

TUESDAY, JANUARY 11, 2011
9:00 A.M.

NO. 1

#25330, #25333

MARK DAVIS and BONNIE DAVIS,
as individuals and as parents
and natural guardians of CHARLIE
DAVIS, CARL DAVIS, JOEY DAVIS,
and SELENA DAVIS; KAY EBEN,
as an individual and as parent
and natural guardian of GRACE
EBEN and KENDRA EBEN; DAN GRANT
and JANE GRANT, as individuals
and as parents and natural
guardians of DYLAN BAMBAS and
ALEXIS BAMBAS; DEBRA BUCHHOLZ
and CALVIN BUCHHOLZ, as individuals
and as parents and natural guardians
of HANNAH BUCHHOLZ and JARED
BUCHHOLZ; JULIA ORROCK, as an
individual and as parent and
natural guardian of LUCIUS
ORROCK and DOMINIC ORROCK;
JULIE SCHENKEL, as an individual
and as parent and natural guardian
of NATHAN SCHENKEL and NOAH
SCHENKEL; ANITA BACH and TODD
BACH, as individuals and as
parents and natural guardians of
TAYLOR BACH, TYRA BACH, and
SETH BACH; MIKE HINTZ and JULIE
HINTZ, as individuals and as
parents and natural guardians of
KAITLIN HINTZ and HANNAH HINTZ;
BRAD NELSON and RITA NELSON, as
individuals and as parents and
natural guardians of CHANTEL
NELSON and SHAINA MARESH; SHANE
McINTOSH and TAMARA McIntOSH,
as individuals and as parents
and natural guardians of LANDRY
McINTOSH and BENNETT McIntOSH;
JIM AKRE and KAY AKRE, as individuals
and as parents and natural guardians
of TAYLOR AKRE; DAWN BIALAS and
KURT BIALAS, as individuals and as
parents and natural guardians

of MORGAN BIALAS, CONNOR BIALAS,
and KEELAN BIALAS; RON SCHOENFELDER
and RENEA SCHOENFELDER, as individuals
and as parents and natural guardians
of TAYLOR SCHOENFELDER, SADIE
SCHOENFELDER, and MOLLY SCHOENFELDER and
SOUTH DAKOTA COALITION OF SCHOOLS,
Plaintiffs and Appellants,
vs.

THE STATE OF SOUTH DAKOTA; SOUTH
DAKOTA DEPARTMENT OF EDUCATION;
SOUTH DAKOTA BOARD OF EDUCATION;
Honorable MICHAEL ROUNDS, in his
official capacity as the Governor
of the State of South Dakota; RICK
MELMER, in his official capacity as
the Secretary of Education of the
State of South Dakota; VERNON L.
LARSON, in his official capacity
as the Treasurer of the State
of South Dakota,
Defendants and Appellees.

Mr. Ronald A. Parsons, Jr.
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(FOR APPELLEES)

The Honorable Lori S. Wilbur
Sixth Judicial Circuit
Hughes County

(CIV 06-244)

NOTICE OF REVIEW FILED JULY 10, 2009

45-45-15

STATEMENT OF THE ISSUES

- I. Should this Court should discontinue application of the criminal conviction standard of "beyond a reasonable doubt" to claims that legislative action violates the state constitution?**

The trial court applied the "beyond a reasonable doubt" standard to the plaintiffs' claim that the statutes establishing the South Dakota Public School Finance System violated Article VIII of the South Dakota Constitution.

- *In re: Z.B.*, 2008 SD 108, 757 N.W.2d 595
- *In re: Davis*, 2004 SD 70, ¶ 4, 681 N.W.2d 452
- *Kanaly v. State*, 368 N.W.2d 819 (SD 1985).
- *Tracfone Wireless, Inc. v. South Dakota Dep't of Rev. & Reg.*, 2010 SD 6

- II. Is the right to a free, adequate, and quality education a fundamental right under the South Dakota Constitution, requiring alleged violations of that right to be subject to heightened scrutiny?**

The trial court held that education is not a fundamental right under the South Dakota Constitution.

- *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989)
- *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997).
- *Olson v. Guindon*, 2009 SD 63, 771 N.W.2d 318
- *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)

- III. Does the South Dakota Public School Finance System, as established by statute or applied by the defendants, violate Article VIII of the South Dakota Constitution or violate plaintiffs' constitutional right to a free, adequate, and quality education?**

The trial court held that the plaintiffs did not establish any constitutional violation.

- *Columbia Falls Elementary School District No. 6 v. State*, 109 P.3d 257 (Mont. 2005)
- *Idaho Schools for Equal Educational Opportunity v. State*, 129 P.3d 1199 (Idaho 2005);
- *Montoy v. State*, 112 P.2d 923 (Kan. 2005)
- *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326 (N.Y. 2003)

IV. Did the trial court err in granting the defendants' motion to dismiss for lack of subject matter jurisdiction for any possible remedial, supervisory, or enforcement mechanism other than purely declaratory relief?

The trial court dismissed any potential remedy or enforcement mechanism for lack of subject matter jurisdiction.

- *Kanaly v. State*, 368 N.W.2d 819 (S.D. 1985)
- *Abbeville County Sch. Dist. v. State*, 515 S.E.2d 535 (S.C. 1999)
- *Lobato v. State*, 218 P.3d 358, 375 (Colo. 2009) (en banc)
- *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994) (in banc).

STATEMENT OF ISSUES

NOTICE OF REVIEW ISSUE

I. WHETHER THE CIRCUIT COURT SHOULD HAVE DISMISSED THIS CASE IN TOTO BECAUSE IT IS NOT JUSTICIABLE?

The trial court held that Appellants' request for declaratory relief was justiciable even though the requested remedies were not justiciable.

State ex rel. Prchal v. Dailey, 234 N.W. 45 (S.D. 1931)
Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962)