

Robert C. Huntley ISB#894
 The HUNTLEY LAW FIRM PLLC
 815 W. Washington Street
 P.O. Box 2188
 Boise, Idaho 83701
 Telephone: 208-388-1230
 Facsimile: 208-388-0234
rhuntley@huntleylaw.com

Attorney for Plaintiffs

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

<p>MIKE ZEYEN, Individually, as a Patron of Pocatello/Chubbuck School District #25 and on behalf of and as Guardian <i>Ad Litem</i> of his minor children, Olivia Zeyen, Noah Zeyen and Anna Zeyen; RACHAEL BOOTH, Individually as a Patron of Pocatello/Chubbuck School District #25 and on behalf of and as Guardian <i>Ad Litem</i> of her minor children, Madison Booth and Braydon Booth,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>POCATELLO/CHUBBUCK SCHOOL DISTRICT NO. 25, a municipal corporation of the State of Idaho</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.</p> <p>Category A: \$96</p> <p>Complaint for:</p> <p style="text-align: center;">(1) Class Action by Patrons and Students of Pocatello/Chubbuck School District #25 for Declaratory Judgment, Refund of Fees Paid Pursuant to Unconstitutional Assessment Thereof; and</p> <p style="text-align: center;">(2) Declaratory Judgment</p>

Plaintiffs as their claim allege:

I. Jurisdiction and Venue

1. Jurisdiction lies in this Court under Article IX, Section 1 of the Constitution of the

State of Idaho. Venue lies in this Court against the Pocatello/Chubbuck School District No. 25, which is located in Bannock County, Idaho.

II. Parties

(A) **Parties Plaintiff:** Mike Zeyen is the parent and guardian *Ad Litem* of his minor children, Olivia Zeyen, Noah Zeyen and Anna Zeyen. Olivia Zeyen was enrolled part-time at Pocatello High School for a CNA class (two periods) in 2015-16. She was also enrolled at Century High School for her general education classes in 2015-16 in the 11th Grade. Noah Zeyen was enrolled in the School District as a 9th Grader in the 2015-16 school year. Anna Zeyen was enrolled in the School District as a 4th Grader in the 2015-16 school year. Olivia Zeyen and Noah Zeyen have been through middle school in the district, and were students in the District during the 2014-15 school year.

RACHAEL BOOTH, is the parent and guardian *Ad Litem* of her minor children, Madison Booth and Braydon Booth. Madison Booth was enrolled in the Pocatello/Chubbuck School District as a 10th Grader in the 2015-16 school year. Brayden Booth was enrolled in the district as a 7th Grader in the 2015-16 school year, and was enrolled in the District during the 2014-15 school year. Madison Booth went through middle school in the district, and was enrolled in the District during the 2014-15 school year.

They bring this action on behalf of themselves and as “Class Representatives” on

behalf of all parents/patrons and students in the Pocatello/Chubbuck School District No. 25.

(B) Party Defendant: Pocatello/Chubbuck School District No. 25, a municipal corporation of the State of Idaho located in Bannock County, Idaho.

FIRST CAUSE OF ACTION

1. Plaintiffs bring this action against the Defendant Pocatello/Chubbuck School District No. 25 (hereinafter “Pocatello”) as a Class Action on behalf of all school children, grades K through 12 enrolled in Pocatello in the 2014-15 and subsequent school years, and on behalf of their parents and guardians, to enforce the “**free common school**” provision of Article IX, Section 1 of the Constitution of the State of Idaho which reads as follows:

§ 1. Legislature to establish system of free public schools.

The stability of a republican form of government depending mainly upon the intelligence of the people, 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**. (Emphasis supplied.)

2. In contravention of the constitutional requirement to provide free common schools, Pocatello, being grossly underfunded by the State Legislature, has been engaging in the practice of levying fees upon its students and their families for various coursework, electives, supplies and other fees and charges, both “curricular” and “co-curricular,” in violation of the Idaho Constitution.

3. Idaho is ranked as the lowest state in the nation in terms of per capita funding of its schools. That fact does not arise from necessity. Historically, the Legislature and people of Idaho strongly supported the institution of the Sales and Use Tax in 1965, primarily for the

purpose of adequately funding Education. At the time of implementation, the Sales and Use Tax contained only 17 exemptions, which exemptions were in place for the purpose of exempting sales prior to “sales at retail,” (thus distinguishing it from a “value added” tax).

