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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

COLUMBIA FALLS Elem. School Dist. No. 6;
EAST HELENA Elem. Dist. No. 9;
HELENA Elem. Dist. No. 1 and H.S. Dist No. 1;
BILLINGS Elem. Dist. No. 2 and H.S. Dist No. 2;
WHITE SULPHUR SPRINGS Elem. Dist. No. 8
and H.S. Dist. No. 8;
TROY Elem. Dist. No. 1 and H.S. Dist. No. 1;
MEA-MFT; MONTANA SCHOOL BOARDS
ASSOCIATION; MONTANA RURAL
EDUCATION ASSOCIATION; SCHOOL
ADMINISTRATORS OF MONTANA; ALAN &
NANCY NICHOLSON; GENE JARUSSI; PETER
& CHERYL MARCHI; and MICHAEL AND
SUSAN NICOSIA, for themselves and as parents
of their minor children,

Plaintiffs,

v.

THE STATE OF MONTANA,

Defendant.

Cause No. BDV-2002-528

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

Trial in this matter occurred from January 20 to February 4, 2004. The Court received numerous exhibits and heard the testimony from a large number of witnesses. Plaintiffs

1 were represented by James P. Molloy of Helena and Brian K. Gallik of Bozeman. The State of
2 Montana was represented by Brian M. Morris and Ali N. Bovingdon, both of Helena.

3 The Court would take this opportunity to tip its judicial hat to all of the attorneys
4 involved in this case for the excellent job they have done in presenting their cases and assisting
5 the Court. The Court hereby enters the following:

6 **FINDINGS OF FACT**

7 1. This case involves a challenge to the constitutionality of Montana's current
8 system for funding its public elementary and secondary schools. The constitutional provision
9 involved reads as follows:

10 **Educational goals and duties.** (1) It is the goal of the people to establish
11 a system of education which will develop the full educational potential of each
12 person. Equality of educational opportunity is guaranteed to each person of the
13 state.

14 (2) The state recognizes the distinct and unique cultural heritage of the
15 American Indians and is committed in its educational goals to the preservation of
16 their cultural integrity.

17 (3) The legislature shall provide a basic system of free quality public
18 elementary and secondary schools. The legislature may provide such other
19 educational institutions, public libraries, and educational programs as it deems
20 desirable. It shall fund and distribute in an equitable manner to the school
21 districts the state's share of the cost of the basic elementary and secondary school
22 system.

23 Mont. Const. art. X, § 1.

24 2. Montana's public school system is governed by legal requirements and
25 mandates imposed upon school districts by virtue of state and federal law. These requirements
include Montana's accreditation standards, content and performance standards, legal mandates for
special education, and, most recently, the federal No Child Left Behind Act.

3. Plaintiffs in this case include 11 Montana public school districts (6

1 9. Defendant State of Montana is a duly established state within the United
2 States of America.

3 10. With leave of Court, an *amicus curiae* brief was filed by the Montana
4 Indian Education Association, in conjunction with the Blackfeet Tribe, the Assiniboine and Sioux
5 Tribes of the Fort Peck Indian Reservation, the Gros Ventre and Assiniboine Sioux Tribes of the
6 Fort Belknap Indian Reservation, the Crow Tribe, the Confederated Salish and Kootenai Tribes,
7 the Northern Cheyenne Tribe, and the state-recognized Little Shell Tribe, as co-signers, as well as
8 the Indian Law Resource Center of Helena, the Montana Indian School Board Caucus, the
9 Montana Association of Bilingual Education, the Indian Impact Aid Schools, the Blackfeet
10 Community College, the Lame Deer Public Schools, the Browning Public Schools, the Harlem
11 Public Schools, the Lame Deer School Parent Indian Education Committee, the Colstrip School
12 Parent Indian Education Committee, and the Montana Peoples Action and Indian Peoples Action.

13 **I. Montana's Public School System**

14 **A. Basic Facts**

15 11. During the 2002-03 school year, 440 school districts operated in
16 Montana, with a total student enrollment of 149,936, and a total "average number
17 belonging" (ANB) of 151,511.

18 12. The term "average number belonging" (ANB) is the enrollment
19 measure used for calculating a school district's budget and for allocation of state
20 revenue for education. A school district's ANB results from the application of a statutory
21 formula to the enrollment, attendance and absence of regularly enrolled full-time pupils
22 during the school term. See Section 20-9-311, MCA. The ANB for a given year is based
23 on the attendance record of the preceding fiscal year.

1 and duties which relate primarily to administrative, organizational and budgetary matters between
2 the state superintendent and local school districts. Duties and powers are generalized in Montana
3 Code Annotated Title 20, Chapter 3, Part 2, and Section 205.

4 21. Article X, Section 8 of the Montana Constitution vests supervision and
5 control of school districts in a locally elected board of trustees.

6 22. Local boards of trustees are separate governing entities for elementary and
7 high school districts. Section 20-6-101(3), MCA. Their powers and duties include, but are not
8 limited to, employing the district superintendent and teachers and assistants upon
9 recommendation by the district superintendent, and conducting the fiscal business of the district.
10 A general list of powers and duties of trustees of a school district can be found in Sections 20-3-
11 324(1)-(29), MCA (general powers and duties) and 20- 9-213(1)-(9), MCA (financial duties of
12 trustees).

13 **II. Montana’s School Funding System**

14 **A. Sources of Revenue**

15 23. The funding for Montana public elementary and secondary schools comes
16 from three general sources: state, local and federal revenues.

17 24. There are two principal sources of state revenue specifically earmarked for
18 schools. The first of these state sources is a property tax of 95 mills levied statewide. Fifty-five
19 of the 95 mills are actually “County Equalization Aid.” Sections 20-9-331, -333, MCA. Each
20 county in Montana levies 55 mills on all taxable property within the district and that money is
21 then applied to the BASE budget funding levels for all districts in the county (as more fully
22 described below). If the amount of revenue raised by the 55 mills exceeds what is necessary to
23 meet the BASE funding programs of all elementary and secondary schools in the county, the

1 county remits the surplus to the Montana Department of Revenue for deposit into the State's
2 general fund.

3 25. The second source of state revenues are revenues derived from
4 school trust lands. Sections 20-9-331, MCA (33 mill county-wide tax for elementary
5 districts); 20-9-333, MCA (22 mill county-wide tax for high school districts); 20-9-343,
6 MCA (Definition of and revenue for State equalization aid); 20-9-360, MCA (40 mill State
7 equalization aid levy); and 20-9-342, MCA (Deposit of interest and income money by
8 state board of land commissioners).

9 26. Local revenues for school districts are derived primarily from local
10 property taxes and fees in lieu of taxes. Sections 20-9-308(4)(5), -353, MCA.

11 27. The largest single source of federal funds received by Montana
12 school districts is P.L. 874 money, which is explained in greater detail below. The other
13 significant sources of federal revenues are Title I funds and School Foods funds. Some
14 districts also obtain revenues through federal grants, based upon application and
15 selection procedures that apply to these various grants.

16 **B. School District Budgets and Funds**

17 28. Montana's school district accounting systems are organized and
18 established on a "fund" basis. Section 20-9-201(1), MCA. A "budgeted fund" means a
19 separate detailed account of receipts and expenditures for a specific purpose authorized
20 by the legislature and for which a budget must be adopted in order to spend money from
21 the fund. Section 20-0-201(1)(a), MCA. A budget must be adopted by a board of
22 trustees in order to spend money from a budgeted fund. *Id.*

23 29. Presently there are the following "budgeted funds" in Montana:

- 1 · General Fund (multiple statutes);
- 2 · Transportation Fund (Section 20-10-143, MCA);
- 3 · Bus Depreciation Fund (Section 20-10-147, MCA);
- 4 · Tuition Fund (Section 20-5-320 to -321, MCA);
- 5 · Retirement Fund (Section 20-9-501, MCA);
- 6 · Adult Education Fund (Section 20-7-705, MCA);
- 7 · Technology Acquisition and Depreciation Fund (Section 20-9-533,
- 8 MCA);
- 9 · Flexibility Fund (Section 20-9-543, MCA);
- 10 · Debt Service Fund (Section 20-9-438, MCA);
- 11 · Non-Operating Fund (Section 20-9-505, MCA); and
- 12 · Building Reserve Fund (Section 20-9-502, MCA).

13 *See also* Section 20-9-201(1)(a), MCA (listing budgeted funds).

14 30. A non-budgeted fund is any fund for which an official budget is not
15 required to be adopted in order to spend money on deposit in the fund. Section 20-9-
16 201(1)(b), MCA. Expenditures from these funds are limited to the amount of cash
17 balance in the fund. Section 20-9-210, MCA. Examples of non-budgeted funds are:

- 18 · Food Service Fund (Section 20-10-207, MCA);
- 19 · Impact Aid Fund (Section 20-9-514, MCA);
- 20 · Building Fund (Section 20-9-508, MCA);
- 21 · Extracurricular Fund (Section 20-9-504, MCA);
- 22 · Lease or Rental Agreement Fund (Section 20-9-509, MCA);
- 23 · Endowment Fund (Section 20-9-604, MCA);

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1. Minimum or BASE General Fund Budgets

33. All Montana school districts must adopt a budget in an amount that equals, at a minimum, that district’s BASE budget, as defined by law. Section 20-9-308(1), MCA. A district’s minimum general fund budget, or “BASE budget,” is calculated as follows:

- + 80% of basic entitlement
- + 80% of the per-ANB entitlement
- + up to 140% of state special education allocation
- + 40% of special education co-op allocation (if any).

