

STATE OF NEW MEXICO
COUNTY OF MCKINLEY
ELEVENTH JUDICIAL DISTRICT

THE ZUNI PUBLIC SCHOOL DISTRICT, et al,
Plaintiff,

-vs-

No. D-1113-CV-98-14-II

THE STATE OF NEW MEXICO, et al,
Defendants.

DECISION AND ORDER

THIS MATTER is before the Court on Amended Complaints filed by the Plaintiffs on July 29, 2015 and December 8, 2015. Plaintiffs seek a declaratory judgment which “declares that [the] current level of funding of capital improvements for public school[s] and the process for approving, designing, and construction of public schools in New Mexico violates Article XII, Section 1 of the New Mexico Constitution.” (Complaint, 07/29/2015, ¶ 40)

Plaintiffs allege that the “current statutory scheme of New Mexico for funding capital improvements [n]eeds violates [N.M. Const. art. XII, § 1] by failing to provide for a uniform and adequate system of funding [c]apital [i]mprovement [n]eeds which failure imposes upon the students of Gallup-McKinley as well Gallup-McKinley itself a distinct educational disadvantage.” (Id. at ¶ 42)

The Plaintiffs specifically argue that the current statutory capital funding scheme is not uniform because “funding for capital outlay in New Mexico is directly tied to property wealth. Property-wealthy districts can build facilities of much higher quality than property-poor districts while paying significantly lower taxes. Property-poor districts may not be able to build any facilities at all, even when levying the highest allowed rates.” (Plaintiff’s Written Closing Argument, 10/28/19, Pg. 4); “a system that ties funding to wealth does not provide a uniform education, and a system that gives less money to the districts with the greatest needs does not provide facilities that are sufficient.” (Id. at pg. 5)

The Defendants argue the constitutional challenge by the Plaintiffs is non-justiciable. The funding formula is for the New Mexico Legislature to determine and “these complicated determinations are answers to political questions not to be disturbed by this court.” (Defendant’s Proposed Conclusions of Law, 10/28/2019, ¶ 27)

The Defendants, further argue “the term “uniform” in Article XII, Section 1 does not prohibit local districts from funding their own capital outlay projects, either in whole or in part, as long as they do not violate Article IX, Section 11(A) in the process.” The framers [of the New Mexico Constitution] “undoubtedly were aware that [Article IX, Section 11] would result in various amounts of revenue from district to district, and so there is no reasonable ground to conclude that they intended equal school capital outlay capabilities.” (Id. at ¶ 23)

The Court held a bench trial from November 7, 2016 to November 10, 2016 and from May 13, 2019 to May 17, 2019. The Court took testimony from witnesses and accepted exhibits into evidence. The parties submitted written closing arguments and proposed findings of facts and conclusions of law on October 28, 2019.

Based on the evidence presented at trial, considering the applicable constitutional provisions and laws of New Mexico, and otherwise being sufficiently advised, the Court finds 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 within districts is not “uniform” as required by Article XII Section 1 of the New Mexico Constitution. It is not “uniform” as intended because the funding scheme, being directly tied to the property wealth of the school districts, allows property-wealthy districts, at their discretion, to raise and spend much more money than property-poor districts to build facilities to their satisfaction while paying significantly lower tax rates. Property-poor districts, on the other hand, may not be able to build

facilities at all, even when levying the highest taxes on their districts, thus, making property property-poor districts mostly or completely dependent on the State to build facilities.

Additionally, the Plaintiffs have proven by a preponderance of 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 the Plaintiff's districts.

Because the Plaintiffs have proven the current capital improvement funding scheme is neither "uniform" nor "sufficient," said funding scheme violates Article XII. Section 1 of the New Mexico Constitution and the Court so declares.

An injunction should therefore issue requiring the Defendants to take all necessary steps as soon as practicable to bring NMSA 1978 Chapter 22 Articles 24 (2000 as amended through 2020)(hereinafter PSCOA) and Article 25 (2007 as amended through 2020)(hereinafter PSCIA) into constitutional compliance. The present statutory scheme itself creates and allows substantial disparities among school districts in capital outlay funding. The Defendants should revise the current system, in which property-poor districts pay more in taxes to receive less, with one funding capital school outlay in a manner that is based on the wealth of the state as a whole. There are ways to create a capital outlay scheme that does this. The Plaintiffs suggest capital outlay funding should be equalized in a way similar to how school operational funding was equalized in 1974 by the New Mexico Legislature. As Lynn Carrillo-Cruz wrote in her excellent and scholarly work, *No cake for Zuni: the Constitutionality of New Mexico's Public School Capital Finance System*, New Mexico Law Review, Spring 2007, Vol. 37 at 356, "New Mexico knows how to create a uniform and sufficient system" having done so with operational funding in 1974. She further wrote that our legislature can be guided by "using any number of suggestions made by other state courts to their legislatures" to make capital funding uniform among

school districts. *Id.* Ultimately, however, it is up to the legislature to choose the methods and combinations of methods from the many that are available to make capital funding uniform.

