

U. S. DISTRICT COURT  
DISTRICT OF IDAHO  
Filed at \_\_\_\_\_ M

MAY 22 1980

JERRY L. CLAPP, Clerk  
By \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

DAN and SHIRLEY REIMANN, et al.,	)	Civil No. 80-4059
	)	
Plaintiffs,	)	ORDER
	)	
vs.	)	
	)	
FREMONT COUNTY JOINT SCHOOL DISTRICT NO. 215, et al.,	)	
	)	
Defendants.	)	

This matter came on for hearing on May 21, 1980, on plaintiffs' motion for a preliminary injunction. Both parties presented testimony and filed briefs. The court has considered the evidence presented and the arguments of counsel. plaintiffs have proven to the satisfaction of the court that (1) unless preliminary injunctive relief is granted they will suffer irreparable harm, and (2) they are likely to prevail on the merits of this case. Therefore, good cause having been shown,

IT IS HEREBY ORDERED AND DECREED that a preliminary injunction should be and is hereby issued, enjoining defendants and all persons acting in concert with them, from conducting the North Fremont High School graduation ceremony, now scheduled for May 22, 1980, in the Church of Jesus Christ of Latter Day Saints' Stake Center, Ashton, Idaho.

DATED this 22nd day of May, 1980.

**RAY McNICHOLS**

RAY McNICHOLS, Chief Judge

ORDER

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DISTRICT NO. 215, et al., )  
Defendants. )

CIVIL NO. 80-4059

REPORTER'S TRANSCRIPT

Reporter's transcript of partial proceedings  
held May 21, 1980, in Boise, Idaho, before the HONORABLE  
RAY McNICHOLS, United States District Judge, District of  
Idaho.

DWIGHT K. WELLS  
Official Reporter

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(The Court then stated the following.)

THE COURT: I'd like to have time to draft a very carefully worded opinion in this case, but one I would like to state how I feel about the matter and what my **views** are in front of the people who are most interested so they hear it firsthand. Therefore, I must do that without the benefit of having an opportunity to very carefully lay out the language.

The only issue before me today is whether or not a preliminary injunction should issue, not who ultimately wins the lawsuit or loses it, but whether or not it is necessary to use the power of the Court to temporarily protect certain rights in order to avoid some

1 irreparable harm that can be otherwise straightened out  
2 while the case is pending.

3 Everyone knows I think now, and certainly  
4 counsel are very much in agreement that there are, first,  
5 two things that the Court must look at. I must determine  
6 now from the evidentiary hearing we have had here whether  
7 plaintiffs have shown a potential irreparable damage to  
8 them and if so, have the **plaintiffs** demonstrated  
9 the likelihood they will continue to prevail in this case.

10 As counsel for the defendants indicated in the  
11 second aspect of that, there's a second ground to it.  
12 One has to measure then whether that irreparable damage  
13 and the allegation of irreparable damage that may be incurred  
14 by the people, i.e. in this case the difference between  
15 the students and their parents who are the plaintiffs and  
16 the balance of the people in *the* community, some of whom will  
17 it seems to me, be barred from attending the ceremony of  
18 necessity because of the mechanics of it.

19 **Now**, I start with that. I was very interested  
20 in the evidence and I think each person that came here gave  
21 their very best and truest version of what they believe  
22 to be the facts. I don't believe anyone here gave us any-  
23 thing but what came right from their conscience and the  
24 best understanding of the facts of the situation.

25 From those facts it certainly emerges very

1 clearly two things about the facilities that were origin-  
2 ally planned. The taxpayers of Fremont County and the  
3 school district there have provided a school. They put in  
4 an auditorium and the purpose of that auditorium clearly  
5 was to hold school functions there.

6 Now, with the passage of time it's quite  
7 evident that at least for commencement purposes the  
8 facility may be too small to take care of everyone that  
9 may want to be there, but it is large enough to handle  
10 students of the graduating class and the faculty who are  
11 the most important, and certainly the families so that  
12 those family members can mechanically be there.

