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 BRIEF IN CHIEF

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. INTRODUCTION 1

II. SUMMARY OF PROCEEDINGS 2

A. Pre-2013 Litigation. 2

B. The Lawsuit's Revival. 8

C. The 2016 and 2019 Bench Trial 9

D. Findings of Fact and Conclusions of Law. 19

E. The District Court's Ruling. 24

F. Post-Judgment Litigation. 26

G. Legislative & Other Developments After Trial. 29

III. ARGUMENT 30

A. The District Court Erred in Holding that the PSCOA and PSCIA Are Unconstitutional Because They Render the State's Capital Outlay System Not Uniform. 30

1. Standard of Review and Preservation. 30

2. The District Court Mistakenly Assessed the Constitutionality of Local Districts' Power to Issue Bonds to Build Schools, Rather Than the Equalizing Efforts of the PSCOA and PSCIA. 30

3. The State's Capital Outlay Awards Through the PSCOC Appropriately Balance the Dueling Constitutional Commands in Article IX, Section 11 and Article XII, Section 1. 34

B. The District Court Erred in Holding that the PSCOC's Awards Under the Adequacy Standards Are Facially Unconstitutional. 38

1. Standard of Review and Preservation. 38

2. The District Court's Holding That the Adequacy Standards "Bear No Relation" to Facility Needs or Children's Educational Needs Is Not Supported by Substantial Evidence. 39

3. Even If Plaintiffs Presented Sufficient Evidence to Establish That the Adequacy Standards Are Insufficient in Particular Circumstances, That Does Not Support a Holding of Facial Invalidity. 41

C. The District Court Erred in Adopting All 412 of Plaintiffs' Proposed Findings of Fact and Refusing to Consider the State's Proposed Findings.42

1. Standard of Review and Preservation. 42

2. As the Factfinder in a Bench Trial, the District Court Must Conduct an Independent Analysis of Findings and Conclusions. 43

3. Some of Plaintiffs' Findings of Fact Adopted by the District Court Are Contradicted by the Record or Were Outdated When Entered, Demonstrating the Absence of Independent Review. 44

4. The Court's Wholesale Rejection of the State's Findings and Conclusions Because the State Had Not Met Its Purported Burden of Proof Improperly Places the Court's Factfinding Role *After* Its Ultimate Judgment. 45

D. The District Court Erred in Not Hearing Evidence of Post-Trial Developments. 47

1. Standard of Review and Preservation. 47

2. Legislative Developments After Trial Altered Some of the Fundamental Premises of Plaintiffs' Action..... 48

3. The Court's Conclusion That These Changes to the Challenged Laws "Do Not Appear to Remedy" the Alleged Constitutional Violation Fails to Grapple With the Profound Significance of the Legislature's Actions. . 49

IV. CONCLUSION 51

TABLE OF AUTHORITIES

NEW MEXICO CASES

"Court's Findings of Fact & Conclusions of Law, & Order re Final Judgment," *Martinez v. State*, D-101-CV-2014-00793 (1st Jud. Dist. Ct. Dec. 20, 2018) .. 44

Bd. of County Comm'rs of Bernalillo County v. McCulloh, 1948-NMSC-028, 52 N.M. 10, 195 P.2d 1005.....35

Bd. of Ed. of Village of Cimarron v. Maloney, 1970-NMSC-146, 82 N.M. 167, 477 P.2d 605.....35

Benavidez v. Benavidez, 2006-NMCA-138, 140 N.M. 167, 145 P.3d 117 42

Coulter v. Stewart, 1982-NMSC-035, 97 N.M. 616, 642 P.2d 602..... 44

Deutsche Bank Nat. Tr. Co. v. Johnston, 2016-NMSC-013, 369 P.3d 1046 47

First W. Sav. & Loan Ass'n v. Home Sav. & Loan Ass'n, 1972-NMCA-083, 84 N.M. 72, 499 P.2d 694 38

Gila Res. Info. Project v. N.M. Water Quality Control Comm'n, 2018-NMSC-025, 417 P.3d 369 41

Gutierrez v. Connick, 2004-NMCA-017, 135 N.M. 272, 87 P.3d 552 42

In re Estate of Keeney, 1995-NMCA-102, 121 N.M. 58, 908 P.2d 751..... 47

Johnson v. Madron, No. A-1-CA-32668, 2015 WL 667560, at *4 (Jan. 28, 2015) 47

Jones v. Schoellkopf, 2005-NMCA-124, 138 N.M. 477, 122 P.3d 844 38

Klutts v. Jones, 1915-NMSC-035, 20 N.M. 230, 148 P. 494 35

League of Women Voters v. N.M. Comp. Comm'n, 2017-NMSC-025, 401 P.3d 73 36

Los Vigiles Land Grant v. Rebar Haygood Ranch, LLC, 2014-NMCA-017, 317 P.3d 842..... 42

Miller v. Bank of Am., N.A., 2015-NMSC-022, 352 P.3d 1162 47

Mora v. Martinez, 1969-NMSC-030, 80 N.M. 88, 451 P.2d 992 .....42, 43, 44

Moses v. Ruszkowski, 2019-NMSC-003, 458 P.3d 406 .....30, 38, 46

Mountain States Constr. Co. v. Aragon, 1982-NMSC-058, 98 N.M. 194, 647 P.2d 396 31

Mowrer v. Rusk, 1980-NMSC-113, 95 N.M. 48, 618 P.2d 886 51

See McCormick v. Bd. of Ed. of Hobbs Mun. Sch. Dist. No. 16, 1954-NMSC-094, 58 N.M. 648, 274 P.2d 299 35

State v. Blea, 2018-NMCA-052, 425 P.3d 385 41

State v. Flores, 2005-NMCA-092, 138 N.M. 61, 116 P.3d 852.....30

State v. Maes, 2007-NMCA-089, 142 N.M. 276, 164 P.3d 975 46

State v. Santillanes, 2001-NMSC-018, 130 N.M. 464, 27 P.3d 456 36

Unified Contractor, Inc. v. Albuquerque Hous. Auth., 2017-NMCA-060, 400 P.3d 290 39

Univ. of Albuquerque v. Barrett, 1974-NMSC-085, 86 N.M. 794, 528 P.2d 20743

OTHER CASES

McCleary v. State, 269 P.3d 227 (Wash. 2012) (en banc) 46

Roosevelt Elem. Sch. Dist., No. 66 v. Bishop, 877 P.2d 806 (Ariz. 1994) ... 25, 33, 34

Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241 (1971) 36

CONSTITUTIONS

N.M. Const., art. IX, § 11 35

N.M. Const., art. XII, § 1 1

RULES

Rule 1-052 NMRA 43

OTHER AUTHORITIES

LESC 2021 Post-Session Review (May 2021) 50

LESC Bill Analysis, H.B. 6 (55th Legis., 1st Sess.) (Mar. 16, 2021)..... 50

LEGISLATION

2000 N.M. Laws, 2d Spec. Sess., ch. 11 5

2000 N.M. Laws, 2d Spec. Sess., ch. 19 5

2001 N.M. Laws, ch. 338.....5

2021 N.M. Laws, ch. 49 29

2021 N.M. Laws, ch. 52..... 29

2022 N.M. Laws, 2d. Sess., ch. 22 ..... 29, 49

S.J.M. 21, 44th Leg., 2d Spec. Sess. (N.M. 2000), https://www.nmlegis.gov/Sessions/00%20Special/memorials/senate/SJM021.pdf 5

I. INTRODUCTION

In the wake of the district court's ruling over 20 years ago, finding the State's capital outlay system for public schools unconstitutional, the State revised and funded its capital outlay system so that all schools would have adequate facilities. The State has continued to supplement and improve those efforts to the present day, including last year ending any reduction of funding to offset federal "impact aid" that some districts receive. The Plaintiff school districts have been among the largest beneficiaries of this system, and the over $2 billion in capital outlay awards made by the State. **[Def. Ex. 10]**

Nonetheless, the district court held that this entire system, including two statutes—the Public School Capital Outlay Act (PSCOA) and Public School Capital Improvements Act (PSCIA)—are unconstitutional because they fail to provide a "uniform system of free public schools sufficient for the education of … all the children of school age…." N.M. Const., art. XII, § 1. The district court's ruling is based on the mistaken premise that these reform measures—the PSCOA and PSCIA—are the cause of, rather than an effort to remedy, inequities that result from school facilities being funded through local taxation. And the court's resulting holding that the

PSCOA and PSCIA fail to provide students with an adequate education lacks support, especially in all the laws' provisions and in all applications, as required by the court's facial invalidation.

In addition to these errors in the district court's constitutional analysis, the court did not make individual findings of fact or conclusions of law, and noted the blanket adoption of all 412 of Plaintiffs' proposed findings. The court did so on the mistaken premise that the State's (admittedly correct) findings of fact could be rejected because the State had not met a burden of proof. Nor did the district court consider profound changes to the challenged funding system that occurred during post-judgment litigation and which eliminate many of the bases of Plaintiffs' claims. Thus, even if the Court does not reverse the district court's ultimate constitutional holding, it should remand the case with instructions to consider these new developments and make individualized findings of fact.

