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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

FILED
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CLERK OF DISTRICT COURT
MARY ROOPE

HELENA ELEMENTARY SCHOOL)
DISTRICT NO. 1 AND HIGH SCHOOL)
DISTRICT NO. 1 OF LEWIS AND)
CLARK COUNTY; BILLINGS ELEMEN-)
TARY SCHOOL DISTRICT NO. 2 AND)
HIGH SCHOOL DISTRICT NO. 2 OF)
YELLOWSTONE COUNTY; et al.,)

Plaintiffs,)

- and -)

MONTANA EDUCATION ASSOCIATION;)
et al.,)

Intervenors-Plaintiffs,)

- vs -)

THE STATE OF MONTANA; and)
THE MONTANA BOARD OF PUBLIC)
EDUCATION; and the MONTANA)
SUPERINTENDENT OF PUBLIC)
INSTRUCTION,)

Defendants,)

- and -)

Cause No. ADV-85-370

OPINION AND ORDER

1 C. J. HOLJE, BERNT WARD and)
2 ROBERT FREDERICH on behalf of)
3 the residents and taxpayers of)
4 Sheridan County, Montana, and)
5 all others similarly situated,)

6 Intervenor-Defendants,)

7 - and -)

8 HAYES-LODGE POLE ELEMENTARY SCHOOL)
9 DISTRICT NO. 50 AND HIGH SCHOOL)
10 DISTRICT NO. 50, BLAINE COUNTY;)
11 et al.,)

12 Intervenor-Defendants.

13 Simply stated, the issue in this case is whether Montana's
14 system of public elementary and secondary school financing
15 infringes upon, burdens, or denies educational rights of persons
16 in this State and thus violates the fundamental constitutional
17 right of persons in the State to equal protection of the law
18 and to equality of educational opportunity. I find that such
19 infringement, burden, and denial clearly exists. The Plaintiffs
20 have proved the factual bases upon which their contentions
21 depend. The Plaintiffs have proved that, for the reasons they
22 present, the constitutional guarantees of equal opportunity
23 to an education and equal protection of the laws are infringed
24 upon, burdened, and denied to persons in this State.

25 The right to education is fundamental under the Montana
Constitution. Therefore, the Montana school finance system
is subject to strict scrutiny, and must be based upon a compelling

1 state interest, so long as Plaintiffs are able to prove, as
2 they have in this case, that the educational rights of persons
3 in this State have been infringed upon, burdened, or denied.
4 State ex rel. Bartmess v. Board of Trustees, ___ Mont. ___,
5 726 P.2d 801, 43 St.Rptr. 1713 (1986); Serrano v. Priest, 18
6 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929; Washakie County
7 School District #12 v. Hershler, 606 P.2d 310 (Wyo. 1980)

8 A right is fundamental under Montana's Constitution if
9 it is "found within Montana's Declaration of Rights or, if
10 it is not, that it is a right 'without which other constitution-
11 ally guaranteed rights would have little meaning.'" See Bartmess,
12 supra. The right to an education is set forth in section 1 of
13 Article X. While the right is not found within Montana's
14 Declaration of Rights (Article II), it is a right expressly
15 guaranteed in the Constitution and is most assuredly a right
16 "without which other constitutionally guaranteed rights would
17 have little meaning."

18 As noted by the Montana Supreme Court in Bartmess at p. 171
19 43 St.Rptr. and p. 804 of 726 P.2d, the strict scrutiny test requires
20 the State to show a compelling state interest and is seldom
21 satisfied. See also Butte Community Union v. Lewis, 712 P.2d
22 1309, 1312, 43 St.Rptr. 65 (1986). In this case, the State
23 did not meet the strict scrutiny test.

24 Regardless of whether education is considered to be a
25 fundamental right, it is a right of "extreme" importance under

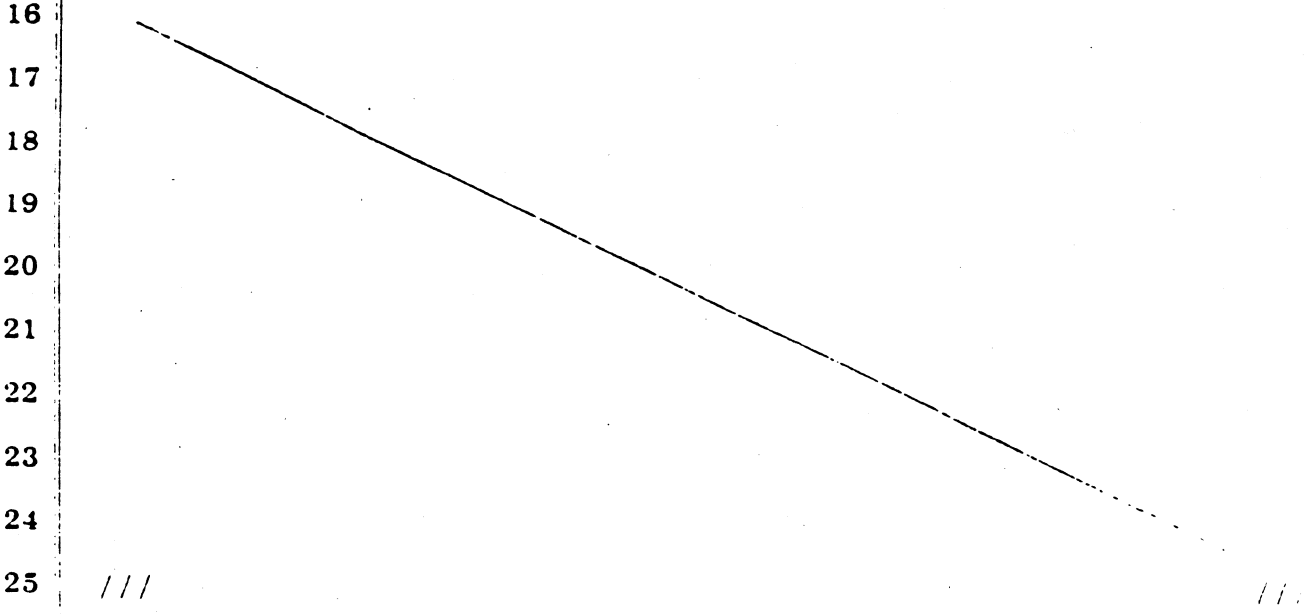
1 the Montana Constitution. Bartmess, 726 P.2d at 804. Under
2 that assumption, the school finance system is, at the minimum,
3 required to meet the middle-tier level of constitutional
4 analysis. Bartmess, supra. Tested by this middle-tier analysis,
5 Montana's school finance system violates the equal protection
6 provision of Article II, section 4 of the Montana Constitution.

7 Plaintiffs base their case upon the equal protection of
8 the laws clause of the Montana Constitution, Article II, section
9 4 (1972), and upon Article X, section 1, which states in subsection
10 (1): "Equality of educational opportunity is guaranteed to
11 each person of the state." This latter sentence is clear and
12 unambiguous. It is not necessary to ascertain its intent or
13 meaning from external sources such as the minutes of the
14 Constitutional Convention of 1972. It means exactly what it
15 says. It guarantees, pledges, and assures equality of educational
16 opportunity to each person of this State.

17 In 1949, the Legislature enacted the Montana School Founda-
18 tion Program. The purpose was to relieve pressure on the property
19 tax through state funding support; to provide equal educational
20 opportunity for children; and to apportion the financial burdens
21 of education fairly among the taxpayers. Until 1949, raising
22 revenues necessary for the schools was largely the responsibility
23 of the local communities, i.e., the counties and school districts.
24 This system was found to be inequitable, unjust, and outmoded.
25 Therefore, in 1949, a state level of funding was adopted which

1 had, as its primary purpose, affording equal public school
2 educational opportunities to all boys and girls in the State.

3 Since the adoption of the Foundation Program, in order
4 to administer the Program, every two years the Legislature
5 sets the "Maximum General Fund Budget Without a Vote" (MGFBWV)
6 (emphasis supplied) schedules for public elementary and secondary
7 school districts. These schedules do not establish maximum
8 budgets for the districts. The school districts can exceed
9 the schedules through non-tax revenues or by raising money
10 through voted local levies. It is important to distinguish
11 between MGFBWV and school district general fund budgets. The
12 former does not include funds raised by voted levies and the
13 latter, in most instances, does. For diagrams of Montana Public
14 School General Fund Structure and Budgeted Funds see copies
15 of Pl. Exhs. 4 and 4A which follow:



MONTANA PUBLIC SCHOOL GENERAL FUND STRUCTURE

MAXIMUM
BUDGET



VOTED:
DISTRICT MILL LEVY

DISTRICT
PROPERTY
TAXES

MAXIMUM
BUDGET
ACCORDING TO
SCHEDULES



OTHER INCOME:

CASH REAPPROP.
VEHICLE TAXES
INTEREST INCOME
TUITION INCOME
MISC. INCOME
P.L. 874 FUNDS

FOUNDATION
PROGRAM



PERMISSIVE:
STATE PERMISSIVE EQUALIZATION
DISTRICT MILL LEVY: ELEM. 6; HS. 4

STATE REVENUE
DISTRICT PROPERTY
TAXES
P.L. 874 FUNDS
VEHICLE TAXES

STATE EQUALIZATION:

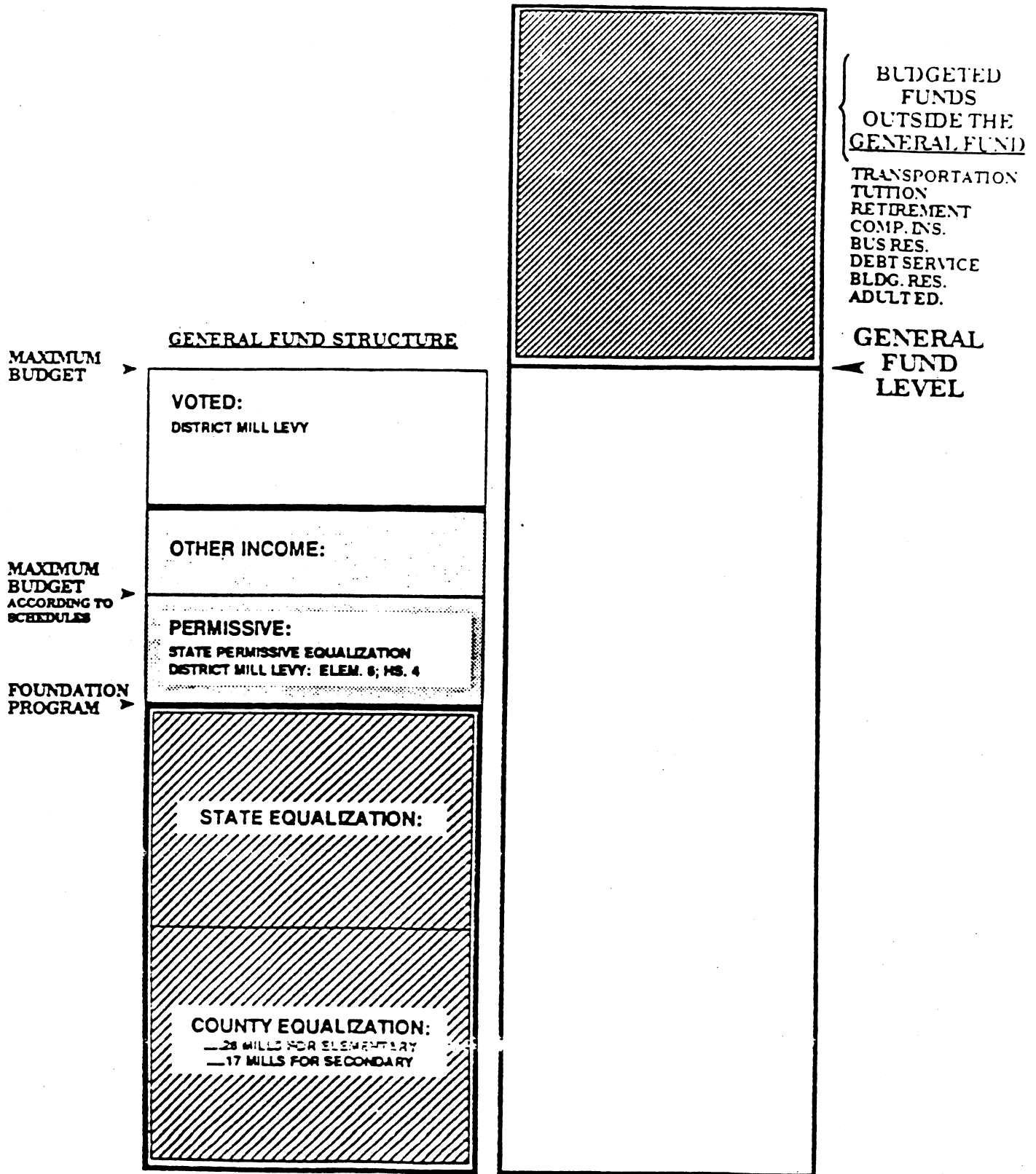
EARMARKED:
EDUC. TRUST FUND
ST. INCOME TAX
U.S. OIL/GAS
ROYALTIES
10% STATE COAL
TAXES
20% ST. CORP. TAXES
CO. EQUALIZATION
SURPLUS TAX
DIRECT
APPROPRIATIONS

COUNTY EQUALIZATION:

.....28 MILLS FOR ELEMENTARY
.....17 MILLS FOR SECONDARY

CO. PROPERTY
TAXES
VEHICLE TAXES
FED. FOREST FUND
TAYLOR GRAZING
FUND
MISC. REVENUE
CASH REAPPROP

MONTANA PUBLIC SCHOOL BUDGETED FUNDS



1 The first stage of school funding is equalization aid
2 provided through the Foundation Program to the school districts.
3 Each school district receives 80% of the MGFBWV through the
4 Foundation Program. It is funded by county and state equalization
5 revenues. Each county levies 45 mills (Elementary-28, High
6 School-17) on all taxable property within its boundaries. Additional
7 revenues from other sources are added to it. These "county
8 equalization" funds are distributed in an equal fashion to
9 the school districts in the county. If a county raises more
10 revenue by the imposition of the 45 mills than is necessary
11 under the Foundation Program for the county's school districts,
12 any surplus goes to the State to equalize aid to other school
13 districts. This is sometimes referred to as the "recapture
14 mechanism" of the Foundation Program. State equalization aid
15 comes from different sources such as earmarked revenues, surplus
16 county Foundation Program revenue as described above, and direct
17 legislative appropriations.

