

**Response by Former Justice Huntley to Mischaracterization
Of Facts in Schools Case by Justice Burdick
May 17, 2010**

I deeply regret the need to go public once more on the Supreme Court election issues. The Honorable Justice Roger Burdick has presented some statements in the public record in a release today which must be corrected.

Justice Burdick states "The approach [of not ordering compliance with its decision that the system of funding schools is unconstitutional] taken by the Court worked." He supports that statement by citing to House Bill 743, the so-called School Facilities Improvement Act effective July 1, 2006 and secondly, to the Property Tax Relief Act which reduced the authority of school districts to levy property taxes, with the promise that the legislature would make up the loss to the schools from the General Fund. He then concluded with a statement "**This addressed the main problem identified by the court in earlier decisions...**"

These statements constitute "judicial activism" in its worst form because:

- (1) Immediately after HB 743 was passed, the schools filed with both the Supreme Court and District Judge Bail pleadings which included an affidavit from Cottonwood School District Superintendent Stan Kress (Chairman of the Plaintiff association) which stated in part:

"4. Rather than comply with the mandate of this Court, the legislature took only two actions, one of which is totally inadequate and the other of which decreases the financial ability of school districts to provide for their students:

- (a) Enactment of House Bill No. 743; and
- (b) Increase of the Homeowners Property Tax Exemption from \$50,000 to \$75,000

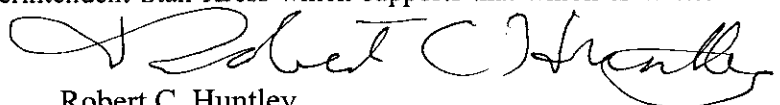
The Supreme Court refused to hear testimony itself or permit Judge Bail to receive testimony and thus no tribunal has heard evidence upon which to support Justice Burdick's now announced opinion.

- (2) Secondly, House Bill 1 of 2006, the Property Tax Relief Act, decreased the ability of schools to have a reliable base upon which to fund Education. There is no testimony before any court at any level to support the opinion which Justice Burdick now issues.

Supreme Court Justices are sworn to base their decisions "upon the record." Justice Burdick has now ruled, without evidence, on the outcome of a case which may come before the Supreme Court in the future, while claiming he is not an activist judge.

Justice Burdick states in his press release that there was in the record evidence supplied by the State itself that fixing defective school buildings would require an estimated sum between \$700 Million and \$1 Billion. There is absolutely no evidence before any court that the two statutes relied upon by Justice Burdick address the magnitude of that need, or the need at any other particular level of funding.

I provide to the public the affidavit of Superintendent Stan Kress which supports that which is written above.



Robert C. Huntley
Former Justice, Idaho Supreme Court

APPENDIX A TO MOTION

IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO SCHOOLS FOR EQUAL
EDUCATIONAL OPPORTUNITY, et al.,

Plaintiffs/ Respondents

vs.

THE STATE OF IDAHO,

Defendant/ Appellant.

Appeal Docket No. 29616

Trial Court Case No. 94008

**Affidavit Of Stan Kress In Support Of
Report To Idaho Supreme Court And
In Support Of Motion For Remand For
Remedial Phase Of Trial**

STATE OF IDAHO

ss.

COUNTY OF IDAHO

I, Stan Kress being first duly sworn deposes and says:

1. I am the President of ISEEO and the Superintendent of the Cottonwood School District No. 242 and provide this affidavit in support of a Report to the Idaho Supreme Court and in support of Motion to Remand to the Trial Court for conduct of the remedial phase of the trial.

2. The Trial Court entered Judgment on the liability phase of this action in early 2001 where *inter alia*, she entered an Order and Judgment declaring that the present system of funding Idaho Schools is unconstitutional.

3. The Supreme Court on appeal affirmed the Trial Court's decision and retained jurisdiction with directions to the legislature "...to comply with the constitutional mandate [to enact legislation to establish a method of funding] to provide a safe environment conducive to learning."

4. Rather than comply with the mandate of this Court, the legislature took only two

actions, one of which is totally inadequate and the other of which decreases the financial ability of school districts to provide for their students:

- (a) Enactment of House Bill No. 743; and
- (b) Increase of the Homeowners Property Tax Exemption from \$50,000 to \$75,000.

5. Attached hereto as Appendix A are the results of a survey conducted by State Representative, Shirley Ringo in March of this year responded to by fifty (50) school districts reporting *inter alia*:

- (a) The fifty (50) districts have a total of 414 buildings containing classrooms, and 99 of those buildings are over 50 years old and 25 of those buildings are over 80 years old.
- (b) One half (25) of those districts reported that more than 400 classrooms are overcrowded.
- (c) Lewiston School District No. 230 has classrooms throughout the district which do not meet the standard of 900 sq. ft.
- (d) Fifty percent (50%) of Fruitland School District No. 373 classrooms are overcrowded.
- (e) The fifty (50) school districts utilize 319 modular classrooms.
- (f) Twenty (20) of the 50 school districts reported problems and deficiencies in heating, ventilation, and air conditioning systems.
- (g) Thirty-two (32) of the 50 districts reported inadequate science lab facilities.
- (h) Twenty-nine (29) of the 50 districts reported inadequacies in their physical education facilities.