II. SUMMARY OF PROCEEDINGS

A. Pre-2013 Litigation.

This case has a long, complex history. In 1998, the Zuni Public School District and individual plaintiffs filed a complaint against the State, arguing

that the State's system for funding capital improvements at public schools was unconstitutional. **[1 RP 5 ¶¶ 26–28]** The Zuni Plaintiffs argued that districts with "productive taxable property" were able to raise money through property taxes, **[1 RP 3 ¶ 17]** but that Zuni was unable to do so given an insufficient tax base and the State's transfer to the General Fund of "impact aid" funds that the district receives from the Federal Government for having non-taxable, federal lands. **[1 RP 2–3 ¶¶ 6, 10]** "By the state taking virtually all of the impact aid funds and other federal funds," Zuni contended, "it destroys any possibility of equalizing capital outlay funds between those districts heavily impacted by a federal presence and those districts with a rich tax base." **[1 RP 5 ¶ 24]** Zuni alleged that such a system violated Article XII, Section 1 of the New Mexico Constitution's guarantee of "a uniform system of free public schools" and requested injunctive relief and monetary damages. **[1 RP 5–8 ¶¶ 28, 31, 36, 40]** Gallup-McKinley School District No. 1 ("GMCS") and Grants Cibola County School District moved and were permitted to intervene as Plaintiffs. **[1 RP 45–60, 93–94]** 41 school districts' motion to intervene as Defendants was denied. **[2 RP 356–59]**

The district court granted partial summary judgment in the Plaintiffs' favor, holding that "[t]he current system for the funding of capital

improvements for New Mexico's school districts violates Article XII, Section 1 of the New Mexico Constitution." **[2 RP 362 ¶ 3]** The court held that the ability of districts to raise capital improvement funds varied because of non-taxable lands and the differing value of taxable lands, and that no state interest justified the resulting inequality. **[2 RP 362–63 ¶¶ 5–6]** Therefore, the court ordered the State, by July 28, 2000, "to establish and implement a uniform funding system for capital improvements for New Mexico school districts and for correcting existing past inequities, all to be within the mandates of Article XII, Section 1 of the New Mexico Constitution." **[2 RP 364 ¶ 5]**[1]

The State adopted the foundations of the current capital outlay system at issue in response to this order. The Legislature appointed a task force to analyze options for providing a continual funding source for capital outlay projects, evaluate impact aid credits, and consider options for providing additional funding and maintaining equity in funding. S.J.M. 21, 44th Leg., 2d Spec. Sess. (N.M. 2000), https://www.nmlegis.gov/Sessions/00%20Special/memorials/senate/SJM021.

[1] The State's application for interlocutory appeal of this order was denied. **[2 RP 394]**

pdf. The State also amended the PSCOA[2] to fund and approve grants for critically-needed capital projects in districts meeting indebtedness and other criteria. 2000 N.M. Laws, 2d Spec. Sess., ch. 19, §§ 1–3 (creating grant criteria); 2000 N.M. Laws, 2d Spec. Sess., ch. 11, §§ 1–4 (authorizing issuance of supplemental severance tax bonds to fund grants). Following these emergency measures, the State in the next general session established the Public School Capital Outlay Fund and a permanent source of supplemental severance tax bonds to fund it, created a process to identify and fund the repair of health- and safety-related deficiencies, created a process for districts to apply for grants for other capital projects in which the State would pay a share of the project based on the district's assessed property value per student, directed the adoption of statewide adequacy standards for school facilities, and provided a state match for districts that have imposed a tax under the PSCIA.[3] 2001 N.M. Laws, ch. 338, §§ 1–19.

Plaintiffs contended that these reforms were insufficient and that they only addressed the adequacy of capital outlay, not its uniformity. **[3 RP 526 ¶**

[2] The current version of the PSCOA is at NMSA 1978, Section 22-24-1 through -12 (1975, as amended through 2022).

[3] The current version of the PSCIA is at NMSA 1978, Section 22-25-1 through -11 (1975, as amended through 2022).

1] To help assess whether the State's efforts were sufficient to comply with its summary judgment order, the court appointed Justice Daniel McKinnon as a special master and instructed him to hold an evidentiary hearing. **[3 RP 529 ¶ 1]** In the special master proceeding, Plaintiffs made many of the same arguments they would make at trial many years later, including that the State's capital outlay system allows some districts to exceed adequacy standards and that the standards do not meet districts' programmatic needs. **[3 RP 597–98 ¶¶ 22, 27; 6 RP 1409 ¶¶ 17–18; 6 RP 1415, 1419 ¶¶ 3, 14]**

Justice McKinnon issued his report as special master. He called the State's legislation to reform the capital outlay system (SB 167 (2001)) "one of the most dramatic actions ever taken by the state to remedy disparities of capital funding among New Mexico school districts." **[3 RP 637 ¶ VI]** And he found that the law "provide[d] for considerable programmatic changes and very substantial additional revenues to help service the capital needs of the public schools…." **[3 RP 633]** As a result, Justice McKinnon "concluded that … the state is to the extent possible under the circumstances, complying with the court's order requiring the development and implementation of a uniform system for funding capital improvements for New Mexico school districts." He noted, however, that it was "premature to completely judge the adequacy of

the state's response" because more time was needed to determine the efficacy of the health-and-safety grants, adequacy standards, and funding streams. **[3 RP 635 (emphasis in original)]**

By its legislation, Justice McKinnon found, the State was "attempting in good faith to establish and implement a sufficient uniform system for the funding and the development of capital projects." **[3 RP 636]** The special master deemed the establishment of uniform adequacy standards preferable to an attempt to equalize capital outlay funding because equal funding does not always meet the differing needs of different schools. **[3 RP 640-41 ¶ XIII]** He credited and endorsed the testimony of Dean Robert Desiderio, the chair of the capital outlay task force, who testified that establishing a uniform adequacy standard would balance and meet the State's obligations under both the education guarantee and local control provisions of the State Constitution. **[3 RP 640-41 ¶ XIII; 4 RP 870:14–872:2]** Justice McKinnon 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." **[3 RP 643 ¶ II]**

Plaintiffs objected to the special master's report, including by arguing that the State's funding mechanism for capital outlay still results in substantial

disparities between districts and by asking the court to require a roughly equivalent opportunity for funding. **[6 RP 1245, 1253, 1255 ¶ 4]** Nonetheless, the district court approved the special master's report **[7 RP 1423–27]**, including adopting its findings of fact and conclusions of law. **[7 RP 1425–26 ¶¶ 15–16]**

B. The Lawsuit's Revival.

After limited proceedings and dismissals for inactivity, Plaintiffs filed an unopposed motion to reinstate the case in 2013. **[7 RP 1457–60]** They argued that developments since the special master's report merited review, including the exclusion from State funding of teacher housing, or "teacherages," and the inability of districts to meet matching-funds requirements. **[7 RP 1459 ¶ 11]**

In 2015, Plaintiffs amended their complaints to include these allegations. **[7 RP 1511–24, 1158–75]** In their amended complaints, the Plaintiffs contended that the State takes 75% of districts' impact aid (through a credit against their state equalization guarantee for operational funding) and that they have to use operational funds for capital projects. **[7 RP 1513 ¶ 12, 1521 ¶ 35]**[4] Plaintiffs further alleged that the adequacy standards for school facilities do not provide

[4] These citations are to GMCS's amended complaint. The other Plaintiffs' amended complaints are substantially similar.

for a sufficient education, because they do not include off-site utilities, teacherages, Navajo Nation taxes, security systems, and other items. **[7 RP 1517 ¶ 25]** Nor, per their allegations, did the adequacy standards permit Plaintiffs to comply with state and federal education standards. **[7 RP 1517–18 ¶ 26]** Plaintiffs sought a declaratory judgment, injunction, and monetary relief. **[7 RP 1521–23 ¶¶ 40, 43, 47]**

C. The 2016 and 2019 Bench Trial.

After several continuances by the court and parties, a bench trial was set for November 2016. The State moved to continue the trial to allow for additional discovery and dispositive motion practice, or for the exclusion of undisclosed exhibits and witnesses. **[8 RP 1680–85; 8 RP 1727–28 ¶¶ 11, 15; 11-7-16 Tr. 18:25–19:15, 22:14–19; 11-9-16 Tr. at 622:15–623:19]**[5] The State argued that the district court's lack of a scheduling order, discovery deadlines, and pretrial conference prejudiced it. **[8 RP 1721–22 ¶¶ 7, 10]** The court denied this motion as untimely. **[8 RP 1715]** When the motion for continuance was renewed at trial, the court denied the motion again, explaining that if not continuing the trial "gives the Plaintiff an advantage here, well, I think it's an

