

IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO POWER COMPANY, an Idaho)
corporation; and AVISTA)
CORPORATION, a Washington)
corporation,)

Docket No. 49126-2021

Plaintiffs-Respondents –)
Cross Appellants,)

Ada Co. Case No. CV01-20-14896

-vs-)

IDAHO STATE TAX COMMISSION,)
in its capacity as the STATE BOARD)
OF EQUALIZATION,)

Defendant-Appellant –)
Cross-Respondent.)

**BRIEF IN SUPPORT OF
APPELLANT CROSS-RESPONDENT'S
PETITION FOR REHEARING**

Appeal from the District Court of the Fourth Judicial District for Ada County

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STATEMENT OF THE CASE

Nature of the Case

The Idaho State Tax Commission (“Commission”) seeks rehearing of this Court’s May 17, 2023, opinion, Idaho Power Company v. Idaho State Tax Commission, Docket #49126 (“Opinion”). The Court, in the Opinion, remanded this case to the district court and directed: “On remand, the district court should determine whether, based on a preponderance of the evidence, the Companies have proven that the Commission erred in failing to equalize the Companies’ assessments.” In the Opinion, the Court stated that it was taking “this opportunity to clarify the standard for reviewing the Companies’ non-uniformity claims, because that determination will assist the district court upon remand.” While the Commission welcomes the Court’s clarification, it respectfully asks for a rehearing on this standard of review issue.

The Commission believes that the Court did not provide sufficient analysis to assist the district court upon remand. It is unclear what standard applies for determining whether the Commission “erred.” The Court used the following quotation from a prior case in its analysis: “[w]here discrimination has occurred, this Court has held that the aggrieved taxpayer is entitled to relief where the valuation fixed by the assessor is manifestly excessive, fraudulent or oppressive, or arbitrary, capricious and systematically discriminatory.” *Ada Cnty. v. Red Steer Drive-Ins of Nev., Inc.*, 101 Idaho 94, 98, 609 P.2d 161, 165 (1980). This phrase describes the common law standard that the Court previously required a property owner to bear when appealing a property tax assessment. This Court observed that the heightened standard quoted in *Red Steer* has been replaced by the 2003 amendment to Idaho Code section 63-409(2). The Statement of Purpose for the 2003 legislation explained, “This legislation changes the legal standard from one that requires proof that an assessment is manifestly excessive, arbitrary and capricious, or fraudulent and

oppressive, to one that requires simply that the assessment is erroneous.”¹ The phrase “systematically discriminatory” was not mentioned in the statement of purpose as part of what was being replaced. The quotation this Court selected from *Red Steer* does contain the term “systematically discriminatory;” a term commonly associated in Idaho’s precedent with what a property owner must prove before the Court will grant relief under a uniformity claim brought pursuant to Section 5, Article VII, of the Idaho Constitution. By quoting the language from *Red Steer* that used the phrase “systematically discriminatory,” the Court has introduced ambiguity into its analysis. It is unclear if the Court merely intends to make it known that the old standard requiring “proof that an assessment is manifestly excessive, arbitrary and capricious, or fraudulent and oppressive” has been abrogated, or if the Court also intended to overturn its prior precedent that has required property owners to prove intentional, systematic discrimination when making a constitutional uniformity claim. The Commission asks the Court to clarify whether it intended to overturn its precedent and change what facts a property owner must prove to get relief under a constitutional uniformity claim.

Statement of Facts and Course of Proceedings in the District Court and on Appeal

Idaho Power Company and Avista Corporation (“Companies”) requested hearings before the Idaho State Board of Equalization (“Board”)² regarding the uniformity of their operating property values for property tax year 2020. (R., pp. 233–35.) The Companies asserted that the Commission had unconstitutionally assessed the value of their operating property at a higher proportion than (1) railroad companies and (2) locally assessed properties. (Id.) The Companies’ two theories were later described,

¹ Available at <https://legislature.idaho.gov/sessioninfo/2003/legislation/H0302/#sop>

