

  
Mark Reynolds

**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**ZUNI PUBLIC SCHOOL DISTRICT,  
And GALLUP-McKINLEY SCHOOL  
DISTRICT No. 1,**

**Plaintiffs/Appellees,**

**v.**

**Ct. App. No. A-1-CA-39902  
Dist. Ct. No. D-1113-CV-98-00014**

**STATE OF NEW MEXICO, and  
PUBLIC SCHOOL CAPITAL  
OUTLAY COUNCIL,**

**Defendants/Appellants.**

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**STATE OF NEW MEXICO'S DOCKETING STATEMENT**

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On Appeal from the Eleventh Judicial District Court,  
McKinley County, New Mexico  
The Honorable Louis E. DePauli, Jr., District Judge

HECTOR H. BALDERAS  
NEW MEXICO ATTORNEY GENERAL

Nicholas M. Sydow  
Civil Appellate Chief  
Erin Lecocq  
Neil Bell  
Assistant Attorneys General  
P.O. Drawer 1058  
Santa Fe, NM 87504-1508  
Telephone: (505) 490-4060  
Facsimile: (505) 490-4881  
[nsydow@nmag.gov](mailto:nsydow@nmag.gov)  
[elecocq@nmag.gov](mailto:elecocq@nmag.gov)  
[nbell@nmag.gov](mailto:nbell@nmag.gov)

Defendants-Appellants the State of New Mexico and its Public School Capital Outlay Council (“PSCOC”) (collectively, the “State”) hereby file their Docketing Statement pursuant to Rule 12-208 NMRA.

## **I. NATURE OF THE PROCEEDING**

This appeal arises out of long-running litigation challenging the constitutionality of New Mexico’s system for funding capital improvements to public schools. The district court’s holding that this entire system—including two statutes, the Public School Capital Outlay Act (“PSCOA”) and the Public School Capital Improvements Act (“PSCIA”)—violates Article XII, Section I of the New Mexico Constitution, merits review and reversal. The necessity of appellate review is highlighted by the fact that the district court’s ruling includes the blanket adoption of all of Plaintiffs’ 412 proposed findings of fact and conclusions of law. Furthermore, the district court did not meaningfully assess the Legislature’s large changes to the State’s capital outlay laws after trial in 2019 that resulted in tens of millions of dollars in additional funding to the Plaintiff districts.

To begin, the district court ruled that because the PSCOA and PSCIA do not preclude local school districts from raising funds for capital improvements on top of state funding, the State’s funding system is not “uniform” for the purposes of Article XII, Section 1. This ruling conflates the uniformity of funding provided by the State with the uniformity of funding obtained by local districts from all sources. The

district court's ruling that local districts may not raise money in a fashion that renders ultimate capital improvement budgets unequal also cannot be reconciled with Article IX, Section 11 of the Constitution. That provision permits school districts to borrow money for capital improvements outside of the State's capital outlay funding system and is rendered a nullity by the district court's ruling.

The district court also ruled that the State's capital funding of the Plaintiff districts is insufficient to provide an adequate education, in violation of Article XII, Section 1. In concluding that the State's capital outlay system does not provide sufficient funding to the Plaintiff districts, the district court accepted and found "as proven the Plaintiff's [*sic*] Proposed Findings of Fact, numbers 1 to 412." Given this wholesale adoption of Plaintiffs' proposed findings of fact and conclusions of law, it is difficult to assess the basis of the district court's conclusion that the Plaintiffs have received constitutionally inadequate funding.

Moreover, the district court declined to revisit its conclusion that the State's capital outlay system violates Article XII, Section 1, notwithstanding the Legislature's major changes to the challenged laws. The State requested that the district court consider these legislative developments in post-judgment proceedings. The district court, despite calling these changes in law "wonderful," reasoned that the changes "do not appear to remedy" inequities in funding. This ruling offers no analysis of how the legislative changes affect the particular legal challenges raised

by Plaintiffs. In particular, it does not consider whether the Legislature's provision of additional funding makes the Plaintiff districts' capital funding adequate to provide a sufficient education.

The district court's conclusion that the State's capital outlay funding system, including two entire statutes, are unconstitutional should be reversed. The PSCOA and PSCIA provide uniform funding from the State to school districts. But before the Court considers these weighty constitutional questions, it should assess whether the district court erred in adopting all of Plaintiffs' proposed findings and conclusions without analysis. Likewise, because the district court's ruling rests on the assessment of a now reworked capital outlay system, it should be reversed to permit assessment of the current law.