Section 20-9-306(3), MCA.

a. Basic Entitlement

34. The “basic entitlement” is the first component used to calculate a district’s BASE budget amount. The amount of the basic entitlement is determined by the legislature. Section 20-9-306(6), MCA. For the 2002-03 school year the basic entitlement for elementary districts, regardless of size, was \$19,244. For high school districts, the basic entitlement was \$213,819, again regardless of the size of the high school district. The basic entitlement is scheduled to increase by \$212 to \$19,456 for elementary districts in 2004, and by another \$403 to \$19,859 in 2005. For high school districts, the basic entitlement is scheduled to increase by \$2,352 to \$216,171 for 2004, and by another \$4,475 to \$220,646 for 2005.

b. Per-ANB Entitlement

35. The next component of a district’s BASE general fund budget is the district’s “per-ANB entitlement.” Section 20-9-306(10), MCA. The per-ANB entitlement, which is added to the district’s basic entitlement, is an additional amount of budget authority for elementary and high school districts. It is based upon the total number of ANB in the elementary

1 or high school district. Again, the amount of the per-ANB entitlement is set by the legislature.

2 36. For elementary districts, the per-ANB entitlement in 2003 begins at
3 \$3,906, and decreases by \$.20 for each additional elementary ANB up to 1,000 ANB at which
4 point the decrease in funding for each additional ANB stops (“stop loss”). The per-ANB
5 entitlement for each ANB over 1,000 is \$3,706.20 in 2003. Section 20-9-306(10)(b), MCA. In
6 FY 2004, the per-ANB entitlement begins at \$3,949.00 and hits a stop loss level at \$3,747.20.

7 37. For high school districts, the per-ANB entitlement in 2003 begins at
8 \$5,205 and decreases by \$.50 for each additional elementary ANB up to 800 ANB at which point
9 the decrease in funding for each additional ANB stops (“stop loss”). The per-ANB entitlement
10 for each ANB over 800 is \$4,805.50 in 2003. Section 20-9-306(10)(a), MCA. In FY 2004, the
11 per-ANB entitlement begins at \$5,262.00 and hits a stop loss level at \$4,862.50.

12 38. For elementary and K-12 districts with an approved junior high or
13 middle school program, the per-ANB entitlement formula works the same way, relying on
14 a proration of the foregoing entitlements. Section 20-9-306(10)(c), MCA.

15 39. In addition to the BASE entitlement and per-ANB entitlements, a
16 district’s BASE general fund budget is determined by the district’s special education
17 entitlements.

18 **2. The Maximum General Fund Budget**

19 40. With limited exceptions, a school district’s maximum general fund
20 budget is defined by the Montana legislature. A district’s maximum general fund budget
21 calculation is determined, in general, by adding the following components:

- 22 + 100 % of the district’s basic entitlement
- + 100% of the district’s per-ANB entitlement
- 23 + 175% to 200% of state special education entitlement
- + 75% to 100% of special education cooperative entitlement

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Sections 20-9-308, -321, MCA.

41. Subject to two exceptions described below, a district may not adopt a general fund budget in excess of its maximum general fund budget amount as defined every two years by the legislature. Section 20-9-308(1), (3), MCA.

a. “Grandfathered Districts” - The 1992-93 General Fund Budget Exception.

42. The first exception to the maximum general fund budget concerns school districts whose 1992-93 general fund budget exceeded its 1993-94 maximum general fund budget, as defined by the school funding legislation implemented in that year. Section 20-9-308(a)(ii), MCA. If the district’s 1992-93 general fund budget exceeded the 1993-94 maximum general fund budget, as defined by the legislature, that district’s general fund budget was capped at the 1992-93 level, or an equal amount over the maximum, whichever is less. Section 20-9-308(3)(a)(ii)(A)(B), MCA. Some districts have remained capped at that level for the past ten years. Voter approval is required each year for the amount over the maximum. Section 20-9-353(1)(b), MCA.

b. “Soft Caps” - Declining Enrollments and the Maximum General Fund Budget Amount Exception

43. The second “exception” to the maximum general fund budget concerns those districts with declining student enrollments. If a school district’s student enrollment declines from the prior year, its BASE and maximum budgets in the year of declining enrollment may decrease from the prior year’s BASE and maximum budgets because its per-ANB entitlement decreases. This may cause the current year budget to exceed the district’s maximum

1 general fund budget authority for the next school year. In such a situation, the district may
2 maintain, but may not raise, its budget over its current level (i.e. the budget in the year prior to
3 the decline in enrollment) and must reduce the general fund budget to the maximum allowed by
4 law, based upon its ANB, within five years. Section 20-9-308(3)(a)(I), MCA.

5 44. If a district's enrollment decrease is greater than 30 percent of its total
6 ANB population (primarily a small school issue), that district must reduce its general fund budget
7 to the maximum allowed by law within five years, using a formula mandated by the legislature
8 which requires the following budget reductions in each of the five years: 20 percent, 25 percent,
9 33.3 percent, 50 percent and 100 percent. Section 20-9-308(3)(a)(i)(A)-(E), MCA.

10 45. For those districts where the decline in student enrollment is less than 30
11 percent of the district's total ANB population, there is no formula outlining the amount or year
12 during which the budget must be reduced to the maximum amount allowed by law. Section 20-9-
13 308(3)(a)(i), MCA. Instead, the legislature simply commands the district to reduce its budget to
14 the maximum amount within five years. *Id.*

15 46. As more fully described below, districts may adopt a general fund budget
16 in excess of the BASE budget only with voter approval. This applies as well to budgets in excess
17 of the maximum general fund budget (as outlined above). Funding for the budgeted amount in
18 excess of the BASE is derived primarily from revenue generated from local property taxes in the
19 school district. Sections 20-9-308(2); -353, MCA.

20 **D. Funding the General Fund Budget**

21 **1. Sources of Funding the General Fund (Section 20-9-307(4), MCA)**

22 47. A school district funds its general fund budget from the following sources:
23 · *Direct State Aid* equal to 44.7 percent of the district's BASE and per-

- 1 ANB entitlements (Sections 20-9-306(2)(a), -307(4), MCA);
- 2 · *Special Education Allowable Cost Funding* from the state (Sections 20-
- 3 9-321, -307(4)(c), MCA);
- 4 · *Non-Levy Revenue and Reappropriated Funds* (Section 20-9-
- 5 141(1)(b)(I), MCA);
- 6 · *Non-Voted Local Levies Subsidized with Guaranteed Tax Base* (GTB)
- 7 aid to fund up to 35.3 percent of the district’s basic and per-ANB
- 8 entitlement and 40 percent of its special education allowable cost payment
- 9 (Section 20-9-306(2)(b), MCA); and
- 10 · *Voted Levies*, with no GTB aid, for that portion of the general fund budget
- 11 that exceeds the district’s BASE budget (Sections20-9-307(4)(e), -308,
- 12 -353(2), MCA).

13 **2. Funding the BASE Budget - 80 Percent of the Maximum General**
 14 **Fund Budget**

15 48. A district’s BASE budget is funded by adding “direct state aid,” local
 16 revenue and state GTB aid, if applicable. Sections 20-9-306(2)(3), -307(4), MCA.

17 49. The State is responsible for funding 44.7 percent of the district’s BASE
 18 budget (i.e. 80 percent of the district’s basic entitlement plus 80 percent of the district’s per-ANB
 19 entitlement). The 44.7 percent is referred to as “direct state aid.” Section 20-9-306(2), MCA. In
 20 addition, the State provides revenue for allowable costs of special education. Section 20-9-321,
 21 MCA.

22 50. Direct state aid and allowable special education revenue is derived from a
 23 combination of sources. These include:

1 a. **County Equalization Aid.** First, each county in the state must levy
2 an annual basic county tax (33 mills for elementary and 22 mills for high school) on the dollar of
3 the taxable value of all taxable property (with certain exceptions) within the county for the
4 purpose of elementary and high school equalization aid and state BASE funding program support.
5 Section 20-9-331, MCA (elementary districts) and Section 20-9-333, MCA (high school
6 districts). The revenue generated by these mills, together with other sources of revenue,
7 including Taylor Grazing Act funds, federal flood control funds, fines for violations of law,
8 federal and state payments in lieu of taxes, gross proceed taxes from coal, and local government
9 severance taxes are referred to as “county equalization aid.” Sections 20-9-331(2), -333(2).
10 MCA.

11 b. **State Equalization Aid.** Next, revenue from various sources,
12 including income from State school lands, United States mineral royalties, surplus revenues from
13 county equalization, interest income, and a 40 mill state equalization levy are paid into a
14 “guarantee account” for purposes of providing revenue to school districts in support of the BASE
15 budget. Section 20-9-343, MCA.

16 51. **Local Revenue and GTB Aid.** The remaining sources of revenue for a
17 school district’s BASE budget are local revenue and guaranteed tax base (GTB) aid, if a district
18 qualifies. Sections 20-9-308, -353, MCA (local); Sections 20-9-366 to -369, MCA (GTB). The
19 revenue for this portion of the BASE budget equals 35.3 percent of the basic entitlement, 35.3
20 percent of the per-student entitlement and 40 percent of special education allowable cost funding.
21 Section 20-9-367(1), MCA. The local revenue portion of the BASE budget is funded through a
22 local permissive (non-voted) tax levy, non-tax revenue sources available to a district, and for
23 districts that qualify, GTB aid. Section 20-9-308(5), MCA.