² The Board of Equalization is required to “assess all operating property”—including the property owned by the Companies. Idaho Code § 63-405(1). Composed of the Idaho State Tax Commissioners, this Court has described the Board as “a constitutional board, clothed by statutory authority with quasi judicial powers in regard to the assessment of certain classes and kinds of property.” *Nw. Light & Water Co. v. Alexander*, 29 Idaho 557, 560, 160 P. 1106, 1109 (1916). See also IDAPA 35.01.03.407.

based upon the language in the Complaint, as the 4-R Act claim³ and the alternative claim, respectively. (R., p. 509.) For the first argument, the Companies pointed to the fact that some, not all, railroads have their assessed values reduced in Idaho pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976 (“4-R Act”).⁴ (R., pp. 10-11.) For the second argument, the Companies relied on the data in the ratio studies produced pursuant to Property Tax Administrative Rule 131 (“Rule 131”) which shows that in some counties, locally assessed commercial properties may be valued at less than 100 percent of fair market value. (R., p. 12.) For context, Property Tax Administrative Rule 131 requires the Commission to monitor local assessments to ensure, using prescribed statistical measures, that all assessments are within a ten-percent deviation of market value. IDAPA 35.01.03.131.

After a hearing, the Board ultimately rejected both of the Companies’ arguments, citing to the effect of federal preemption and reliance on Rule 131 as the bases for its decision. (R., pp. 17–20.) The Companies timely appealed the Board’s decision to district court. (R., pp. 8–15.) Before the district court, the Companies maintained that the Commission had unconstitutionally over-assessed the value of their properties relative to (1) railroads (the 4-R Act claim) and (2) locally assessed commercial property (the alternative claim). (R. pp. 11–12.)

On the 4-R Act claim, the Commission moved for judgment on the pleadings on the basis that “the only facts that [the Companies] argue entitle them to uniformity relief are a result of federal law that preempts the Idaho Constitution’s uniformity requirement uniquely for the railroad industry.” (R. pp. 32–50.) The Companies opposed by filing their own motion for summary judgment. (R. pp. 51–130.) After a

³ The 4-R Act claim was named for its reliance upon the federal Railroad Revitalization and Regulatory Reform Act of 1976, commonly known as the “4-R Act.” 49 U.S.C. § 11501.

⁴ 49 U.S.C. § 11501

hearing, the district court granted the Commission's motion—agreeing with the Commission's theory that federal preemption required the adjustments to the value of certain railroad companies. (R., pp. 598–605.)

On the alternative claim, the Commission moved for summary judgment on the basis that any disparities between locally assessed property values and the Companies' property values were not systematic or intentional, as is required by Idaho law for relief. (R., pp. 142–65.) In particular, the Commission observed that the only evidence that the Companies relied upon to establish the under-assessment of locally assessed property were the Commission's ratio study data produced pursuant to Rule 131. (R., pp. 155–64.) The Commission also observed that Idaho law regarding uniformity of property taxation had never required the absolute uniformity requested by the Companies but instead protected against intentional and systematic discrimination. (R., pp. 155–59.) Finally, because it was uncontested that the Commission had complied with the requirements of Rule 131, the Commission argued that the Companies were in effect challenging Rule 131 and principles of administrative deference entitled the Commission to summary judgment. (R., pp. 159–63.)

In ruling upon the Commission's motion for summary judgment, the district court agreed with the Commission that the Companies would ultimately need to demonstrate some form of intentional, systematic disparity between their assessments and local assessments. (R., p. 608–09 n.7.) However, the district court did not reach the Commission's administrative deference argument and instead concluded that deciding these issues involved unresolved questions of fact. (R., p. 612.) According to the district court:

Questions of fact therefore appear to exist whether the Tax Commission has fulfilled its obligation to equalize [the Companies'] centrally assessed property to other relevant property. Resolving these questions of fact will likely include, among other matters, determining whether Rule 131 provides a reliable indirect means of assuring equalization and what is the most appropriate methodology to calculate whether [the Companies'] property is or is not systematically assessed. The fact the 4-R act uses a ratio study does not, in the Court's judgment, mandate whether such a study is the correct methodology and even if it is, what are the appropriate values to be used (e.g. weighted mean or median). These, in the Court's judgment, are questions of fact.