Jurisdiction. The Plaintiffs are local school boards for the Gallup McKinley County School District and the Zuni Public School District, both located in McKinley County New Mexico. Plaintiffs have the capacity to sue and be sued. Plaintiffs bring their action under the Declaratory Judgment Act, NMSA 1978 §§ 44-6-1 to 44-6-15, seeking a declaration that New Mexico's statutory scheme for capital outlay funding for public schools violates Article XII Section 1 of the New Mexico Constitution. Plaintiffs also seek injunctive relief. Defendants are the State of New Mexico and the Public School Capital Outlay Council, a department of the State of New Mexico charged with certain duties pursuant to NMSA 1978 § 22-24-6.

The Plaintiffs have established a justiciable claim for relief and thus have established standing. To establish standing the Plaintiffs must demonstrate "the existence of (1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." *Prot. and Advocacy Sys. v. City of Albuquerque*, 2008-NMCA-149, ¶ 18, (Internal quotation marks and citations omitted).

The Plaintiffs have met their burden of proof to demonstrate these elements. Regarding the elements of injury in fact and a causal relationship between the injury and the challenged conduct, the Court accepts and finds as proven the Plaintiff's Proposed Findings of Fact, numbers 1 to 412 (filed 10/28/2019).

Regarding the element of redressability, the Court finds applicable and persuasive the rationale on redressability in *Martinez v. The State of New Mexico*, D-101-CV-2014-00793, where Judge Singleton found the Plaintiff's claims brought pursuant to Article XII Section 1 were redressable. (See Order Denying Defendant's Motion to Dismiss Plaintiff's First and Second Amended Complaint, 11/14/2014, and Decision and Order 07/20/2018, pgs. 5-9) This Court adopts Judge Singleton's rationale to this case

because it answers the argument made by the Defendants that the Plaintiff's claims herein are not redressable.

Burden of Proof. The Court finds Article XII, Section 1 of the New Mexico Constitution provides a fundamental right to a uniform and sufficient education. *Martinez et al. v. the State of New Mexico*, No. D-101-CV-2014-00793, (Order Denying Defendant's Motion to Dismiss Plaintiff's First and Second Amended Complaint, 11/14/2014, p. 5)

As such, the burden of proof is on the Defendants to prove by a preponderance of the evidence that the statutory capital outlay funding system achieves or is reasonably related to achieving the constitutional requirement of providing a uniform and sufficient education to children in New Mexico. *Martinez et al. v. The State of New Mexico*, No. D-101-CV-2014-00793, (Decision and Order, 7/20/2018, p.17); See also *McCleary v. State*, 269 P.3d. 227, ¶ 102 (Wash. 2012) (...in a positive rights context we must ask whether the State action achieves or is reasonably likely to achieve the constitutionally prescribed end.) (Internal quotation marks and citations omitted); *State v. Campbell County School District*, P.3d 19 518, 536 (Wy. 2001) (determining the burden of proof was on the state to provide a compelling reason for any disparities in funding between school districts.)

The Court finds there is no requirement as argued by the Defendants (See Defendant's Proposed Conclusions of Law, 10/28/19, ¶ 3) that the Plaintiffs advance an equal protection or due process challenge to the funding system before the Court can find that Article II, Section 1 of the New Mexico Constitution is a fundamental right. The case cited by the Defendants as authority on this point did not hold that a fundamental right determination can only be advanced through an equal protection or due process challenge.

Based on the above, the Court rejects the Defendant's argument that the burden of proof is on the Plaintiffs to prove beyond all reasonable doubt that the capital outlay funding system is not "uniform" and "sufficient" under Article XII, Section 1.

Findings of Fact. Whatever the burden of proof is, and whatever party has it, the Plaintiffs have proven beyond all reasonable doubt, that New Mexico's statutory capital outlay funding system is not "uniform" as required by Article XII, Section 1 of the New Mexico Constitution.

The Plaintiffs devote 32 paragraphs of proposed conclusions of law to the definition of "Uniform." (Plaintiff's Proposed Conclusions of Law, 10/28/19, ¶¶ 71 to 103). Most of those paragraphs cite case law from states that have addressed the constitutionality of their statutory capital financing schemes for public education that were primarily financed with local property taxes, that, in turn, caused disparate funding among districts based on disparate property wealth among those districts.

Roosevelt Elem. School Dist., No. 66 vs. Bishop, 877 P. 2d 806, (Ariz. 1994), is a prime example. It is a close fit to this case. *Bishop* sought to define what "general and uniform" meant in the Arizona Constitution's educational clause. Art. XI of Arizona's Constitution allowed taxation to fund schools (The legislature shall make such appropriations, to be met by taxation...). *Bishop* at 813. The legislature enacted a statutory scheme that relied heavily on local property taxation. *Id.* at 808. Enormous facility disparities resulted among the various school districts traced to the statutory scheme relying in large part on local property taxation for capital requirements. *Id.* at 808. The Parties agreed that a financing scheme that relied in part on property taxation was not necessarily unconstitutional. *Id.* at 813.