## **II. TIMELINESS OF APPEAL**

The district court entered the final order giving rise to this appeal on June 18, 2021, when it denied the State's post-judgment motion. The State filed its Notice of Appeal with the district court on July 19, 2021, the first business day after the 30th day following the filing of the order denying the post-judgment motion. This appeal is thus timely under Rule 12-201(A)(1)(b) NMRA.

## **III. STATEMENT OF THE CASE**

1. The Original Litigation. This appeal arises from a lawsuit filed in the Eleventh Judicial District Court in 1998. The initial complaint alleged that the

method provided by the legislature for funding public schools' capital improvements produced inequitable results in violation of Article XII, Section 1 of the New Mexico Constitution. That section provides, "A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."

In 1999, the district court (Hon. Joseph L. Rich) entered a *Partial Summary Judgment*, wherein it determined that "[t]he current system for the funding of capital improvements for New Mexico's school districts violates Article XII, Section 1." The court gave the State "until July 28, 2000, in which to establish and implement a uniform funding system for future capital improvements for New Mexico school districts and for correcting existing past inequities, all to be within the mandates of Article XII, Section 1." The court reserved jurisdiction to review the State's development and implementation of a new funding system.

In 2000, the legislature passed bills providing for the use of supplemental severance tax bonds for the funding of public school projects, which were signed by the Governor. In 2001, a special master was appointed to determine whether the State had complied with the *Partial Summary Judgment*. In January 2002, the special master concluded that "at this time the state is in good faith and with substantial resources attempting to comply with the requirements of Judge Rich's previous directions." Following the district court's adoption of the special master's report,

there was little action in the case for more than ten years, resulting in two dismissals (and re-openings) for failure to prosecute, first in 2003 and again in 2013.

2. The Reopening of the Action and 2019 Trial. In 2015, Plaintiffs filed an amended complaint in which they challenged the “adequacy standards” established by the State for public school construction. The standards had been adopted by the PSCOC after the 2002 special master’s report and order. Plaintiffs alleged that the standards are not sufficient for the education of all school-age children and thus violate Article XII, Section 1. The district court (Hon. Louis DePauli, Jr.) commenced a bench trial in November 2016, which was continued after the State filed a motion to dismiss for lack of standing. As a result of this motion, the district court dismissed the individual Zuni Plaintiffs and the Zuni and Gallup-McKinley School Districts and for the latter, substituted the Zuni and Gallup-McKinley School Boards. After additional discovery, the court resumed and completed the trial in May 2019.

Eighteen months after the trial, on December 29, 2020, the district court issued its *Decision and Order*, finding that Plaintiffs have “proven beyond all reasonable doubt” that New Mexico’s “current statutory scheme for funding capital improvements to public school districts” is not “uniform” as required by Article XII, Section 1. In so finding, the Court “accept[ed] and [found] as proven the Plaintiff’s Proposed Findings of Fact, numbers 1-412.” The district court did not make specific

factual findings or offer sufficient analysis or conclusions to identify exactly which portions or applications of the PSCOA and the PSCIA violate Article XII, Section 1. The lack of analysis leaves “policymakers without a clear understanding of why the court found the [funding] systems unconstitutional.” *See* Bedeaux, Simon, *Legislative Education Study Committee Bill Analysis (LESC Analysis)*, at 5 (last updated March 16, 2021).<sup>1</sup>

Rather, the district court ultimately declared that the PSCOA and the PSCIA, in their entirety, violate Article XII, Section 1, and enjoined the State to “create and implement a statutory scheme funding capital outlay within Article XII Section 1 in a way that does not create substantial disparities in capital funding among the school districts in New Mexico.” The Court also held that the “Plaintiffs have proved by a preponderance of the evidence, that the capital outlay funding provided by the State, the amount of which is provided by statutory adequacy standards . . . , is insufficient, not only to provide adequate physical facilities, but also an adequate education to the children of the Plaintiff[s’] districts.”

3. Post-Judgment Proceedings. The State moved to amend and reconsider the final judgment, and for clarification of the order. In this post-judgment motion, the State requested that the district court clarify the basis of its ruling, including the relief

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<sup>1</sup> Available at <https://www.nmlegis.gov/Sessions/21%20Regular/LESCAnalysis/HB0006.PDF>.

ordered, that the district court reconsider its blanket adoption of Plaintiffs' findings of fact, and that the district court consider the Legislature's changes to the challenged funding formulas since 2019. The district court denied this motion in its entirety. The State filed a notice of appeal from both the *Decision and Order* and the order denying its post-judgment motion.

