

If not courts, who enforces constitution?

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If any case signals what's ailing the Idaho Supreme Court, it's the court's lame handling of the public school construction lawsuit.

At their televised debate Tuesday, 2nd District Judge John Bradbury framed the issue as "the darkest day in the history of the Idaho Supreme Court, starting with 1890." His opponent, Justice Roger Burdick, defended the decision and his own role in it.

By 2005, Idaho schools had been in and out of court for 15 years arguing that the way Idaho dumps public school construction on the backs of property taxpayers is unconstitutional. If a kid attends school in a district without much money, odds are he's sitting in a building that won't be as adequate - or even as safe - as the structure another student inhabits in a much more affluent community.

Idaho's charter says plainly that "... it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools." As a result, the state has provided a minimal level of funding for instruction. But lawmakers have largely ignored inequities when it comes to relying almost exclusively on local tax bases to pay for facilities.

That's not maintaining a "general, uniform and thorough system of public, free common schools." So the Supreme Court ruled in 2005.

Burdick joined in that decision.

The court has never insisted on a remedy, however. It's the equivalent of having a judge rule that the other side was wrong in a personal injury lawsuit and then allow them to leave without cutting you a check.

The attorney for those schools, former Justice Robert Huntley of Boise, says he was told that the case was "over" and that the court had no intention of moving ahead. Taking the case to the federal courts didn't resolve the matter.

Burdick says the case remains open.

"The parties who brought this lawsuit in the first place could bring this lawsuit tomorrow, if they wished," he said. "They could start the lawsuit again. This case is not over."

But Huntley, who donated huge sums of money and time to this cause, has run out of both.

So there it sits. Nearly two decades of court battles and a Supreme Court ruling that says the state constitution is being violated. Noble words. No deeds.

Says Burdick, that's the separation of powers. The courts opine, but they can't force lawmakers to raise taxes.

"The Idaho State Legislature are the people who, in fact, fund the schools," he said. "The Supreme Court of Idaho cannot. It is up to the Legislature."

It's bad enough that another generation of Idaho school children will attend class in crummy buildings. Worse yet is where this decision leaves every citizen of this state. Because here's the question: Who defines and enforces the Idaho Constitution? The Legislature? Who decides if the Legislature is following the law of the state? The Legislature?

Imagine, said Bradbury, if the U.S. Supreme Court had taken such a step in *Brown v. Board of Education*, the landmark ruling that outlawed segregation in the schools.

"To follow my opponent's position, if, when the United States Supreme Court said that segregation was illegal, the Idaho Supreme Court would have said, 'But it's up to Alabama or Mississippi to decide whether they want to follow it,' " Bradbury said.

Of course, the U.S. Supreme Court insisted. The schools were integrated. The U.S. Constitution and the rule of law were enforced.

To say Bradbury is correct does not say he belongs on the Supreme Court. Nonetheless, on this most important point, Bradbury is right and Burdick is wrong. - M.T.