IN THE COURT OF APPEALS FOR THE STATE OF NEW MEXICO

ZUNI PUBLIC SCHOOL DISTRICT and GALLUP-MCKINLEY SCHOOL DISTRICT NO. 1,

Plaintiffs-Appellees,

A-1-CA-39902

v.

STATE OF NEW MEXICO and PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL,

Defendants-Appellants.

STATE OF NEW MEXICO'S REPLY BRIEF

On Appeal from the Eleventh Judicial District Court
The Honorable Louis E. DePauli, Jr., District Judge
No. D-1113-CV-98-00014

Nicholas M. Sydow
Solicitor General
Erin Lecocq
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, NM 87501
Tel: (505) 490-4060
Fax: (505) 490-4881
nsydow@nmag.gov
elecocq@nmag.gov

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I. INTRODUCTION

Much of the Plaintiff-Appellee School Districts' (the "Plaintiff Districts") Answer Brief consists of reasserting the history of New Mexico's school capital outlay and the general reasons why they believe this system is unconstitutional. Left largely unchallenged are the specific infirmities the State identifies in the District Court's opinion that merit reversal.

First, the Plaintiff Districts do not offer evidence that the Public School Capital Outlay Act (PSCOA) or Public School Capital Improvements Act (PSCIA) create or worsen inequities in capital outlay spending. The challenged laws remedy inequities that result from local districts' constitutional power to issue bonds for school facilities. Second, the Plaintiff Districts do not refute the State's showing that there is no evidence underlying the District Court's finding that the State's adequacy standards for facilities are unrelated to educational needs. This holding forms the basis of the District Court's conclusion that the PSCOA and PSCIA fail to provide a sufficient education. Third, the Plaintiff Districts do not justify the District Court's wholesale rejection of the State's proposed findings of fact before assessing whether those facts met any burden of proof. And finally, the Plaintiff Districts do not contest that large

changes have been made to the PSCOA and PSCIA—including the elimination of Impact Aid credits that were central to Plaintiffs' lawsuit—that were not considered by the District Court.

II. FACTUAL BACKGROUND & PROCEDURAL HISTORY

Plaintiff Districts' Summary of Facts and Proceedings focuses on the State's long history of capital outlay, not the State's current funding system. **[AB 2–13]** As a result, much of the Factual Summary is out of date and does not reflect recent changes, or even what was presented at the 2019 trial.

Most significantly, the impact aid credits described by Plaintiff Districts **[AB 4–5 & 7 n.10]** were eliminated with the passage of HB 6 in 2021. **[BIC 27, 29; 12 RP 2806]** Also, Plaintiff Districts' description of their money available for capital outlay is largely of funding *before* the State provides additional money. **[AB 7–8]** The PSCOA and PSCIA help counteract inequalities in property taxation by adjusting the local share of funding based on a district's property tax base. **[BIC 17–18, 22** (citing **11 RP 2688–89, ¶¶ 18, 23** (Zuni has 0% local share, GMCS 18%); **12 RP 2747–48 ¶¶ 11–12** (considers whether property tax revenues sufficient to replace facilities on 45-year schedule)]

Also out-of-date is Plaintiff Districts' assertion that they did not receive direct appropriations. **[AB 9]** This statement is based on the years 2011-18 and

leaves out appropriations before that time [**11 RP 2689 ¶ 10**] and after. [**12 RP 2734–36** ($52.9 million appropriated for building out-of-adequacy in FY20 and FY21; $24 million in from SB 280 (2019); **Defs.' Ex. 21** (large PSCOC awards to Plaintiff Districts in 2018-19)] So too is Plaintiffs' criticism that they cannot obtain funding for teacherages [**AB 10**], which were allocated specific funding and are now eligible for PSCOC awards. [**BIC 18, 27** (citing **12 RP 2747 ¶ 10**)] And while GMCS states that it was only able to build one new school between 1974 and 2002 [**AB 10**], it has since been able to rebuild more than half its schools. [**BIC 14**]