18 At this first stage of funding, the system is equalized.

19 The second stage of funding is the "permissive component."
20 This is the 20% difference between the Foundation Program component
21 and the MGFBWV. It is funded by revenues from district (local
22 permissive mill levies (Elementary-6, High School-4) and state
23 permissive equalization revenues. Non-tax revenues such as
24 Public Law 874 (P. L. 874) funds may also be used at this stage.
25 Again, if inequities occur in the process of levying the permissive

1 levy, State permissive equalization funds are used to make
2 up deficiencies for districts with relatively low property
3 wealth.

4 Although there are some minor disparities at this second
5 stage of funding, the system continues to be equitable.

6 The third stage of funding largely depends upon tax levies
7 voted by the electorates of the various school districts. It
8 is at this stage that the funding system becomes inequitable.
9 Over the years since the adoption of the Foundation Program
10 in 1949, the State has failed to shoulder its burden of funding
11 up to the amount originally contemplated by the Foundation
12 Program. Consequently, inequities have become embedded in
13 Montana's school financial system. In 1950, at its inception,
14 Foundation Program revenues funded 81.2% of the statewide total
15 general fund budgets. In 1986, however, Foundation Program
16 revenues funded only 58% of statewide elementary school general
17 fund budgets and 54% of secondary school general fund budgets.
18 This has caused disparities and inequities among school districts
19 in tax burdens, educational expenditures, and educational
20 opportunities. The reason for this is because the third stage
21 of funding for our schools relies upon local (district) voted
22 tax levies. The vast majority of the districts find it necessary
23 in order to properly fund a basic quality education, to resort
24 to funds derived from the voted local levy. This being so,
25 under Montana's school financing system, school districts with

1 high property valuations (wealthier school districts) have
2 more money available to them and, thus, are able to offer better
3 educational opportunities than school districts with lower
4 property taxable valuations (poorer school districts). This
5 unfair system is further exacerbated by the fact that capital
6 improvements within the school districts also depend upon voted
7 tax levies, and state equalization funds are not provided.
8 Moreover, teachers' retirement is funded on a local basis except
9 for a recent source of partial funding provided by an enactment
10 of the 1987 legislative session, i.e., a share of the profits
11 of the State Lottery. Pupil transportation funding also creates
12 inequities, as does the method of financing special education.

13 The net result of the three-stage system above referred
14 to, and which is described in greater detail in the Court's
15 Findings of Fact, is that Montana has not met its burden of
16 providing equality of educational opportunity. The disparate
17 wealth of the various districts brings about this inequity.
18 Many students who reside in poorer school districts have fewer
19 educational opportunities than students who reside in wealthier
20 school districts. The State's Foundation Program does not
21 achieve its purpose which is to reasonably fund and equalize
22 educational financing among the various school districts. The
23 lack of equalized funding causes the system to operate in an
24 unconstitutional way.

25 For example, Baker spends \$6,000 per student and comparabl.

1 sized Darby spends \$2,000 per student. Darby students are
2 being shortchanged.

3 In the general election in November 1986, the voters
4 adopted Initiative 105. The Legislature in 1987 adopted Senate
5 Bill 71. The net effect of these enactments (with a minor
6 exception for emergencies) is to freeze property tax amounts
7 at 1986 levels. Thus, the disparities and inequities previously
8 existing within Montana's school districts are "locked in."
9 Those districts with high mill levies remain high, and those
10 with low mill levies remain low.

11 This year Lewistown (a poorer school district) lost its
12 voted levy for the third and final time which means that Lewis-
13 town will be deprived of approximately one-third of its public
14 elementary and secondary school budget. The Lewistown students
15 lose out. It is unlikely that would have happened in a high
16 property value district.

17 Overall, actual school budgets are funded approximately
18 35% by voted levies and 65% by Foundation Program, permissive
19 levies, and miscellaneous revenues. The share provided by voted
20 levies has gradually increased over the years and it appears
21 likely this trend will continue. These funding percentages
22 are out of proportion. It is doubtful that this lawsuit would
23 have been brought if these percentages had remained reasonable
24 in line with what was expected and intended at the time of
25 the adoption of the equalized Foundation Program in 1949.

1 Superintendent of Public Instruction Argenbright is the
2 principal Defendant here. He is the Plaintiffs' main antagonist.
3 Yet he conceded ". . . given the current fiscal climate of
4 the Legislature these Plaintiffs were left with no recourse
5 but to sue."

6 The beliefs and opinions of Superintendent Argenbright
7 do not coincide with the position taken by the State's counsel
8 in this case. Following are excerpts or paraphrases from the
9 transcript of Superintendent Argenbright's testimony which
10 present views with which he either agreed or which he acknowledged
11 having expressed at some point in time prior to the trial of
12 this cause:

13 1. "This [tax] disparity has resulted in inequities in
14 taxpayer burdens and per student expenditures among districts.
15 There is clear evidence that high property wealth districts
16 have lower tax rates and higher per student expenditures while
17 lower property wealth districts have lower per student expenditure
18 and higher tax rates."

19 2. ". . . on balance the permissive levy results in
20 a disequalization among school districts."

21 3. ". . . There is very clear evidence that high wealth
22 school districts have lower taxes and higher expenditures per
23 student than do low wealth districts. This situation exists
24 because a fairly substantial portion of school district expend-
25 itures is in the voted levy amount."

1 4. ". . . some school districts have access to such large
2 amounts of non-tax revenues that district property taxes are
3 eliminated. None of Montana's existing funding mechanisms
4 make any adjustment to state aid payments based on wealth from
5 non-tax sources."

6 5. ". . . if the legislature does not freeze [sic] or
7 does not fund the foundation program adequately it is a back
8 door approach if you will to putting that burden on to local
9 property taxpayers. . . ."

10 6. In reference to gubernatorial cuts to State special
11 education funding, "the districts were either forced to cut
12 back on their spending for special education or were forced
13 to pick up those costs . . . out of district local sources."

14 7. There is "three times as much spending per student
15 in Baker High School as in Darby."

16 8. Initiative 105 creates a situation "that locks Darby"
17 into its inequitable situation, but that SB 71 would allow
18 some relief under "an emergency kind of situation."

19 9. As concerns the funding of teachers' retirement even
20 though "there is some minor mitigative effect from lottery
21 money going in after 1988," there still remains an inequitable
22 situation "from a taxpayer's standpoint."

23 10. ". . . about 35% of general fund budgets now on average
24 are provided by the voted levies."

25 11. Historically, the perspective has been that the Legislature

1 saves educational funding "to the last because it is such a
2 big budget item . . . and that causes problems with the schools
3 in budgeting."

4 12. ". . . the needs of education demand more than the
5 foundation schedules."

6 Practically every qualified expert witness agreed that
7 the system operated in an inequitable way. Defendants' fallback
8 argument is that if the districts meet their accreditation
9 standards as established by the Board of Education, a basic
10 quality education is provided and that this passes constitutional
11 muster. However, Defendant Board of Education has said "The
12 Board recognizes that the accreditation standards do not fully
13 describe basic quality education. Rather the standards establish
14 a measure of adequacy by specifying for schools the minimum
15 upon which a quality education can be built." (Emphasis supplied.)

16 The Office of Public Instruction expresses the fear that
17 if the current system is ruled unconstitutional, the Legislature
18 in its resulting quest for equality and given the current State
19 funding shortage, will adopt a system which, even though it
20 acts equally upon all, produces a uniformly poor education
21 in all the districts of the State. If that is a risk, and
22 I do not believe it is, it is one that must be taken.

23 Defendants say that even under stressful economic circum-
24 stances educators have been able, with dedication and ingenuity
25 to produce excellent students. In some instances, this may

1 be so. Nevertheless, that does not justify the imposition
2 of heavy taxing burdens upon some of the districts of the State,
3 while others are able to fund their programs with relative
4 ease. There can be no doubt that many students in the State,
5 regardless of the efforts made by local administrators and
6 teachers, are not being provided with the educational oppor-
7 tunities that other students who reside in wealthier school
8 districts receive as a matter of course.

9 P. L. 874 funds (Federal Impact Aid) are the special concern
10 of the Intervenor-Defendants who represent the interests of
11 school districts whose student enrollment is predominantly
12 Native American and who receive Federal Impact Aid funds because
13 of the presence of Indian reservations within their districts.
14 These Intervenor-Defendants urge the Court to segregate and
15 restrict these Federal Impact Aid funds so that they may not
16 be used in a general statewide equalization funding plan. They
17 are concerned that Native American students may not be treated fairly
18 by the Legislature. However, the Montana Constitution provides
19 in Article X, section 1(2) as follows:

20 The state recognizes the distinct and unique
21 cultural heritage of the American Indians and
22 is committed in its educational goals to the
preservation of their cultural integrity.

23 The Court declines to remove P. L. 874 funds from legislative
24 scrutiny. The Legislature needs to have the whole picture
25 before it.

1 I find, determine, and declare Montana's system of financing
2 public elementary and secondary schools to be in violation of
3 the Montana Constitution of 1972.

4 Solutions to the problems inherent in Montana's school
5 finance system are not simple. However, they can be solved.
6 It would be presumptuous of me to order specific remedies at
7 this time. Those solutions must await careful study by the
8 Legislature with the assistance of administrators, State
9 executives, and other professionals.

10 The relief granted by this Court is prospective and in
11 order to provide the Legislature with the opportunity to search
12 for and present an equitable system of school financing in
13 this State, this decision will become effective upon October
14 1, 1989. Washakie, 606 P.2d at p. 340.

15 The school system of the State of Montana shall continue
16 under existing statutes until October 1, 1989. The validity
17 and enforceability of past and future acts, bonded indebtedness,
18 and obligations incurred under applicable statutes are not
19 affected by this decision. Washakie, 606 P.2d at p. 340.

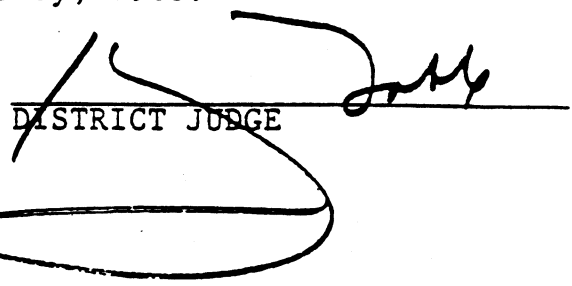
20 This Court retains jurisdiction until a constitutional
21 body of legislation is enacted and it will, from time to time,
22 take such action as may be necessary to assure conformity with
23 this decision. Washakie, 606 P.2d at p. 340.

24 Filed simultaneously herewith are the Court's Findings
25 of Fact and Conclusions of Law, plus an Order. In the main.

1 they are taken from the proposed findings and conclusions of
2 the Plaintiffs. I have carefully scrutinized each and all
3 of the findings and conclusions and the objections of the
4 Defendants and other parties have been studied and analyzed.
5 However, Plaintiffs' findings are supported by substantial
6 evidence. Evidence which contradicted such findings was
7 considered and rejected.

8 If there is any conflict between this Opinion and the
9 Court's Findings of Fact and Conclusions of Law, the latter
10 shall control.

