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 quardian 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 quardians 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.

(FOR APPELLANTS)

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The Honorable Lori S. Wilbur

Sixth Judicial Circuit

Hughes County

(FOR APPELLEES)

(CIV 06-244)

NOTICE OF REVIEW FILED JULY 10, 2009

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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

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)

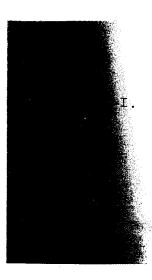


IV. Did the trial court err in granting the defendants' motion to dismiss for lack of subject matter jurisdiction for any possible remedial, supervisory, or enforcement mechanism other than purely declaratory relief?

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).

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STATEMENT OF ISSUES

NOTICE OF REVIEW ISSUE

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.

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