4. Year after year, the Legislature has added new exemptions to the Sales and Use Tax, to the point where there are now more than 98 exemptions, with the result that the exemptions have a value of approximately \$1.9 Billion, whereas the tax itself as now imposed provides the State with only \$1.2 Billion in revenue. The result has been to impose increased burdens on Pocatello at a time when limitations upon local taxing authority make it difficult for Pocatello and other school districts to provide free public schools as required by the Idaho Constitution.

5. Additionally, over the twenty years last past, Idaho has enacted legislation adding exemptions and other reductions to the corporate and individual Income Tax rates, thus further reducing the funds available for education appropriately supplied from the General Fund.

6. While reducing general fund tax collections as stated in paragraphs 4 and 5 above, the State has reduced the authority of school districts to raise revenues through local property taxes.

7. The Idaho Supreme Court, in *Paulson v. Minidoka County School District No. 331, et al.*, 93 Idaho 469; 463 P.2d 935 (1970) ruled that the levying of certain fees upon the students violated the constitutional mandate, the Court ruling in part:

- “Because the Appellants’ [Minidoka County School District No. 331] High School is a ‘common school,’ it must, by constitutional command, be ‘free.’”
- One-half of the \$25 fee is assigned as a payment for what Appellants themselves call extra-curricular activities. If a student of Minidoka County

High School wishes a transcript of his scholastic achievement he must pay the entire \$25, one-half of which is expressly consigned to fund extra-curricular activities. Items which are “extra-curricular” are, by definition outside of or in addition to the regular academic courses or curriculum of a school. A levy for such purposes, imposed generally on all students whether they participate in extra-curricular activities or not, becomes a charge on attendance at the school. **Such a charge contravenes the constitutional mandate that the school be free.** (Emphasis supplied.)

- Textbook fees...are indistinguishable from other fixed educational expense items such a school building maintenance or teachers’ salaries. The Appellants may not charge students for such items because the common schools are to be “free” as our constitution requires.
- (Paraphrased) The Court held that a charge for transcripts was a necessary part of the **“entire product to be received by the student”** and it must be “free,” and that the school could not withhold a student’s transcript to coerce payment of the lump sum \$25 fee.

8. Idaho Code § 33-603 **unconstitutionally** provides in part as follows:
Payment of fees or returning of property. The board of trustees of each school district shall have the power and the ability to require as a condition of graduation, as a condition of issuance of a diploma or a certification, or as a condition for issuance of a transcript, that any and all indebtedness incurred by the person when he/she was a student be satisfied, or that all books or other instructional material, uniforms, athletic equipment, advances on loans, or other personal property of the school district borrowed by the person when he was a student of the district, be returned... (I.C., 33-603, as amended by S.L. 1992, ch. 112, §1; S.L. 1996, ch. 138, §1)

9. Plaintiffs, through this action, seek return of fees unconstitutionally assessed and paid for the 2014-2015 and subsequent school years, and Declaratory Judgment and other relief from the current unconstitutional fee imposition practices. Unconstitutional fees have been assessed against and paid on behalf of Olivia Zeyen, Noah Zeyen, Anna Zeyen, Madison Booth and Brayden Booth for which Plaintiffs are entitled to be reimbursed, and unless the assessment

of unconstitutional fees is discontinued the Plaintiffs will be assessed and required to pay such unconstitutional fees throughout the course of their matriculation through the grade levels at Pocatello from Kindergarten through grade 12.

10. Plaintiffs, and all other parents and guardians with students enrolled, recently enrolled, or soon to be enrolled in Pocatello, are, have been or will be subjected to multiple communications from Pocatello requiring the payment of fees for enrolling in public schools as a part of the student registration process. Such communications include, but are not limited to, statements in Registration Materials, Fee Payment links on the Pocatello website, fee announcements by school administrators and teachers, inclusion of required fees in Student Handbooks, and school board policy, all of which compel Plaintiffs and all others similarly situated to pay fees that contravene the constitutional protection of a free public education and which amount to a form of coercion to pay for essential and normal elements of a free public education. Such action is an impermissible establishment and collection of fees under the Article IX, §1 of the Constitution of the State of Idaho.

11. The Defendant, Pocatello, also communicates the expectation that Plaintiffs, and others similarly situated, will purchase and provide school supplies which are not specifically attached to individual student needs, a requirement that, even though described at times as voluntary, is clearly communicated as being a requirement for the Plaintiffs to enroll children in school, successfully attend, and complete school assignments. Plaintiffs cannot distinguish supply list purchases from fees and Plaintiffs cannot, therefore, jeopardize attendance at school in order to avoid unwanted exposure to unfavorable notice by or criticism from school teachers and administrators. Defendant Pocatello has created a state-sponsored and state-directed

“essential consumable supply curriculum” which Plaintiffs assert contravenes the constitutional protection of a free public education and which amounts to a form of state coercion of Plaintiffs to pay for essential elements of a free public education. Such state action is impermissible establishment of fees under Article IX, §1 of the Idaho Constitution.