11 IT IS SO ORDERED
12 DATED this 13th day of January, 1988.

13
14 
DISTRICT JUDGE

- 15 pc: James H. Goetz
16 James P. Molloy
17 John W. Larson
18 Rick Bartos
19 John North
20 W. William Leaphart
21 Loren O'Toole
22 Donald A. Garrity
23 Ben Hilley
24 Emilie Loring
25 Terry G. Spear

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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

HELENA ELEMENTARY SCHOOL)
DISTRICT NO. 1 AND HIGH)
SCHOOL DISTRICT NO. 1 OF)
LEWIS AND CLARK COUNTY;)
BILLINGS ELEMENTARY SCHOOL)
DISTRICT NO. 2 AND HIGH)
SCHOOL DISTRICT NO. 2 OF)
YELLOWSTONE COUNTY; et al.,)

Plaintiffs,

- and -

MONTANA EDUCATION ASSOCIATION;)
et al.,)

Intervenors-Plaintiffs,)

- vs -

THE STATE OF MONTANA; and THE)
MONTANA BOARD OF PUBLIC EDUCA-)
TION; and the MONTANA SUPERINTEN-)
DENT OF PUBLIC INSTRUCTION,)

Defendants,

- and -

Cause No. ADV-85-370

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER AND JUDGMENT

1 C. J. HOLJE, BERNT WARD and)
2 ROBERT FREDERICH on behalf of)
3 the residents and taxpayers of)
4 Sheridan County, Montana, and)
5 all others similarly situated,)

6 Intervenor-Defendants,)

7 - and -)

8 HAYES-LODGE POLE ELEMENTARY)
9 SCHOOL DISTRICT NO. 50 AND)
10 HIGH SCHOOL DISTRICT NO. 50,)
11 BLAINE COUNTY; et al.,)

12 Intervenor-Defendants.)

13 -----
14 THE COURT'S FINDINGS OF FACT
15 AND CONCLUSIONS OF LAW

16 This cause came on for trial commencing on May 11, 1987,
17 and continuing through June 17, 1987, before the Court sitting
18 without a jury, the Honorable Henry Loble, District Judge,
19 presiding. James H. Goetz and James P. Molloy of the Bozeman
20 firm of Goetz, Madden & Dunn, P.C. represented the Plaintiffs.
21 Benjamin W. Hilley of Hilley & Loring, Great Falls, represented
22 the Intervenor-Plaintiff, the Montana Education Association.
23 John W. Larson of Missoula, and Richard P. Bartos of the Office
24 of Public Instruction, Helena, represented the Defendants State
25 of Montana and the Superintendent of Public Instruction.
W. William Leaphart of the Leaphart Law Firm of Helena, represented
ed the Defendant Montana Board of Public Education. Terry
Spear of the Billings firm of Crowley, Haughey, Hanson, Toole
and Dietrich represented the Intervenor-Defendants Hayes-

1 Lodge Pole, et al.; Donald Garrity, of the law firm of Garrity,
2 Keegan & Brown of Helena, and Loren J. O'Toole of Plentywood,
3 represented the Intervenor-Defendants C. J. Holje, Bernt Ward,
4 and Robert Frederick.

5 The Court, having fully considered the law and evidence
6 adduced at trial through testimony of lay and expert witnesses,
7 deposition testimony, and exhibits, now makes the following
8 Findings of Fact and Conclusions of Law:

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1 FINDINGS OF FACT

2 I. INTRODUCTION

3 A. The Parties

4 1. Plaintiffs in this case are sixty-five (65) Montana
5 Public School Districts (35 elementary and 30 secondary dis-
6 tricts), and eight (8) individuals who are parents of students
7 in various Plaintiff school districts. The Plaintiff school
8 districts, which are diverse in both size and geographical
9 location, represent 35.1% of Montana's total elementary student
10 population, and 42% of the State's total secondary student
11 population. (Plaintiffs' Exhibits (Pl. Exh.) 16 and 17¹) The
12 Plaintiff districts are, on the whole, below the statewide
13 averages in property wealth and educational spending, and
14 above the statewide average in school taxes. (Pl. Exh. 18)

15 2. The Defendant State of Montana is a duly established
16 State within the United States of America.

17 3. The Defendant Montana Board of Public Education is
18 a board created by Article X, section 9 of the Montana
19 Constitution of 1972, and Section 2-15-1507, MCA.

20 4. The Defendant Montana Superintendent of Public Instruc-
21 tion is an elected executive officer of the State of Montana.
22 a position established by Article VI, section 3, of the
23

24 ¹Unless otherwise specified, all data, figures, and statis-
25 tics discussed or referred to herein relate to the 1985-86
academic school year, the last year for which comprehensive
data was available for purposes of preparing trial evidence.

1 Montana Constitution.

2 5. The Intervenor-Plaintiff Montana Education Association
3 (MEA) is a representative of school district employees in
4 employment related matters. The MEA also acts as an advocate
5 for quality public education. The MEA represents various
6 children, and parents of those children, who attend various
7 "low wealth" school districts in Montana.

8 6. The Intervenor-Defendants C. G. Holje, Bernt Ward,
9 and Robert Frederich are members of, and constitute the Board
10 of County Commissioners of Sheridan County, Montana. The
11 Intervenor-Defendants represent the residents and taxpayers
12 of Sheridan County, and all others similarly situated.

13 7. The Intervenor-Defendants Indian Impact Aid Districts
14 are Montana elementary and secondary school districts that
15 receive Public Law 874 (P. L. 874) monies due to the presence of
16 Indian reservations within their districts. The Association
17 of Indian Impact Schools of Montana is an unincorporated
18 association which consists of such districts. The Association was
19 formed to further quality education, maintain member school
20 access to P. L. 874 monies, and to identify and deal with
21 problems common to its member schools.

22 B. Litigation Background

23 8. Plaintiffs filed the Complaint in this case on April
24 17, 1985, alleging that Montana's system of funding elementary
25 and secondary schools violates Article II, section 4, and

1 Article X of the Constitution of the State of Montana.

2 9. The Defendant Board of Public Education moved to dismiss
3 the case in May of 1985, on the grounds that it presented
4 a nonjusticiable controversy. That Motion was denied on September
5 6, 1985.

6 10. Trial was originally scheduled to begin on December
7 1, 1986. By agreement of the parties, however, the trial
8 date was continued until May 11, 1987, to afford the 1987
9 Montana Legislature an opportunity to address the problems
10 complained of by the Plaintiffs.

11 11. After the Legislature failed to act in a manner which
12 would solve the problems complained of Plaintiffs, trial com-
13 menced as scheduled on May 11, 1987, and continued until June
14 17, 1987, with a total of 22 trial days. A total of 65 witnesses
15 testified, including nationally-recognized experts on education
16 and school finance, expert statisticians, administrators,
17 teachers, and school board trustees from Montana's school
18 districts, state legislators, and state officials. Numerous
19 exhibits were admitted into evidence, as were several depositions
20 transcripts.

21 C. The Importance of Education

22 12. At issue in this case is whether Montana's system
23 for financing its public elementary and secondary schools
24 violates our State Constitution. The case thus raises issues
25 of great magnitude, both in terms of public policy and individual.

1 constitutional rights.

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

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

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

25 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.

15. Public education is, without doubt, a fundamental
and most important function of the State of Montana and its

1 political subdivisions. It is a State and local responsibility
2 jointly shared.

3 II. MONTANA'S PUBLIC SCHOOL SYSTEM

4 A. Basic Facts

5 16. During the 1985-86 school year, 545 school districts
6 operated in Montana, with a total student enrollment of 153,869
7 and a total "average number belonging" (ANB)² of 151,565. (Final
8 Pre-Trial Order, Agreed Fact No. 3; Pl. Exh. 10)

9 17. 382 of these school districts were elementary districts,
10 with a total ANB of 105,090 representing 69% of the total
11 Montana ANB. (Pl. Exh. Nos. 10 and 26A) An elementary school
12 district provides public education for all grades up to and
13 including grade 8, including, where provided, preschool and
14 kindergartens. (Section 20-6-101, MCA)

15 18. There were 163 secondary districts, with a total ANB
16 of 46,475 or 31% of the total Montana ANB. (Pl. Exh. Nos.
17 10 and 26B) A secondary or "high school" district provides
18 public education for all grades beyond grade 8, including post-
19 secondary programs, except community college districts or the
20 Montana University System. (Section 20-6-101, MCA)

21
22 ²The term "average number belonging" (ANB) is the enrollment
23 measure used for Foundation Program calculations. A school
24 district's ANB results from the application of a statutory
25 formula to the enrollment, attendance, and absence of regularly
enrolled full-time pupils during the school term. The ANB
for a given year is based on the attendance record of the preceding
year. Section 20-9-311, MCA. The ANB figure is roughly comparable
to actual student enrollment.

1 19. Operating within the 545 school districts were 597
2 elementary schools, ten junior high schools, and 170 high schools,
3 for a total of 777 public elementary and secondary schools
4 in Montana. (Agreed Fact No. 2)

5 20. Fall 1986 enrollments for school districts in Montana
6 ranged from 1 ANB in the Cooke City Elementary District, to
7 10,608 ANB in Billings elementary schools, and 16 ANB in Reed
8 Point High School District to 5,176 ANB in Billings High Schools.
9 (Pl. Exh. Nos. 26A and 26B) Nearly 45% of Montana's public
10 schools have enrollments fewer than 100 students. (Agreed
11 Fact No. 2)

12 B. Governance

13 21. Public entities and officials at both the State and
14 local levels govern Montana's public school districts. (Note
15 Article X, section 8, Montana Constitution 1972)

16 22. The Board of Public Education consists of seven members
17 appointed by the Governor, and confirmed by the Senate. The
18 Governor, Commissioner of Higher Education, and State Superintendent
19 of Public Instruction are ex officio non-voting members of
20 the Board. Together with the Board of Regents of Higher Education
21 the Board of Public Education is responsible for long-range
22 planning, and for coordinating and evaluating policies and
23 programs for the State's educational systems. (Article X,
24 section 9, Montana Constitution 1972; Section 20-2-101, MCA)
25 Among other things, the Board of Public Education administers

1 and orders the distribution of State equalization aid (Sections
2 20-2-121(3) and 20-9-344, MCA), adopts standards of accreditation,
3 and establishes the accreditation status of every public elemen-
4 tary and secondary school in the State. (Sections 20-7-101
5 and 20-7-102, MCA)

6 23. The Superintendent of Public Instruction has the general
7 duty of supervising the State's public schools and school districts.
8 The powers and duties of the Superintendent are set by law,
9 generally Title 20, Chapter 3, Part 1 of the Montana Code
10 Annotated. The Superintendent supervises the budgeting procedures
11 prescribed by law, estimates the statewide equalization level
12 for the Foundation Program, and distributes State equalization
13 aid in support of the Foundation Program. The Superintendent
14 also recommends to the Board of Public Education standards of
15 accreditation for all public schools, as accreditation status
16 for each school. (Section 20-3-106, MCA)

17 24. The County Superintendent of Schools is elected in
18 each county of the State, unless a county manager form of
19 government has been organized in that county. The County
20 Superintendent's duties relate primarily to coordination of
21 administrative and budgetary matters between the office of
22 the State Superintendent of Public Instruction and local school
23 districts. (Section 20-3-205, MCA)

24 25. Article X, section 8 of the Montana Constitution vests
25 control of school districts in local boards of trustees.

1 26. Local boards of trustees are separate governing entities
2 for elementary and high school districts. Members may serve
3 both elementary and high school districts. They maintain separate
4 budgets and financial records for elementary and high school
5 districts. (Agreed Fact No. 50)

6 27. The trustees of each school district prescribe and
7 enforce policies for the government of the district, adopt
8 and administer the district's annual budget in accordance with
9 the budgeting provisions of Title 20 of the Montana Code Annotated,
10 employ administrative, teaching and support personnel for the
11 school district, and perform the other duties and functions
12 set forth by Montana law. (Sections 20-3-323 and 20-3-324, MCA)

13 C. Finance

14 1. Sources of Revenue

15 28. The funding for Montana schools comes from three general
16 sources: state, local, and federal revenues. In 1985-86, State
17 revenues (including State mandated local property taxes) accounted
18 for 57.4% of total elementary school district revenues, and
19 50.5% of total secondary school district revenues. Local revenues
20 (not including State mandated local property taxes) accounted
21 for 34.5% of total elementary school district revenues and 45.4%
22 of total secondary school district revenues. Federal revenues
23 accounted for 8.1% of elementary revenues, and 4.1% of secondary
24 revenues. (Pl. Exh. Nos. 11A and 11B)

25 29. The property tax is the primary source of local revenue.

1 Other sources of local revenue, to the extent they are available
2 to a school district, include vehicle taxes, cash reappropriated,
3 interest income, and other miscellaneous revenues, such as
4 tuition, consolidation payments, enrollment income, non-tax
5 revenues, and investment income.

6 30. The largest single source of federal funds received
7 by Montana school districts is P. L. 874 money, which will
8 be addressed in greater detail in subsequent Findings and
9 Conclusions. Other federal funds are largely earmarked for
10 specific educational purposes. For most school districts,
11 federal funds are less significant than State and local sources.