[5] The citations are to the unofficial transcriptions of the audio recordings of the trial, supplemented to the Record by the Court's order.

earned advantage." [**11-7-16 Tr. 26:25–27:1**] The court further held that "Plaintiffs can put on who they want to put on because Defendants did not request a witness list." [**11-7-16 Tr. 28:4–5**] And when the State objected to the testimony from an undisclosed expert witness, the court explained, "The informality of the discovery process is catching up with the parties, and that's just too bad, I guess." [**11-7-16 Tr. 76:5–8**]

The bench trial commenced with four days of testimony in 2016. During the trial, the court continued to admit testimony and evidence over the State's objections, including by repeatedly questioning witnesses to lay a foundation or establish hearsay exceptions for Plaintiffs' exhibits. [**11-7-16 Tr. 81:21–84:5, 86:22–89:1; 11-10-16 Tr. 753:9–754:6, 802:17–803:22**] The court overruled an objection to the admission of a document with tiny print by instructing the State's counsel to "get out your magnifying glass" [**11-7-16 Tr. 140:2–6**] and overruled a hearsay objection by commenting, "I'm sure [the witness] is proud of this publication and he wouldn't have a problem with it, so, I don't, either." [**11-10-16 Tr. 850:11–13**] When the State objected to the admission of partial documents, including a document where the witness testified that he couldn't explain the document without its missing remainder [**11-10-16 Tr. 817:17–820:21**], the court noted, "And again, going back to not knowing what exhibits

are going to be in until relatively recently, well, not my fault." **[11-9-16 Tr. 624:9–625:25]**

At trial and in their post-trial submissions, Plaintiffs continued to argue that the State's system for funding capital outlay projects violated Article XII, Section 1. Plaintiffs argued that the system was not uniform because direct appropriations and property tax bases permitted some schools to build facilities above the adequacy standards without taxing themselves as much as the Plaintiff districts. **[11-7-16 Tr. 59:15–23; 11 RP 2576]** Plaintiffs further argued that the impact aid they received was very substantial and the State took 75% percent of this money, which also created non-uniformity. **[11-7-16 Tr. 61:23–62:12, 62:21–23; 5-13-19 Tr. 22:8–21; 11 RP 2576–77]** Finally, Plaintiffs argued that they have not been able to build sufficient facilities under the capital outlay system, including because the adequacy standards do not permit rural districts to meet educational specifications or encompass teacherages, off-site utilities, Navajo Nation taxes, or sufficient athletic facilities, security systems, and therapy pull-out spaces. **[11 RP 2544, 2578–81, 2584]** In fact, Plaintiffs claimed that GMCS and Zuni need more money and better facilities than other districts. **[11 RP 2584]**

The parties presented testimony concerning the operation of the State's capital outlay system. David Abbey, Chair of the Public School Capital Outlay Council (PSCOC), testified that capital outlay is provided through a uniform, formula-based system and that while there may be debates about whether the system is equitable or sufficient, it is uniform. **[11-7-16 Tr. 217:10–218:19]** Jonathan Chamblin, Executive Director of the Public Schools Facility Authority (PSFA), testified that the PSCOC's capital outlay process is consistent for all schools and fair, with an equal opportunity to seek funds. **[5-15-19 Tr. 179:11–180:21]** This system, Chamblin testified, results in adequate facilities. **[5-15-19 Tr. 182:5–12]** Adequacy is measured by the State's adequacy standards, which are developed by many experts, including GMCS staff **[5-10-16 Tr. 879:11–15]** and are based on educational program needs. **[5-13-19 Tr. 150:12–151:8]** Jeff Eaton of the Legislative Counsel Service explained that the PSCOC process is designed to equalize funding through its state- and local-match process, that is unequal as a result of districts' taxation ability or direct appropriations. **[11-9-16 Tr. 658:11–21, 659:11–17; *see also* Pltf. Ex. 18 at 3, 5]** A "very, very small handful of districts" have never come to PSCOC for funding. **[5-15-19 Tr. 165:2–16]**

Plaintiffs introduced testimony that some districts are able to generate funds to exceed adequacy standards in their facilities. **[11-9-16 Tr. 636:7–11]** Zuni, by contrast, testified that it cannot get a building exceeding adequacy standards through the PSCOC process **[5-14-19 Tr. 16:1–7]** and that when it does build above the adequacy standards, it does so with State funds under PSCIA (or "SB 9") instead. **[5-14-19 Tr. 21:24–22:14]** Zuni's finance director, Martin Romine, testified that Zuni had not requested PSCOC to build above adequacy or appealed its decisions. **[5-14-19 Tr. 24:19–24]**

Witnesses testified about the changes in the State's capital outlay system since the case was filed in 1998. They testified that the Legislature has dramatically increased state funding for capital outlay since the filing of the lawsuit **[11-7-16 Tr. at 228:18–25; 11-9-16 Tr. 679:9–24]** and the average facility condition of public schools is markedly better than when the case started. **[11-7-16 Tr. 222:9–22; 11-9-16 Tr. 687:25–688:18; 11-10-16 Tr. 755:10–756:7; Pltf. Ex. 35 at 3]** In fact, New Mexico schools were now in better condition than the national average. **[11-10-16 Tr. 767:7–21, 886:20–887:5]** Because so few schools were in poor enough condition to require a total replacement, the State began making smaller, "systems-based" awards to help maintain schools in good

condition for longer. [**11-10 Tr. at 772:17–775:10; 5-14-19 Tr. 94:6–95:16 (discussing SB 128 (2015)**]

Evidence was presented concerning the particular benefits from the capital outlay system that have flowed to the Plaintiff districts. GMCS has received more money through the challenged capital outlay process than any other district. [**11-7-16 Tr. 223:14–224:2; 11-9-16 Tr. 525:21–526:8; 11-10-16 Tr. 867:12–22; 5-15-19 Tr. 79:2–21; Def. Ex. 10**] More than half of GMCS schools are new or are in construction since the litigation began [**11-8-16 Tr. 359:3–14; 362:20–24, 363:23–364:9, 364:14–17**] and some have aspects above the State's adequacy standards, including off-site utilities and teacherages. [**11-8-16 Tr. 372:18–373:6; 5-13-19 Tr. 86:17–87:8; 11 RP 2616 ¶¶ 166, 168–89**] Both GMCS and Zuni receive among the highest amounts of state funds for capital outlay per student. [**Def. Ex. 4**] As a result, both GMCS and Zuni had facility condition scores better than the statewide average. [**5-15-19 Tr. 117:9–118:16**]

The Plaintiff districts presented testimony that the capital outlay awards under the State's adequacy standards do not include facilities that they desire, including Navajo language and culture classrooms, a second gym, Navajo Nation taxes, off-site utilities, and teacherages—which GMCS's superintendent called "the one I should have put at the top of the list, I'll put

a star." [**11-8-16 Tr. 263:1–265:24, 267:13–18, 269:3–6; 275:14–18; 5-13-19 Tr. 108:25–109:19**] GMCS's witnesses also criticized the adequacy standards' square-foot provisions as creating hardships for specialized instruction [**11-8-16 Tr. 278:14–280:11, 282:15–283:13; 5-13-19 Tr. 34:23–35:1, 37:5–17, 190:6–11**], albeit noting that some schools that were too small were because of inaccurate enrollment estimates. [**11-8-16 Tr. 337:18–23, 347:2–11**] PSFA Director Robert Gorrell, however, testified that an appeal process exists if a school's design space does not accommodate its educational function [**11-10-16 Tr. 776:–778:1**] and that GMCS was not receptive to suggestions as to how to better utilize space, nor did it appeal PSFA's square foot decision to the PSCOC. [**11-10-16 Tr. 786:13–24**]

More broadly, there was a wealth of testimony that the State's capital outlay process allows for the modification of facility design to accommodate local schools' programs, including tiered instruction. [**11-10-16 Tr. 793:8–794:3, 799:19–800:7; 5-13-19 Tr. 156:15–157:21**] One possible modification is the ability to increase a school's square footage where justification exists [**11-10-16 Tr. 880:1–7; 5-15-19 Tr. 81:8–85:6**], including for language and culture classes [**5-15-19 Tr. 172:10–13**] and special education and therapy "pull-outs." [**5-15-19 Tr. 173:3–8; *see also* Def. Ex. 1 at A-1 (square feet guidelines are designed**

to efficiently use space and may be challenged on a case-by-case or educational program-by-program basis)] GMCS has not appealed decisions by PSFA regarding space for Navajo language or culture classrooms [**11-10-16 Tr. 800:10–18**] and indeed has some Navajo language classrooms. [**5-13-19 Tr. 38:16–24**] The PSFA's Executive Director testified that, in particular, if a school had a high number of at-risk students, that would constitute a unique educational program need and would be "in all likelihood, demonstrated and justified fairly readily" to increase the square footage of a school. [**5-15-19 Tr. 171:18–172:5**] Zuni's superintendent, Daniel Benavidez, testified that he was not aware of any instance where PSCOC had denied assistance to his district. [**5-13-19 Tr. 140:9–11**]