(R., pp. 612–13.) In short, the district court viewed questions related to Rule 131 as questions of fact and did not apply principles of administrative deference in its decision.

The Commission moved the district court for permissive appeal on the portion of the district court’s decision related to the Companies’ alternative claim. (R., pp. 505–18.) The district court granted the Commission’s motion for permissive appeal (Aug. R., p. 2.) The district court further stated: “In this Court’s judgment, substantial grounds exist for a difference of opinion whether this Court is correct on controlling issues of law as to Count II. Having direction from the Supreme Court may completely avoid the need for a costly trial.” (Aug. R., p. 2.) This Court also granted the Commission permission to appeal the district court’s interlocutory order denying the Commission’s motion for summary judgment. The Commission then timely appealed. (R., p. 587–90.)

The district court issued a Judgment and Rule 54(B) Certification against the companies on the 4-R Act issue. (R., p. 584-86.) The Companies then filed a cross appeal on the 4R Act issue to this Court. (R., p. 615-18.)

In its ensuing Opinion, this Court reversed the district court’s dismissal of the Companies’ 4-R claim and affirmed the district court’s denial of summary judgement as to the Companies’ alternative claim and remanded the case to the district court for further proceedings. (Opinion, p. 12.) This Court also provided guidance regarding the standard of review for the Companies’ uniformity claims on remand. (Opinion, p. 11.) The state filed a timely petition for rehearing. (6/7/23 Petition.)

ISSUE PRESENTED ON REHEARING

Has the Supreme Court overturned its precedent requiring that property owners prove intentional, systematic discrimination and if it has, what replaces this test for determining whether a uniformity adjustment is appropriate pursuant to Section 5, Article VII, of the Idaho Constitution?

ARGUMENT

I. The Requirement to Show, by a Preponderance of the Evidence, Facts Establishing Intentional, Systematic Discrimination for Uniformity Claims can be Applied Consistent with the 2003 Amendment to Idaho Code § 63-409(2).

The Commission requests that this Court clarify its decision and uphold its long-established test requiring that property owners demonstrate intentional, systematic discrimination before receiving uniformity relief. This test can be applied consistent with Idaho Code § 63-409(2) by recognizing that taxpayers are required to demonstrate intentional, systematic discrimination by a preponderance of the evidence to establish that the Tax Commission erred in denying their uniformity claim. Short of this, the Commission asks the Court to articulate what test should replace the intentional, systematic discrimination test and not leave this question unsettled for the district court to address on remand.

The parties have already supplied briefing related to this issue, addressing what the companies are required to show for relief under a property tax uniformity claim. (Appellant's Brief, p. 9-13; Cross-Appellants' Opening Brief and Response, p. 36-41; Appellant's Reply Brief, p. 36-41; Cross-Appellants' Reply Brief, p. 3, fn. 2.) The Commission argued that proof of "intentional, systematic discrimination," as established in a historic line of Idaho cases, is required to show an error sufficient to require an adjustment under the uniformity clause of the Idaho Constitution. The Companies argued that showing intentional, systematic discrimination should no longer be required and offered instead: "a logical standard would be that no relief would be granted if the evidence shows that value inequities are the result of errors in judgment, of falling short of exactitude, or of individual irregularities. If it is more than that, then the failure to achieve uniformity should give rise to a remedy." (Cross-Appellants' Opening Brief and Response, p. 41.)

Resolution of this issue is necessary to give meaningful direction to the district court. At this point the parties and the district court will be left to speculate and contend about the answer.

The intentional, systematic discrimination requirement is not in conflict with the Court's guidance that the Companies must show by a preponderance of the evidence that the Tax Commission erred. This Court's guidance provides the burden of proof but is silent regarding what type of proof is needed to establish an error. This seems to leave the standard established in this Court's prior decisions in place. Which means, that on remand, in district court, the Companies will have to show their property was valued at a higher percentage of fair market value than the railroads or the county commercial properties and that the difference was due to intentional, systematic discrimination. If the Companies can show this by a preponderance of the evidence, then the district court should conclude that the Tax Commission erred by not granting the companies the relief they sought under their uniformity claims.