6. The un-refuted testimony of Dr. Richard Slaughter at the trial established a back log in at time of \$620 million dollars. Against that back log, House Bill 743 provides a contribution towards bond issues to the extent of \$5.8 million dollars per year, of which 5.3 million is from existing funds and only \$500,000 of which is new money. At the rate of 5.8 million dollars per year the elimination of the back log will require a mere 107 years.

7. House Bill 743 provides \$25 million to be used to repair unsafe conditions, if (a) the district fails to pass a bond in two attempts and applies to the State for funds; or (b) the administrator of building safety, an appointed bureaucrat unaccountable to either the school district nor the public, finds a safety problem, the district can not fund the repair, and a 1.5% sequestration of district budget does not repair the problem within a two year period. When such situation develops, as has happened frequently throughout the state, the administrator "shall submit an application" to the State Board to take over the district.

It is my opinion, and that of other superintendents with whom I have spoken, that the foregoing scheme is both (a) detrimental to timely addressing of safety issues; and (b) practically and functionally totally unworkable for the following reasons:

- (1) the process requires several years before actions are taken; and
- (2) no superintendent and board is going to make application to start a process wherein a "czar" from outside supplants the local superintendent and board; and
- (3) Knowledgeable lawyers have advised me that there is a substantial question of the constitutionality of the scheme in that the provision for the State or a District Judge to impose a levy payable over twenty (20) years to "repay the loan" violates Idaho Constitution Title 8, Sect. 3, which requires that long term obligations require a 2/3 vote of the qualified electors.

8. House Bill 743 provides for the following which further reduced the ability of the school districts to provide a thorough education:

- (a) It provides that districts will spend a minimum of two percent (2%) of the value of its physical plan for maintenance each year but makes no provision for funding of the final three-quarters of a percent (.75%), thus providing an unfunded mandate of approximately \$12 million dollars per year.

9. It is noteworthy that the legislature directly controls almost all of a school district's budget. Because the legislature directly mandates school staffing for instruction, administration, and non-certificated support, expressed in numbers of staff in each category per support unit, and also specifies the minimum salary for each position, all funding for maintenance as well as repairs must come from the "discretionary funds" (which for 2007

maintenance plus utilities, books, instructional supplies, janitorial supplies, libraries, liability, fire, and health insurance and all other purchases necessary to provide a "thorough free public education" to the students of Idaho. Because the legislature controls the minimum and maximum tax levy of 3 mils, the only means available to any district to obtain increased funding is through continuing override levies supported by the patrons.

10. The passage of the increased Homeowners Exemption will reduce the income of school districts to the extent of approximately \$15 million dollars per year. Such is brought about by the fact that school districts are mandated to a levy of 3 mils (.003) for maintenance and operations, which rate is also the maximum a school district may levy. Therefore, when \$25,000 additional dollars per residential property owner is removed from the tax base, the school district can not make up that loss through the imposition of a levy greater than 3 mils (.003). It is possible that some of the loss to some of the school districts can be mitigated to a certain extent by increased state funding through the foundation formula, but such is not provided for or guaranteed through House Bill 743.

11. The net effect of the legislation passed by the 2006 legislature takes education funding backwards, not forwards and does little or nothing to honor the mandate of the Idaho Supreme Court.

12. ISEEO and the Plaintiffs/Respondents respectfully request that the Supreme Court remand this case to Judge Bail for completion of the remedial phase of the case.

Dated this 20th day of April, 2006.

Stan Kress
Stan Kress, President of ISEEO

SUBSCRIBED and Sworn to be fore me this 20th day of April, 2006.

Denise Uhlentrott
Notary Public for Idaho
Residing at: Cottonwood Idaho
My Commission Expires: 10-25-07



SUMMARY OF SCHOOL DISTRICT REPORTS
TO REPRESENTATIVE SHIRLEY RINGO

1. As of 10:00 a.m. Tuesday, March 16, 2006. 50 school districts have responded.
2. Total number of school buildings containing classrooms 414.
3. Number of buildings more than 50 years old 99; number of buildings more than 80 years old 25.
4. Number of districts reporting overcrowded classrooms 25.
5. Number of overcrowded classrooms 382. In addition to this number the following school districts note:
 - a. Nampa School District #131 states: too numerous to count
 - b. Jerome School District #261 states: 80% of current classrooms
 - c. Lewiston Independent School District #340 states: classrooms throughout the district do not meet standard of 900 square feet
 - d. Fruitland School District #373 states: 50% of classrooms overcrowded
 - e. Twin Falls #411 states: 5 of the 11 schools are over capacity
6. Number of modular classrooms in use either for classrooms or office 319.
7. See individual reports for districts with heating, ventilation, air conditioning and control problems. Number reporting problems 20.
8. Number of districts reporting inadequate science lab 32. Several of the districts state that lab space is currently adequate, but if additional science requirement is required, there will not be enough labs.
9. Number of districts reporting inadequate PE facilities 29.

NOTE:

The attached pages of reports from the 50 districts are printed on the front and reverse sides of the pages.