12 31. State revenues for education come from a variety of
13 sources, including various earmarked State revenues, State
14 mandated property taxes, and direct legislative appropriations.
15 (Section 20-9-343, MCA)

16 2. School District Budgets

17 32. There are a total of 22 funds, 10 budgeted funds and
18 12 non-budgeted funds, used in the operation of school districts.
19 (Section 20-9-201, MCA) For purposes of addressing issues
20 in this litigation, the budgeted funds, and more specifically
21 the General Fund, Transportation Fund, Retirement Fund, and
22 "Capital Outlay" Funds, including the Debt Service Fund and
23 Building Reserve Fund, are the most pertinent.

24 a. Budgeted Funds

25 33. School Districts must adopt budgeted funds in the

1 manner prescribed by law. The district then has the power
2 of expending the budget whether it has cash monies or not.
3 If there is not enough cash available to the school district,
4 the county treasurer must borrow money, by registering warrants,
5 to pay the current obligations. (Section 20-9-201(1)(a), MCA;
6 Agreed Fact No. 9)

7 34. Budgeted funds include:

8 (A) General Fund
9 (Title 20, Chapter 9, Parts 1 and 3, MCA)

10 (B) Transportation Fund
(Section 20-10-143, MCA)

11 (C) Tuition Fund
12 (Sections 20-5-307 and 20-5-312, MCA)

13 (D) Retirement Fund
(Section 20-9-501, MCA)

14 (E) Bus Depreciation Fund
15 (Section 20-10-147, MCA)

16 (F) Comprehensive Insurance Fund
(Section 2-9-212, MCA)

17 (G) Adult Education Fund
18 (Section 20-7-705, MCA)

19 (H) Non-Operating Fund
Section 20-9-505, MCA)

20 (I) Debt Service Fund
21 (Section 20-9-438, MCA)

22 (J) Building Reserve Fund
(Section 20-9-503, MCA)

23 (Agreed Fact No. 11)

24 b. Non-Budgeted Funds

25 35. As the description implies, school districts do not

1 adopt a budget for non-budgeted funds. Instead, district
2 expenditures are limited to the amount of cash on hand. (Section
3 20-9-201(1)(b); Agreed Fact No. 10)

4 36. Non-budgeted funds include:

- 5 (A) Food Services Fund
(Section 20-10-204, MCA)
- 6 (B) Miscellaneous Fund
(Section 20-9-507, MCA)
- 7 (C) Traffic Education Fund
(Section 20-9-510, MCA)
- 8 (D) Rental Fund (Housing and Dormitory Fund)
9 (Section 20-9-509, MCA)
- 10 (E) Sick Leave Reserve Fund
11 (Section 20-9-512, MCA)
- 12 (F) Block Grant Chapter 1 Fund
13 Required by Federal Government
- 14 (G) Block Grant Chapter 2 Fund
15 Required by Federal Government
- 16 (H) Block Grant Type C Fund
17 Required by Federal Government
- 18 (I) Block Grant Type D Fund
19 Required by Federal Government
- 20 (J) Building Fund
21 (Section 20-9-604, MCA)
- 22 (K) Endowment Fund
(Section 20-9-604, MCA)
- 23 (L) Interlocal Agreement Fund
(Section 20-9-511, MCA)

24 (Agreed Fact No. 11)

25 3. Budgets: The General Fund v. Total Budget District.

37. The General Fund is the largest budgeted fund. General

1 Fund budgets account for approximately 70% of total, statewide
2 school district budgeted funds.

3 38. As the foregoing Findings demonstrate, in addition
4 to the General Fund, there are several other budgeted funds,
5 which account for the remaining 30% of statewide budgeted funds.
6 These outside funds include Retirement, Transportation, Tuition,
7 Bus Depreciation, Comprehensive Insurance, Adult Education,
8 Non-Operating, Debt Service, and Building Reserve. At trial,
9 particular attention was given to the Retirement, Transportation,
10 and "Capital Outlay," (Debt Service and Building Reserve) Funds.
11 As will be established in subsequent Findings, these non-General
12 Fund budgets are funded primarily through local tax revenues,
13 thus resulting in disparities among school districts in tax
14 efforts and/or revenues, due to disparities in district taxable
15 wealth. The mechanism by which each of these latter budgets
16 (Retirement, Transportation, and Capital Outlay) is funded as
17 described below.

18 4. Budgets: The Operation of Selected Budgeted Funds

19 a. Teachers' Retirement

20 39. The Retirement Fund budget exists for the purpose
21 of covering the employer's (school district) contribution to
22 the Teacher's Retirement System, the Public Employees' Retirement
23 System, Unemployment Compensation, and Social Security.

24 40. The school district's contribution to the Teacher's
25 Retirement System is a set percentage of each employee's gross

1 salary. The Unemployment Compensation employer's contribution
2 is not uniform; each district has its own rate. (Section
3 20-9-501, MCA)

4 41. Prior to 1971, the cost of retirement was part of
5 a school district's General Fund budget. Thus, the State shared
6 in the cost of Teacher's Retirement through Foundation Program
7 funding. In 1971, however, the Montana Legislature removed
8 Retirement from the General Fund, and in doing so, placed the
9 entire burden of funding districts' retirement costs on local
10 taxpayers. (Pl. Exh. 7, A Legislative and Financial History
11 of the Montana School Foundation Program (1949-1981), p. 7)

12 42. Unlike most local school revenue which is raised on
13 a district-by-district basis, revenue for school districts'
14 Retirement Funds are generated through a county-wide property
15 tax levy; that is, a uniform number of mills is assessed on
16 a county-wide basis to fund the Teacher's Retirement Funds
17 for all school districts within that particular county.
18 (Section 20-9-501, MCA)

19 43. To provide the necessary revenues for the Retirement
20 Fund budget for each district within the county, that county
21 assesses a levy on all of the taxable property within the county.
22 That mill levy is not subject to voter approval. The number
23 of mills levied depends upon the total of the Retirement Fund
24 budgets of all districts within the county and the taxable
25 valuation of the county. (Sections 20-9-501(4) and 20-9-142, MCA)

1 44. The number of mills assessed to finance retirement
2 varies widely among the counties in Montana. In 1985-86, the
3 number of mills levied for retirement ranged from a low of
4 2.54 mills in Fallon County to a high of 65.36 mills in Deer
5 Lodge County. (Pl. Exh. 67) The variation of mills levied
6 will be less as a result of the net lottery revenue distributed
7 to counties that levied in excess of nine mills in the prior
8 year. (Exh. M-328)

9 45. The 1987 Montana Legislature passed, and the Governor
10 amended, Senate Bill 183, which will distribute revenue from
11 the new Montana Lottery to help fund Teacher Retirement.

12 46. Under Senate Bill 183, net revenues from the lottery
13 will be distributed on a per ANB basis to each county which
14 levies nine (9) or more mills to support its school districts'
15 Retirement Funds. Fiscal notes accompanying Senate Bill 183
16 estimated that lottery revenues available to offset property
17 taxes for teachers retirement will be \$7,463,000.00 in 1988,
18 and \$9,120,500.00 in 1989. (Exh. M-328)

19 47. Assuming that Senate Bill 183 had been in effect in
20 the 1985-86 school year, and applying the most optimistic revenue
21 assumption, Fallon County would still have had the lowest county
22 retirement millage at 2.54 mills. The highest county retirement
23 millage would have been reduced to 51.42 mills in Deer Lodge
24 County. The average retirement county millage would have been
25 reduced from 30.76 mills to 24.08 mills. An average of 80% of

1 retirement costs would still be funded by counties. (Pl. Exhs.
2 67A and 67B)

3 48. In sum, even though lottery revenues will provide
4 some State support for retirement, the burden of funding districts'
5 retirement costs will remain substantially on local taxpayers.

6 b. Transportation

7 49. The Transportation budget exists for the purpose of
8 providing publicly-financed school transportation.³ The State
9 establishes financial schedules which define the transportation
10 expenditures for which a district is eligible for State and
11 county reimbursement. These expenditures are referred to as
12 "Transportation on Schedule." Expenditures above or not included
13 in these financial schedules are referred to as "Transportation
14 Over Schedule," and are the obligation solely of the local
15 school district. (Sections 20-10-141 and 20-10-142, MCA)

16 50. For purposes of defining the respective financial
17 obligations of the State, county, and district, the Transportation
18 on Schedule amount for each elementary and high school district
19 is divided into thirds. A State appropriation covers one-third
20

21 ³School districts must provide transportation without
22 cost to "eligible transportees," who are those students living
23 more than three miles from the closest school building within
24 their grade level, as well as those special education students
25 for whom transportation is required in their Individual Education
Plans. School districts commonly choose to offer transportation
without cost to students who live inside the three-mile limit
based on safety considerations. Also, districts sometimes choose
to provide free transportation to otherwise ineligible transportees
when doing so poses no extra costs to the district.

1 of the on-schedule amount for elementary and high school districts.
2 (Section 20-10-145, MCA)

3 51. For elementary districts, one-third of the remaining
4 on-schedule amount is funded through county equalization funds
5 derived from the 28-mill mandatory, statewide levy. The remaining
6 one-third of the on-schedule amount, plus the entire over-schedule
7 amount is funded through a non-voted levy on the taxable property
8 of the school district. (Sections 20-9-331(1)(a) and 20-10-144,
9 MCA) The number of mills required to fund the district's obligation
10 is a function of the total dollars needed and the district's
11 taxable valuation, i.e., property wealth.

12 52. High school districts are treated differently. The
13 remaining two-thirds of the on-schedule amount (after the State
14 appropriation) is funded by the county through a non-voted
15 levy on the taxable property of the county. The over-schedule
16 portion of high school districts' Transportation budgets is
17 funded through a non-voted levy on the taxable property of
18 the district. (Sections 20-10-144, 20-10-145, and 20-10-146.
19 MCA) These county transportation levies, in 1985-86, ranged
20 from a low of .17 mills in Petroleum County to a high of 3.27
21 mills in Carter County. Again, the number of mills required
22 for the county and district transportation levies depends on
23 the dollar amounts needed and the property wealth of the county
24 and district, respectively. It also depends upon the districts'
25 policies in providing free bus transportation to "ineligible

1 transportees," and the shifting of administrative costs from
2 "General Fund budget" to Transportation budget. The cost does
3 not relate solely to the statutory requirements set out by
4 law.

5 53. In sum, while there is State participation in funding
6 school districts' Transportation Budgets, the burden of funding
7 those budgets falls most heavily on local taxpayers, through
8 non-voted county and district transportation levies.

9 c. "Capital Outlay": Debt Service and Building
10 Reserve Funds

11 54. There are three methods, in general, by which school
12 districts can finance capital construction or improvements
13 to school facilities: (1) through the General Fund; (2) the
14 Debt Service Fund; and (3) Building Reserve Fund.

15 55. In rare instances, or when a district is wealthy,
16 the cost of Capital Outlay can be accomplished through the
17 General Fund. For most school districts, however, the Debt
18 Service and Building Reserve Funds are the primary method of
19 funding Capital Outlay.

20 56. The Debt Service Fund exists for the purpose of paying
21 interest and principal on outstanding bonds. The trustees
22 of a school district may issue and negotiate bonds on the credit
23 of the school district for the purposes of: (a) building,
24 altering, repairing, buying, furnishing, equipping, purchasing
25 lands for and/or obtaining a water supply for, a school teacherage.

1 dormitory, gymnasium, other building, or combination of these
2 buildings for school purposes, including post-secondary vocational-
3 technical centers in the school district; (b) buying a school
4 bus or buses; (c) providing the necessary money to redeem
5 matured bonds, maturing bonds, or coupons appurtenant to bonds
6 when there is not sufficient money to redeem them; (d) providing
7 the necessary money to redeem optional or redeemable bonds
8 when it is for the best interest of the school district to
9 issue refunding bonds; or (e) funding a judgment against the
10 district. (Section 20-9-403, MCA; Agreed Fact No. 38)

11 57. In order to issue bonds for any purpose other than
12 redeeming outstanding bonds, a school district must obtain
13 voter authorization.⁴ (Section 20-9-421, MCA; Agreed Fact
14 No. 39)

15 58. The maximum amount for which each school district
16 may become indebted by the issuance of bonds, including all
17 indebtedness represented by outstanding bonds of previous issues
18 and registered warrants, is 45% of the taxable valuation of
19 the school district. (Section 20-9-406; Agreed Fact No. 40)
20 Consequently, the greater a district's taxable valuation, the
21 greater the amount it may raise through bond issues to construct
22

23 ⁴If there is at least 40% voter turnout, a simple majority
24 of the votes cast is required to pass the bond issue. If voter
25 turnout is between 30% and 40%, a 60% plurality of the votes
cast is necessary to approve a bond issue. A bond issue may
not be passed if voter turnout is less than 30%. (Section
20-9-428, MCA)

1 or remodel facilities.