II. A Showing of "Intentional, Systematic Discrimination" is Required for the Relief Sought by the Companies.

The legislature did not intend to dispose of the intentional, systematic discrimination requirement with its 2003 amendment to Idaho Code section 63-409(2). In the Opinion, this Court quoted a line from *Red Steer* as being the standard that the Tax Commission contends should be applied to the Companies' claims; "[w]here discrimination has occurred, this Court has held that the aggrieved taxpayer is entitled to relief where the valuation fixed by the assessor is manifestly excessive, fraudulent or oppressive, or arbitrary, capricious and systematically discriminatory." *Ada Cnty. V. Red Steer Drive-Ins of Nev., Inc.* 101 Idaho 94, 98, 609 P.2d 161, 165 (1980). The Court then quoted the 2003 statutory amendment to Idaho Code section 63-409(2) and

stated, “section 63-409(2) statutorily replaced the heightened standard urged by the Commission.” However, it should be noted that Statement of Purpose for this legislation explained: “This legislation changes the legal standard from one that requires proof that an assessment is manifestly excessive, arbitrary and capricious, or fraudulent and oppressive, to one that requires simply that the assessment is erroneous.”⁵ The Statement of Purpose made no mention of replacing the intentional, systematic discrimination standard for uniformity claims. This Court discussed this statutory change in a footnote in its 2012 *Pacificorp* decision and made no mention of the intentional, systematic discrimination standard for uniformity claims changing. *PacifiCorp v. Idaho State Tax Comm'n*, 153 Idaho 759, 775 n. 19, 291 P.3d 442, 458 (2012).

The Idaho Constitution requires that: “All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax[.]” Idaho Const. art. VII, § 5.⁶ However, uniformity does not require exact uniformity as there will always be “individual irregularities and inequality in taxation[.]” *In re Bd. of Tax Appeals, Appeal No. 16-A-1079*, 165 Idaho 433, 439, 447 P.3d 881, 887 (2019) (quoting *Anderson’s Red & White Store v. Kootenai Cty.*, 70 Idaho 260, 265, 215 P.2d 815, 818 (1950)). These irregularities exist because property tax assessment “is a process which cannot be reduced to an exact science.” *Id.* As such, the “law does not require exactitude, but it does require uniformity.” *Id.*

⁵ Available at <https://legislature.idaho.gov/sessioninfo/2003/legislation/H0302/#sop>

⁶ The uniformity clause is not the only constitutional provision that informs this requirement of uniformity. The Idaho Supreme Court has specifically held in *Idaho Telephone Company v. Baird*, that the uniformity clause must be construed considering section 2 of the same Article of the Idaho Constitution. 91 Idaho 425, 429, 423 P.2d 337, 341 (1967) (*abrogated on other grounds by Simmons v. Idaho State Tax Commission*, 111 Idaho 343, 723 P.2d 887 (1986)). This section provides: “The legislature shall provide such revenue as may be needful, by **levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property**, except as in this article hereinafter otherwise provided.” Idaho Const. art. VII, § 2 (emphasis added). These two principles—uniformity and proportionality—must both be followed to ensure uniformity through the property tax system.

This Court has never required exact mathematical uniformity. Instead, it has stated that: “The requirement of uniformity is violated ... when one class of property is **systematically assessed** at a higher percentage of actual cash value, subjecting the taxpayer to a higher rate of taxation, than applies to other property within the taxing district.” *Ada Cty. v. Red Steer Drive-Ins of Nevada, Inc.*, 101 Idaho 94, 97–98, 609 P.2d 161, 164–65 (1980) (emphasis added). Thus, systematic discrimination requires a showing of something more than individual irregularities and errors in judgment; it exists when the system of taxation or assessment intentionally produces a discriminatory result.

This Court has provided a series of examples of how this intentional, systematic discrimination standard for a uniformity violation is applied. In *Idaho Telephone* the legislature had established a statutory scheme where property throughout Idaho was to be assessed at 20 percent of fair market value, while operating property was specifically instructed to be assessed at 40 percent of fair market value. *Idaho Telephone Co. v. Baird*, 91 Idaho 425, 423 P.2d 337 (1967). This Court invalidated that statutory scheme because it violated uniformity to intentionally disadvantage operating property by statute. *Id.* at 429, 423 P.2d at 341.