Nor is there evidence to support Plaintiff Districts' contention that "poor districts cannot reach adequacy." [**AB 9**] Findings of Fact 127–83, to which the Districts cite, contain examples of schools (including some by Plaintiff Districts) being built beyond adequacy standards, not that Plaintiff Districts cannot build schools to adequacy. And Plaintiff Districts' contention that PSCOC funds have decreased over time [**AB 9; 11 RP 2643–46 ¶¶ 347–64**] is based on a projection during the 2016 trial that was not substantiated in the 2019 trial with evidence that this funding decrease had transpired. [**BIC 23** (citing **11 RP 2698 ¶ 86**); ***see also* 5-14-19 Tr. at 163:19–164:10** (PSCOC has not denied major projects for lack of funds)] The Plaintiff Districts' continued

assertion of and reliance on the District Court's outdated and inaccurate findings of fact illustrates the foundational errors in the District Court's ruling that warrant reversal.

III. THE STANDARD OF REVIEW

The issues raised by the State's appeal generally do not require determining the standard of review applicable to challenges brought under Article XII of the New Mexico Constitution. Whether the District Court erred in concluding the PSCOA and PSCIA worsen inequality **[BIC 30–34]** or the adequacy standards are unrelated to educational needs **[BIC 39–40]** when there is no evidence of either does not require determining the standard of review. And the State's challenge to the District Court's wholesale adoption of Plaintiffs' findings of fact **[BIC 42–47]**, as well as whether changes to the challenged laws make the case moot **[BIC 47–51]**, are subject to standards of review entirely different than claims under Article XII.

Nonetheless, if the Court reaches the standard of review for claims under Article XII, Section 1, it should reject the Plaintiff Districts' invitation to apply strict scrutiny. **[AB 15–17]** To begin, the Plaintiff Districts acknowledge that they faced the initial burden of showing that the challenged laws were

"either not uniform or not adequate." [**AB 14**][1] They also recognize that the District Court's description and application of the burden of proof was unclear, incorporating both "beyond a reasonable doubt" and "sufficiency of the evidence" standards. [**AB 14**]

Strict scrutiny is a standard for equal protection cases that does not apply to Plaintiff Districts' claim under Article XII, Section 1. The cases to which the Plaintiff Districts cite for a strict scrutiny standard all involved equal protection claims. [**AB 15**]; *Serrano v. Priest*, 487 P.2d 1241, 1249 (Cal. 1971); *State v. Campbell*, 2001 WY 19, ¶ 42, 19 P.3d 518 (Wyo. 2001); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1354 (N.H. 1997); *Horton v. Meskill*, 376 A.2d 359, 373 (Conn. 1977); *Wagner v. AGW Consultants*, 2005-NMSC-016, ¶ 12, 137 N.M. 734. This was the State's position below—that strict scrutiny doesn't apply to cases involving positive rights rather than the State's restriction on the exercise of a right. [***See* 11 RP 2698 ¶ 3**]

By contrast, the Washington Supreme Court's decision in *McCleary v. State* discussed in the Answer Brief [**AB 16**] considers whether a state has provided a positive right. 269 P.3d 227 (Wash. 2012) (en banc). In *McCleary*,

[1] As discussed infra p. 18, this is contrary to the District Court's statement that the State had the burden of proof.

the court did not apply strict scrutiny or other levels-of-scrutiny analysis from the equal protection context. *Id.*, ¶¶ 100–102. The District Plaintiffs write that the "State argues against this standard" [**AB 16**], but the State does not contend that the *McCleary* framework of placing the burden of proof on Plaintiffs is incorrect. Rather, the State argues that a plaintiff's burden in bringing a positive rights claim under Article XII should be assessed with the underlying presumption that legislation is constitutional. [***See*** **BIC 46–47**]; *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 10, 458 P.3d 406.