13 The alternative that is suggested is to go to  
14 a brand new and obviously nice facility that has been pro-  
15 vided by one of the churches and which they are willing--  
16 the LDS Church--and if I say "Mormon" sometimes I mean  
17 nothing but the best. This institution in our state has  
18 demonstrated for many years the goodness within it and the  
19 strength that it has.

20 It's clear that they cannot seat all people  
21 within it that would like to attend the ceremony at the  
22 school. I don't think the board itself is motivated in  
23 making this decision by an improper purpose; however,  
24 I have the strongest feeling that in a community such  
25 as the evidence shows here, that is strongly Mormon and

1 strongly **members** of the LDS faith and that that church  
2 being a strong missionary church, that where their church  
3 is required by public officials to be used for public  
4 affairs and while it may be one could say *a* student doesn't  
5 have to go, the facts of life are that they **have a right**  
6 to go and it's a place they want to go to, and if the **church**  
7 can offer that and if the board can utilize that church  
8 matter, I am unable to say that **that** doesn't have the effect  
9 of advancing the interests of that church. That's specific-  
10 ally clearest where people are required to attend public  
11 affairs, and I use the word "required to attend" again in  
12 the sense that it's someplace they want to go and they **have**  
13 a right to, and it's public and a non-sectarian affair.  
14 I believe it has to be treated as a potential advancement  
15 of a particular religion, an advancement against people  
16 in an area where the minority groups, the minority church  
17 groups do not want to for reasons of their own, which  
18 they have a right to, do not want to attend.

19 I think that the **answer** to that brings into  
20 it that it is not possible to 'avoid entangling the matter  
21 with a religious entanglement. Obviously, the very fact  
22 that we are here indicates the divisiveness in this small  
23 community where the majority of the church is to be utilized  
24 for this public purpose and has to be attended then by those  
25 people whose teachings do not permit them to accept the

1 teachings of that church or who actually opposes them,  
2 and who don't want to be put in an atmosphere or into the  
3 environment of another church. I just think that the  
4 divisiveness here is self-evident.

5 I must say to you I'm reluctant, especially  
6 at this late date, to discommode people, but **when it** comes  
7 to discommoding those who have the absolute right to take  
8 part in this ceremony, the graduating youngsters, when I  
9 measure their right against the overall public rights to  
10 take part in something like that, it seems to me that it is  
11 an overriding, totally overriding right of the **students,**  
12 and that the ruling of the 'board violates the First Amendment  
13 and the establishment clause, and that I have to admit that  
14 I am reluctant about it to restrain the board and the defen-  
15 dants from holding the North Fremont High School commence-  
16 ment on Friday night in the Latter Day Saints Center.

17 I issue that oral order to those gentlemen and  
18 ladies because they are here now. It is the order of the  
19 Court that to hold and proceed with that ceremony would be  
20 a violation of these people's constitutional rights and  
21 I have ordered them not to do it. I'll reduce it to  
22 writing as soon as I can, but orally you are so advised.

23 I want you to know that I have no pleasure in  
24 taking part in your North Snake River controversy, and  
25 this kind of case always is difficult to decide, and it's

1 too bad that these matters get to the point where they  
 2 have to be brought before the Court, and then someone has  
 3 to say yes or no to a question that hopefully could be  
 4 better settled by good citizens among themselves. When it  
 5 can't be, I have certain duties to carry out and I do the  
 6 best of my conscience, and that's what I have done here  
 7 today.

8                   You can get a temporary injunction ready and I  
 9 will sign it, but in the meantime you have the oral  
 10 injunction.

11                   I appreciate the candor of all witnesses here  
 12 today and I appreciate counsel's efforts to get briefs to  
 13 the Court in a very short time, and especially defendants.

14                   I appreciate also the courtesies and demeanor  
 15 and manner in which everyone presented this case, and  
 16 I thank you all.

(Whereupon, the Court  
 adjourned.)

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