In addition to its criticism of the adequacy standards, GMCS also offered testimony that facility problems affect academic education, especially because it has needed to use operational funds to build facilities, including teacherages. [**11-8-16 Tr. 320:24–322:23; 11-9-16 Tr. 701:15–21; 5-13-19 Tr. 195:11–21**] GMCS could not, however, point to specific data that its concerns with facilities had an adverse effect on students, only that it "potentially" could be doing better if it had more resources. [**11-8-16 Tr. 421:24–422:20**] Nor did

GMCS offer an empirical or objective basis for its opinion regarding how many square feet its schools should be. **[11-8-16 Tr. 451:6–22]**

In the three years between the two portions of trial in 2016 and 2019, the district court granted in part the State's motion to dismiss on standing grounds. **[10 RP 2195–97]** The court dismissed the individual Zuni Plaintiffs because their claims had been abandoned. **[10 RP 2195, 2196 ¶ 1]** And the court dismissed the school district Plaintiffs because they lacked the capacity to sue **[10 RP 2195, 2196–97 ¶ 2]**, but later permitted Plaintiffs to substitute school boards for the dismissed districts. **[10 RP 2229–32]**

At the outset of the trial's continuation, the court dismissed Grants Cibola County School District because it was not present at trial. **[5-13-19 Tr. 13:11–21; 11 RP 2521–22]** The parties also introduced evidence and presented argument concerning legislative changes to the challenged capital outlay system that had occurred since 2016. **[*See, e.g.*, 5-13-19 Tr. 24:8–12 (Plaintiffs acknowledging in opening statement change to state/local match formula and $34 million appropriation to impact aid districts)]**

Among these legislative changes was Senate Bill 30 (2018). The State offered testimony that SB 30 changed the local match formula to account for the number of students, facility needs, and bonding capacity in an attempt to

ensure that some districts weren't receiving more money than needed. [**5-14-19 Tr. 101:22–103:18, 105:3–106:7**] These increased required local matches did not substantially impact GMCS or Zuni. [**5-14-19 Tr. 107:10–17**]

In addition, the Legislature had appropriated $10 million for teacherages and $24 million for above-adequacy construction projects in impact aid districts. [**5-13-19 Tr. 203:20–204:5; 5-14-19 Tr. 123:2–124:2, 126:21–127:6**] Because this appropriation was in the preceding legislative session, however, Zuni testified that it was unsure how much money it would receive or what these funds would be used for. [**5-13-19 Tr. 123:21–124:8**] And the State's witness testified that there was some ambiguity in how awards under this appropriation would operate. [**5-14-19 Tr. 124:3–125:7**]

Two other bills amended the PSCOA to add new purposes for which awards could be made. SB 239 (2018) permitted security systems to be included in "systems-based" awards. [**5-14-19 Tr. 109:7–110:4; 5-15-19 Tr. 47:11–16**] GMCS received an award for a security system under this provision. [**5-15-19 Tr. 174:22–175:2**] And SB 230 (2019) amended the PSCOA to allow awards to build pre-K classrooms. [**5-14-19 Tr. 112:25–114:5**] Lastly, the State introduced evidence that both GMCS and Zuni had received large project awards from PSCOC in the last fiscal year. [**Def. Ex. 21**]

At the close of Plaintiffs' case, the State moved for a directed verdict. The State argued that Plaintiffs had not established standing, exhausted their administrative remedies, or introduced evidence that they cannot meet educational specifications under the current adequacy standards. **[5-14-19 Tr. 27:8–21, 28:20–29:20, 30:10–31:7, 43:3–9]** The court granted the dismissal of individual Plaintiffs, because no evidence about them had been introduced. **[5-14-19 Tr. 31:11–19]** But the court denied the remainder of the motion, holding that Plaintiffs had established that capital outlay funding was not uniform because it was mostly determined by property values **[5-14-19 Tr. 46:4–16]** and that Plaintiffs had presented evidence of an injury based on the size of buildings and the athletic facilities they have been able to build. **[5-14-19 Tr. 47:3–22]** The court held that administrative exhaustion was not required because Plaintiffs' constitutional challenge was bigger than particular rulings by the PSCOC. **[5-14-19 Tr. 48:5-16]**

D. Findings of Fact and Conclusions of Law.

After the testimony of Defendants' witnesses and Plaintiffs' rebuttal witness, which is summarized in the discussion of the trial above, the parties discussed with the court how to conclude the trial. Recognizing that "the appellate court deserves to know where this Court is coming from and you

guys need to help me do that" [**5-15-19 Tr. 227:11–13**], the court directed the parties to submit written closing arguments and proposed findings of fact and conclusions of law. [**5-15-19 Tr. 226:17–21, 229:16-19**]

Plaintiffs submitted 412 proposed findings of fact [**11 RP 2587–2653**] and 129 proposed conclusions of law. [**11 RP 2655–2682**] Although the entirety of these proposed findings and conclusions are beyond the constraints of this brief, some of Plaintiffs' findings and conclusions were:

- Property taxes, not state wealth, fund capital outlay [**11 RP 2593 ¶ 20**] and, somewhat inconsistently, capital outlay funding is predominantly based on property wealth; [**11 RP 2593 ¶ 24**]
- The PSCOA is based on a principle of adequacy, not equity; [**11 RP 2593–94 ¶ 27**];
- The State takes 75% of impact aid with limited exceptions; [**11 RP 2598–99 ¶¶ 53, 203**]
- Property-rich districts can generate more dollars for capital outlay than property-poor districts; [**11 RP 2602 ¶ 73**]
- Going through the PSCOC award process is slower than construction outside of the process and disadvantages districts (lacking a record citation); [**11 RP 2610 ¶ 121**]
- Districts including Albuquerque are able to build facilities above adequacy; [**11 RP 2611 ¶ 128**]
- Property value, population density, enrollment, and distance from construction firms are all "disequalizing" realities in the capital outlay process; [**11 RP 2619 ¶ 190**]

- The adequacy standards do not incorporate educational specifications; **[11 RP 2625 ¶ 229]**

- PSCOC does not fund teacherages and GMCS uses operational funds to build teacherages; **[11 RP 2626–27 ¶¶ 232, 236, 243–44; 11 RP 2652 ¶ 399]**

- Adequacy standards do not include security alarms and cameras; **[11 RP 2631 ¶¶ 272–74]**

- GMCS is in violation of Title IX because of inadequate athletic facilities; **[11 RP 2631 ¶ 275]**

- Adequacy standards do not provide space for therapy pull-outs; **[11 RP 2632 ¶ 278; 11 RP 2636 ¶ 301]**

- Albuquerque received funds to construct new high schools from a $90 million direct appropriation in 2006; **[11 RP 2633–34 ¶¶ 287–90]**

- Adequacy standards do not permit space for tiered instruction; **[11 RP 2637 ¶ 308]**

- Projections of worsening facilities condition and reduced PSCOC funding from 2016, rather than actual conditions at close of trial in 2019; **[11 RP 2643–46 ¶¶ 347, 349, 351–52, 355, 364]**

- New Mexico's facilities conditions statewide are average at best; **[11 RP 2646 ¶ 367]**

- Numerous instances of duplicative facts; **[*see, e.g.*, 11 RP 2647 ¶ 374; 11 RP 2648 ¶ 378]**

- Unsupported conclusions that under the PSCOA the quality of education is a function of property wealth and that facilities of property-poor districts are dramatically inferior; **[11 RP 2676 ¶¶ 99–101]** and

- The State's taking of impact aid through a credit against operational funding results in a non-uniform capital outlay system. **[11 RP 2676 ¶¶ 105–06]**

Among the State's proposed findings of fact and conclusions of law, which were all rejected by the district court, were:

- Under the PSCOA, capital outlay financing is a shared state and local responsibility; **[11 RP 2688 ¶ 17]**

- In 2018, the state/local match formula was significantly amended to account for districts' square footage and percentage of indebtedness, which will require other districts to increase their local share but not significantly affect GMCS or Zuni; **[11 RP 2688–89 ¶¶ 18, 23]**

- GMCS requests for waivers were denied because the district had sufficient funding or failed to submit required documentation; **[11 RP 2690 ¶ 25]**

- Albuquerque repaid the State the emergency appropriation it received to construct new high schools in 2006; **[11 RP 2690 ¶ 26]**

- New Mexico school facilities are above the nationwide average; **[11 RP 2692 ¶ 42]**

- GMCS and Zuni have above-average facility condition index (FCI) scores; **[11 RP 2692 ¶ 44]**

- GMCS has never been accused of violating Title IX and has no evidence to support such a violation; **[11 RP 2693 ¶ 47]**