IV. THE PLAINTIFF DISTRICTS DO NOT REFUTE THAT THE CHALLENGED LAWS NEITHER CREATE NOR WORSEN INEQUITIES.

Plaintiff Districts do not point to evidence that the PSCOA or PSCIA create or worsen inequities in school facilities. Plaintiff Districts instead contend that disparities remain after the PSCOA/PSCIA funding process. But this does not support a finding of unconstitutionality under the standard borrowed by the District Court from the Arizona Supreme Court in *Roosevelt Elementary School District, No. 66 v. Bishop*, 877 P.2d 806 (1994). Therefore, even assuming that the *Bishop* standard is the correct interpretation of New Mexico's Constitution, the District Court erred in interpreting and applying

this standard to require that the PSCOA and PSCIA correct every instance of different facilities.

The District Plaintiffs assert that "substantial evidence shows that the PSCOA System created and exacerbated the disparities between poor and wealthy districts." **[AB 20]** But the evidence to which District Plaintiffs cite in the next sentence of their brief is that "even after the reforms, the ability to finance capital outlay depends on the property wealth of the district." **[AB 20]** Such evidence—that capital outlay still depends in part on a district's property taxes—is not evidence that the PSCOA or PSCIA create or worsen inequality, but that not all unequal aspects to capital outlay funding are remedied by the challenged laws.

The Plaintiff Districts argue that the "State takes the impermissible approach of identifying evidence that might have supported a different result." **[AB 21]** Yet the evidence to which the State points is all evidence that the PSCOA and PSCIA *lessen* inequality, rather than create or worsen inequality. For example, that Plaintiff Districts have received more money than most districts from the PSCOC and have dramatically improved their facilities since the adoption of the laws is evidence that the PSCOA and PSCIA do not create inequities. **[BIC 31–32]** Plaintiffs do not offer evidence to the contrary, but only

argue that some inequality persists. **[AB 20–21]**[2] In fact, even if the pertinent inquiry were whether unequal funding or facilities existed after the PSCOC process, Plaintiff Districts do not cite to any data-based finding that they receive less funding than other districts under the current system. **[*Cf.* 12 RP 2806–07** (citing Fiscal Impact Report for HB 6 (2021)[3] which describes that elimination of impact aid credit combined with "continued PSCOC grant assistance" could provide districts "a significant windfall for capital projects")]

As the Plaintiffs Districts recognize, the District Court's adoption of the standard from *Bishop* that state funding laws cannot create or worsen inequality is central to the District Court's reconciliation of Article XII, Section 1 with Article IX, Section 11. **[AB 22–23]** The District Court explained, "While Article IX, Section 11 allows taxation by districts to fund capital improvements, it does not follow it allows the legislature to pass funding schemes that *cause and create* gross capital funding disparities…." **[12 RP 2724** (emphasis added)] This reasoning flows directly from *Bishop*, where the court explained: "[D]istricts … are therefore free to go above and beyond the system provided

[2] Plaintiff Districts acknowledge that their primary criticism that the State takes credit for 75% of impact aid **[BIC 48]** is no longer true. **[AB 21]**

[3] https://www.nmlegis.gov/Sessions/21%20Regular/firs/HB0006.PDF (at 4).

by the state. It is thus not the existence of disparities between or among districts that results in a constitutional violation. The critical issue is whether those disparities are the result of the financing scheme the state chooses."[4] 877 P.2d at 815. Plaintiff Districts recognize that under *Bishop*, local districts can use their bonding power to go "above and beyond" statewide standards. **[AB 22]**

Here, the source of the inequities Plaintiff Districts allege is local districts' constitutional right to issue bonds for school facilities. N.M. Const., art. IX, § 11. Plaintiff Districts claim the State "selected a funding mechanism that depended heavily on property value" **[AB 18** (quotation omitted)], but school facility funding based on property value was only "selected" by the State in the sense that it is contained in Article IX, Section 11 of the Constitution. The PSCOA and PSCIA are a counterbalance to this constitutional provision, provide state funding in an *inverse* relationship to local property tax bases, and ensure that all schools can meet uniform adequacy standards. **[BIC 12, 17–18, 22; 12 RP 2747–48, ¶¶ 11 & 12]**

[4] In *Bishop*, Arizona conceded that "enormous disparities among school districts [were] the direct result of the state's financing scheme." 877 P.2d at 815.