4. Legislative Changes to the Challenged Funding System. During and since the trial in this case, which began in November 2016, resumed in May 2019, and was decided by the district court's Decision and Order in December 2020, a number of legislative changes have been made. These changes directly relate to, and may have been in response to, this litigation or the issues raised by Plaintiffs. In the motion for post-judgment relief, the State identified several changes that occurred between 2019 and 2020 that directly affect material issues in the case and argued that those changes justify reconsideration or reopening the trial to admit further evidence. The State also identified legislation awaiting the Governor's review that could render Plaintiffs' requested relief moot.

Since the 2019 trial, the State has adopted significant changes to its capital outlay funding system that are not considered in the district court's ruling. The most notable example is House Bill 6 (HB 6) (2021), which the Governor signed into law while the State's motion for post-judgment relief was pending. Among other things, HB 6 eliminates credits taken in the state's funding formula for 75 percent of federal



Impact Aid, federal forest reserve payments, and the local half-mill levy when calculating a school district's equalization guarantee (SEG) distribution. These funds now must be budgeted for purposes related to the Indian Education Act, PSCOA, PSCIA, Public School Buildings Act, and Community Schools Act. HB 6 also provides for the expanded use of capital improvement levies, including to fund teacher housing. *See* NMSA 1978, § 22-18-1(A) (2021). A number of other legislative changes were made between the trial and the Decision and Order that relate directly to the issues presented here, including changes to the state and local match calculation and the implementation of standards-based and systems-based awards.

In denying the State's post-judgment motion, the district court concluded that, while "it is wonderful the Plaintiff[s'] federal impact aid will no longer be taken by the State," these legislative changes "would not likely change the judgment of the Court." Yet, HB 6 changes the capital outlay funding formula and is likely to create a major windfall for Impact Aid school districts with increased funding from the PSCOC and through additional SEG distributions. *See* Liu, *HB 6/aSEC Fiscal Impact Report (HB 6 FIR)*, at 4 (last updated March 16, 2021).<sup>2</sup> HB 6 will result in an approximately \$83 million increase in state revenue for 89 school districts,

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<sup>2</sup> Available at <https://www.nmlegis.gov/Sessions/21%20Regular/firs/HB0006.PDF>.

including exceptionally significant increases of SEG funding to Plaintiffs' districts. *See LESC Analysis*, Attachment 2, line 187.<sup>3</sup> Notably, of the projected \$83 million increase, nearly sixty percent of the funds would be allocated to the Gallup-McKinley County, Central, and Zuni school districts. *See HB 6 FIR*, at 3.

#### IV. ISSUES PRESENTED BY THIS APPEAL

**Issue A:** The district court erred in failing to alter, amend, or reconsider its final judgment in light of the substantial, material legislative changes that were made to the public schools capital outlay funding system after both the trial in May of 2019 and the entry of the Decision and Order in December of 2020.

- Preservation: The issue was preserved in *Defendants' Motion to Amend and Reconsider the Judgment and to Clarify the Order*, filed on January 28, 2021.
- Standard of Review: A motion to alter, amend, or reconsider a final judgment is reviewed for abuse of discretion. *See In re Estate of Keeney*, 1995-NMCA-102, ¶ 12, 121 N.M. 58.
- Supporting Authorities:

*In re Estate of Keeney*, 1995-NMCA-102, ¶ 12 (“There is no abuse of discretion for the trial court to consider new material as part of a motion for reconsideration under Rule [1–059] as long as the delay in presenting the new material is not just for strategic reasons, and its relevance outweighs any prejudice.”).

*Unified Contractor, Inc. v. Albuquerque Hous. Auth.*, 2017-NMCA-060, ¶ (finding no abuse of discretion in denying reconsideration where the motion for reconsideration reiterated arguments already made to the district court).

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<sup>3</sup> According to the LESC, HB 6 is estimated to provide the Gallup-McKinley School District with over \$24.5M in additional SEG revenue, a 21.1% increase, and the Zuni School District with over \$5.3M in additional SEG revenue, a 37.7% increase.

*Deaton v. Gutierrez*, 2004-NMCA-043, ¶ 9, 135 N.M. 423 (finding no abuse of discretion in denying reconsideration where the omission of documents in prior proceedings appeared to have been purposeful).

**Issue B:** The district court erred by adopting all 412 of Plaintiffs’ proposed findings of fact indiscriminately and without any analysis, failing to reflect independent judgment and making it exceedingly difficult to determine whether the Decision and Order is supported by substantial evidence.