In *Red Steer*, farm and residential properties were assessed at 73 percent of fair market value while commercial properties were assessed at 100 percent of fair market value. *Ada Cty. v. Red Steer Drive-Ins of Nevada, Inc.*, 101 Idaho 94, 609 P.2d 161 (1980). Red Steer claimed it suffered discrimination as the results of the method of assessment used by the county assessor. *Id.* at 96, 609 P.2d at 163. The parties stipulated that the Ada County Assessor’s Office had reduced the market value of residential and farm property improvements by 27 percent but did not apply this reduction to commercial property. *Id.* Red Steer argued that “when all the exceptions and inequities in valuation were removed from the 1975 tax roll, all non-commercial properties were being

assessed at 62% of their market value” and therefore they should receive a 38 percent reduction to their property value. *Id.* at 97, 609 P.2d at 164. This Court found that Red Steer was entitled to relief, but only for “**intentional, systematic discrimination** which occurred... in the application of the 27% reduction to residences and farms, only that portion of the assessment required relief.” *Id.* at 100, 609 P.2d at 166 (emphasis added). The other 11 percent of the 38 percent relief Red Steer was seeking was attributed to errors in judgement (not intentional, systematic discrimination) and this Court explained that it “will not attempt to correct mere mistakes or errors of judgment on the part of the assessor.” *Id.*

In *Anderson’s Red & White*, this Court observed that the assessor had “assessed stocks of merchandise at 20% of their respective actual cash value, and assessed all other property in the county at 10% of its actual cash value...” but even then, this Court was not prepared to grant relief without a finding of systematic discrimination; this Court remanded the case and ordered the district court to grant relief only if it found that either the other property in the county had been systematically undervalued or the appellant’s property had been systematically overvalued. *Anderson’s Red & White Store v. Kootenai Cty.*, 70 Idaho 260, 215 P.2d 815 (1950).

In summary, for a property owners to receive uniformity relief for its property, they must show something more than irregularities arising from mistakes or errors of judgment on the part of the assessor. Property owners must show an intentional, systematic effort to value other properties at less than market value or to value their property at more than market value.

Taking this Court’s precedent altogether, property owners must show intentional, systematic discrimination to receive uniformity relief. This can be shown when a law exists that intentionally provides a lower rate of assessment for one category of property over another, as seen in *Idaho Telephone*. Or can be shown by facts establishing that appraisal methods of the assessor

intentionally valued one category of property at a lower or higher percentage of fair market value than other categories, as seen in *Red Steer*.

CONCLUSION

The parties offered differing arguments about what must be shown to establish an error sufficient to trigger relief under the uniformity clause of the Idaho Constitution. Resolution of this issue is necessary. Without further guidance from this Court the parties and the district court will be left to speculate and contend about the answer. It is unclear if the Court intended to overturn its prior precedent that has required property owners to prove intentional, systematic discrimination when making a uniformity claim. The Commission asks the Court to clarify whether it intended to overturn its precedent and change what facts a property owner must prove to get relief under a uniformity claim.

The Tax Commission respectfully requests that this Court analyze this issue and expressly declare what must be shown in district court, by a preponderance of the evidence, to establish that the Tax Commission erred.

The Tax Commission believes that the answer to this question is, that on remand, in district court, the Companies will have to show their property was valued at a higher percentage of fair market value than the railroads or the county commercial properties and that the difference was due to intentional, systematic discrimination. If the Companies can show this by a preponderance of the evidence, then the district court should conclude that the Tax Commission erred by not granting the companies the relief they sought under their uniformity claims.

DATED this 20 day of June, 2023.

/s/ Phil N Skinner

PHIL N SKINNER
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of June, 2023, I served the within and foregoing **BRIEF IN SUPPORT OF PETITION FOR REHEARING** electronically through the iCourt E-File system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Copy of Service Filing:

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