- If facility spaces cannot be shared, PSCOC will be asked to increase a facility's allowable square feet; **[11 RP 2693 ¶ 51]**

- Districts can now apply to PSCOC for smaller awards to improve buildings, including security systems; **[11 RP 2694 ¶ 57]**

- SB 280 (2019) provided $34 million for teacherages and projects outside of adequacy standards for districts receiving impact aid; **[11 RP 2695 ¶ 61]**

- No districts have all facilities above adequacy; **[11 RP 2696 ¶ 70]**

- GMCS has received $274 million in PSCOC awards, the most of any district, and Zuni has received $37 million; **[11 RP 2697 ¶ 76]**

- Jal and Santa Fe, to which Plaintiffs compare themselves, have more indebtedness per student than GMCS and Zuni; **[11 RP 2697 ¶¶ 80–83]**

- No evidence was presented in the 2019 phase of the trial that the feared reduction in capital outlay funding in 2016 had transpired; **[11 RP 2698 ¶ 86]**

- Levels of scrutiny do not apply to a challenge under Article XII, Section 1. Rather, a law is upheld unless it is beyond all reasonable doubt the Legislature acted outside constitutional bounds; **[11 RP 2698–99 ¶¶ 3–4]**

- Article XII, Section 1 should be interpreted in tandem with Article IX, Section 11, which gives local districts the right and responsibility to fund capital projects; **[11 RP 2699–2701 ¶¶ 6, 14–15]**

- Plaintiffs did not present any evidence that any schools have failed to open because of a lack of local funds; **[11 RP 2706 ¶ 35]**

- Plaintiffs did not rebut that security systems are now funded by the PSCOC; **[11 RP 2706 ¶ 36]**; and

- Adequacy standards include spaces for therapy sessions; GMCS's lack of space is due to therapist scheduling. **[11 RP 2708 ¶ 43]**

E. The District Court's Ruling.

More than a year after the parties' submission of proposed findings of fact and conclusions of law, the district court issued a nine-page order holding that the State's entire system for funding capital projects at public schools, including the PSCOA and PSCIA, are unconstitutional. **[12 RP 2717–25]** The court found "that the Plaintiffs have proven beyond all reasonable doubt that New Mexico's current statutory scheme for funding capital improvements to public school districts, and the scheme for approving[,] designing, and constructing public schools is not 'uniform' as required by Article XII[,] Section 1 of the New Mexico Constitution." **[12 RP 2718]** In so holding, the court placed the burden of proof on the State to prove by a preponderance of the evidence that its system for funding capital outlay was reasonably related to providing a uniform and sufficient education." **[12 RP 2721]**

The court reasoned that the funding system was not uniform because it permits property-rich districts "to raise and spend much more money than property-poor districts to build facilities to their satisfaction while paying significantly lower tax rates." **[12 RP 2718]** Property-poor districts, by contrast, are "mostly or completely dependent on the State to build facilities." **[12 RP 2718–19]** Employing the Arizona Supreme Court's definition of "uniform" from

Roosevelt Elementary School District, No. 66 v. Bishop, 877 P.2d 806, 814 (1994), the court concluded that the "PSCOA creates a funding mechanism that guarantees non-uniform, unequal and disparate funding among school districts." **[12 RP 2722–23]**. The court criticized the PSCOA for focusing on adequacy, rather than uniformity, and for "creat[ing] substantial disparities instead of remedying them." **[12 RP 2723]**

The court held that its interpretation of Article XII, Section 1 "is not in irreconcilable conflict with Article IX, Section 11." **[12 RP 2724]** "While Article IX, Section 11 allows taxation by districts to fund capital improvements," the court explained, "it does not … allow[] the legislature to pass funding schemes that cause and create gross capital funding disparities among school districts." **[12 RP 2724]** The court further held that the "Plaintiffs at trial established the effect of the gross disparity in funding on the Plaintiff's school districts." **[12 RP 2724]**

With respect to Plaintiffs' argument that the capital outlay system does not permit them to provide a sufficient education, the court held that "Plaintiffs have proven by a preponderance of the evidence[] that the capital outlay funding provided by the State, the amount of which is determined by statutory adequacy standards (standards that bear no relation to a district's

actual physical facility needs or the unique needs facing the children within a particular district), is insufficient, not only to provide adequate physical facilities, but also an adequate education to the children of Plaintiff's [*sic*] districts." **[12 RP 2719]** In particular, the court held that Plaintiffs' facilities built under the adequacy standards "are not sufficient to meet their student's [*sic*] educational needs and requirements under law." **[12 RP 2725]**

In finding in Plaintiffs' favor, the court noted that it "accepts and finds as proven the Plaintiff's Proposed Findings of Fact, numbers 1 to 412." **[12 RP 2720]** The court did not adopt any of the parties' proposed conclusions of law, other than a single conclusion that the PSCOA and PSCIA violate Article XII, Section 1. **[12 RP 2725]** The court enjoined the State to "create and implement a statutory scheme funding capital outlay for public schools within the mandates of Article XII, Section 1 of the New Mexico Constitution in such a way that the scheme itself does not create substantial disparities in capital funding among the school districts in New Mexico." **[12 RP 2725 ¶ 2]**

F. Post-Judgment Litigation.

The State filed a motion for post-judgment relief under Rules of Civil Procedure 1-052(D), 1-059, and 1-060. **[12 RP 2726–48]** It argued, first, that the order does not give sufficient guidance to the Legislature or explain the legal

basis for its ruling. [**12 RP 2729, 2731–32**] Second, the State argued that the court should consider substantial changes to the challenged funding system that transpired since trial, including by reopening testimony under Rule 1-059(A). [**12 RP 2729, 2732–33**] Specifically, the State asked the court to consider large PSCOC awards to the Plaintiff districts [**12 RP 2733–34**], appropriations in FY20 and FY21 to build outside of adequacy standards without an offset against future awards [**12 RP 2734–36, 2747 ¶ 9**], changes to the state/local match formula [**12 RP 2736–37, 2747 ¶ 12**], and the eligibility of teacherages for PSCOC awards. [**12 RP 2747 ¶ 10**] The State also noted in its reply brief, after the Legislature passed HB 6 (2021), that the new law if signed by the Governor would eliminate the State's credit for impact aid entirely and amend the capital outlay funding formula including permitting awards for teacherages. [**12 RP 2803, 2806–07**] The State argued that this would be a windfall for Plaintiffs and render the case moot. [**12 RP 2807–08**] Finally, the State in its post-judgment motion asked the court to consider and enter specific findings of fact and conclusions of law as required by Rule 1-052(A), rather than its wholesale adoption of Plaintiffs' 412 findings and a single conclusion of law. [**12 RP 2729–30, 2739–41**]

The court denied the State's post-judgment motion. **[12 RP 2824–26]** It held that the court's order provided sufficient direction to the Legislature. **[12 RP 2824]** Although the court described as "wonderful" the development that "the Plaintiff's federal impact aid will no longer be taken by the State," it concluded that "House Bill 6, Senate Bill 20, the other legislative enactments, and direct appropriations, all enacted subsequent to the trial in this case do not appear to remedy the fact that the citizens in Plaintiff's school districts will continue to be taxed more and get less than citizens in other school districts." **[12 RP 2825]**

The court also rejected the State's request to enter individual findings of fact and conclusions of law. **[12 RP 2825–26]** It explained that "it considered the Defendant's Proposed Findings of Facts" and noted that "[m]any of them were established by the evidence and undisputed." **[12 RP 2825]** However, the court explained that "[b]ecause the Defendants did not meet their burden, the Court found it unnecessary to adopt any of the Defendant's Proposed Findings of Facts in its Decision." **[12 RP 2825–26]** The State appealed both the district court's decision and order and the order denying the State's motion for post-judgment relief. **[12 RP 2836–49]**

G. Legislative & Other Developments After Trial.

Even since the filing of its post-judgment motion, the State has continued to make substantial improvements and changes to its system for funding capital projects in public schools. To begin, the Governor signed HB 6 (2021), eliminating the State's credit for impact aid in making the state equalization guarantee. 2021 N.M. Laws, ch. 52, § 5. HB 6 also permits districts to use general obligation bonds to build teacher housing or outside-adequacy spaces, 2021 N.M. Laws, ch. 52, §7(A)(1), and revises the state/local match calculation to include unrestricted revenue from all sources, but does not count expenditures used for teacherages. 2021 N.M. Laws, ch. 52, §8(K). SB 144 (2021) also expanded the types of technology eligible for awards from the PSCOC. 2021 N.M. Laws, ch. 49. And this year, HB 119 (2022) amended the PSCIA to increase the State's guaranteed funding to districts that have imposed a "two mill" tax for school facility improvements. 2022 N.M. Laws, 2d. Sess., ch. 22.