12. A reasonable observer would believe that payment of fees and purchasing of essential school supplies signified constitutionally protected action by Defendant. But the State may not place the dissenter in the dilemma of either paying or protesting fees and “essential school supply lists.” This is especially true at the middle school and high school level where adolescent students are often susceptible to peer pressure, especially in matters of social convention. Through its pervasive control of communicating and endorsing its fee and school supplies list, Pocatello has created an environment that feeds on social pressure to enforce payment of fees and providing of “essential school supplies”. The embarrassment and intrusion of this exercise cannot be refuted by arguing that the fees are of a *de minimus* character, since fees control student choice of elective and advanced courses that are important to the student’s overall learning and potential for continued education. It also gives insufficient recognition of the real conflict of conscience faced by an adolescent student and financially limited parents and guardians who would have to choose whether to enroll in a class like Chemistry or take a less rigorous class. Nor is the “essential school supplies list” *de minimus* and voluntary, given the environment created by Pocatello and the clear message to Plaintiffs that failure to purchase “essential school supplies” will compromise not only their children’s learning, but the entire school’s instructional effectiveness. Such is an affront to Plaintiffs and others similarly situated, and constitutes a violation of their rights under the Idaho Constitution’s guarantee of a free

public education.

13. The pressure, though subtle and indirect, to pay fees and purchase “essential school supplies” that become part of the Defendant’s general education curriculum program can be as real as any overt compulsion. The “State” (by and through “Pocatello”) cannot require one of its citizens to forfeit his or her rights and benefits to a free public education as the price of resisting conformance to state-sponsored school fees and purchasing of “essential school supplies” that will be distributed to and used by all students, a burden that is constitutionally required to be provided by the Defendant.

III. Class Allegations

14. This action is brought as a Plaintiff class action pursuant to Rule 23(b)(3) of the Idaho Rules of Civil Procedure.

15. Plaintiff Class Representatives Mike Zeyen and Rachael Booth and their minor children, Olivia Zeyen, Noah Zeyen, Anna Zeyen, Madison Booth and Brayden Booth are members of the Plaintiff Class as defined herein and bring this action on their own behalf and on behalf of those Pocatello students and parents/patrons similarly situated.

16. Plaintiffs seek to recover damages which they, and the Class Members, have suffered, and continue to suffer, as a result of the conduct and practices of Pocatello in charging various fees for educational services in grades K-12 in violation of the Idaho Constitution’s mandate to provide free, common schools.

17. The class represented by the Plaintiffs (the "Plaintiff Class") includes all students enrolled in Pocatello and their parents and guardians, commencing with school year 2014-2015, now, and in the future.

18. The named Plaintiffs are members of the Plaintiff Class.

19. There are currently thousands of school children who are members of the class and literally thousands of parents and guardians, making the members of the Plaintiff Class so numerous that joinder of all class members is impracticable.

20. The claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff Class. Plaintiffs and all members of the Plaintiff Class sustained economic damages as a result of the Defendant's wrongful and unconstitutional misconduct complained of herein.

21. Plaintiffs will fairly and adequately protect the interests of the members of the Plaintiff Class and have retained counsel competent and experienced in class action litigation as well as prosecution of actions of this nature.

22. A class action is superior to other available methods for a fair and efficient adjudication of this controversy. Since the damages suffered by the individual Plaintiff Class Members may be relatively small and geographically diverse, the expense and burden of individual litigation makes it impossible for the Plaintiff Class Members individually to seek redress for the wrongful conduct alleged.

23. Common questions of law and fact exist as to all members of the Plaintiff Class, which predominate over questions affecting solely individual members of the class.

24. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a Plaintiff Class action.

25. Among the questions of law and fact common to the Plaintiff Class are:
- (a) The proper interpretation of the constitutional mandate for "free" schools;
 - (b) The types of fees which are impermissible under Article IX, Section 1;
 - (c) Whether the fees wrongfully charged must be refunded;
 - (d) The terms of a Declaratory Judgment;

- (e) Whether Idaho Code Section 33-603 should be declared unconstitutional to the extent it conflicts with the mandate of Article IX, Section 1.