The Plaintiff Districts contend that there is no conflict between Article XII, Section 1 and Article IX, Section 11, so long as you apply *Bishop's* holding.[5] **[AB 23** ("*Bishop's* holding resolves the tension….")**]** Even if correct, a reading of the constitutional provisions based on *Bishop's* holding (which is in line with the State's interpretation **[BIC 36]** and Justice McKinnon and Dean Desiderio's reading of the Constitution **[BIC 7]**) supports the constitutionality of the PSCOA and PSCIA. *Bishop* does not preclude the State from funding school facilities that meet statewide adequacy standards, beyond which districts can build using their local property taxes. *Bishop*, 877 P.2d at 814–15. This holding is also in keeping with other cases cited by the Plaintiff Districts. *See Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989) (legislature may empower schools "to enact local revenue initiatives to supplement the uniform, equal educational effort"); *Serrano*, 5 Cal. 3d at 596 (where competing constitutional provisions "we must reject plaintiffs'

[5] If there is a conflict between the provisions, Article IX, Section 11 would control as the more specific provision, which Plaintiff Districts do not refute. **[BIC 36]** Plaintiff Districts do correctly note that both constitutional provisions were present in the State's inaugural constitution. **[AB 23]** The State mistakenly stated that Article IX, Section 11 was adopted, rather than amended, in 1933. **[BIC 36; 12 RP 2701, ¶ 15]**

argument that … a 'system of common schools' requires uniform educational expenditures").

The District Court either: (1) incorrectly interpreted *Bishop* to require the State to ensure that all schools have equivalent facilities even after local bond initiatives; or (2) held, without substantial evidence, that the PSCOA and PSCIA themselves create or worsen inequality. In whichever light one reads the District Court's opinion, its conclusion that the PSCOA and PSCIA are unconstitutional should be reversed.

V. NO EVIDENCE SUPPORTS THE DISTRICT COURT'S HOLDING THAT THE ADEQUACY STANDARDS ARE UNRELATED TO EDUCATIONAL NEEDS.

In response to the State's argument challenging the District Court's holding that the PSCOA's adequacy standards fail to satisfy Article XII, Section 1, Plaintiff Districts first criticize the State for not offering its own standard of a sufficient education. **[AB 27]** The State's position, however, is not that the District Court applied the wrong legal standard in defining a sufficient education. It is that no evidence supports the holding underlying the District Court's legal standard: that there is no relationship between the adequacy standards and students' educational needs. **[BIC 39–40]**

Plaintiffs do not identify evidence that the adequacy standards are unrelated to educational needs. They could not, given the trial testimony that adequacy standards are developed by experts, including their own, and based on educational program needs. **[BIC 12]** Instead, Plaintiffs argue that the lack of a relationship between the adequacy standards and educational needs is something the District Court "note[d] parenthetically." **[AB 31]**

To the contrary, the District Court's holding that the adequacy standards are unrelated to educational needs is central to its conclusion that the PSCOA and PSCIA do not provide a sufficient education. First, the District Court's statement that the adequacy "standards … bear no relation to a district's actual facility needs or the unique needs facing the children within a particular district" is the only explanation in the opinion for why "the capital outlay funding provided by the State … is insufficient…." **[12 RP 2719]** The District Court does state its conclusion that "physical facilities built or maintained under the adequacy standards are not sufficient to meet … educational needs" "in a slightly different way," but then only recites its *uniformity* conclusion that "the PSCOA and PSCIA have resulted in the Plaintiff's (*sic*) school districts receiving insufficient funds to adequately

educate their school children on substantially equal terms to children in property-wealthy districts." **[12 RP 2725]**