- Preservation: The issue was preserved in *Defendants’ Motion to Amend and Reconsider the Judgment and to Clarify the Order*, filed on January 28, 2021.
- Standard of Review: Conclusions of law by the trial court are reviewed *de novo*. *Gutierrez v. Connick*, 2004-NMCA-017, ¶ 7, 135 N.M. 272.

Findings of fact are reviewed for substantial evidence. *Benavidez v. Benavidez*, 2006-NMCA-138, ¶ 21, 140 N.M. 167.

Findings of fact must be “adequate”; “specific enough to enable this court to review its decision on the same grounds as those on which it stands”; and based “on the exercise of an independent judgment on the part of the trial judge.” *Miller v. Bank of Am., N.A.*, 2015-NMSC-022, ¶ 30, 352 P.3d 1162; *Mora v. Martinez*, 1969-NMSC-030, ¶ 6, 80 N.M. 88.

- Supporting Authorities: *Miller v. Bank of Am., N.A.*, 2015-NMSC-022, ¶ 30, 352 P.3d 1162 (“This Court is not a fact-finding body. We therefore think the fairest solution is to remand to the district court for an opportunity to clarify its findings and conclusions. It is the trial court’s duty to make findings of the essential or determining facts, on which its conclusions in the case were reached, specific enough to enable this court to review its decision on the same grounds as those on which it stands.” (internal quotation marks, citations, and alterations omitted)).

*Mora v. Martinez*, 1969-NMSC-030, ¶ 6, 80 N.M. 88 (“We agree with the federal cases which, without exception, require adequate findings and insist on the exercise of an independent judgment on the part of the trial judge in making his own findings of fact rather than adopting those of one of the parties.”); *id.* ¶ 5 (“[I]t is impossible for us, with fairness, to dispose of the appeal until the trial court performs its required duty of making proper findings of fact and conclusions of law. The whole gist of the appeal involves facts. . . . [I]t is not for us to search the record in order to determine whether the long meandering findings which the court attempted to adopt by reference are supported by substantial evidence.”).

*Los Vigiles Land Grant v. Rebar Haygood Ranch, LLC*, 2014-NMCA-017, ¶ 2 (“This Court looks askance at wholesale verbatim adoption of the prevailing party’s extensive requested findings of fact and conclusions of law. And when appropriate, we will relax our usual deferential review.”).

*State ex rel. Human Services Dept. v. Coleman*, 1986-NMCA-074, ¶ 26, 104 N.M. 500, *abrogated on other grounds by State v. Alberico*, 1993-NMSC-047, ¶ 26, 116 N.M. 156 (“Where doubt or ambiguity exists as to whether the trial court considered relevant evidence, or where other findings are required, the ends of justice require that the cause be remanded to the district court for the entry of additional findings and conclusions of law.”).

**Issue C:** The district court erred in finding that the current statutory scheme for funding capital improvements to public school districts is neither “uniform” nor “sufficient” in violation of Article XII, Section 1 of the New Mexico Constitution, including as applied to the Plaintiff districts. The funding scheme ensures that the State’s funding for free public schools across the state, including schools in Plaintiffs’ school districts, is both uniform and sufficient. Plaintiffs failed to prove beyond a reasonable doubt that the funding system is not uniform and sufficient.

- Preservation: The issue was preserved in *Defendants’ Proposed Findings of Fact and Conclusions of Law*.
- Standard of Review: Constitutional questions are questions of law, which are reviewed *de novo*. *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 10.
- Supporting Authorities:  
*State v. Boyse*, 2013-NMSC-024, ¶ 9 (applying “the plain meaning rule” to constitutional interpretation, which “requires that statutes be given effect as written without room for construction unless the language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity or contradiction, in which case the statute is to be construed according to its obvious spirit or reason.” (internal quotation marks and citation omitted)).

*Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 10 (“[W]e presume that the statute is valid and will uphold it unless we are satisfied beyond all reasonable doubt that the Legislature went outside the bounds fixed by the Constitution in enacting the challenged legislation. We will not question the wisdom, policy, or justness of a statute, and the burden of establishing that the statute is invalid rests on the party challenging the constitutionality of the statute.” (internal quotations marks and citations omitted)).

*Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 11 (“To determine whether loaning textbooks to private school students constituted ‘support’ of private schools in violation of Article XII, Section 3, this Court considered the historical circumstances that led to the provision’s adoption[.]” (internal quotation marks added)).