2 59. Once a bond issue has been approved by the voters,
3 the revenues to finance the interest and principal on the out-
4 standing bonds are raised through a mandatory levy on the tax-
5 able property in the district. The number of mills required
6 for Debt Service depends upon the number of dollars needed
7 and the property wealth of the district. (Section 20-9-439,
8 MCA)

9 60. The Building Reserve Fund exists for the purpose of
10 establishing and maintaining a cash reserve to be used after
11 a specified period of time for construction, renovation, or
12 repair of school buildings, or for the purpose of purchasing
13 land needed for school purposes in the district. There must
14 be voter approval to establish a Building Reserve Fund. The
15 voters must be presented with a ballot detailing the yearly
16 contribution to the Building Reserve, the total amount to be
17 raised, the number of years over which such amount is to be
18 raised, and the purpose or purposes for which the Building
19 Reserve will be used. (Section 20-9-502, MCA; Agreed Fact
20 No. 41)

21 61. If a Building Reserve Fund is authorized by the voters,
22 an annual levy is assessed on the taxable property of the district
23 to fund the annual contribution to the Reserve Fund. (Section
24 20-9-503, MCA; Agreed Fact No. 42)

25 62. The total amount of Building Reserve, when added to the

1 outstanding indebtedness of the district, shall not exceed
2 45% of the taxable value of the taxable property of the district.
3 (Section 20-9-502(2); Agreed Fact No. 43)

4 63. In sum, funding the Debt Service and Building Reserve
5 Funds is entirely the obligation of school districts; there
6 is no state contribution to these funds.

7 III. THE GENERAL FUND

8 A. Introduction

9 64. As previously established, the General Fund is the
10 largest school district fund, constituting approximately 70%
11 of school districts' budgets statewide. It is the fund which
12 finances the general operation and maintenance costs of a school
13 district.

14 65. The total amount of spending for schools in all funds
15 in Montana in 1985-86 was \$649,546,201.15.

16 The following chart demonstrates the revenue sources,
17 along with 1985-86 statewide, total expenditures, for the General
18 Fund:

19	A. Foundation Program Dollars	\$247,504,552
20	1. County Equalization	
21	(Sections 20-9-331 and	
	20-9-333, MCA)	
22	2. State Equalization	
23	(Sections 20-9-343 and	
	20-9-347, MCA)	

24
25 ///

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1	B. Permissive Dollars	\$ 61,891,851
2	1. District (Local) Permissive	
3	(Section 20-9-352, MCA)	
	- \$18,437,903.00	
4	2. State Permissive	
5	(Section 20-9-352, MCA)	
	- \$43,453,948.53	
6	C. "Over-Schedule" Dollars	\$166,444,645
7	1. Voted Levy	
8	(Section 20-9-353, MCA)	
9	2. Non-tax and Miscellaneous Revenue	
	(Section 20-9-104, MCA)	
10		<hr/>
	TOTAL	\$475,841,048

11 (Agreed Facts Nos. 12, 55, and 56; Pl. Exhs. 4 and 4A)

12 B. The Foundation Program

13 1. Introduction

14 66. In 1948, the Montana Superintendent of Public Instruc-
 15 tion wrote:

16 Up to the present time, the Legislative Assembly
 17 of Montana has delegated most of the responsibility
 18 of operating schools to the local communities,
 19 the county and school district. These two divisions
 20 of government must depend primarily upon the
 21 property tax for the revenue necessary for the
 22 schools. . . . [T]his form of financing has
 23 become inequitable, unjust and outmoded. A
 24 source of revenue other than the property tax,
 on a state level should be found in order to
 serve as a replacement tax on property, adjust
 inequalities due to the differences in the
 distribution of property wealth in the state,
 and afford equal educational opportunity to
 all boys and girls in the state.

25 G. Bandy, Financing the Public Schools of Montana, p. 4, Pl.
 Exh. 102; See also A Legislative and Financial History of the
 Foundation Program (1949-1981), Pl. Exh. 7.

1 67. In an attempt to remedy the problems identified by
2 the Superintendent, the Legislature in 1949 enacted the Montana
3 School Foundation Program. (G. Bandy, Financing the Public
4 Schools of Montana, p. 4, Pl. Exh. 102; See also History of
5 Foundation Program, Pl. Exh. 7) The goals of the Foundation
6 Program were to:

7 1. Gain state funding support to relieve pressure
8 on the property tax;

9 2. Provide equal educational opportunity for
10 children; and

11 3. Apportion fiscal burdens of education fairly
12 among taxpayers.

13 (Bandy Report, p. 4, Pl. Exh. 102; Joint Subcommittee on Educa-
14 tion, Montana School Finance: A Question of Equity, p. 6,
15 (1982), Pl. Exh. 101)

16 68. The intent of a Foundation Program approach in school
17 finance is to neutralize local property wealth as a determinant
18 of educational spending.

19 2. The Maximum-General-Fund-Budget-Without-A-Vote

20 69. For the purpose of funding public schools, the Montana
21 Legislature, every two years, sets the "Maximum General
22 Fund Budget Without a Vote" (MGFBWV) schedules for public
23 elementary and secondary school districts. These schedules
24 provide differential dollars per ANB for various size categories
25 of school districts. (See Sections 20-9-318 and 20-9-319,
MCA) The amount per ANB decreases as school district size
increases. Individual school districts calculate their maximum

1 budgeting schedules by multiplying the number of anticipated
2 ANB by the maximum budget schedule established by the Legislature.
3 The amount allowed per ANB varies depending on the number of
4 ANB, with larger amounts allowed for smaller sizes, as discussed
5 more fully below. The "maximum budgeting schedules," however,
6 do not establish a maximum budget for the districts. Rather,
7 school districts may, and do, exceed the maximum budget schedules
8 by spending non-tax revenues and/or by raising money through
9 voted local levies as described below. (Agreed Fact No. 14)

10 70. The principal factors, or variables, in the MGFBWV
11 schedule are first, the number of students, expressed as Average
12 Number Belong (ANB), and second the type of school - high school,
13 middle school, or elementary school. A special approach, using
14 a classroom unit, applies in the case of very small schools
15 (i.e., one-, two-, and three-teacher schools). Schools with
16 fewer than 18 students may have one teacher, schools between
17 14 and 18 students may have funding for a teacher-plus-aide,
18 schools with more than 18 students may have funding for two
19 teachers, and schools with more than 40 students, and less
20 than 51 students, may have funding for three teachers. (Sections
21 20-9-318 and 20-9-319, MCA; Agreed Fact No. 71)

22 71. Special education programs are handled as part of
23 the General Fund. If a school district anticipates offering
24 a special education class or program in the ensuing year, it
25 must request State approval of the allowable cost of the program.

1 Approved allowable costs are incorporated into the MGFBWV.⁵
2 (Agreed Fact No. 23; Sections 20-9-321 and 20-7-431, MCA)

3 72. In sum, a school district's MGFBWV (Section 20-9-303,
4 MCA) is the total of the amount in the schedules as set by
5 the Legislature, plus the approved allowable costs for Special
6 Education (Section 20-9-321, MCA) This is the maximum amount
7 a district can budget without using non-tax revenue, cash
8 reappropriated, and/or levying a local voted levy. (Agreed
9 Fact No. 16)

10 3. The Foundation Program Component

11 73. Through the Foundation Program, school districts receive
12 "equalization aid." The Foundation Program amount for each
13 school district is 80% of its MGFBWV. This amount represents
14 the minimum budget a district may adopt in support of its
15 schools to qualify for State equalization funds. The Foundation
16 Program is funded by county equalization revenues and State
17 equalization revenues. (Section 20-9-303, MCA)

18 74. To raise revenues in support of each district's Founda-
19 tion Program amount, the county commissioners of each county
20

21 ⁵As is commonly done in analyzing General Fund budgets,
22 the majority of evidence at trial excluded, or deleted, Special
23 Education from the General Fund analysis. In other words,
24 the data analyzing and comparing General Fund budgets generally
25 was expressed in terms of "the General Fund budget, with the
Allowable Costs of Special Education removed." The financing
of Special Education, and its implications for the present
case, are addressed in Section IV-E, below.

1 in Montana must levy 45 mills on all taxable property within
2 their county: 28 mills for the support of elementary districts,
3 and 17 mills for the support of secondary districts. Additional
4 revenues, to the extent they are available to a county, are
5 added to the proceeds from the mandatory 45-mill levy to make
6 up the "county equalization" funds. These additional revenues
7 include vehicle taxes,⁶ federal funds,⁷ Taylor Grazing Funds,⁸
8 county cash reappropriated,⁹ and miscellaneous revenues.

9 (Sections 20-9-331 and 20-9-333, MCA)

10 75. The County Superintendent of Schools distributes the
11 total county equalization revenues to the school districts
12 in the county, according to their Foundation Program schedule
13 amounts. (Sections 20-9-331 and 20-9-334, MCA)

14 76. The mandatory 45 mills in the various Montana counties
15 raises divergent amounts of revenue, depending directly on
16 the taxable valuation of each county. (Agreed Fact No. 17)

17 77. If a county raises more revenue through the mandatory
18 45 mills than required to meet the total Foundation Program
19 amount for the county's school districts, the surplus revenue
20 goes to the State Special Revenue Fund for State equalization.

21
22 ⁶See Sections 61-3-532 and 61-3-536, MCA.

23 ⁷See Sections 17-3-211, 17-3-212, 17-3-231, and 17-3-232.

24 ⁸See Sections 17-3-221 and 17-3-222, MCA.

25 ⁹See Section 17-3-222, MCA.

1 aid to other school districts of the State. (Section 20-9-331(1)(b),
2 MCA) This is referred to as the "recapture mechanism" of the
3 Foundation Program.

4 78. If the county equalization revenues are insufficient
5 to meet the total Foundation Program schedules for the county's
6 school districts, the County Superintendent apportions the revenues
7 equally among the school districts on a percentage basis. For
8 example, if a county is able to raise only 50% of the total
9 amount of revenue necessary to meet the Foundation Program
10 amounts of all districts in the county, each district receives
11 50% of its Foundation Program revenues from the county equaliza-
12 tion fund. State equalization revenues supplement the county
13 equalization revenues to eliminate the deficit between the
14 Foundation Program amount and the amount received through county
15 equalization dollars. (Section 20-9-335, MCA)

16 79. Revenue for State equalization aid comes from a variety
17 of sources, including: (1) earmarked revenues from the education
18 trust fund, state income tax, United States oil and gas royalties,
19 10% of state coal taxes, and 25% of state corporation taxes;
20 (2) surplus county Foundation Program revenue, as described
21 above; and (3) direct legislative appropriations. (Section
22 20-9-343, MCA; Pl. Exhs. 4 and 4A) Middle-school funding,
23 at the option of elementary districts, can provide a source
24 of different payments to school districts and authorize a
25 separate funding mechanism. (See discussion of budget units

1 and middle school funding, part 4, pp. 11-13, Pl. Exh. 5)

2 80. At this stage of funding, every Montana elementary
3 and high school district Foundation Program budget (80% of
4 the MGFBWV) is fully funded.¹⁰ Moreover, each district of
5 similar size has received the same amount of General Fund revenue
6 per ANB, with equal tax efforts (the mandatory, statewide,
7 45-mill levy). In other words, the system is equalized at
8 this level of funding. Middle school funding, when adopted
9 by an elementary district, does not change the substantive
10 truth of this finding.

11 C. The Permissive Component

12 81. The "permissive component" of a school district's
13 General Fund budget is the 20% difference between the Foundation
14 Program component and the MGFBWV. The permissive component
15 is funded by revenues from district (local) permissive mill
16 levies and State permissive equalization revenues. School
17 districts with access to non-tax revenues, including P. L.

18
19 ¹⁰They are "fully funded" in the sense that the schedules
20 are set by the Legislature based on the level of appropriations
21 made for the schools. Thus, the schedules are not set on an
22 independent determination of need, but based on the amount
23 of appropriations the Legislature is willing to provide for
24 education for the biennium. A chronic complaint with public
25 school financing is that the State's budget is balanced on
the backs of schools. State Superintendent Argenbright, for
example, testified that the general pattern has been for the
Legislature to use school funding as a budget balancer.

1 874 funds,¹¹ may use those revenues to meet the permissive
2 amount. (Section 20-9-352, MCA)

3 82. School boards may impose, at their own discretion,
4 permissive levies of up to six mills for elementary schools
5 and four mills for high schools. These levies are assessed
6 by a special resolution, which is not subject to voter approval;
7 that is, the "permissive levy" is not presented to local voters
8 for approval. (Section 20-9-352, MCA)

9 83. The imposition of a permissive levy cannot result
10 in the raising of revenue in excess of 100% of the MGF BWV.
11 (Section 20-9-352(1), MCA) Thus, some districts with relatively
12 high property wealth can raise the full 20% necessary to reach
13 the 100% MGF BWV without levying the full number of permissive
14 mills otherwise allowed by law. On the other hand, districts
15 with relatively low property wealth may fall short of raising
16 the full 20% contemplated by the permissive levy, even though
17 they levy the full number of permissive mills. In such cases,
18 State permissive equalization funds make up the deficiency.
19 (Section 20-9-352(2)(b), MCA) Most of the elementary and
20 secondary districts impose the full permissive levy, and most

21
22 ¹¹P. L. 874 funds (P. L. 81-874) [1950] [codified at 20
23 U.S.C. §§ 236-240] [1980] are federal funds provided to school
24 districts in compensation for federal land or facilities within
25 school district boundaries, which are not subject to state
and local taxes. In other words, 874 funds are received in
lieu of property tax revenue. This source of revenue is addressed
in greater detail in Section VI, below.