IV. Factual allegations

26. Pocatello has been on notice about the unconstitutionality of the fees it has been charging at least since the litigation on that subject was filed in Ada County District Court on October 1, 2012, with notice at that time to all school districts in the state of Idaho of the then potential class action involving every school district and every charter school in the state. As a result of that litigation, the Honorable Richard D. Greenwood entered Findings of Fact and Conclusions of Law which are a proper basis for “affirmative collateral estoppel” in this case, seven of which Findings and/or Conclusions are summarized as follows:

1. In paragraph 8 the Court stated: “The question here is whether the defendant is providing a *general, thorough and free education* to Peyton Joki. The Court concludes it is not,” further stating: “...Where a class is offered as part of the regular academic courses of the school, the course must be offered without charge.”
2. The Court next stated in paragraph 9: “Based upon the evidence available in this case, the best determinate of whether a class is part of the regular academic course of the Defendant is whether academic credit toward graduation is granted for the class.”
3. In paragraph 9 the Court ruled that the junior class dues fall in a category “generally imposed on all students whether they participate in extra-curricular activities or not, which becomes a charge on attendance at the school.” The Court ruled: “As such they are impermissible.”
4. In paragraph 11 the Court rejected the school’s position that “only those classes offered without charge are part of the constitutionally required thorough education.” [Plaintiffs made as a major point of their case that families should not be forced to choose whether they can afford to take a course or not and they should not be required to seek charity through a waiver.] The Court ruled “The fact that the fees may be waived in the discretion of the principal of the building does NOT render them constitutional.” (emphasis supplied)

5. The Court ruled that the district was incorrect in its position that the Plaintiffs' case should be dismissed because they did not file suit under the Idaho Tort Claims Act because "In this case, the suit is for return of monies unconstitutionally taken in the form of charges for taking a class or attendance at schools."
6. In paragraph 20, the Court rejected the School District's position that it is free to charge for Kindergarten because the school is not required by law to provide Kindergarten. The Court ruled that once the school district decides to offer Kindergarten it is a part of a thorough education.
7. In paragraph 21, the Court held that the fees charged for the Plaintiff Kindergarten students were impermissible. (The Court did hold that there was no proof offered that Sara Holt was the mother of her children, but that the fees paid by their grandfather, Russell Joki, should be refunded, but that that payment to Russell Joki will only occur if there is an appeal to this case to the Idaho Supreme Court.)

27. Appendix A hereto, (which contains a sampling of listings on web-sites of Idaho schools of fees charged to students), demonstrates the generally pervasive proclivity of School Districts (including Pocatello) throughout the state to impose fees upon students in violation of both Article IX, Section 1 of the Idaho Constitution and the ruling of the Idaho Supreme Court in *Paulson v. Minidoka County School District No. 331, et al.*, 93 Idaho 469; 463 P.2d 935 (1970).

28. Plaintiffs allege that the fees collected in violation of the constitutional mandate by Pocatello are in the magnitude of hundreds of thousands of dollars per school year. This estimate is subject to quantification upon completion of discovery.

29. Plaintiffs request Pocatello be required to reimburse each class member for fees unconstitutionally collected for the 2014-2015 and subsequent school years.

V. Attorney Fees under Private Attorney General Doctrine or Common Fund Doctrine

30. Plaintiffs request the Defendant Pocatello/Chubbuck School District be required to pay Plaintiffs' attorney reasonable attorney fees under the Private Attorney General Doctrine

as enunciated in *Hellar v. Cenarrusa*, 106 Idaho 571, 862 P.2d 524 (1984) and other relevant cases. Further, and alternatively, attorney fees attributable to refunds be assessed under the Common Fund Doctrine equal to not less than twenty percent (20%) of the fees ordered refunded, or under such other measure as the Court may deem appropriate.

WHEREFORE, Plaintiffs pray judgment as follows:

1. Certification as a Class action;
2. Declaration that certain of the fees being imposed by the Pocatello/Chubbuck School District No. 25 upon school children and their parents and guardians for a public education are illegal and unconstitutional;
3. That Pocatello/Chubbuck School District No. 25 be required to reimburse all Class Members for all such fees paid for the 2014-2015 and succeeding school years, which sum is estimated to be in the magnitude of hundreds of thousands of dollars per year.
4. That this Court enter appropriate Declaratory Judgment that the alleged unconstitutional practices hereinabove referenced violate the mandates of the Idaho Constitution.
5. For reasonable attorney fees.
6. For costs and such other and further relief as may be meet and equitable in the premises.

DATED this 15th day of June, 2016.

The HUNTLEY LAW FIRM PLLC

Robert C. Huntley