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1 60. In 1985, a lawsuit was filed challenging Montana's then-existing
2 school funding system in this Court bearing the caption, *Helena Elementary School*
3 *District No. 1, et al. v. State*, Cause No. ADV-85-370. At the time, funding for school
4 districts' general funds was provided through the Montana Foundation Program.

5 61. In January 1988, the Honorable Henry Loble, District Judge,
6 declared Montana's system of school finance unconstitutional. *Helena Elem. Sch. Dist.*
7 *No. 1 v. State*, No. ADV-85-370 (Mont. 1st Jud. Dist., Jan.13, 1988).

8 62. In that order, Judge Loble issued the following findings of fact concerning
9 the importance of education. These findings remain accurate and applicable:

10 13. The importance of education is universally recognized in our
11 society. In an often-quoted passage from *Brown v. Board of Education*, the United
12 States Supreme Court aptly described the role of education:

13 Today, education is perhaps the most important function of state
14 and local governments. Compulsory school attendance laws and
15 the great expenditures for education both demonstrate our
16 recognition of the importance of education to our democratic
17 society. It is required in the performance of our most basic public
18 responsibilities, even service in the armed forces. It is the very
19 foundation of good citizenship. Today, it is a principal instrument
20 in awakening the child to cultural values, in preparing him for
21 later professional training, and in helping him to adjust normally
22 to his environment. In these days, it is doubtful that any child may
23 reasonably be expected to succeed in life if he is denied the
24 opportunity of an education. Such an opportunity, where the state
25 has undertaken to provide it, must be made available to all on
equal terms.

Brown of Board of Education, 347 U.S. 483, 493 (1954).

14. Contemporary society demands increasing levels of sophistication,
and increased knowledge and understanding of technology. Education plays the
central role in developing a person's abilities to achieve that sophistication,
knowledge and understanding. Consequently, the quality of an individual's life is
increasingly dependent on the level and quality of that individual's education.

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15. Public education is, without doubt, a fundamental and most

1 important function of the State of Montana and its political subdivisions. It is a
2 State and local responsibility jointly shared.

3 *Helena Elem. Sch. Dist. No. 1 v. State*, No. ADV-85-370, at 10-11 (Mont. 1st Jud. Dist.,
4 Jan.13, 1988).

5 63. The importance of education is also recognized by the Montana Supreme
6 Court's decision in *Helena Elem. Sch. Dist. No. 1 v. State*, 236 Mont. 44, 769 P.2d 684 (1989),
7 *modified by* 236 Mont. 44, 784 P.2d 412 (1990) (hereinafter "*Helena Elementary I*").
8 The supreme court noted that equality of educational opportunity is the only right that is
9 expressly guaranteed in the Montana Constitution. *Helena Elementary I*, 236 Mont. at 53, 769
10 P.2d at 689.

11 64. On appeal, the Montana Supreme Court held that Montana's then-existing
12 school finance system violated Article X, Section 1 of the Montana Constitution. In arriving at
13 its holding, the supreme court focused in part on historically declining levels of state support for
14 elementary and secondary education:

15 The evidence shows that, in 1985-86, most school districts. . .utilized a
16 third stage of funding under which monies were obtained primarily from property
17 tax levies voted by each school district [and other, less significant sources]. By
18 1985-86, 35% of all General Fund budgets were obtained from this level of
19 funding. In contrast, in 1950, the Foundation Program furnished 81.2% of all
20 general fund revenues in Montana, leaving less than 20% of revenues to be
21 obtained by local levies and other sources.

22 . . .

23 In 1972, when our Constitutional Convention met, approximately 65% of
24 General Fund revenues were funded through the Foundation Program. Con.Con.
25 Tr. 2157. The transcript of the debate on Art. X, § 1(3), Mont. Const. clearly
expresses the delegates' concern with the level of funding. See, for example,
Con.Con. Tr. 1981-86, 2152-59.

Id., at 48, 54-55, 769 P.2d at 686, 690.

1 65. In addition, the supreme court expressly addressed the relationship (or lack
2 thereof) between state funding and the mandated educational program as established by minimum
3 accreditation standards:

4 The evidence presented at the trial of this case clearly and unequivocally
5 established large differences, unrelated to “educationally relevant factors,” in per
6 pupil spending among the various school districts of Montana. . . . There was also
unrebutted testimony that the Foundation Program funding [i.e. state support for
general fund expenditures] falls short of even meeting the costs of complying with
Montana’s minimum accreditation standards.

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8 *Id.*, at 53-54, 769 P.2d at 690.

9 66. In holding that the system was unconstitutional, the court focused on the
10 lack of adequate state funding:

11 We conclude that as a result of the failure to *adequately fund* the
12 Foundation Program, forcing an excessive reliance on permissive and voted
levies, the State has failed to provide a system of quality public education
granting to each student the equality of educational opportunity guaranteed under
Art. X, § 1, Mont. Const.

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14 *Id.*, at 55, 769 P.2d at 690 (emphasis added).

15 67. The Montana Legislature, in a special session in 1989, adopted new school
16 funding legislation through House Bill 28.

17 68. In 1991, two companion lawsuits were filed, challenging the
18 constitutionality of the revised system of school finance. *Helena Elem. Sch. Dist. v. State*, No.
19 BDV-91-1334 (Mont. 1st Jud. Dist.), and *Mont. Rural Educ. Ass'n v. State*, No. BDV-91-
20 2065 (Mont 1st Jud. Dist.). These lawsuits came before this Court for trial in the early
21 months of 1993, while the 1993 Montana Legislature was in session.

22 69. In 1993, the Montana Legislature adopted House Bill 667 (HB 667).
23 Through that legislation, the legislature changed from the Foundation Program to the
24 BASE budgeting system for funding general funds in Montana’s public elementary and

1 secondary schools. As a result of the changes in the finance system, the pending
2 lawsuits were ultimately dismissed on mootness grounds.

3 **IV. House Bill 667**

4 70. As a result of the 1991 lawsuits mentioned in the above Finding of
5 Fact No. 68, the 1993 Montana Legislature adopted HB 667.

6 71. Testifying at trial in this matter was James Gillett, an auditor with the
7 Montana Legislative Auditor's Office. Gillett indicated that in creating what has become HB 667
8 in Montana's current finance system, his office analyzed school spending data for the year 1991.
9 The Legislative Auditor's Office used a statistical analysis known as a regression analysis.

10 72. The purpose of the regression analysis, which was later reflected in HB
11 667, was to design a system that addressed the issues of spending and taxpayer disparities among
12 similarly sized school districts. This purpose was generally accomplished by HB 667, which
13 prevented wide spending differences among similarly sized elementary and high school districts.

14 73. The evidence appears clear that HB 667 eliminated the wide spending
15 disparities that existed in prior law. However, some of the inherent problems that exist in the
16 construction of HB 667 are the problems that bedevil us today.

17 74. First, the school financing scheme evidenced by HB 667 is clearly
18 complicated and hard to understand. Not only is that the opinion of the numerically-challenged
19 author of this opinion, but also the opinion of well-respected national and state education leaders.
20 (*See e.g. Myers Test.; Miller Test.*)

21 75. The major problems of HB 667 are as follows:

22 a. HB 667 provided no mechanism to deal with inflation. John L.
23 Myers found this particularly alarming.

1 b. HB 667 did not base its numbers on any study of teacher pay, the
2 cost of meeting accreditation standards, the fixed costs of school districts, or the costs of special
3 education.

4 c. Any increases allowable to school districts under HB 667 were in
5 no way tied to the costs of increased accreditation standards or content and performance
6 standards.

7 d. The information upon which HB 667 relied was already two years
8 old when it was enacted into law.

9 e. HB 667 did not conduct any study to justify the disparity in ANB
10 dollars provided for high school and elementary students. (*See Quinlan Test.*)

11 76. Shortly after enacting HB 667, the legislature met in special session and
12 enacted House Bill 22 (HB 22). (*See Pls.' Ex. 5.*) HB 22 reduced state support of public
13 education by 4.5 percent, or \$19 million to the state general fund.

14 **V. Developments Since 1993**

15 **A. Technology Fund**

16 77. The Montana Legislature enacted a technology fund in 1995 to allow
17 school districts to spend funds outside a district's general fund for the purchase and maintenance
18 of technology-related equipment, especially computers. The problem with the State's
19 contribution to the technology fund is that it is not predictable. For example, in 2002, the State
20 funding to the technology funding was put on hold for two years. It may or may not be
21 reinstated.

22 78. Some districts have been able to raise additional revenues for their
23 technology funds, while other districts have not. GTB aid does not apply to the technology fund,

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1 and the amount of money raised for this fund is dependent upon the property wealth of the school
2 district.

3 **B. The Flex Fund**

4 79. The “School Flexibility Fund” (flex fund) was created by the legislature in
5 2001. This fund allows yet another means for school districts to shift expenditures for expenses
6 outside the general fund. *See* Section 20-9-542 to -544, MCA. In general, the flex fund was
7 designed to allow school districts to spend money outside the spending caps imposed by HB 667.
8 Again, since GTB aid does not apply to the flex fund, the revenue a school district is able to raise
9 in support of the flex fund is dependent upon the wealth of the district.