1 of the school children in Montana attend districts where the
2 full permissive levy is imposed.

3 84. At this level of funding all similarly sized elementary
4 and high school districts which have chosen to assess their
5 full permissive levies receive the same amount of money per
6 ANB. Relatively minor differences exist, however, in the tax
7 efforts required to receive this amount, with relatively wealthy
8 districts able to achieve the 100% of the MGFBWV level by levying
9 fewer than the full six or four permissive mills, while relatively
10 less wealthy districts must levy the full six or four mills
11 to achieve the 100% level. (G. Bandy, Financing the Public
12 Schools of Montana, p. 6; Pl. Exh. 102)

13 85. These relatively minor tax effort disparities also
14 result from the ability of some districts to use non-tax revenues
15 to achieve 100% of the MGFBWV level, without levying the full
16 six or four permissive mills. (Id.)

17 86. Some districts which do not levy the full number of
18 permissive mills, and are not property-wealthy enough to raise
19 their full permissive amounts without levying the full permissive
20 mills, receive less than the MGFBWV amount. This occurs even
21 though they may be levying more permissive mills than a wealthier
22 district which achieves 100% of the MGFBWV with less than the
23 full permissive levies. (Id.)

24 D. The "Over-Schedule" or "Above-Foundation" Component

25 87. The third major component of Montana's system of

1 financing the General Fund is the "over-schedule" component,
2 also referred to at trial as the "above-foundation" component.

3 88. School districts may and, in almost all instances,
4 do adopt budgets in excess of the MGFBWV schedules set by the
5 Legislature. To fund these "over-schedule" amounts, school
6 districts rely on revenues generated through voted local levies
7 or non-tax revenues, or both. For virtually all Montana school
8 districts, the voted local levy is the primary source of over-
9 schedule revenue.

10 1. The Voted Local Levy

11 89. School district trustees may propose to adopt a General
12 Fund budget in excess of the MGFBWV schedule through a voted
13 levy. Voted levy funds may be used for any of the following
14 purposes: (1) proper maintenance and operation of instructional
15 and non-instructional programs of the school districts; (2)
16 building, altering, repairing or enlarging any school building
17 of the district; (3) furnishing additional school facilities
18 for the district; and (4) acquisition of land for the school
19 district. (Section 20-9-353(1), MCA)

20 90. When a school board determines that the General Fund
21 budget which it has adopted requires revenue in excess of the
22 statutory schedule amount (MGFBWV), the trustees must submit
23 the proposition of an additional levy to the qualified voters
24 in the district. The ballot must state the amount of money
25 to be raised by additional property taxation, the approximate

1 number of mills required to raise that money, and the purpose
2 for which the money is to be expended. (Section 20-9-353(2),
3 MCA)

4 91. The voted levies are usually submitted to the voters
5 in the spring of each year. If the voters defeat the additional
6 levy, the school board may resubmit the levy for an additional
7 vote. In such a case, the school board may, but need not,
8 adjust the levy amount. There is no legal limit on the number
9 of voted levy elections a district may hold. However, 40 days
10 notice must precede such elections, and the final vote must
11 occur before August 1. Consequently, as a practical matter,
12 a district may hold only three voted levy elections in a given
13 year. (Section 20-20-201, MCA)

14 92. If a majority of those voters voting in the election
15 approve the additional General Fund levy, the school board
16 trustees may use any or all of the authorized amount in adopting
17 the preliminary budget for the district. The trustees must
18 certify the additional levy amount on the budget form submitted
19 to the County Superintendent. The county commissioners must
20 then levy the number of mills necessary to raise that amount
21 on the taxable value of all taxable property within the district.
22 Authorization to levy an additional tax is effective for only
23 one school fiscal year. (Section 20-9-353(3)(4), MCA)

24 93. The amount of revenue a school district can raise
25 through the voted levy is primarily a function of two related

1 factors: (1) the property wealth of the district as defined
2 by its taxable valuation per ANB, and (2) the willingness of
3 the district's voters to approve additional property taxation.
4 These factors vary significantly among school districts in
5 the State. Because of these variations, revenues from the
6 over-schedule component of the General Fund budget are, by
7 definition, unequalized. That is, there are wide variations
8 among school districts in the State in the amount of revenue
9 received from the over-schedule component of the General Fund
10 budget, and these variations are accompanied by wide variations
11 in tax efforts necessary to generate the revenues.

12 2. Other Sources of Over-Schedule Revenue

13 94. In addition to the voted levy, school districts may
14 rely on revenue from the following non-tax revenue sources,
15 to the extent they are available, to exceed the MGFBWV: (1)
16 P. L. 874 funds, (2) vehicle taxes,¹² cash reappropriated,¹³
17 interest income,¹⁴ and miscellaneous income. School boards
18 need not seek voter approval for authorization to use these
19 non-tax revenue sources.

20 95. Revenues raised from voted levies represent a more
21 significant portion of total General Fund revenues than do
22

23 ¹²See Sections 61-3-532 and 61-3-536, MCA

24 ¹³See Section 20-9-104, MCA

25 ¹⁴See Section 20-9-213(4), MCA

1 non-tax revenue sources.

2 E. Excessive Reliance on Local Revenues

3 1. Decline in Foundation Program Support

4 96. As previously established, the goals of the Foundation
5 Program when enacted were to relieve pressure on the property
6 tax, to apportion fiscal burdens of education fairly among
7 taxpayers in the State, and to provide equal educational
8 opportunity for all children in the State. In 1950, at its
9 inception, Foundation Program revenues funded 81.2% of the
10 statewide, total General Fund budgets. (Joint Subcommittee
11 on Education, Montana School Finance: A Question of Equity,
12 p. 8 (1982), Pl. Exh. 101). In 1986, however, Foundation Program
13 revenues funded only 58% of statewide elementary school General
14 Fund budgets, and 54% of secondary school General Fund budgets.
15 (Pl. Exh. 13) As a result of this decline in Foundation Program
16 support, the problems which the Program was intended to address
17 remain, and the goals it sought to achieve presently are not
18 being met. That is, there is now excessive reliance on local
19 property wealth, causing significant disparities and inequities
20 among school districts in tax burdens, educational expenditures,
21 and educational opportunities.

22 97. Dr. George Bandy's 1980 Report to the Superintendent
23 of Public Instruction, Financing the Public Schools of Montana,
24 summarizes the decline of Foundation Program support for
25 Montana schools. Dr. Bandy correctly noted that the decline

1 in Foundation Program support, with a corresponding increase
2 in voted levy dependence, is the "fundamental problem" of
3 Montana school finance. (Pl. Exh. 102, p. 37) Bandy wrote:

4 Montana public schools have been forced to place
5 an ever increasing dependence on voted levies.
6 The schools are forced into this dependence
7 because the General Fund Without a Vote has
8 declined as a percentage of the General Fund
9 Budget from 92.5% in 1949-50 to 72.0% in 1979-80
10 and to approximately 66.5% in 1980-81. Accordingly,
11 voted levies have increased from 7.5% of the
12 General Fund budgets in 1949-50 to 28.0% in
13 1979-80 and to 33.5% in 1980-81.

14 Pl. Exh. 102, p. 37.

15 98. Dr. Bandy cited several reasons for the decline in
16 Foundation Program support, reasons which apply as well today
17 as when they were written in 1980:

18 The reasons that the GFWV [General-Fund Budget-
19 Without-A-Vote] has declined as a percentage
20 of the total General Fund budgets are several:

21 1. The Montana Foundation Program [sic]
22 schedules have not kept pace with inflation
23 much less with the costs of operating schools
24 which, until very recent years, have risen
25 faster than inflation.

2. Permissive levies . . . have and will
continue to produce declining percentages of
the total General Fund Budgets.

Gradually, over the years, the inadequate percentage
increases in the Foundation Program schedules
which have been appropriated by the legislature,
coupled with the rapidly increasing costs of
operating schools, have produced a situation
which grows more difficult by the year.

If there is serious interest and intent to reduce
the heavy reliance on voted levies, then the
Foundation Program schedules must be raised significantly.

Pl. Exh. 102, pp. 37-38.

1 99. The problems addressed by Dr. Bandy have long been
2 the focus of public studies and comment. In 1962, the School
3 Foundation Committee presented the Montana Legislature with
4 a study which stated:

5 The foundation program schedule has not kept
6 pace with the national increases in per pupil
7 costs; neither has it kept pace with the pattern
8 Montana citizens apparently desire as shown
9 by trustee and citizen action on permissive
and voted levies. In 1949-50 these levies
represented 18.8% of the foundation program,
while in 1961-62 the permissive and voted
levies were 32.3% of the foundation program
for that year.

10 School Foundation Study Committee, A Report to the 38th
11 Legislative Assembly, p. 4, (1962) Pl. Exh. 6.

12 100. Ten years later, then Superintendent of Public Instruc-
13 tion, Dolores Colburg, reported:

14 On the basis of a comparison of the foundation
15 program schedule values with actual costs of
16 elementary general fund programs, Montana's
17 foundation program falls far short of providing
adequate funding for basic educational programs
as they presently exist at the elementary level.
The result is additional upward pressure on
district property tax levels, which in turn
18 compounds the effects of existing (and
19 traditional) disparities in district wealth

20 D. Colburg, Part 1: A Study of Basic Educational Program
21 Funding Methodology in Montana, Section VI Conclusion #2,
Pl. Exh. 8A.

22 The Superintendent reached identical conclusions with respect
23 to high school General Fund programs. (Id.)

24 101. In a 1975 Report to the Montana Legislature, the
25 Montana Board of Public Education stated:

1 Even with the latest revision, [a foundation
2 program increase], the foundation program still
3 does not support the kinds of educational programs
4 that school districts throughout the state have
5 chosen to develop for their students. A large
6 majority of school districts use both the district
7 and state permissive levies to finance their
8 general fund budgets. Further, a majority of
9 school districts needs a voted levy to support
10 their total general fund budgets. In fact,
11 in 1974-75, 96.4% of all high school districts
12 in the state had voted levies, while 71.1% of
13 all elementary districts had voted levies.
14 Obviously, school districts have chosen to
15 offer educational programs that require
16 greater support than that available through
17 the foundation program.

10 Board of Public Education, Basic Quality Education, p. 46,
11 (1975); Pl. Exh. 100B.

12 The Board further stated:

13 While [legislative changes enacted in 1973]
14 have constituted significant steps in bringing
15 equity to school finance, it is still possible
16 to identify major areas of school finance that
17 depend entirely or to a great extent on local
18 wealth. The entire voted levy amount is supported
19 by district revenues--primarily property taxes.
20 The voted levy amount made up 23% of all general
21 funds budget in 1974-75, and that percentage
22 has been increasing.

18 Id.

19 102. In 1982, the Joint Subcommittee on Education of the
20 Montana Legislature wrote:

21 The unequalized voted levy area has increased
22 steadily over the years for most districts.
23 By the 1981 school year, voted levies funded
24 nearly one-third (33.3%) of the total general
25 fund budgets of Montana schools. The percentage
of voted general fund support dropped to 29.4%
in 1982, but this amount still suggests that
foundation/permissive funding has not kept pace

1 with locally determined and mandated costs of
2 educational programs.

3 Joint Subcommittee on Education, Montana School Finance: A Question
4 of Equity, p. 7 (1982); Pl. Exh. 101 (Emphasis in original)

5 The Subcommittee further reported:

6 Most districts depend on voted levies to generate
7 revenue for general fund budget needs beyond the
8 foundation and permissive program support. Relatively
9 few districts are able or willing to limit their budgets
10 to the foundation and permissive levels of support. 50%
11 of the elementary students (by average number belonging
12 count) attend schools in districts where the voted
13 levy area is 46% above the foundation/permissive level
14 of support. 50% of the high school ANB count attend
15 schools in districts where the voted area is at least
16 50% above the foundation/permissive level of support. . . .

17 Id. at 8.

18 103. Montana's present Superintendent of Public Instruction,
19 Mr. Ed Argenbright, has also addressed these problems in public
20 statements. In January of 1983, for example, Superintendent
21 Argenbright stated (quoted into the record, pursuant to Mont.
22 R. Evid. 613 from the Montana Standard):

23 When the school foundation program was established it
24 provided enough assistance to local school districts
25 that voted levies accounted for an average of only
9% of school needs. Over the years, however, the
proportion of state funding fell, until voted levies
were accounting for 33% of school needs by 1981. Part
of the reason for this is that the legislature found
it easier to let rising school costs fall on local
property taxpayers than to raise taxes to bolster
foundation program assistance.

26 Montana Standard, January 5, 1983¹⁵

27 _____
28 ¹⁵Superintendent Argenbright testified that this was an
29 accurate quote of his 1983 statement.