The Court will utilize *Bishop* in defining "uniform" in Article XII, Section 1 of the New Mexico Constitution. *Bishop* defined "general and uniform" in Arizona's education clause as follows:

First, units in "general and uniform" state systems need not be exactly the same, identical, or equal. 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.

Bishop, at 814.

Utilizing this definition, the Plaintiffs have proven beyond all reasonable doubt that New Mexico's statutory funding scheme is not "uniform". The PSCOA creates a funding mechanism that guarantees non-uniform, unequal and disparate funding among school districts. The purpose of the Act is "to ensure that, through a standards-based process for all school districts, the physical condition and capacity, educational suitability and technological infrastructure of all public school facilities in New Mexico meet an adequate level statewide." NMSA 1978 § 22-24-2 (2004). This purpose embraces the legal concept of adequacy. *No cake for Zuni*, at 346. The Act ignores the constitutional requirement of uniformity. The Act creates substantial disparities instead of remedying them. *Id.* at 350. The creation of this disparate funding system is made clear by NMSA 1978 § 22-24-5 (F) which states:

It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed...; 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 local funds to exceed the statewide adequacy standards.

The Defendants in this case argue that N.M. Const. art. 9, § 11(A) allows disparate funding among school districts. (See generally Defendant's Proposed Conclusions of Law, 11/28/19, ¶14 through 24). (No school district shall borrow money except for the purpose of...improving school grounds...); Article IX, Section 11 "authorizes the very element of the fiscal system of which the Plaintiffs complain." (*Id.* at ¶14); that whatever "uniform" means in Article XII, Sec. 1, it "cannot be interpreted to prohibit school districts from relying on their own local funds" to make capital improvements to school grounds because to do so would render Article IX, Section 11 "entirely meaningless". (*Id.* at ¶15).

The Court rejects the argument that Article IX, Section 11 makes the State's statutory funding scheme constitutional. The Court finds that Article XII, Section 1 is not in irreconcilable conflict with Article IX, Section 11. While Article IX, Section 11 allows taxation by districts to fund capital improvements, it does not follow it allows the legislature to pass funding schemes that cause and create gross capital funding disparities among school districts. The Defendant's argument is answered by

Bishop:

In short, the system the legislature chooses to fund the public schools must not itself be the cause of substantial disparities. There is nothing unconstitutional about relying on a property tax. There is nothing unconstitutional about creating school districts. But if together they produce a public school system that cannot be said to be general and uniform throughout the state, then the laws chosen by the legislature to implement its constitutional obligation under art. XI § 1 fail in their purpose.

Bishop, at 815.

The Court finds that Article IX, Section 1 does not decide the question of whether or not New Mexico's statutory funding scheme is "uniform". The critical issue is whether disparities are the result of the financing scheme the state chooses. *Id.* Like *Bishop*, and all the cases cited by the Plaintiff in their proposed conclusions of law on the definition of uniformity, a funding system based primarily on local property wealth will not meet the constitutional requirement of uniformity. See e.g., *State v. Campbell County Sch. Dist.*, 19 P. 3d 518, 557 (Wyo. 2001) (Finding that such a system violates Wyoming's Constitution. See also *No Cake for Zuni*, at 346.

The Plaintiffs at trial established the effect of the gross disparity in funding on the Plaintiff's school districts. The trial evidence established that property-wealthy districts can spend millions and millions of dollars to build physical facilities over and above the PSCOA adequacy standards for physical facilities that property-poor districts can only dream about, all the while bypassing the utterly complex and tortuous process of applying for and receiving "grant assistance" under NMSA 1978 §22-24-5 (2000 as amended through 2019). The Plaintiff's school districts are relegated to funding pursuant to

“adequacy standards” under the PSCOA and PSCIA. The Plaintiffs have proven their physical facilities built or maintained under the adequacy standards are not sufficient to meet their student’s educational needs and requirements under law. Stated in a slightly different way, the gross disparities in funding among school districts caused by the PSCOA and the PSCIA have resulted in the Plaintiff’s school districts receiving insufficient funds to adequately educate their school children on substantially equal terms to children in property-wealthy districts.

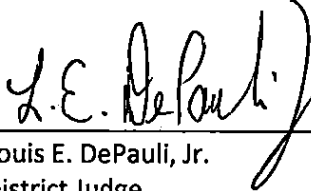
Conclusion of Law. The Plaintiffs having proven that the statutory scheme for public school capital funding is neither “uniform” or “sufficient” under Article XII, Section 1 of the New Mexico Constitution, the Court concludes the PSCOA and PSCIA violate Article XII, Section 1 of the New Mexico Constitution.

Relief.

1. Declaratory Relief. Based upon the findings of fact and conclusion of law reached herein, the Court declares the PSCOA and the PSCIA unconstitutional under Article XII, Section 1 of New Mexico Constitution.
2. Injunctive relief. The Defendants are enjoined 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.

The Court shall retain jurisdiction to determine whether, within a reasonable time, legislative action has been taken consistent with this decision and order. However, this Decision and Order is considered by the Court to be a final judgment under NMRA Rule 1-054 for purposes of appeal.

IT IS SO ORDERED.



Louis E. DePauli, Jr.
District Judge