10 80. As far as the State contribution goes, the 2001 legislature appropriated
11 money for this fund, and some districts raised additional revenue through voted levies. The 2003
12 legislature, however, did not appropriate any money to the flex fund for the 2004-05 biennium.

13 **C. House Bill 424**

14 81. House Bill 424 (HB 424) was enacted by the Montana Legislature and
15 found its way into law as Section 20-9-501, MCA. The issue with this enactment is that,
16 beginning in 2005, school district employees whose salaries are funded with federal revenues
17 may not have their retirement benefits paid from the district retirement funds. The costs of these
18 retirement benefits will have to be funded either by federal dollars or general fund dollars.

19 **VI. Mandates and Standards**

20 82. A central issue in this case has been the legal requirements imposed on
21 school districts both by the federal government and the State of Montana. In almost every
22 instance, the mandates, whether they be federal or state, impose financial requirements on the
23 school districts without providing a funding source.

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1 At page 11, it is indicated that the two Billings high schools will require approximately 57 new
2 classrooms. According to Svee, most of these new classrooms are required because of increased
3 federal and state mandates. However, no funding is provided despite the imposition of the
4 increasing mandates.

5 88. According to Dr. Kirk Miller (Chairman of the Board of Education and
6 Superintendent of Schools in Havre), Rodney Svee and Charles Brown (Superintendent of
7 Schools in Lewistown), the accreditation standards do not define a quality education, but, rather,
8 set forth the basic or minimum standards that schools must provide. Indeed, the Montana
9 Supreme Court agreed with the concept that the accreditation standards do not fully define a
10 quality education, but, rather, are minimum standards. *See Helena Elementary I*, 236 Mont. at
11 57, 769 P.2d at 692.

12 89. Each year, school districts submit their reports to OPI. Based upon those
13 reports, OPI then makes a recommendation to the Board of Public Education as to whether a
14 school district has met the standards. This then results in a school being placed in certain
15 categories of accreditation.

16 90. Exhibits 85, 613 and 685C show the schools accredited under advice or
17 deficiency criteria. These schools are below the acceptable accreditation or accreditation with
18 minor deviation standards. In 1994-95, about four percent of Montana's elementary, middle and
19 high schools were accredited under advice or deficiency status. However, in fiscal year 2002-03,
20 that number had risen to over 18 percent. (Pls.' Ex. 85.)

21 91. Complying with the accreditation standards has imposed additional
22 financial burdens on school districts without corresponding increases in state aid to meet the new
23 standards. This and the lack of any inflationary component in HB 667 has resulted in many of the

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1 accreditation problems shown on Exhibit 685C.

2 92. According to Dr. Miller, the money problems inherent in HB 667's scheme
3 has resulted in many teachers leaving Montana and teachers teaching without full endorsements
4 in specialized areas such as special education, math, science, and counseling.

5 **B. No Child Left Behind Act**

6 93. The No Child Left Behind Act of 2001 (NCLB) makes federal financial aid
7 for schools conditional on schools meeting certain academic standards and abiding by policies set
8 by the federal government.

9 94. Pursuant to the NCLB, every classroom must be staffed by a teacher
10 qualified to teach in his or her subject area. Further, the states must improve the quality of their
11 schools from year-to-year by achieving "Adequate Yearly Progress" (AYP). The percentage of
12 students proficient in reading and math must continue to grow, and the test score gap between
13 advantaged and disadvantaged students must narrow.

14 95. The exact impact of the NCLB is unknown. However, it would be safe to
15 say that there will be a financial impact on Montana schools for having to meet the NCLB
16 mandates. Unfortunately, it does not appear that the costs associated with compliance with the
17 NCLB are being paid by the state or federal governments. Although the federal government may
18 provide some of the necessary revenue, it will be insufficient to cover all the costs associated
19 with NCLB mandates. (*See, e.g., McCullough Test.*) According to Superintendent McCullough,
20 Montana now broadly endorses teachers so that, for example, a teacher with a general science
21 background could teach botany. On the other hand, under the NCLB's requirement for highly
22 qualified teachers, a botany teacher would have to have a major or certificate in botany in order to
23 teach that class.

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1 and special education programs.

2 **VII. Funding Trends**

3 **A. State Funding Trends**

4 100. At trial, Plaintiffs introduced Exhibit 22 which shows school district
5 general fund budget trends from fiscal year 1991 through fiscal year 2003. Although student
6 enrollment is declining, the ANB count in fiscal year 2003 is 3,541 higher than in fiscal year
7 1991. (Pls.' Ex. 22, l. 2.) The state share of the general fund budget has dropped from 71.44
8 percent in fiscal year 1991 to 60.95 percent in 2003. *Id.*, l. 29. During the same time period, the
9 local share of the general fund budget has gone from 28.91 percent to 39.30 percent. *Id.* ¶ 31
10 at 1. Adjusted for inflation, the total state aid for the same time period has gone down by 17
11 percent. *Id.* ¶ 41 at 2. During the same time period, school district local property taxes have
12 increased 120.5 percent. *Id.* ¶ 47 at 2. And, according to line 52 of Exhibit 22, state support for
13 ANB has gone from \$2,751 in fiscal year 1991 to \$2,230 in fiscal year 2003 - a drop of 18.9
14 percent.

15 101. At the time Montana's constitution was adopted in 1972, state support for
16 general fund budgets was approximately 65 percent. According to Plaintiffs' Exhibits 32 and 33,
17 when all budgeted funds are considered, the same trends mentioned in Finding No. 100 continue.
18 State support for all funds fell from 54.29 percent in 1993 to 42.59 percent in 2002, while local
19 support increased from 36.68 percent in 1993 to 44.40 percent in 2002.

20 102. These same trends hold true for state support for special education.
21 Plaintiffs' Exhibit 115 is a document prepared by the Montana School Renewal Commission on
22 September 8, 2003. That exhibit deals with special education finance. At page 11, it is noted that
23 in 1989-90, the state share of special education costs was 81.49 percent, while the local share was

1 7.12 percent. By 2001-02, the state share had dropped to 41.49 percent, while the local share had
2 risen to 38.13 percent. These same trends are also shown on Plaintiffs' Exhibit 111.

3 103. According to various school district officials, over time the requirements of
4 federal law concerning services to disabled students have increased. The state's contribution has
5 declined over time, while the local contribution has increased. The extra money that the local
6 districts need is taken out of their regular funding sources, which creates a competition between
7 the general fund and funding for special education. (*See e.g., Johnson Test.; Svee Test.; Brown*
8 *Test.; Nicosia Test.*) This testimony was also echoed by Dr. William Hickey, Executive Director
9 of Special Services for Anaconda Public Schools, who testified that recent increases in state
10 funding towards special education are lost by the increased costs of providing services to disabled
11 students. Hickey testified that, in his opinion, the State of Montana was not funding its share of
12 special education costs, which adversely affected all school district children due to the
13 competition for dollars mentioned above.

14 **B. Increasing Trends Towards Budget Maximums**

15 104. When HB 667 was enacted, it implemented the mandatory BASE budget
16 amount (80 percent of the maximum). The purpose of establishing the BASE budget amount was
17 to assure all districts budgeted at a minimum level – a level that would presumably be adequate to
18 meet minimum standards. The concept was then to allow local districts the option of adopting
19 additional budget authority, up to the maximum general fund budget allowed by law (the 100
20 percent level).

21 105. Since 1991, the number of districts and ANB at or above the budget
22 maximum have increased. In fiscal year 1994, a total of 75 districts and 7,971 ANB were at 100
23 percent of the maximum general fund budget allowed by law. (Pls.' Ex. 49.) By fiscal year 2003,

1 the number of districts had increased to 172 and the ANB to 35,495. *Id.* This trend seems to be
2 more marked for elementary districts than high school districts.

3 106. When considering the number of districts and ANB at 98 percent or more
4 of maximum general fund budget allowed by law, we find that in 1994, 92 districts representing
5 12,511 ANB were at 98 percent of maximum general fund budget allowed by law. (Pls.' Ex. 49.)
6 By 2003, the number of districts had increased to 220, and the total students increased to
7 81,915. *Id.*

8 107. The information shown in Plaintiffs' Exhibit 49 indicates that the budget
9 maximums established by HB 667 are not related to the costs that districts must incur to deliver
10 quality education programs and that state funding for public schools is inadequate.

11 108. Districts that are currently operating above the caps face serious
12 difficulties as they approach the five-year deadline for returning to the budget
13 maximums. Trustee Peter Marchi from the White Sulphur Springs District explained, for
14 example, that his district has two years left before it must return to the budget maximum,
15 but they "really don't have anything to cut as far as staff members or programs."
16 (Marchi Test.) Under current law, however, they must find a way within two years to
17 implement additional "substantial cuts" that will adversely affect the quality of the
18 program. *Id.* This is in a district that already has accreditation problems due to its
19 inability to hire a language instructor to offer foreign language. This raises concern that the
20 state funding of public education is not based on educationally-relevant factors.

21 **VIII. Problems Related to Funding**

22 **A. Violations of Accreditation Standards**

23 109. Earlier this Court discussed the increasing number of school districts that
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1 are having problems meeting Montana's accreditation standards. (*See* Pls.' Ex. 85; Miller Test.)
2 According to Dr. Miller, the rising number of schools failing to meet accreditation standards is
3 tied to the failure of the funding mechanism of HB 667 to keep up with inflation.