III. ARGUMENT

A. The District Court Erred in Holding that the PSCOA and PSCIA Are Unconstitutional Because They Render the State's Capital Outlay System Not Uniform.

1. Standard of Review and Preservation.

The district court's conclusion that the PSCOA and PSCIA violate Article XII, Section 1 and are unconstitutional is subject to de novo review. Constitutional questions are questions of law that are reviewed de novo. *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 10, 458 P.3d 406 (filed 2018).

This question was preserved. The State raised the argument that the PSCOA and PSCIA were not in violation of Article XII, Section 1's guarantee of a uniform education in its answers to Plaintiffs' complaints [**7 RP 1526 ¶ 8; 7 RP 1579 ¶ 2**], in closing argument—including argument that Plaintiffs' interpretation conflicts with Article IX, Section 11 [**11 RP 2682–84**], and in the State's proposed conclusions of law. [**11 RP 2701 ¶ 15, 2703 ¶ 23, 2709 ¶ 49**]

2. The District Court Mistakenly Assessed the Constitutionality of Local Districts' Power to Issue Bonds to Build Schools, Rather Than the Equalizing Efforts of the PSCOA and PSCIA.

Most fundamentally, the district court's ruling mistakenly conflates the unequal ability of school districts to raise funds for capital projects through property taxes, with the State's substantial and ongoing efforts to ensure a uniform and adequate system for capital outlay on top of local funding

through the PSCOA and PSCIA. Although the court held that the PSCOA "creates substantial disparities instead of remedying them," **[12 RP 2723]** the court offers no explanation or support for its conclusion that the PSCOA worsens inequities. *See Mountain States Constr. Co. v. Aragon*, 1982-NMSC-058, ¶ 3, 98 N.M. 194, 647 P.2d 396 (reversal warranted if findings and conclusions not supported by evidence or permissible inferences). The absence of such support also invalidates the ultimate relief ordered by the district court, directing the State to "create and implement a statutory scheme funding capital outlay … in such a way that the scheme itself does not create substantial disparities…." [**12 RP 2725 ¶ 2**]

To the contrary, the evidence at trial established that the PSCOA and PSCIA reduced inequities in capital outlay; the parties' litigation disputed whether the laws' efforts to eliminate disparities were sufficient. And even on the latter question, there was no holistic or statistical evidence that the Plaintiff districts, or other districts with less property tax revenue, have less money for capital outlay *after* State funds are provided under the PSCOA and PSCIA and those districts receive impact aid and other funds.

The district court's holding that the PSCOA and PSCIA create substantial disparities, instead of remedying them, cannot be squared with the

evidence at trial that GMCS and Zuni receive much more money than average from the PSCOC and that GMCS has received more State funds than any other district. [***Supra* p. 30; 11-7-16 Tr. 223:14–224:2; 11-9-16 Tr. 525:21–526:8; 11-10-16 Tr. 867:12–22; 5-15-19 Tr. 79:2–21; Def. Ex. 10**] Nor can it be reconciled with evidence that GMCS and Zuni have dramatically improved their facilities since the State's reforms and strengthening of the PSCOC award process in response to the summary judgment in the first stage of this litigation. [***Supra* pp. 13–14; 11-8-16 Tr. 359:3–14; 362:20–24, 363:23–364:9, 364:14–17 (GMCS improved facilities); [5-15-19 Tr. 117:9–118:16 (improved FCI scores)**].

Plaintiffs' evidence that some districts are able to build above adequacy standards by spending funds outside of the PSCOC award process does not establish that the PSCOA and PSCIA create disparities. *See supra* p. 13 (discussing this testimony). Rather, such evidence reflects districts' power to impose taxes and construct schools under Article IX, Section 11, not the equalizing effects of State funding. Also, the contention that Plaintiffs are not able to build schools above adequacy standards is contradicted by: evidence that Plaintiffs have built schools over adequacy [***Supra* p. 14; [11-8-16 Tr. 372:18–373:6; 5-13-19 Tr. 86:17–87:8; 11 RP 2616 ¶¶ 166, 168–89 (GMCS); 5-14-19 Tr. 21:24–22:14 (Zuni)**]; that Plaintiffs have not sought, or have submitted

incomplete, requests for waivers to exceed the adequacy standards (except for one GMCS waiver rejected because the district had sufficient funds [***Supra* p. 13; 5-14-19 Tr. 24:19–24; 11 RP 2690 ¶ 25 (and evidence cited therein)**]; that the State provided appropriations to build outside of adequacy standards in FY20 and FY21 [**12 RP 2734–36, 2747 ¶ 9**]; or that Plaintiffs now can retain impact aid to build above adequacy. 2021 N.M. Laws, ch. 52, § 5; *see also infra* Part III(D).

Because the PSCOA and PSCIA do not create disparities, the district court erred in its legal conclusion that the laws violate the standard of uniformity it adopted from *Roosevelt Elementary School District, No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994). [**12 RP 2722–23**]. In *Bishop*, the Arizona Supreme Court held that the constitutional principle of uniformity prohibits the State from establishing financing systems that themselves create gross disparities: "Funding mechanisms that provide sufficient funds to educate children on substantially equal terms tend to satisfy the general and uniform requirement. School financing systems which themselves create gross disparities are not general and uniform." *Id.* at 814; *see also id.* at 815 ("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."). At the same time, the *Bishop* court held that "[a]s long as the statewide system provides an adequate education, and is not itself the cause of substantial disparities, local political subdivisions can go above and beyond the statewide system. Disparities caused by local control do not run afoul of the state constitution because there is nothing [in the constitution] that would prohibit a school district … from deciding for itself that it wants an educational system that is even better than the general and uniform system created by the state." *Id.* at 814–15.

Indeed, New Mexico strives to do more and correct inequities that result from local taxation through the PSCOA, PSCIA, and other measures. But imperfections in this system to not render it unconstitutional.

3. The State's Capital Outlay Awards Through the PSCOC Appropriately Balance the Dueling Constitutional Commands in Article IX, Section 11 and Article XII, Section 1.

This is especially true given the necessity to balance the Constitution's commands in Article IX, Section 11 and Article XII, Section 1. A holding that the PSCOC and PSCIA are unconstitutional because they do not eliminate disparities inherent in local districts' ability to impose property taxes to build schools would nullify and ignore the Constitution's authorization to local districts to borrow money to construct and improve facilities. *See McCormick*

v. Bd. of Ed. of Hobbs Mun. Sch. Dist. No. 16, 1954-NMSC-094, ¶ 14, 58 N.M. 648, 274 P.2d 299 ("All constitutional provisions have equal dignity.").

Article IX, Section 11(A) provides: "Except as provided in Subsection C …, no 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…."[6] The power of local school districts to build facilities using bond proceeds under this provision has been recognized by our Supreme Court. *Bd. of County Comm'rs of Bernalillo County v. McCulloh*, 1948-NMSC-028, ¶ 25, 52 N.M. 10, 195 P.2d 1005 (recognizing Attorney General's argument that "the Constitution makers gave specific authority to school districts to buy a site upon which to erect school buildings and equip them out of the proceeds of bond issues"); *see also Klutts v. Jones*, 1915-NMSC-035, ¶ 5, 20 N.M. 230, 148 P. 494 (noting that 1899 law by territorial legislature authorized districts to submit vote to issue bond to construct schools). Thus, our Constitution "authorizes the very element of the fiscal system of which plaintiffs complain."

[6] Part of Article IX, Section 11(A) limiting electors for votes to incur such debt to property owners was struck down under the federal Equal Protection Clause. *Bd. of Ed. of Village of Cimarron v. Maloney*, 1970-NMSC-146, 82 N.M. 167, 477 P.2d 605.

Serrano v. Priest, 5 Cal. 3d 584, 596, 487 P.2d 1241 (1971) (rejecting the argument that the California Constitution requires equal school spending where another constitutional provision authorizes school districts to impose taxes for school districts).

Indeed, because Article IX, Section 11 was adopted after Article XII, Section 1, it governs in a conflict between the two provisions. *League of Women Voters v. N.M. Comp. Comm'n*, 2017-NMSC-025, ¶ 23, 401 P.3d 734. And the more specific provisions regarding capital construction in Article IX, Section 11 govern over Article XII, Section 1's more general commands. *State v. Santillanes*, 2001-NMSC-018, ¶ 7, 130 N.M. 464, 27 P.3d 456; *see also Serrano*, 487 Cal. 3d at 596 (interpreting similar provisions in California Constitution to avoid conflict and noting that if conflict, more recent and more specific provision regarding school financing would prevail). But no conflict need be found. As Dean Desiderio and Justice McKinnon observed at the special master proceedings, ensuring an adequacy standard through the State's capital outlay program meets both constitutional commands. *See supra* p. 7.