Moreover, the disconnection between the adequacy standards and educational needs is the only basis for a conclusion that would apply in all circumstances and thus support a holding of facial unconstitutionality. *State v. Blea*, 2018-NMCA-052, ¶ 17, 425 P.3d 385 (in facial challenge, plaintiff must show law is unconstitutional in all applications). By contrast, Plaintiff Districts' specific arguments regarding items not covered by the adequacy standards are district-specific issues that do not apply to all schools.[6] **[AB 31–33]**

Even the district-specific objections that Plaintiff Districts assert do not support a finding that the adequacy standards provide an insufficient education.[7] Initially, Plaintiff Districts do not address the evidence cited in the Brief-in-Chief that they have been able to build schools above adequacy and

[6] The State did not acknowledge that the Districts offered evidence that the adequacy standards did not allow them to build adequate facilities **[AB 30]**, but wrote that "that the adequacy standards did not include all of the facilities they desired…." **[BIC 40]**

[7] The State does not argue that a compelling interest justifies a failure to provide a sufficient education. **[AB 33–35]** The State disputes that a strict scrutiny standard requiring a compelling interest applies, *see supra* Part III, and disputes that it has not provided a sufficient education.

that they have not sought waivers to fund items not covered by the adequacy standards. **[BIC 14–16, 31–32]** Similarly, Plaintiff Districts' argument that they have had to divert operational funding for uncovered items **[AB 31–32]** overlooks that they can now retain impact aid money to build above adequacy. **[BIC 27, 29, 33, 48]**

The specific items Plaintiff Districts note do not support a holding that the PSCOA and PSCIA are facially unconstitutional. Plaintiff Districts omit **[AB 31–32]** that teacherages were funded by a legislative appropriation **[BIC 18]** and that districts can now get PSCOC awards for teacherages. **[BIC 27** (citing **12 RP 2747 ¶ 10]** Plaintiff Districts do not allege that the need to extend utilities to some schools has prevented them from building any schools. **[BIC 32; *see also* 5-13-19 Tr. at 209:14–211:17** (GMCS has not sought waiver or other funding for utility extensions)] So too with the Navajo Nation business tax, which is only applicable to a few schools that districts site on the Navajo Nation. **[*See* 11-9-16 Tr. at 598:7–11** (not aware of any plans to build schools that would implicate tax)]

Lastly, Plaintiff Districts assert that the adequacy standards do not provide them with "funds necessary to meet certain legal requirements." **[AB 32]** The record does not support this contention. First, GMCS has never been

accused of violating Title IX and has no evidence to support such a violation. **[11 RP 2693 ¶ 47]**[8] Likewise, Plaintiff Districts' argument that the adequacy standards do not include therapy spaces overlooks that GMCS's space restrictions were due to specific scheduling concerns, and that the adequacy standards include such spaces. **[BIC 15–16 & 23** (citing **11 RP 2708 ¶ 43**)] And Plaintiff Districts ignore that Pre-K classrooms are covered by the PSCOA after SB 230 (2019). **[BIC 18]**

As a final note, Plaintiff Districts' argument that the State did not preserve an "as applied" argument **[AB 35–36]**, misunderstands the State's argument. The State does not contend that the Districts were actually bringing an as-applied challenge, but that there is insufficient evidence to support a holding of facial invalidity—including on the District Court's grounds that the adequacy standards are unrelated to educational needs. **[BIC 41–42]** This was also the State's position below. **[11 RP 2708 ¶ 45]**

[8] This is one of the State's proposed findings of fact that the District Court rejected in place of Plaintiff Districts' unsupported assertion that GMCS is in violation of Title IX. **[BIC 22]**