4 110. It should be kept in mind that the accreditation standards are duly adopted
5 by the State of Montana. Thus, any suggestion raised by the State at the trial of this matter that
6 the violation of the accreditation standards is not serious is rejected by the Court. If the State is
7 going to require schools to meet the accreditation standards, the State cannot say that violations
8 of those standards are not a serious issue.

9 111. The increasing violation of minimum accreditation standards is evidence to
10 this Court that Montana's quality public education system is being damaged and that it is related
11 to a decreasing supply of funds provided by the State of Montana.

12 **B. Teacher Salaries and Benefits**

13 112. According to Dr. Linda Darling-Hammond of Stanford University, quality
14 teachers are essential for successful students and a quality education. According to Dr. Darling-
15 Hammond, adequate salaries, working benefits and conditions are a big factor in getting and
16 maintaining a teacher corp.

17 113. It is undisputed that Montana teachers' salaries have been lagging behind
18 national averages. For example, the average salary for a beginning teacher in the United States is
19 \$32,000, while in Montana it is \$22,000. (Pls.' Ex. 72.) The average salary for an experienced
20 teacher in the United States is \$44,000, while in Montana it is \$34,000. *Id.*

21 114. In fiscal year 1992, Montana teachers' average salaries were 39th in the
22 country, while in fiscal year 2003, Montana ranked 47th in the amount it pays its average teacher.
23 (Pls.' Ex. 34.)

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1 115. Plaintiffs' Exhibit 36 graphically shows the declining trend of the average
2 salary paid to Montana's teachers. In approximately fiscal year 1980, Montana's teachers were
3 28th in the nation and now they are 47th.

4 116. There also appears to be a clear trend of decreasing benefits for teachers.
5 For example, Charles Brown, Superintendent of Schools in Lewistown, testified that his district is
6 shifting more and more health insurance costs to the employees.

7 117. Many superintendents and other school officials testified at the trial
8 regarding this matter. Most testified to a noticeable decline in the number and quality of
9 applicants applying for job openings. In some areas, such as special education, music, language,
10 and science, school districts have difficulties finding qualified candidates. For example,
11 Superintendent McCullough indicated that 70 percent of the graduates getting a B.A. degree in
12 education from the Montana University System leave the state. According to McCullough, other
13 states offer signing bonuses, repayment of student loans and financial help with advanced
14 degrees, none of which are offered in Montana.

15 118. Dr. Miller indicated that in 1996 a job opening in the Havre School District
16 would attract 60 to 100 applications. He testified that a job opening last year garnered 15
17 applications, of whom he would classify 5 as being good. Dr. Miller noted that the quality of the
18 pool of applicants is decreasing, and that the State of Montana is not adequately funding a quality
19 education. (*See also* Cameron Test.; Marchi Test.; Schmidt Test.)

20 119. Roger Armstrong, Superintendent of Schools in White Sulphur Springs,
21 testified that at one job fair he went to, not one application was received for an opening in his
22 district. Indeed, Armstrong indicated that he intended to retire soon from the Montana system
23 and move to Washington state to regain employment, all strictly for financial reasons.

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1 120. John McNeil, Superintendent of Schools in Savage, indicated that when
2 his district had an opening for a music teacher, the only applicant was a 70-year-old individual.

3 121. According to Dr. Bruce Messinger, Superintendent of the Helena School
4 District, the State is not supplying adequate resources for schools to do their job. Dr. Messinger
5 agreed that the number of applicants is down, especially now that regional competition for
6 teaching candidates is becoming a factor. Dr. Messinger noted that the Helena School District
7 was not able to use general fund monies for professional development, but is looking to federal
8 grants for that type of program.

9 122. Michael Nicosia, Superintendent of Columbia Falls School District,
10 indicated that his district uses retirement incentives to lure older, higher paid teachers to retire so
11 that they may be replaced by lower paid, inexperienced teachers.

12 123. It cannot be said that the State does not recognize the problems that exist in
13 recruiting and retaining teachers. Plaintiffs' Exhibit 75 is the Governor's Task Force on Teacher
14 Shortage and Teacher Salaries Final Report prepared in September 2000 at the request of
15 Governor Marc Racicot. Although identifying the problems and some solutions, few of the
16 solutions recommended in the task force report have been implemented.

17 124. In addition, the Montana Board of Public Education commissioned Dr.
18 Dori Burns Nielson to conduct a study on the teacher problem in Montana. Dr. Nielson's
19 document entitled "Who will Teach Montana's Children?" was received into evidence. (Pls.' Ex.
20 78.) This document is dated February 2001. The 2002 follow-up study was received as Exhibit
21 79. According to Dr. Nielson, Montana is projected to need approximately 900 new teachers per
22 year. Although Montana's university system produces about 900 students finishing education
23 programs each year, only about 29 percent of those students stay in Montana. (Pls.' Ex. 78 at 1.)

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1 Dr. Nielson's report noted shortages in subject areas, as noted above, in special education, music
2 and the sciences. She also noted the decline in applications in even some of the more attractive
3 parts of Montana. Where some of these school districts once had 115 applicants for a position,
4 those districts now only receive about 40. *Id.* at 5.

5 125. Dr. Nielson also noted that not only it is difficult to recruit teachers, but
6 retaining them is a growing problem since as many, especially in smaller districts, are required to
7 accomplish multiple assignments. Dr. Nielson also noted the powerful competition from out of
8 state where new teachers are offered high salaries, bonuses and moving expenses. Dr. Nielson
9 noted that some school districts in Montana provide no benefits for their teachers.

10 126. In Dr. Nielson's follow-up study in 2002 (Pls.' Ex. 79), she noted no
11 improvement. Dr. Nielson noted that the number one reason certified staff leave their positions
12 in Montana is to obtain higher salaries. *Id.* at 7. Factors that might improve staff retention and
13 recruitment are ranked in order of importance from higher salary and better benefits to mentoring
14 programs and smaller classrooms. *Id.* at 10.

15 127. Dr. Nielson also surveyed Montana superintendents and principals. (Pls.'
16 Ex. 81.) Dr. Nielson noted that approximately 48 percent of the administrators surveyed
17 indicated that they planned to retire within the next five years. *Id.* at 1. Almost one-half of that
18 group is expected to leave Montana and continue working out of state as either a teacher or
19 administrator.

20 128. This trend, both as to teachers and administrators, is alarming in light of
21 the testimony of Dr. Darling-Hammond, who testified that proven research establishes a
22 significant relationship between teacher quality and student achievement and gains. According to
23 Dr. Darling-Hammond, if it is difficult to recruit and retain teachers, the entire education system

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1 at risk.

2 129. Dr. Darling-Hammond also noted that the recent economic changes to
3 which our economy has been subjected place an increasing demand for skill and training on the
4 workforce. The standard-based movement, through criteria reference tests, allows educators to
5 see if their students are meeting expected progress. This allows educators to determine if
6 students are meeting the new demands of society and allows educators to measure and allocate
7 resources as appropriate.

8 **C. Other Consequences of Dwindling Funding**

9 130. As noted above, more and more school districts are reaching budget caps.
10 When that occurs, the only options available are to reduce budgets, cut programs and reduce staff.
11 (*See Miller Test.*) Some of these problems have already been mentioned, such as difficulty in
12 paying for professional development programs. For example, Kent Kultgen, Superintendent of
13 Choteau School District, indicated that next year his district will eliminate all non-instructional
14 aides. Richard Cameron, Superintendent of Glendive School District, indicated that, in violation
15 of the accreditation standards, his district does not have a curriculum coordinator. Ron
16 Whitmoyer, Superintendent of East Helena Elementary School District, indicated that his district
17 does not have a gifted and talented program as required under the accreditation standards. He
18 added that his district has also cut programs in art, computer education and Spanish. Charles
19 Brown, Superintendent in Lewistown, indicated that in some of his schools, the supplies for
20 elementary students are furnished by parents as opposed to the school district. According to
21 Brown, the Lewistown School District is slowly dismantling its school system under the current
22 funding formulas.

23 131. The Court has already mentioned the trouble created when there is

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1 competition for dollars within school districts where general fund dollars are being diverted to
2 pay for special education programs.

3 **D. Facilities, Construction and Maintenance**

4 132. Adequate and safe school facilities are an essential component of a quality
5 education system. This is specifically addressed in Montana’s accreditation standards.

6 130. Richard A. Whitney, Director of Billings School District Facilities
7 Services, presented a list of building projects that his district needs to undertake over the next two
8 years in order to meet various building and safety codes. (Pls.’ Ex. 147.) Whitney indicated that
9 approximately \$64 million is required for these projects. *Id.* at 2.

10 133. Due to lack of classroom space in Billings schools, the Billings School
11 District was forced to resort to a program called “Teachers on Carts.” These teachers have no
12 classrooms assigned to them, but carry their instructional supplies on a cart while they roam to a
13 vacant room. (Pls.’ Ex. 149 at 7-8.)

14 134. The Court has already referenced the testimony of Rodney Svec, wherein
15 he indicated that Billings High Schools needs 57 new classrooms resulting from increased federal
16 and state requirements.

17 135. The Court heard evidence that both Eureka and Livingston recently had
18 school buildings that were deemed unsafe and were either condemned or are on the verge of
19 being condemned. While a new building was being built, students in Eureka were educated in
20 various building around town, including a church building and part of a high school.