**Issue D:** The district court erred in concluding that the ability of school districts to use local funds to exceed the statewide adequacy standards results in a system that violates the uniformity requirement set forth in Article XII, Section 1. Article IX, Section 11(A) of the New Mexico Constitution, which was adopted after Article XII, Section 1, expressly authorizes school districts to borrow money for capital

improvements; therefore, the Legislature’s recognition of that right in NMSA 1978, § 22-24-5(F) cannot be the basis for holding the capital funding scheme unconstitutional.

- Preservation: The issue was preserved in *Defendants’ Proposed Findings of Fact and Conclusions of Law*.
- Standard of Review: Constitutional questions are questions of law, which are reviewed *de novo*. *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 10.
- Supporting Authorities:  
N.M. Const. art. IX, § 11(A) (“[N]o school district shall borrow money except for the purpose of erecting, remodeling, making additions to and furnishing school buildings or purchasing or improving school grounds or any combination of these purposes[.]”).

NMSA 1978, § 22-25(F) (2021) (“It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed pursuant to Subsection C of this section; provided, however, that nothing in the Public School Capital Outlay Act or the development of standards pursuant to that act prohibits a school district from using other funds available to the district to exceed the statewide adequacy standards.”).

*State ex rel. League of Women Voters v. N.M. Comp. Comm’n*, 2017-NMSC-025, ¶ 23 (“[T]he latter [constitutional] provision governs as the latest expression of the sovereign will of the people, and as an implied modification pro tanto of the original provision of the Constitution in conflict therewith.” (internal quotation marks and citation omitted)).

*State v. Santillanes*, 2001-NMSC-018, ¶ 7, 130 N.M. 464 (“[I]f two statutes dealing with the same subject conflict, the more specific statute will prevail over the more general statute absent clear expression of legislative intent to the contrary. The specific statute operates as an exception to the general statute[.]” (internal citation omitted)).

*McCormick v. Bd. of Educ. of Hobbs Mun. Sch. Dist. No. 16*, 1954-NMSC-094, ¶ 16 58 N.M. 648 (“All constitutional provisions have equal dignity.”).

*State ex rel. Ward v. Romero*, 1912-NMSC-011, ¶ 11, 17 N.M. 88 (“It is therefore a very proper rule of construction that the whole is to be examined with a view to arriving at the true intention of each part.”).

*Khutts v. Jones*, 1915-NMSC-035, ¶ 5, 20 N.M. 230 (noting that “[s]ection 1542, C.L. 1897, authorize[d] the school directors of any school district to submit to the voters of their district . . . the question of the issuance of bonds for the purpose of constructing a school building,” and further noting that “[i]n 1899 the Legislature . . . provided that the county superintendent of schools should have the power . . . [in certain circumstances] to order the school directors of such district to submit the question of issuing bonds of such district for the purpose of building a schoolhouse.”).

## **V. RECORDING OF PROCEEDINGS**

All proceedings since the filing of the First Amended Complaint in July of 2015 were audio recorded. Undersigned counsel also have written transcripts of the following proceedings:

- 2016 trial (November 7-10, 2016);
- 2019 trial (May 13-15, 2019).

## **VI. RELATED OR PRIOR APPEALS**

There are no related or prior appeals.

Respectfully submitted,

HECTOR H. BALDERAS  
NEW MEXICO ATTORNEY GENERAL

By:  /s/ Erin Lecocq \_\_\_\_\_  
Nicholas M. Sydow  
Civil Appellate Chief

Erin Lecocq  
Neil Bell  
Assistant Attorneys General  
P.O. Drawer 1058  
Santa Fe, NM 87504-1508  
Telephone: (505) 490-4060  
Facsimile: (505) 490-4881  
nsydow@nmag.gov  
elecocq@nmag.gov  
nbell@nmag.gov

### **CERTIFICATE OF SERVICE**

I certify that on September 1, 2021, I filed the foregoing *Docketing Statement* using the Odyssey File & Serve electronic filing system, thereby causing a true and correct copy to be served on the following individuals:

Ronald J. Van Amberg  
*Counsel for Zuni Public School Board*

Robert F. Rosebrough  
David A. Ferrance  
*Counsel for Gallup-McKinley County School Board*

I also served the District Court with this docketing statement by filing in the District Court matter and by causing the docketing statement.

Finally, I caused this notice to be served by first-class mail to:

The Honorable Louis E. DePauli, Jr.  
207 W. Hill Ave.  
2nd Floor, Room 200  
Gallup, NM 87301



Kelly Mccale  
Court Monitor  
207 W. Hill Ave.  
2nd Floor, Room 200  
Gallup, NM 87301

/s/ Nicholas M. Sydow