The district court's order attempts to elide Article IX, Section 11 by explaining that while the provision "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 among school districts." [**12 RP 2724**] As noted in Part III(A)(2) above, there is no support for the conclusion that the PSCOA and PSCIA "cause and create" such disparities. And if the district court instead is suggesting that the State must equalize the effects of any local funding, it is unclear how this would operate without a restriction on local funding. Regardless of how much funding the State provides for capital outlay, a local district could always decide to provide more. If the State guaranteed all schools a second gym, local schools could build a third.

The district court's holding that the PSCOA and PSCIA are unconstitutional because they create substantial disparities is without substantial support and should be reversed. If, instead, the court's holding is interpreted to require the State to correct every disparity resulting from local taxation, it cannot be reconciled with Article IX, Section 11 and should be rejected as a matter of law.

B. The District Court Erred in Holding that the PSCOC's Awards Under the Adequacy Standards Are Facially Unconstitutional.

1. Standard of Review and Preservation.

As above, the district court's conclusion that the PSCOA and PSCIA violate Article XII, Section 1 is subject to de novo review. *Moses*, 2019-NMSC-003, ¶ 10. While evidentiary findings are "viewed in the light of presumptive correctness, … this [] presumption does not replace the requirement that the judgment must be supported by findings, which in turn must be supported by substantial evidence." *First W. Sav. & Loan Ass'n v. Home Sav. & Loan Ass'n*, 1972-NMCA-083, ¶ 10, 84 N.M. 72, 499 P.2d 694 (cleaned up). Legal conclusions drawn from facts are reviewed de novo. *Jones v. Schoellkopf*, 2005-NMCA-124, ¶ 8, 138 N.M. 477, 122 P.3d 844.

This State preserved this question that the PSCOA and PSCIA were not in violation of Article XII, Section 1's guarantee of a sufficient education in closing argument, [**11 RP 2684–85**], in its proposed findings of fact [**11 RP 2692 ¶¶ 37–41 (adequacy standards), 2693–94 ¶¶ 51–56 (adequacy planning guide), 2695–96 ¶¶ 65–68 (educational specifications)**], and in the State's proposed conclusions of law. [**11 RP 2706–09 ¶¶ 34–48**]. *See Unified Contractor, Inc. v. Albuquerque Hous. Auth.*, 2017-NMCA-060, ¶ 32, 400 P.3d

290 (submission of findings and conclusions preserves questions as to sufficiency of evidence).

2. The District Court's Holding That the Adequacy Standards "Bear No Relation" to Facility Needs or Children's Educational Needs Is Not Supported by Substantial Evidence.

The district court offers a very limited explanation for its holding that the "Plaintiffs have proven their physical facilities built or maintained under the adequacy standards are not sufficient to meet their student's [*sic*] educational needs and requirements under law." **[12 RP 2725]** The holding appears to be based on the conclusion 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." **[12 RP 2719]** But there is not substantial evidence to support that the adequacy standards are unrelated to facility needs or educational needs.

Rather, the State offered unrebutted evidence that the adequacy standards are based on experts' assessments of facility requirements and educational programs, and have flexibility to accommodate districts' unique needs. The State introduced evidence that the adequacy standards are developed by many experts, including GMCS staff **[5-10-16 Tr. 879:11–15]** and are based on educational program needs. **[5-13-19 Tr. 150:12–151:8]**. *See supra*

p. 12. The State also presented testimony that the PSCOC process and adequacy standards permit the modification of facilities to accommodate local schools' particular needs and programs, [***See supra* pp. 15–16; 11-10-16 Tr. 793:8–794:3, 799:19–800:7; 5-13-19 Tr. 156:15–157:21**] including increased square footage to instruct at-risk students. [**5-15-19 Tr. 171:18–172:5**]

To be sure, Plaintiffs offered testimony that the adequacy standards did not include all of the facilities they desired, that some classrooms were too small, and that they did not have dedicated spaces for some types of specialized education. *See supra* pp. 14–15. But such testimony does not support the district court's conclusion that the adequacy standards "bear no relation" to facility or student needs. [**12 RP 2719**] In fact, Plaintiffs did not present evidence that they were unable to provide any required programs as a result of the adequacy standards or were in violation of law. The evidence presented at trial does not support the court's conclusion that the adequacy standards are insufficient to meet students' educational needs and requirements under law.

3. Even If Plaintiffs Presented Sufficient Evidence to Establish That the Adequacy Standards Are Insufficient in Particular Circumstances, That Does Not Support a Holding of Facial Invalidity.

Even if the court did not err in finding that the Plaintiff districts' particular needs have not adequately been met through the PSCOC process—including as revised in recent legislation, and by the process's waiver and appeal opportunities—it was error to find the PSCOA and its adequacy standards facially unconstitutional. **[12 RP 2826 (clarifying that ruling holds statutes facially unconstitutional)]** Any finding of invalidity should be limited as applied to the particular districts and to the particular provisions of the adequacy standards that are insufficient.

In a facial challenge, a plaintiff must show that a law is unconstitutional in all its applications. *State v. Blea*, 2018-NMCA-052, ¶ 17, 425 P.3d 385. Any particularized findings—such as that the adequacy standards do not provide specific space for therapy pull-outs given GMCS's therapists' travel schedules **[11 RP 2632 ¶ 278; 11 RP 2636 ¶ 301]**—can only support an as-applied challenge to specific provisions in the adequacy standards. *See Gila Res. Info. Project v. N.M. Water Quality Control Comm'n*, 2018-NMSC-025, ¶ 6, 417 P.3d 369 (facial challenge to regulation must establish no set of circumstances exist where it could be valid). Plaintiff did not establish either that the entirety of the PSCOC

and its adequacy standards[7] fail to meet educational needs and requirements, or that the laws fail to meet such needs as applied to all school districts.

C. The District Court Erred in Adopting All 412 of Plaintiffs' Proposed Findings of Fact and Refusing to Consider the State's Proposed Findings.

1. Standard of Review and Preservation.

Conclusions of law by the trial court are reviewed de novo. *Gutierrez v. Connick*, 2004-NMCA-017, ¶ 7, 135 N.M. 272, 87 P.3d 552. Findings of fact are reviewed for substantial evidence. *Benavidez v. Benavidez*, 2006-NMCA-138, ¶ 21, 140 N.M. 167, 145 P.3d 117. A trial court must provide "adequate findings" and "exercise … 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." *Mora v. Martinez*, 1969-NMSC-030, ¶ 6, 80 N.M. 88, 451 P.2d 992. The Court has repeated a "continuing concern about the practice of some trial courts of adopting, verbatim, all or virtually all of a prevailing party's extensive requested findings of fact and conclusions of law in complex cases," "looks askance at wholesale verbatim adoption," and "when appropriate, we will relax our usual deferential review." *Los Vigiles Land Grant v. Rebar Haygood Ranch, LLC*, 2014-NMCA-017, ¶ 2, 317 P.3d 842.

[7] The adequacy standards are contained at 6.27.30 NMAC.

This State preserved this issue by requesting and submitting findings of fact and conclusions of law from the Court under Rule 1-052(A). **[5-15-19 Tr. 223:23–226–21; 11 RP 2686–2709]** When the district court issued an order adopting all of Plaintiffs' findings of fact wholesale, the State filed a motion for post-judgment relief under Rule 1-052(D) requesting the court to revisit its findings and adopt individualized findings of fact. **[12 RP 2739–41]**

2. <u>As the Factfinder in a Bench Trial, the District Court Must Conduct an Independent Analysis of Findings and Conclusions.</u>

The court in a bench trial has a duty to "enter findings of fact and conclusions of law when a party makes a timely request." Rule 1-052(A) NMRA; *see also Univ. of Albuquerque v. Barrett*, 1974-NMSC-085, ¶ 7, 86 N.M. 794, 528 P.2d 207 (findings and conclusions should be entered before entry of judgment). It is "impossible" for an appellate court, "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." *Mora*, 1969-NMSC-030, ¶ 5. The Supreme Court, quoting *Featherstone v. Barash*, 345 F.2d 246, 249 (10th Cir. 1965), explained the imperative of proper findings: "Proper and adequate findings are not only mandatory, but highly practical and salutory in the administration of justice. … [W]hen findings wholly fail to resolve in any

meaningful way the basic issues of fact in dispute, they become clearly insufficient to permit the reviewing court to decide the case at all, except to remand it for proper findings by the trial court." *Mora*, 1969-NMSC-030, ¶ 6.

3. Some of Plaintiffs' Findings of Fact Adopted by the District Court Are Contradicted by the Record or Were Outdated When Entered, Demonstrating the Absence of Independent Review.

