any aspect of the remedial phase to the trial court at this time, no action will be taken on any pending motions because this Court lacks jurisdiction to consider them.

It is so ordered.

Dated this \_\_\_day of November, 2006.

---

Deborah A. Bail  
District Judge

---

he felt that the Opinion only addressed the system of funding in 2001 and earlier and required no legislative action. This is a plain misreading of the Supreme Court’s Opinion which made it manifestly clear that it was confident that the Legislature will make the necessary changes in the system of school funding in “good faith and in a timely manner.” Hopefully, the legislators and legislative counsel will read the Opinion for themselves. The Supreme Court ruled that the issues were not moot.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this \_\_\_\_\_ day of November, 2006.

---

Deborah A. Bail  
District Judge