VI. THE DISTRICT COURT'S WHOLESALE ADOPTION OF PLAINTIFFS' FINDINGS OF FACT ABDICATED ITS JUDICIAL ROLE.

Plaintiff Districts defend the District Court's adoption of all 412 of their findings of fact by arguing that the Court must strive to sustain the judgment[9] so long as it can be fairly construed. **[AB 36–37]** The Supreme Court has directed, however, that the "verbatim adoption of proposed findings requires the appellate court to view the challenged findings and the record as a whole with a more critical eye to ensure that the trial court has adequately performed its judicial function." *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 207, 93 N.M. 105, 597 P.2d 290 (quotation omitted). Here, Plaintiff Districts do not establish that the District Court performed its independent judicial function.

Plaintiff Districts argue that the District Court wrote its own legal analysis **[AB 37]** and that the "*Order* bears little resemblance to the proposed findings and conclusions submitted by either party." **[AB 39]** Most importantly, the District Court's opinion doesn't just *resemble* Plaintiffs' proposed findings of fact, it adopts all of them directly. And even as to the

[9] Plaintiff Districts' quotation of *Sheraden v. Black* for this proposition omits the qualifying clause that this standard applies "in a comparative negligence action." 1988-NMCA-016, ¶ 10, 107 N.M. 76, 752 P.2d 791.

District Court's legal analysis, Plaintiffs' own reading of the opinion demonstrates that it is unclear and difficult to review. **[*See, e.g.*, AB 11** ("[I]dentifying some of its findings and conclusions requires careful reading."), **24** ("The district court devoted little analysis to [the] question" of what the Education Clause requires), **29** (District Court "did not define 'educational needs'" but its "general sense" can be intuited from other cases)] The opinion is not "sufficiently comprehensive and pertinent to the issues to provide a basis for decision." *United Nuclear Corp.*, 1980-NMSC-094, ¶ 206.

Nor are the 412 findings of fact "supported by the evidence." *Id.* Plaintiff Districts criticize the State for not explaining why the findings are inaccurate. **[AB 39]** But the State, through the cross-referencing of the Brief-in-Chief's facts **[BIC 20–23]**, identified facts that were outdated, contrary to more specific evidence, duplicative, or unsupported. **[BIC 45]** The State is not asking the Court to reassess each of these factual findings, but is providing numerous examples illustrating that the District Court did not conduct its required, independent analysis. Similarly, the State is not challenging on appeal the procedural and evidentiary rulings it documents **[AB 39–40]**, but offering them as evidence of the lack of independent judgment.

Furthermore, Plaintiff Districts do not refute that the District Court rejected the State's proposed findings for an improper reason—a conclusion that the State had not met its burden of proof. As the Brief-in-Chief explained, this constituted two errors: (1) determining whether the State had met a burden of proof before assessing proposed findings; and (2) by placing the burden of proof on the State. **[BIC 46–47]** Plaintiffs do not even contest the first error. And Plaintiffs seemingly acknowledge that they bore the initial burden of proof. *See supra* pp. 4–5.

Plaintiff Districts instead contend that the District Court's statement that it rejected the State's findings of fact "[b]ecause the Defendants did not meet their burden" **[12 RP 2725]** was "take[n] out of context…." **[AB 40]** This statement is not out of context, but the only explanation we have—in rejecting the State's motion for reconsideration—as to why the District Court adopted all of Plaintiffs' proposed findings. **[12 RP 2725; *see also* 12 RP 2721** (again placing burden of proof on State)] The District Court acknowledges that many of the State's proposed findings "were established by the evidence and undisputed," **[12 RP 2725]** which further demonstrates that it did not reject all of the State's findings because they were unsupported. By the District Court's

own explanation, it rejected the State's proposed findings for an improper reason, warranting reversal.