While it is true that a trial court does not inherently abdicate its judicial responsibilities by adopting one party's proposed findings and conclusions, *Coulter v. Stewart*, 1982-NMSC-035, ¶ 3, 97 N.M. 616, 642 P.2d 602, here there are particular indications that the district court did not fulfill its factfinding role. First, despite seven days of trial testimony and the parties' submission of hundreds of proposed findings of fact, the court's only discussion of findings of fact was an offhand remark in a discussion of standing that "the Court accepts and finds as proven the Plaintiff's Proposed Findings of Fact, numbers 1 to 412." **[12 RP 2720]**; *cf.* "Court's Findings of Fact & Conclusions of Law, & Order re Final Judgment," *Martinez v. State*, D-101-CV-2014-00793 (1st Jud. Dist. Ct. Dec. 20, 2018) (entering 608 pages of findings and conclusions in constitutional challenge to state's funding of school operations). The court entered only a solitary conclusion of law. **[12 RP 2725]**

Second, the court adopted Plaintiffs' Findings of Fact that were outdated (Facts 53, 203, 232, 236, 243–44, 272–74, 399) and rejected the State's more current proposed facts (proposed Facts 18, 23, 57, 61, 86 and Conclusion 36), adopted facts contrary to more specific factual evidence (*compare* Facts 128, 229, 275, 287–90, 301, 308 *with* State's proposed Facts 17, 26, 44, 47 and Conclusion 43), and adopted facts that were duplicative (Facts 374 & 378) or unsupported (Fact 121). *See supra* pp. 20–23 (summarizing such proposed facts). Third, the district court began trial without a pretrial order, deadlines, or witness and exhibit disclosures over the State's objections, and assisted Plaintiffs in introducing evidence. *See supra* pp. 9–11. All of these factors undermine the suggestion that the district court exercised an independent factfinding role in adopting all of Plaintiffs' proposed findings of fact.

4. <u>The Court's Wholesale Rejection of the State's Findings and Conclusions Because the State Had Not Met Its Purported Burden of Proof Improperly Places the Court's Factfinding Role *After* Its Ultimate Judgment.</u>

Most importantly, the court's order denying the State's motion for post-judgment relief reveals that the district court improperly denied the State's proposed findings and conclusions as a result of improperly placing the court's factfinding role *after* reaching a final judgment. The court explained that "it considered the Defendant's Proposed Findings of Facts" and that "[m]any of

them were established by the evidence and undisputed." **[RP 2725]** However, "[b]ecause the Defendants did not meet their burden, the Court found it unnecessary to adopt any of the Defendant's Proposed Findings of Facts in its Decision." **[12 RP 2725–26]**

In so ruling, the district court erred in several ways. First, it reached an ultimate conclusion that the State had not met its burden of proof *before* adopting findings of fact. To determine whether the State met any burden of proof, it is necessary to make factual findings *first*. *See State v. Maes*, 2007-NMCA-089, ¶ 12, 142 N.M. 276, 164 P.3d 975 (reviewing court must be satisfied that evidence sufficient to establish facts required by applicable burden of proof).

Second, the district court erred by placing the burden of proof on the State. In a challenge to the constitutionality of a statute—including those in Article XII—"we 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." *Moses*, 2019-NMSC-003, ¶ 10 (internal quotation marks and citation omitted). Even if the court were to impose a more deferential standard of review, *see, e.g., McCleary v. State*, 269 P.3d 227, 248 (Wash. 2012) (en banc) (cited in **12**

RP 2721), such authority does not support shifting the burden of proof from Plaintiffs to the State. Indeed, the fact that the court had Plaintiffs present their case first, indicated that it believed they had the initial burden of proof. *See Johnson v. Madron*, No. A-1-CA-32668, ¶ 10, 2015 WL 667560, at *4 (Jan. 28, 2015) ("the order of presentation of the evidence typically follows the burden of proof"). By rejecting the State's proposed findings of fact before conducting factfinding and determining whether the Plaintiffs had met their initial burden, the court erred and the case should be remanded if any factfinding is needed. *See Miller v. Bank of Am., N.A.*, 2015-NMSC-022, ¶ 30, 352 P.3d 1162.

D. The District Court Erred in Not Hearing Evidence of Post-Trial Developments.

1. Standard of Review and Preservation.

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, 908 P.2d 751. A district court's standing determinations are reviewed for substantial evidence. *Deutsche Bank Nat. Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 28, 369 P.3d 1046.

This question was preserved below. The State introduced evidence during the 2019 segment of the trial concerning legislative developments since 2016 and submitted proposed findings of fact and conclusions of law on such

developments. *See supra* pp. 17–18. The State also filed a motion for post-judgment relief under Rules 1-059 and 1-060 requesting that the court hear evidence of legislative and other developments in the intervening 20 months between trial and the post-judgment motion. **[12 RP 2732–39, 2744–48, 2805–07]**

2. Legislative Developments After Trial Altered Some of the Fundamental Premises of Plaintiffs' Action.

Since trial, the State has passed legislation increasing funding for school facilities, including eliminating several of the fundamental bases of Plaintiffs' constitutional challenge. Most significantly, the State in HB 6 (2021) ended its practice of taking a credit against State operational funding for 75% of the "impact aid" that districts with non-taxable, federal land receive. *See supra* pp. 27, 29 (discussing this legislation in more detail). This now-eliminated impact aid credit was one of the fundamental bases of Plaintiffs' lawsuit, both when first filed and at trial **[1 RP 5 ¶ 24; 7 RP 1513 ¶ 12, 1521 ¶ 35; 11-7-16 Tr. 61:23–62:12, 62:21–23; 5-13-19 Tr. 22:8–21; 11 RP 2576–77; 11 RP 2676 ¶¶ 105–06]** The State also made teacherages and security systems eligible for PSCOC awards, *see supra* pp. 18, 27, two other bases of Plaintiffs' lawsuit. **[7 RP 1459 ¶ 11; 7 RP 1517 ¶ 25; 11 RP 2544, 2578–81, 2584; 11-8-16 Tr. 275:14–18 (calling teacherages "the one I should have put at the top of the list"); 11-8-16 Tr. 320:24–322:23**

(needing to use operational funds for teacherages harms education)] And this year, the State has increased its funding under the PSCIA. 2022 N.M. Laws, 2d. Sess., ch. 22. The district court's ruling does not incorporate any of these developments.

3. The Court's Conclusion That These Changes to the Challenged Laws "Do Not Appear to Remedy" the Alleged Constitutional Violation Fails to Grapple With the Profound Significance of the Legislature's Actions.

When the State requested that the district court consider and hear evidence on the effects of these legislative changes on the case, the court declined to do so. While calling these changes, including the elimination of impact aid credits, "wonderful," the court surmised that they did not alter its ultimate conclusions. **[12 RP 2825]**

In particular, the court's assumption that the legislative changes "do not appear to remedy the fact that the citizens in Plaintiff's [*sic*] school districts will continue to be taxed more and get less than citizens in other school districts" was in error—or at minimum, merits evidentiary review. **[12 RP 2825]** The Legislative Education Study Committee's (LESC) analysis of HB 6 found that "[s]taff anticipate school districts receiving a large amount of new funding from the elimination of SEG credits will use a significant amount of funding on capital outlay expenses, including the litigant districts in the Zuni

capital outlay lawsuit." LESC Bill Analysis, H.B. 6 at 3 (55th Legis., 1st Sess.) (Mar. 16, 2021).[8] The same analysis projected that the bill would increase funding to GMCS by 21.1% and Zuni by 37.7%. *Id.*, Attachment 2; *see also* LESC 2021 Post-Session Review at 31 (May 2021) (noting that HB 6 will distribute approximately $82 million, 83% of which will go to districts that receive impact aid).[9]

The district court has not heard any evidence or conducted any analysis of how much funding the Plaintiff districts will have for capital outlay after the change to impact aid credits and other legislative developments, including whether the funding system that exists after these changes is uniform or sufficient. Nor has the district court considered whether, after these changes, the Plaintiff districts will still need to be "taxed more" (Zuni has only imposed the two-mill levy under SB 9) with the ability to retain and use impact aid for capital outlay. Indeed, given the projections from LESC on the effects of HB 6, it is possible that Plaintiffs may have more funds available for capital outlay than other districts and lack the injury needed for standing. *See Mowrer v.*

[8] https://nmlegis.gov/Sessions/21%20Regular/LESCAnalysis/HB0006.PDF

[9] https://www.nmlegis.gov/Entity/LESC/Documents/Public_School_Related_Legislation/LESC%202021%20Post-Session%20Review.pdf

Rusk, 1980-NMSC-113, ¶ 13, 95 N.M. 48, 618 P.2d 886 (generally, cases will be dismissed that become moot on appeal).

IV. CONCLUSION

For the foregoing reasons, 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. The State further requests that the Court hold that the PSCOA and PSCIA do not violate Article XII, Section 1 of the New Mexico Constitution. Alternatively, the State requests that the Court remand the case to the district court with instructions to (1) consider the legislative, regulatory, and operational changes to the challenged laws since the beginning of trial and (2) require individualized consideration and adoption of the parties' proposed 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 August 22, 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 this contains 10,988 words in the body of the brief, according to a count by Microsoft Word 2016.

/s/Nicholas M. Sydow
Nicholas M. Sydow