1 Following the 1983 legislative session, Superintendent Argenbright
2 issued a news release stating "this year the state legislature
3 gave schools only a 4% increase in state funds; this placed
4 the burden right in the lap of the local taxpayer." (Pl. Exh.
5 163. See also Pl. Exh. 112)

6 2. The Importance of Voted Levy Revenue

7 104. The increasing reliance on revenues from local voted
8 levies to fund school districts' General Fund (operating)
9 budgets is troublesome because those revenues are necessary
10 to fund essential educational programs and services. That
11 is, school districts in Montana are not funding "frills" through
12 the use of local voted levies. As Superintendent Argenbright
13 testified at trial, "the demands for quality education exceed
14 the amount of money provided by the foundation program." Thus,
15 "the money which school districts raise above the foundation
16 program is vital to the school districts." Consistent with
17 this testimony, Mr. Bob Stockton, Director of State Aid in
18 the Office of Public Instruction, and one of Superintendent
19 Argenbright's chief assistants, testified that it is "unrealistic
20 to think that a school district can operate today without the
21 voted levy."

22 105. Virtually all Plaintiffs' trial witnesses, which
23 included school district superintendents, principals, teachers,
24 and school board trustees, attested to the importance of voted
25 levy revenues. Without such revenues, schools would be forced

1 to cut teachers and academic programs, maintenance, and other
2 capital expenditures would suffer badly, extracurricular
3 activities would be severely curtailed, and in the larger school
4 districts, schools would be closed. In short, without the
5 over-schedule component of their General Fund budgets, the
6 educational programs and services offered in Montana's schools
7 would be unrecognizable when compared with that which is presently
8 offered. Mr. Mike Reynolds, Superintendent of Absarokee schools,
9 perhaps stated it most simply and poignantly when he testified
10 that without voted levy revenues, Absarokee schools would not
11 have the resources to exceed minimum Accreditation Standards,
12 and that he would not be willing to run the school system on
13 that basis, nor would he send any of his seven children to
14 it. (See also Pl. Exhs. 9, 134, 136, 148)

15 106. The superintendents of two schools represented by
16 the Sheridan County Intervenors-Defendants, in deposition
17 testimony submitted into the record, also testified to the
18 importance of voted levy revenues. Robert Otheim, the Super-
19 tendent of Westby schools, testified as follows:

20 A. (Otheim)

21 . . . [T]he problem, and a lot of people
22 have felt that way, [is] that the state has
23 not been paying their fair share of what it
takes to educate the kids.

24 * * *

25 . . . I feel that people in school districts
shouldn't have to vote for things, vote special
money, for things that are mandated by the State

1 of Montana. That is how I feel, and I feel
2 if you talk with most of the superintendents
3 in the State of Montana, I think they will tell
4 you the same things. . . .

5 Q. And I gather with your feelings while you
6 were in Wilsall, that there were things mandated
7 that you had to provide that the state wasn't
8 funding?

9 A. Yes.

10 Q. The level of funding simply was not adequate
11 from the state, when you were at Wilsall?

12 A. Well I don't think it was because I was
13 at Wilsall, I think it was through the whole
14 state.

15 (Otheim Depo. Tr. at 15-16)

16 Steve Gaub, the Superintendent of Outlook schools was more blunt:

17 Q. If you had to finance your school just from what
18 the foundation program gives you, plus the permissive,
19 . . . would you have problems?

20 A. (Gaub) We wouldn't exist.

21 (Gaub Depo. Tr. at 9)

22 IV. DISPARITIES IN MONTANA'S SCHOOL FINANCE SYSTEM

23 A. Introduction

24 107. Three variables are relevant to understanding the
25 problems with Montana's school finance system: (1) district
property wealth, as defined by the district taxable valuation
per ANB; (2) district tax effort, as defined by the number
of voted General Fund mills; and (3) district spending, as
defined by General Fund dollars per ANB.

108. In analyzing these three variables, it is important

1 to control for size of school districts, in order to ensure
2 that similarly situated schools are compared. For this purpose,
3 the most valid breakdown of size categories is that consistent
4 with the Foundation Program schedules. (See Sections 20-9-316
5 and 20-9-317, MCA) Those size categories, for elementary and
6 secondary districts, are as follows:

7 Elementary Districts	Secondary Districts
8 8 or less	24 or less
9 9 - 17	25 - 40
10 18 - 40	41 - 100
11 41 - 100	101 - 200
12 101 - 300	201 - 300
13 301 and greater	301 - 600
	14 601 or more

15 The statistical evidence presented by Plaintiffs at trial is
16 based on these size categories. The State Defendants, on the
17 other hand, created different size categories, and based their
18 statistical analysis on those categories.

19 109. Dr. John Augenblick, a nationally recognized expert
20 on school finance, explained that in analyzing school finance
21 systems, one may focus on "disparity measures" or "relational
22 measures." Disparity measures focus on each of the above-
23 described variables (i.e., taxable valuations, tax effort, and
24 spending) individually, and analyze differences existing among
25 school districts in the State with respect to each of the above-

1 described three variables. Relational measures, on the other
2 hand, analyze the relationships among the school finance vari-
3 ables.

4 110. The following Findings address the statistical evidence
5 regarding disparity measures and relational measures. The
6 evidence establishes that with respect to disparity measures,
7 significant disparities exist among Montana school districts
8 with respect to each of the variables: property wealth, tax
9 effort, and district spending, even controlling for school
10 district size.

11 111. More significantly, the evidence demonstrates that
12 as district wealth increases, school districts rely more on
13 local revenues generated through the voted levy to support
14 their General Fund budget. That is, wealthy districts are
15 able to generate more dollars in the over-schedule component
16 of the General Fund budget than are poorer districts. More-
17 over, wealthier school districts are able to accomplish this
18 with relatively lower tax efforts, or tax efforts which are
19 disproportionately smaller than the amount of over-schedule
20 revenue generated. In short, wealthier districts can spend
21 more, with less tax effort than can the poorer districts. The
22 consequences of this three-way relationship among wealth,
23 spending, and tax effort lie at the heart of the problems with
24 Montana's school finance system.

25 ///

///

1 B. Disparities in Property Wealth, Tax Effort, and General
2 Fund Spending

3 1. District Property Wealth

4 112. As previously established, the property wealth of
5 a school district is defined by the district's total Taxable
6 Valuation divided by its total ANB (TVANB).

7 113. Tremendous disparities in property wealth exist
8 among Montana's school districts, and considering all school
9 districts, regardless of size, taxable valuation among elementary
10 districts ranges from a low of \$346 per ANB at Lame Deer Elemen-
11 tary to a high of \$19,154,864 per ANB at Squirrel Creek Elemen-
12 tary, a ratio of 54,885 to 1. Taxable valuation for high school
13 districts ranges from \$1,553 per ANB at Hayes-Lodge Pole High
14 School to \$1,016,028 per ANB at Plevna High School District,
15 a high to low ratio of 654.2 to 1. (Agreed Fact No. 49; Pl.
16 Exhs. 23A, 23B) These disparities are systematic over all
17 school districts in Montana.

18 114. The significant disparities in property wealth are
19 equally evident when size of school districts is controlled.
20 both with respect to elementary and high school districts.
21 (Pl. Exhs. 23A, 23B)

22 115. If the extreme highs and lows are eliminated by
23 focusing on the 95th and 5th percentiles, the significant
24 property wealth disparities remain. Considering all elementary
25 school districts within this range, the ratio of 95th to 5th

1 is 12.1 to 1. At the high school level, the 95th to 5th percentile
2 ratio is 9.2 to 1. Again, based on the 95th to 5th percentiles,
3 the significant disparities at both elementary and high school
4 district levels remain when size of school district is controlled.
5 (Pl. Exhs. 23A, 23B)

6 116. The evidence demonstrates that in recent years,
7 the property wealth disparities among Montana's school districts
8 have been getting worse, at both the elementary and secondary
9 levels. (Pl. Exh. 24)

10 117. The discrepancies in school district wealth
11 cannot be explained by the possibility of variations in property
12 assessment among counties in the State of Montana, as the State
13 Defendants realize:

14 INTERROGATORY NO. 11: TO THE STATE OF MONTANA:
15 Is the current method of assessing property
16 in the state of Montana equitable?

16 ANSWER: Yes.

17 (Defendants' Answers to Plaintiffs' Second Interrogatories,
18 Pl. Exh. 151)

19 118. This was confirmed by the conclusion of Dr. Thomas
20 Power, Professor of Economics at the University of Montana,
21 who conducted an analysis of the impact of property assessment
22 uniformity on school district tax effort in Montana. (Pl.
23 Exh. 127)

24 119. In sum, there are gross disparities in district
25 property wealth among Montana's school districts, across all

1 size categories. This irrefutable fact has long been recognized,
2 and was directly identified by the Montana Legislature's Joint
3 Subcommittee on Education in its 1982 Report:

4 There is wide disparity in the property wealth
5 available to districts for both permissive and
6 voted area support. Taxable valuation per ANB
7 ranges from under \$1,000 per ANB to over one
8 million dollars per ANB for some elementary
9 districts in resource wealthy areas (see
10 Appendix B).

11 Montana School Finance: A Question of Equity, p. 9, App. B
12 and App. C, Pl. Exh. 101

13 2. Tax Effort

14 120. As previously established, a school district's
15 "tax effort" is defined by the number of General Fund mills
16 assessed on the district's property taxpayers. This measure
17 does not include the mandatory, statewide 45-mill levy, nor
18 does it include levies for non-General Fund budgets, such
19 as Retirement, "Capital Outlay," and Transportation. The
20 statistics presented at trial (as General Fund mills) did include
21 the permissive levy for each district (up to six mills for
22 elementary districts, and up to four mills for secondary districts).

23 121. There are wide variations among Montana's school
24 districts in the number of General Fund mills assessed on district
25 property owners. Considering all elementary districts, the
highest taxing district assesses 110.6 General Fund mills, while
some districts assess no General Fund mills. The highest
taxing secondary district, considering all sizes of schools,

1 assesses 80.81 General Fund mills, while again some high school
2 districts assess no General Fund mills. (Pl. Exhs. 25A, 26A)

3 122. Very significant tax effort disparities are further
4 evident when the extreme highs and lows are eliminated from
5 consideration, as well as when size of school district is
6 controlled for. This is true with respect to both elementary
7 and high school districts.

8 123. In sum, as demonstrated by the difference in mills
9 levied for education, there are wide disparities in tax effort
10 which cannot be explained by any possible non-uniformity in
11 property assessment between rich and poor counties. (Pl. Exhs.
12 127, 151)

13 3. General Fund Spending Per ANB

14 124. The third major variable relevant to analyzing
15 Montana's school finance system is the amount of money spent
16 by school districts to educate students. This measure is defined
17 by the amount of General Fund dollars per ANB (GFANB). It does
18 not include dollars spent in non-General Fund budgets, such
19 as "Capital Outlay," Retirement, and Transportation.

20 125. Within each size category at the elementary level,
21 there are significant variations among school districts in
22
23
24

25 ///

///

1 General Fund dollars per ANB.¹⁶ The ratios for high to low
2 spenders range from 8 to 1 (\$19,959 to \$2,495), for schools
3 with fewer than eight students, to 3 to 1 (\$5,167 to \$1,702),
4 for schools with greater than 300 students. (Pl. Exh. 27A)
5 For the remaining size categories, the high to low ratios average
6 4 or 5 to 1. (Id.) Moreover, these disparities remain when
7 the extremes are eliminated within each size category. The
8 95th to 5th percentile ratios range from 3.7 to 1 (\$5,612 to
9 \$1,507) for schools with between 18 and 40 students, to 1.8
10 to 1 (\$3,435 to \$1,921) for elementary districts with greater
11 than 300 ANB. In other words, in the largest size category,
12 the school at the 95th percentile spends almost twice as much
13 in the General Fund as does the school at the 5th percentile.
14 In all other size categories, the disparity is even greater
15 than this. (Pl. Exh. 27A)

16 126. Similar disparities in General Fund per ANB are
17 evident with respect to secondary districts. The high to low
18 ratios for schools in the various size categories up to 600
19

20 ¹⁶It is particularly important, when comparing spending
21 per pupil, to control for size of school district. The fact
22 that the highest spending elementary district spent \$19,959
23 per ANB, while the lowest spending district spent only \$1,400
24 per ANB, is of little relevance, because the elementary school
25 with the highest per pupil spending has fewer than eight students,
while that school with the lowest per pupil spending is in the
largest size category, with greater than 300 students. (Pl.
Exh. 27A) Similarly, the high school district which spends the
most per ANB, at \$20,163, is a school with between 25 and 40
students, while the lowest spending school, at \$2,170, is in the
301-600 size category. (Pl. Exh. 27B)

1 students range from 4.8 to 1 (\$14,889 to \$3,118), for schools
2 with between 41 and 100 ANB, to 2.4 to 1 (\$18,393 to \$7,728),
3 for schools with fewer than 24 students. For the very largest
4 size category, schools with greater than 600 students, the
5 high to low ratio is 1.4 to 1 (\$3,916 to \$2,828). In other
6 words, the highest spending district spends almost 50% more
7 per student than does the lowest spending district. (Pl. Exh. 27B)

8 127. Again, these disparities are further evident when
9 the extremes are eliminated. The only exception is for the
10 largest size category, in which the 95th to 5th ratio is 1.1
11 to 1 (\$3,187 to \$2,828). For all other size categories, the
12 95th to 5th percentile exceeds 2 to 1; in other words, some
13 schools within each size category spend more than double the
14 amount per student in the General Fund than do other schools
15 in those same size categories. (Pl. Exh. 27B)

16 4. Significance of Disparities in Each of the Three
17 Variables

18 128. The disparities addressed in the foregoing Findings,
19 with respect to each of the three variables, are significant
20 in and of themselves. First, as the School Foundation Study
21 Committee stated in its Report to the Montana Legislature in
22 1962, "the property valuation per Average Number Belonging
23 (ANB) is a measure of ability to support education in a state
24 where a property tax is the major source of revenue." (1962
25 School Foundation Study Committee Report, p. 12, Pl. Exh. 6)

1 Similarly, State Superintendent of Public Instruction Colburg
2 stated in her 1972 study that "funding of basic educational
3 programs in Montana is strongly dependent on local property
4 taxation, and thus, on school district wealth." (Colburg 1972
5 Study, Section 1, Pl Exh. 8A)

6 129. The disparities in tax effort among school districts
7 in Montana create manifest inequities for taxpayers. It is
8 not fair that property owners in one school district must pay
9 significantly higher taxes than property owners in a similar
10 school district for the support of education. Moreover, as
11 will be addressed in greater detail in subsequent findings,
12 taxpayer burdens limit school districts' abilities to fund
13 education, and thus have a direct impact on the programs and
14 services provided to educate students in Montana's schools.