21 **E. Other Problems with the School Finance System**

22 136. Montana, like many other states, is implementing a standards-based
23 approach to education, as part of an effort to improve student performance. The Court has

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1 already mentioned the implementation of the NCLB, Montana's accreditation standards, and
2 performance and content standards.

3 137. In implementing a standards-based approach, a state needs to do three
4 things: (1) specify its expectations for student performance; (2) develop procedures to measure
5 how well students are meeting those expectations; and (3) hold providers of education services
6 (school districts, schools, teachers) accountable for student performance. The logic of the
7 approach implies that a state will assure that sufficient resources are available in all school
8 districts, if not in all schools, so that they can reasonably be expected to meet state standards.
9 (Pls.' Ex. 68 at 2.)

10 138. A discussion of adequacy involves a determination of funding necessary to
11 produce a specific level of student performance. *Id.* at 1. For the standards-based approach to
12 have any chance of success, the state must assure that districts have sufficient resources available
13 so that they can reasonably be expected to meet the state's standards concerning student
14 performance. This requires that the foundation or base level of funding should reflect the
15 expenditures a district must make to enable students without special needs to meet state
16 performance expectations. The foundation or base level funding should also be adjusted to
17 reflect increased costs associated with special needs characteristics of students or districts.

18 139. In school finance terminology, a school finance system should satisfy
19 principles of equity and adequacy. That is, it should provide adequate funding to allow districts
20 to meet the expectations established under state law, and the funding should be allocated in an
21 equitable manner to assure equal opportunities for all students in the state. Significantly, experts
22 for both Plaintiffs and the State were in complete agreement on these fundamental principles.
23 The State's primary expert, Dr. Thomas Downes, for example, agreed that to define adequacy,

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1 one must ask what resources are necessary for a school district to achieve the standards
2 established by a state.

3 140. In drafting Montana's constitution, it appears that the framers were
4 concerned that the needs of a basic quality system of education be realistically assessed. *See*
5 *Con. Con. Tr.*, Vol. II, 725 (Educ. and Pub. Lands Comm. comment).

6 141. In *Helena Elementary I*, the Montana Supreme Court also
7 recognized the importance of relating the school finance system to the educational
8 programs and opportunities made available in Montana's elementary and secondary
9 schools. The supreme court concluded that expenditure disparities among Montana
10 schools were not related to "educationally relevant factors." Based in part on this
11 conclusion, the court declared the funding system unconstitutional under Article X,
12 Section 1 of the Montana Constitution. *Helena Elementary I*, 236 Mont. at 55, 769 P.2d at
13 690.

14 142. One of the main problems with Montana's current school funding system is
15 that it is not based upon educationally relevant factors, nor is it based upon a determination of the
16 funding levels that are necessary to meet the standards required for public education. Rather, it
17 was designed to be a mathematical, statistical regression analysis based on previous expenditure
18 patterns. According to Superintendent McCullough in designing the current funding system, the
19 State made no effort to determine the components of a basic system of quality education, nor did
20 it make any attempt to relate the funding formula to the cost of providing that education or to
21 meet the requirements of its accreditation standards. According to Rodney Svee, the base amount
22 of funding under HB 667 is not tied to the actual cost of providing an education.

23 143. The base amounts allowable under HB 667 were never based on a
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1 determination of the costs of meeting mandates and expectations. Any number of
2 superintendents testified that the base amounts would not allow their districts to meet minimum
3 accreditation standards. (Svee Test.; Whitmoyer Test.; Armstrong Test.; McNeil Test.; Kultgen
4 Test.)

5 144. As noted earlier, the funding formula allows for different funding between
6 elementary and high schools. However, it appears that there was no study or research done that
7 would indicate that these funding differentials accurately reflect any cost differences that may
8 exist. Dr. Messinger indicated that the inadequacies and differences in the elementary funding
9 level have caused the Helena School District to take money out of its middle school program to
10 make up for shortfalls at the elementary level. According to Dr. Messinger, this has harmed the
11 quality of education in Helena's middle school program.

12 145. Other evidence points to the fact that HB 667's funding formula may not be
13 based on educationally relevant factors. HB667's formula provides for decreasing general fund
14 budget authority as ANB may decrease. This decline in general fund budget authority as a result
15 of declining enrollment, however, does not appear to be rationally related to the economic reality
16 of operating a school district.

17 146. Ron Whitmoyer of East Helena indicated that as enrollment in his district
18 has dropped, the district loses money under the funding formula, but costs do not go down
19 because many of the costs are fixed. A school district must continue with the same physical
20 plant, heating bills and electrical bills. (*See also* Armstrong Test.; Quinlan Test.)

21 147. After continued, unsuccessful attempts to convince the State to undertake
22 an effort to correlate funding to educational costs and needs, the Montana School Boards
23 Association, in conjunction with other interested groups, commissioned a study of the cost of

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1 providing an adequate education in Montana. The study was performed by the nationally-
2 recognized school finance consulting firm of Augenblick & Myers (A&M). Plaintiffs' Exhibit 68
3 is the resultant study which looked to determine the adequacy of school funding in Montana. The
4 study was designed to determine the funding levels necessary for different school districts to
5 produce a specific level of student performance or an adequate education. (Pls.' Ex. 68 at 1.)

6 148. A&M's finance experts utilized a "professional judgment" approach to
7 studying the costs of education in Montana. This is one of four methods that have been
8 developed to study the costs of education. In conjunction with the national experts,
9 approximately 80 educators from Montana participated in the study process,. These Montana
10 educators include well-recognized and respected educators and leaders from throughout the State,
11 including several members of the Montana Board of Public Education, as well as award-winning
12 administrators, teachers and school trustees. Several educators who participated in the study
13 testified at trial. They consistently endorsed the methodology and results of the study, and stated
14 that the resources identified were not "pie in the sky" or ideal, but were instead realistic
15 assessments of the resources necessary to meet existing standards and requirements.

16 149. According to the study, the professional judgment approach asked
17 educators to specify the resource needs of quality schools. It asked educators to identify the
18 resources they feel need to be in place in prototype schools in order for students to achieve a
19 specific set of objectives. *Id.* at i.

20 150. A&M explained its procedure as follows: First, A&M created prototype
21 districts. Then, a school level panel of educators focused exclusively on estimating the resources
22 needed at the prototype school site. A school district level panel then reviewed the work of the
23 school level panel and estimated the resource needs of the prototype districts. Finally, one expert

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1 panel reviewed the work of all the district panels and made choices regarding the price of
2 resources. *Id.* at ii.

3 151. According to the A&M study, Montana's school funding formula is not
4 currently providing adequate funding to allow school districts to meet the standards, expectations
5 and mandates that apply to public schools in Montana. This is consistent with the testimony of
6 Dr. Miller, Mr. McNeil, and Dr. Lawrence Picus, a nationally known school finance expert from
7 the University of Southern California.

8 152. The A&M study merely supports other evidence that shows that the State
9 of Montana is not adequately funding public education. Also, it demonstrates methods the State
10 could employ to analyze and construct a funding system that is rationally based on the costs that
11 must be necessarily incurred to meet the standards and requirements that govern public education
12 in Montana.

13 153. John Myers testified that the A&M study may not necessarily be the
14 answer for a new funding system for Montana. There are, for example, extra needs that have not
15 been factored in such as the unknown costs of the NCLB. Further, the A&M study does not deal
16 with building construction or transportation, nor does it have a built-in inflationary adjustment.

17 154. The Court notes that under Montana's current system, the average
18 expenditure per pupil is \$7,007, while the prototype districts had average expenditures per pupil
19 ranging from \$7,681 to \$9,954. *Id.* at 23.

20 155. This Court notes four deficiencies with the professional judgment
21 methodology as explained by Dr. Thomas Downes, an economics professor at Tufts University:
22 (1) the results cannot be duplicated; (2) the panel members have no incentive to think about
23 tradeoffs; (3) the process requires many panels members to predict out of samples beyond their

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1 own experience; and (4) the process suffers from an inherent upward bias driven by self-serving
2 behaviors of even one panel member. In addition, one panel member expressed concern that the
3 plan may call for more than Montana's economy could support. (Defs.' Ex. 685KKK.)

4 156. There is no question that John Myers and his firm are nationally renowned
5 experts in the field of educational finance, and that their study, although not perfect, certainly is a
6 good start.

7 157. According to Dr. Larry Picus, there are four methods to test adequacy to
8 see if a state's educational system allows students to meet standards. The first is the professional
9 judgment study just mentioned. The second is the evidence-based approach, where evaluators
10 look at models of school systems, such as was done in Arkansas and Kentucky. The third is the
11 successful school model where evaluators identify good schools, and then determine the costs
12 associated with those schools and apply those costs to other schools. Finally, there is the cost
13 function approach, which, according to Dr. Picus, has not been used by any state.

14 158. As noted earlier, the A&M study does not address building costs. The
15 Montana Legislative Fiscal Analyst Office conducted a study in 1990 and found “the results
16 indicated that many of Montana's inadequate school buildings are concentrated in the state's
17 poorest districts and that 4 of every 10 districts will need a new facility or extensive remodeling
18 of existing facilities by fiscal year 1996.” (Pls.' Ex. 160 at 23.)