VII. PLAINTIFFS ACKNOWLEDGE THE CHALLENGED LAWS ARE FUNDAMENTALLY CHANGED.

Plaintiff Districts do not contest that large changes have been made to the PSCOA and PSCIA that the District Court did not consider, including the elimination of the impact aid credits that were central to Plaintiffs' lawsuit. **[BIC 26–29, 48–51]** Even accepting the entirety of the District Court's legal conclusions, this fact alone merits dismissal for mootness or remand to assess whether the current funding system fails to provide a uniform or sufficient education.

Plaintiff Districts contest the general rule that a case should be dismissed when the issues have become moot on appeal, *Howell v. Heim*, 1994-NMSC-103, ¶ 7, 118 N.M. 500, 882 P.2d 541, by arguing that the public interest and "capable of repetition yet evading review" exceptions to mootness apply. **[AB 41–42]** First, there is no public interest in reviewing the District Court's constitutional assessment of a now-changed system for capital outlay. As described above, *see supra* pp. 2–3, much of the ruling addresses the constitutionality of a system that no longer exists—such as taking credit for impact aid, or the ineligibility of teacherages or pre-K classrooms for funding.

Even if an advisory appellate opinion were desirable, the District Court's opinion is not a good vehicle. *See supra* p. 17 (Districts acknowledge ambiguities and lack of analysis in opinion). This is especially true with respect to the "sufficiency" component of Article XII, Section 1, where the District Court's ruling is grounded in the unsupported holding that the adequacy standards are unrelated to educational needs. *See supra* Part V.

Plaintiff Districts do not even attempt to establish that the "capable of repetition" exception applies. They do not explain how the constitutionality of outdated funding laws is an issue "capable of repetition." Nor do Plaintiff Districts explain how the issues raised "may evade review … before this Court decides them." *Gunaji v. Macias*, 2001-NMSC-028, ¶ 10, 130 N.M. 734, 31 P.3d 1008.

Instead, Plaintiff Districts argue that their constitutional challenge is live because the State reduced funding based on impact aid in the past and capital outlay funding is still based on property wealth. **[AB 42]** Initially, the remedy of past crediting for impact aid is not part of the judgment on appeal, which simply holds that the PSCOA and PSCIA are unconstitutional and directs the Legislature to draft new laws. **[12 RP 2725]** As well, that some capital outlay funds come from property taxes can't be the basis for Plaintiffs'

constitutional challenge, however, given that it is expressly provided by Article IX, Section 11 and the *Bishop* standard Plaintiffs endorse. *See supra* pp. 8–9. The constitutional question for the Court is whether the PSCOA and PSCIA fail to provide a uniform and sufficient education. This requires an assessment of the current laws.

VIII. CONCLUSION

Therefore, the State respectfully requests that the Court reverse the District Court's holding that the PSCOA and PSCIA are unconstitutional and enjoining the State to create a different capital outlay system. Alternatively, the State requests that the Court dismiss the case for mootness or remand the case with instructions to (1) consider the current, amended versions of the PSCOA and PSCIA and (2) require individualized consideration of findings of fact and conclusions of law.

Respectfully submitted,

HECTOR BALDERAS
NEW MEXICO ATTORNEY GENERAL

By: */s/ Nicholas M. Sydow*
Nicholas M. Sydow
Solicitor General
Erin Lecocq
Assistant Attorney General
408 Galisteo Street
Santa Fe, NM 87501

Tel.: (505) 490-4060
Fax: (505) 490-4881
nsydow@nmag.gov
elecocq@nmag.gov

Counsel for the State of New Mexico

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, I filed the foregoing *Brief in Chief* via the Court's Odyssey electronic filing system, thereby providing service to all counsel of record.

/s/ Nicholas M. Sydow

STATEMENT OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Pursuant to Rule of Appellate Procedure 12-318(F)(3) and (G), I certify that there are 4,390 words in the body of the brief, according to a count by Microsoft Word 2016.

/s/Nicholas M. Sydow
Nicholas M. Sydow