19 159. State funding for capital outlay costs is proportionately not large. For
20 example, Plaintiffs' Exhibit 56 shows the ratio of state revenue for debt service compared to total
21 expenditures for debt service by district level. The state share of the total debt service for
22 building construction ranges, for fiscal year 2002, from about 6.7 to 9.8 percent. The cost of
23 constructing and maintaining school facilities remain primarily a local burden, funded primarily

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1 through local property taxes. (Pls.'s Ex. 56.)

2 160. In sum, evidence of the State's failure to adequately fund its share
3 of the elementary and secondary school system in Montana is evidenced by the following:

4 A. The growing number of school districts budgeting at or near their
5 maximum budget authority. (Picus Test.)

6 B. The increasing number of schools with accreditation problems.

7 C. The difficulty in attracting and retaining teachers, which is based,
8 to a large degree, on the decreasing salaries and benefits that are offered to Montana teachers
9 compared to their counterparts in the United States.

10 D. The large number of programs that have been cut in recent years as
11 evidenced by the testimony of numerous superintendents.

12 E. The increasing difficulties that schools are having constructing safe
13 and adequate buildings or maintaining the code compliance of the buildings that currently exist.

14 F. The increasing competition for general fund dollars between special
15 education and regular education, which lowers the available money to students in regular
16 education programs.

17 G. The results of the A&M study.

18 H. The testimony of various superintendents that, if they were forced
19 to provide their educational programs at the BASE general fund amount, they could not meet
20 accreditation standards or offer a quality educational program.

21 I. The declining share of the State's contribution to the general fund
22 budget of Montana's school districts.

23 J. The fact that Montana's funding formula is not reasonably related to

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1 the costs of providing a basic system of quality public elementary and secondary schools.
2 Further, it is clear that the current funding system was not based on a study of the funding
3 necessary to meet what the state and federal governments expect of Montana's schools.

4 K. The fact that the Montana Supreme Court has stated that it is the
5 State's obligation to adequately fund its share of the school financing formula. *Helena*
6 *Elementary I*, 236 Mont. at 55, 769 P.2d at 690.

7 L. The fact that the Montana Supreme Court noted that “[i]n 1972,
8 when our Constitutional Convention met, approximately 65% of General Fund revenues were
9 funded through the Foundation Program. The transcript of the debate on Art. X, § 1(3), Mont.
10 Const. clearly expresses the delegates’ concern with the level of funding.” *Helena Elementary I*,
11 236 Mont. at 48, 769 P.2d at 690.

12 **IX. Equity**

13 161. Dr. Picus, a nationally recognized expert in school finance and the
14 author of a leading text in the field, conducted an equity analysis of Montana’s school
15 funding system. According to Dr. Picus' analysis, using recognized measures of equity,
16 approximately one-third of Montana's children live in school districts where there are substantial
17 differences in expenditures or revenues per-ANB. (Picus Test.) Dr. Picus testified that Plaintiffs'
18 Exhibit 60, on pages 1 and 2, shows that smaller elementary school districts are substantially
19 unequal. In addition, Dr. Picus felt that there was substantial inequity for K-12 districts as shown
20 in Plaintiff's Exhibit 43. Further, Dr. Picus noted that only the smallest high school districts
21 shown on Plaintiffs' Exhibit 62 had worrisome inequity problems.

22 162. On cross-examination, however, Dr. Picus conceded that he had conducted
23 equity studies in both Massachusetts and Kansas in which he had used identical methods as the

1 study he conducted in Montana. (Picus Test.) In both Massachusetts and Kansas, Dr. Picus
2 evaluated the equity of spending across school districts on a statewide basis due to the fact that all
3 districts in those states are consolidated K-12 types. (Picus Test.) Dr. Picus did not attempt to
4 break down the districts by size in either state. (Picus Test.)

5 163. In both Massachusetts and Kansas, Dr. Picus found acceptable levels of
6 inequality based upon a series of statistical measures used by researchers in the field of school
7 finance, including the Federal Range Ratio, the Coefficient of Variation, the Gini Coefficient, the
8 McLoone Index, and the Verstegen Index. (Picus Test.)

9 164. A comparison of these various indices between Montana and
10 Massachusetts and Kansas, however, undermines the credibility of Dr. Picus's conclusions
11 regarding the unacceptable levels of inequality in Montana. For example, according to Dr.
12 Picus's own analysis, Montana's elementary school districts showed higher levels of equality
13 than either Massachusetts and Kansas. (Defs.' Exs. 685EE, 685UU.)

14 165. Despite this result, Dr. Picus testified that Montana's elementary districts
15 show unacceptable levels of equality beginning in those districts with enrollments between 151
16 and 400 students and continuing through the smaller districts. (Picus Test.) A review of his
17 analysis for Montana's elementary districts with enrollments between 151 and 400 students
18 reveals that Montana exceeds Massachusetts in all measures of equity, except the Verstegen
19 Index. (Defs.' Ex. 685II.) Montana's Verstegen Index for these districts was 1.10, compared
20 with 1.09 for Massachusetts. A comparison between these districts in Montana with Kansas
21 results in a similar outcome: Montana exceeds Kansas in all measures of equity except the
22 Verstegen Index. (Defs.' Ex. 685YY.)

23 166. A comparison of Montana's high school districts with enrollments of
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1 between 201 and 400 students to Massachusetts and Kansas also calls into question Dr. Picus’s
2 conclusions regarding Montana. These Montana high school districts exceeded Massachusetts in
3 all measures of equity. (Defs.' Ex. 685OO.) These Montana high school districts also exceeded
4 Kansas in all measures of equity except the Verstegen Index. (Defs.' Ex. 685CCC.) Finally, with
5 respect to K-12 districts, Montana’s districts with more than 400 students show higher levels of
6 equity than Kansas in all categories except one. (Defs.' Ex. 685EEE.)

7 167. In an attempt to rehabilitate Dr. Picus’s analysis, Plaintiffs asked him to
8 conduct a statewide analysis for Montana in order to get an “apples to apples” comparison with
9 the statewide equity analyses that he had conducted in Massachusetts and Kansas. According to
10 Dr. Picus, the levels of inequality in Montana on a statewide basis far exceed that found in
11 Massachusetts or Kansas on a statewide basis. (Picus Test.; Defs.' Ex. 166.)

12 168. As noted by Dr. Thomas Downes, who testified on behalf of the State, Dr.
13 Picus’s “apples to apples” comparison of Montana on a statewide basis to Massachusetts and
14 Kansas on a statewide basis, fails to take into account important differences. For instance,
15 Massachusetts and Kansas have only K-12 districts. By contrast, Montana has elementary
16 districts, high school districts, and K-12 districts. More importantly, Montana’s funding system
17 provides different levels of a base entitlement between the various types of districts and a
18 different level of ANB between elementary and high school students. (Downes Test.)

19 169. In light of Dr. Picus’s conclusions that the levels of inequality found in
20 Massachusetts and Kansas were acceptable, the Court finds it difficult to suggest that similar
21 levels of inequality in Montana should be deemed unacceptable.

22 170. This leaves the Court in quite a conundrum, since both Dr. Picus and Dr.
23 Downes are well-respected scholars. Concerning this conundrum, the Court takes the suggestion

1 of Plaintiffs' counsel and calls this dispute a tie. The laws enacted by the legislature are
2 presumed constitutional unless proven otherwise beyond a reasonable doubt. *Zempel v.*
3 *Uninsured Employers Fund*, 282 Mont. 424, 428, 938 P.2d 658, 661 (1997). Since Plaintiffs
4 have the burden to show that a statute is unconstitutional, the Court must find that concerning
5 school equity issues, Plaintiffs have not met their burden.

6 171. Plaintiffs suggest two other areas of inequity. First, Plaintiffs suggest that
7 the burdens of paying for the construction of school facilities still fall primarily on local
8 taxpayers, which is true. According to Plaintiffs, since local taxpayers must pay virtually the
9 entire cost of constructing buildings, the poor districts are unable to construct badly needed
10 facilities. (See e.g., Quinlan Test.) Further, Plaintiffs suggest that the competition between the
11 special education funds and general education funds for non-special education students creates
12 equity issues.

13 172. Plaintiffs' factual assertions are correct in regard to construction and
14 special education. However, the Court disagrees with Plaintiffs' categorization of these matters
15 as issues of equity. Rather, the Court treats these two issues as further evidence of inadequacy
16 rather than inequity.

17 **XI. Indian Education**

18 173. As noted earlier, Article X, Section 1(2) of the Montana Constitution
19 provides: “The state recognizes the distinct and unique cultural heritage of the American Indians
20 and is committed in its educational goals to the preservation of their cultural integrity.”

21 174. In *Helena Elementary I*, the Montana Supreme Court addressed this
22 subsection and held that “[T]he provision establishes a special burden in Montana for the
23 education of American Indian children which must be addressed as part of the school funding

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1 issues.” 236 Mont. 58, 769 P.2d at 693.

2 175. Despite this admonition by the supreme court, it would appear that nothing
3 has been done to effectuate subsection (2) of Article X, Section 1 of the Montana Constitution.
4 As shown on Plaintiffs' Exhibit 141 at page 53, the 1995 Montana Legislature adopted Senate
5 Joint Resolution No. 11, directing the committee on Indian Affairs to study issues relating to the
6 implementation of the Article X, Section 1(2) principles. The committee published its report to
7 the Fifty-Fifth Legislature in December 1996. The committee's conclusions included the
8 following:

9 1. The intent of Article X, section 1, subsection (2), of the
10 Montana Constitution is for **all** public schools to develop appropriate
11 policies and programs to recognize and preserve the value of the
12 American Indian culture and traditions.

13 2. Many public schools are attempting to educate their students
14 about the role of Indians in the history of Montana and the nation by
15 integrating Indian history into the regular history and social studies
16 curricula and by celebrating Native American Day every September.

17 3. Many public schools do not provide any instruction or
18 sponsor any activities relating to Indian history and culture.

19 4. Very few school districts require any specific training in
20 Indian studies for their certified personnel, nor do they provide such
21 instruction through inservice training. . . .

22 (Pls.' Ex. 141 at 53.)

23 176. In 1999, the legislature enacted House Bill 528, which has come to
24 be known as the Indian Education for All Act. It is codified at Sections 20-1-501 to -503,
25 MCA. The law incorporates mandates that are intended to give effect to the
constitutional principles of subsection (2) of Article X, Section 1. (Juneau Test.;
McCullough Test.; Silverthorne Test.)

 177. To have any meaning or effect, the Indian Education for All Act requires
resources and programs, which, in turn, require funding. Despite this, the legislature has

1 provided no funding. In this regard, the Court relies on the testimony of two well-respected
2 Native American educators, Carol Juneau and Joyce Silverthorne, a member of the Montana
3 Board Public Education.

4 178. In reality, the State appears to be defenseless on Plaintiffs' claim that
5 Article X, Section 1(2) of the Montana Constitution has not been implemented by the State
6 despite the constitution's direction to do so.

7 **X. The State has Acknowledged a Problem**

8 179. The 2001 legislature created the Governor's K-12 Public School Funding
9 Study Advisory Council. That advisory council's report and recommendations is dated December
10 31, 2001. (Pls.' Ex. 96.) In that study, it is noted that “the Council concluded that an adequacy
11 study would have several benefits. . . .” *Id.* at 31. However, it appears that no adequacy study
12 was ever completed.

13 180. The Office of Public Instruction is also on publicly on record in identifying
14 problems with Montana’s school funding system. (*See* Pls.' Exs. 2, 2A, 98, 99, 111, 112, 113,
15 116-121.)

16 181. The Montana Board of Public Education is on record recognizing that there
17 are serious problems with Montana's school funding system through its Action Plan (Pls.' Ex. 84)
18 and Position Paper on Public School Funding and Structure (Pls.' Ex. 87.) Further, the Board, as
19 noted earlier, was the sponsor of the studies conducted by Dr. Nielson concerning problems with
20 attracting and retaining teachers and administrative staff. (Pls.' Exs. 78 through 81.)

21 182. Part of the State's defense seems to encompass a view that a lot of the
22 problems mentioned by the educators are future problems. However, the continued existence of
23 Montana's system of quality public schools is threatened. As Superintendent McCullough

1 testified:

2 If we don't seriously address the very real problems, such as a looming
3 educator shortage and adequate state support for state schools, we will very likely
4 see a decline in the quality of the education our children receive. We need to
5 address these problems now. Waiting will only create far worse and more costly
6 problems.

7 (McCullough Test.)

8 183. Dr. Miller stated: "If we fail to work together now to provide a quality
9 system of education in Montana, it will take a generation to recover from the erosion we are
10 currently facing. Our children, and our state, deserve our best effort!" (Pls.' Ex. 88 at 6.)

11 **XII. The State's Defenses**

12 184. The State urges three defenses of the current funding system: (1)
13 Montana's relative spending in light of its fiscal capacity compared to other states; (2) Montana's
14 ability to recruit and retain quality teachers; and (3) achievement levels of Montana students as
15 measured by available standardized tests.

16 185. The State produced two very impressive witnesses in Dr. Thomas Downes
17 of Tufts University and Dr. Susanna Loeb of Stanford University.

18 186. The fiscal capacity issue is essentially the same one that was advanced by
19 the State in *Helena Elementary I*. In that decision, the Montana Supreme Court held that state-
20 wide fiscal difficulties cannot justify an unconstitutional funding system. 236 Mont. at 54, 769
21 P.2d at 690. The constitution says what it says and does not allow for such a defense.

22 187. The State also relies on evidence that Montana's students do well on
23 standardized national tests. Defendants' Exhibit 685F sets forth various encouraging statistics
24 concerning Montana students' achievements on the National Assessment of Education Progress
25 (NAEP) test and on college entrance examinations. The State attempted this same defense in

1 *Helena Elementary I*, and it was rejected there. 236 Mont. at 54, 769 P.2d at 690.

2 188. The educators who testified at trial indicated that performance on
3 standardized tests, such as are mentioned in Exhibit 685F, are an incomplete measure of
4 adequacy. Indeed, Dr. Downes, the State's main expert, admitted that he was unable to draw any
5 conclusions one way or the other with respect to the adequacy of Montana's funding based upon
6 available test score data. Primarily, the Court would assume this is so because the tests here in
7 question, the NAEP and the Iowa Test of Basic Skills, are standardized norm tests, whereas a
8 better measure would be criteria tests, which are not yet in place. These criteria tests measure
9 how well a school is doing on the standards-based approach that was mentioned above.

10 189. The Court notes that Superintendent McCullough testified that there is
11 evidence suggesting Montana's relative ranking is stagnating, and Dr. Darling-Hammond
12 testified that Montana's ranking has actually declined on some tests. For example, the fourth
13 grade NAEP test for reading shows that Montana fell from fourth in 1998 to ninth in 2003. (Pls.
14 Ex. 173.)

15 190. Further, the Court must give some weight to the fact that neither
16 Dr. Downes nor Dr. Loeb strayed far from any statistical data, and neither one of them
17 communicated directly with educators in Montana. In this regard, the Court must find more
18 credible the overwhelming evidence that has been presented by Montana's leading educators.

18 **XIII. Suggested Remedies**

19 191. This Court does not find it necessary or proper to define or specifically
20 determine the components of a “basic system of free quality public elementary and secondary
21 schools.” Also, it is unnecessary to declare a specified percentage that would be sufficient to
22 satisfy the State's share of the cost of this system. Suffice it to say, under the current system, the
23 Court concludes that the State is currently not meeting its obligation to fund its share of the costs

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1 of the system as it is required to by Article X, Section 1 of the Montana Constitution.

2 192. In this regard, it is important to further recognize and find that the
3 State's constitutional obligations are not limited to general fund budgets. Rather, the
4 cost of the basic system includes all costs, whether funded through the general fund or
5 other funds, including such significant funds as capital outlay/debt service, retirement
6 and transportation. When these additional costs are considered, the State is funding an
7 even smaller percentage of the total costs of the basic system.

8 193. The Court notes that there are methods recognized by policy makers and
9 experts for identifying the costs of meeting standards established by the State for its system of
10 public education. One of these costing-out methodologies is the professional judgment approach,
11 such as the A&M study. The Court finds this approach to determine an adequate level of funding
12 is much more reliable and accurate than the approach that was used in formulating the current
13 system and the actions taken by the State in respect to funding since the enactment of HB 667.
14 However, for the reasons noted earlier in this decision, the Court finds it would be inappropriate
15 to rely entirely on a professional judgment approach.

16 194. As noted by the State in its proposed Finding of Fact No. 72, Plaintiffs'
17 own expert, Dr. Picus, has modified his future adequacy studies to combine the professional
18 judgment methodology with the cost-based approach.

19 195. A particular requirement is that the funding system must be based on
20 educationally-relevant factors. This requires that the funding system be based on the costs of
21 meeting the standards that govern the operation of Montana's schools. Once adequate levels of
22 funding are determined, the State must then fund its share of the cost of the system. The State's
23 share must be an amount that is adequate at the BASE or foundation levels to allow districts to

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3. Article X, Section 1 of the Montana Constitution requires:

Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

4. This Court concludes that the rights in Article X, Section 1 were very important to the people who wrote the Montana Constitution. As noted by the Montana Supreme Court, there is no other instance in the constitution where that document guarantees a particular right. *Helena Elementary I*, 236 Mont. at 53, 769 P.2d at 689. Further, the Montana Constitution, in Article X, Section 1, imposes clear mandatory duties upon the Montana Legislature. Among those duties is the requirement that the legislature fund the State's share of the costs of the basic elementary and secondary school system.

5. This Court determines that a middle-tier analysis of the constitution is most appropriate in this case. *Mont. Env'tl. Info. Center v. Dep't of Env'tl. Quality*, 1999 MT 248, ¶ 57, 296 Mont. 207, ¶ 57, 988 P.2d 1236, ¶ 57 (“MEIC”); *See also Kaptein v. Conrad Sch. Dist.*, 281 Mont. 152, 931 P.2d 1311 (1997).

6. Under such a test, where a constitutionally significant interest is implicated, middle-tier scrutiny requires that the State demonstrate two factors: (1) that its classification is reasonable, and (2) that its interest in classifying is more important than the

1 1 through 15, into this Court's Order. Each of these Conclusions of Law is hereby entered as an
2 Order of this Court.

3 DATED this __ day of April, 2004.

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6 JEFFREY M. SHERLOCK
District Court Judge

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8 pc: James P. Molloy
Brian K. Gallik
9 Brian M. Morris/Ali N. Bovingdon

10 T/JMS/COLUMBIA FALLS V. STATE FCO.WPD

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