15 130. The most important of the three variables is the
16 measure of spending per pupil. It is the universal practice
17 in analyzing school finance systems for inequities to focus
18 on money spent per pupil as a measure of disparities in educa-
19 tional resources and educational opportunities. In other words,
20 this variable is an important measure of whether a particular
21 school finance system operates equitably. This measure has
22 been used in school finance litigation in other states, as
23 well as in the various reports and analyses of Montana's system
24 throughout the years, which were submitted into evidence.
25 (See, e.g., Pl. Exhs. 6, 8, 8A, 100B, 101, 102, 105, and 128)

1 131. In sum, significant disparities exist among Montana's
2 school districts with respect to each of the three variables,
3 district property wealth, tax effort, and spending per pupil.
4 These disparities, when individually considered, demonstrate
5 problems and inequities in Montana's school finance system.
6 As the following Findings establish, however, the disparities
7 and inequities are of even greater significance when the relation-
8 ship among the three variables is examined.

9 C. The Relationship Between Wealth, Tax Effort, and Spending

10 1. Introduction

11 132. The foregoing Findings addressed each of the three
12 school finance variables individually. To understand adequately
13 the problems with Montana's system, it is important to examine
14 how those three variables interrelate, and the results of those
15 interrelationships.

16 133. It is not possible to examine and understand the
17 relationship between any two of these variables, without con-
18 sidering the third variable as well. That is, any attempt
19 to discern the relationship between district wealth and spend-
20 per pupil, without also considering district tax effort, is
21 overly simplistic and ill-conceived.

22 134. The way in which the three variables interrelate
23 can best be illustrated by examining selected comparisons of
24 similar school districts. These comparisons illustrate, on
25 a case-by-case basis, disparities and problems in the system.

1 Comprehensive, statewide data demonstrates that these problems
2 and disparities are systematic and pervasive.

3 2. Selected Comparisons of Similar School Districts

4 a. Unequal Spending Based on Equivalent Tax Efforts

5 135. Disparities in per pupil expenditures result where
6 two similarly sized school districts, with divergent district
7 wealth, tax at equivalent rates. This is illustrated by a
8 comparison of Belfry and Ramsay Elementary School Districts.
9 These two districts are similar in size, with 118 and 113 ANB,
10 respectively. The number of General Fund mills (voted levy)
11 for each district is identical, at 27.9 mills. The Belfry
12 Elementary District, however, has significantly more district
13 wealth, with a taxable valuation per ANB of \$97,642 versus
14 Ramsay's \$40,691 per ANB. With an identical tax effort, the
15 Belfry School District is able to spend approximately \$1,600
16 more per student than is the Ramsay District (\$4,548 versus
17 \$2,938). This example illustrates how disparities in district
18 wealth can create disparities in the amount of money spent to
19 educate students. (Pl. Exh. 44)

20 136. A comparison of Sidney and Hamilton High School
21 Districts further illustrates this relationship. Each of these
22 districts has an identical number of ANB (506). Their district
23 tax efforts are comparable, with Sidney having 10.8 General
24 Fund mills, and Hamilton having 12.0 mills. Sidney, however,
25 spends \$3,301 per ANB, while Hamilton spends \$2,219 a difference

1 of approximately \$1,100 per ANB. This disparity results directly
2 from the fact that Sidney has a taxable valuation per ANB of
3 \$124,713, approximately eight times greater than Hamilton's
4 \$15,914 per ANB. (Pl. Exh. 62)

5 b. Greater Spending, Even With Less Tax Effort

6 137. The above examples illustrate a blatant inequity
7 in the school finance system. Perhaps even more inequitable
8 is the fact that a "property-wealthy" school district can spend
9 more per student than a "property-poor" district, even while
10 making significantly less tax effort. A comparison of Noxon
11 and Fort Shaw-Simms Elementary School Districts illustrates
12 this fact. The schools have identical numbers of students,
13 with 133 ANB. Fort Shaw-Simms has a district tax effort of
14 60 General Fund mills, almost twice that of Noxon, with 33.55
15 mills. Even with this significantly greater tax effort, however,
16 Fort Shaw-Simms spends approximately \$500 less per student
17 than does Noxon. The explanation for this, of course, lies
18 in the differences in property wealth; Fort Shaw-Simms has
19 a taxable valuation per ANB of \$8,121 while Noxon's is \$38,084
20 per ANB. (Pl. Exh. 45)

21 138. This particular interrelationship among tax effort,
22 spending, and district wealth, is illustrated even more
23 graphically with a comparison of Whitewater and Ulm Elementary
24 Districts. Ulm, with 66 ANB, has a district tax effort of
25 78.62 General Fund mills, approximately six times as great

1 as Whitewater's (with 63 ANB) 12.36 mills. Even so, Ulm spends
2 \$2,845 per student, while Whitewater spends \$5,119 per student.
3 Again, the obvious source of these inequities is the difference
4 in property wealth, with Ulm having a taxable valuation per
5 ANB of \$10,565 while Whitewater's is \$209,794. (Pl. Exhs.
6 38 and 39)

7 139. Fairfield and Choteau High School Districts are
8 adjacent districts in north central Montana. They are roughly
9 comparable in size, with Choteau having 157 ANB, and Fairfield
10 137 ANB. The property owners in the Fairfield district pay
11 44.36 General Fund mills, more than twice that of Choteau property
12 owners, who pay 21.6 mills. Even with less than half the tax
13 effort, however, the Choteau district is able to spend \$700
14 more per student than the Fairfield district (\$4,358 per ANB
15 versus \$3,657 per ANB), because Choteau's district wealth is
16 significantly greater than Fairfield's (\$73,889 versus \$21,848
17 per ANB). (Pl. Exh. 63) This comparison is a particularly
18 good illustration of inequities in the system, given the close
19 proximity between the two districts.

20 c. Similar Spending, Based on Equal Tax Efforts

21 140. Some school districts which are relatively less
22 property-wealthy, are able to spend similar amounts per student
23 as wealthier districts, but to do so, they must make a signifi-
24 cantly greater tax effort. Alberton Elementary School District,
25 for example, with 150 ANB, spends approximately the same per

1 ANB as does the Twin Bridges District, with 161 ANB (\$2,688
2 versus \$2,786). To do so, however, the Alberton School District
3 makes a tremendous tax effort, with 99.17 General Fund mills.
4 The Twin Bridges District on the other hand, has a tax effort
5 of 33.87 General Fund mills, which is in itself a respectable
6 effort, compared with other similarly sized schools. The Alberton
7 District must make such a great tax effort because its taxable
8 valuation per ANB is only \$8,251 compared to Twin Bridges'
9 \$29,588. (Pl. Exh. 46)

10 141. A comparison of two similarly sized high school
11 districts, Sidney High School and Fergus High School in Lewistown,
12 further illustrates this interrelationship. Fergus High School
13 had a 1985-86 taxable valuation per ANB of \$22,532 while Sidney's
14 was \$124,713. The two schools were very close in size, with
15 488 ANB at Fergus High School and 506 ANB at Sidney High School.
16 To achieve roughly comparable spending per student, however,
17 Fergus High School had to make a tax effort of 42.26 General
18 Fund mills, four times greater than Sidney's 10.8 mills.¹⁷

19 (Pl. Exh. 61)

20 3. Systematic Evidence of Disparities

21 142. The foregoing Findings illustrate fundamental problems
22 with Montana's school finance system by comparing various schools.
23

24 ¹⁷As subsequent Findings establish, this disparity is
25 understated because it does not include non-General Fund taxes,
such as Retirement mills.

1 districts. These illustrations are not isolated incidences
2 or anomalies. To the contrary, statewide data, controlled
3 for size of school districts, demonstrates a systematic pattern
4 by which school districts with greater property wealth are
5 able to spend more per student, while making less tax effort
6 than less wealthy school districts. (Pl. Exhs. 33A-33E6;
7 34A-34E7; 35A and 35B)

8 143. School districts with relatively greater property
9 wealth are able to generate more dollars in the "over-schedule"
10 component of their General Fund budgets, thus permitting them
11 to spend more on education. That is as district wealth increases,
12 districts rely more on the voted levy to support their General
13 Fund budgets. As previously established, however, wealthier
14 districts accomplish this with relatively less tax effort.

15 (Id.)

16 144. There is little variation in Foundation Program
17 revenues per ANB among similarly sized elementary and secondary
18 high school districts. The small degree of variation that
19 does exist is unrelated to district wealth. There are, however,
20 large variations in "over-schedule" or "above-foundation"
21 revenues per ANB. These "over-schedule" revenues are positively
22 related to the wealth of school districts, and unrelated
23 or negatively related to districts' tax effort. (Pl. Exhs.
24 35A and 35B)

25 145. The foregoing facts were established through the

1 testimony of, and exhibits compiled by, Plaintiffs' experts,
2 Dr. Jack Gilchrist and Dr. John Augenblick. Their conclusions,
3 based on independent analysis of comprehensive data relating
4 to Montana's school finance system, are consistent with the
5 conclusions reached by others who have studied the system,
6 including committees of the Montana Legislature.

7 146. The State Defendants, through the testimony of,
8 and analysis by, Dr. Kenneth Tiahrt, attempted to undermine
9 the evidence of systematic disparities, and the conclusions
10 drawn therefrom. Dr. Tiahrt's analysis, however, suffers from
11 several fatal flaws. The most serious deficiency in his analysis
12 lies in the fact that he failed to include district tax effort
13 in analyzing the relationship or correlation between wealth
14 and spending in school districts. That is, he presented evidence
15 of two variables (a linear correlation), without considering
16 the third crucial variable. As previously established, it
17 is impossible to understand adequately the relationship between
18 wealth and spending without including tax effort in the analysis.

19 147. A further problem with Dr. Tiahrt's analysis is
20 that he failed to control for non-tax revenues in analyzing
21 the "over-schedule" revenues. Such non-tax revenues may include
22 P. L. 874 monies, cash reappropriated, interest income, and
23 district tax levies. Inclusion of a district's non-tax revenues
24 in the analysis will result in understating the relationship
25 between wealth and spending, and thus present a misleading

1 picture. For example, as Dr. Gilchrist pointed out in rebuttal,
2 a school district which receives substantial amounts of P. L. 874
3 monies, as several school districts in Montana do, could appear
4 in Dr. Tiahrt's analysis as having a very low taxable valuation,
5 but very high spending. Accordingly, the correlation between
6 the wealth and spending of that particular district is understated
7 for that district and will deflate the extent of the true correla-
8 tions over the system.

9 148. A fundamental problem with Dr. Tiahrt's analysis
10 lies in the fact that his research and analysis are not consistent
11 with, or substantively cognizant of, the operation of Montana's
12 school finance system. For example, contrary to the approach
13 followed by others who have studied the system, including Plain-
14 tiffs' experts, the school district size categories used by
15 Dr. Tiahrt are not consistent with Foundation Program schedules.

16 149. In sum, the State Defendants failed to refute the
17 overwhelming evidence of systematic problems with Montana's
18 school finance system.

19 150. As previously noted, the problems in the finance
20 system have been identified in previous studies and reports.

21 151. Following an extensive study of issues identical
22 to those presented in this case, the 1982 Joint Subcommittee
23 on Education of the Montana Legislature arrived at the following
24 conclusions:

25 ///

///

1 There is very clear evidence that high-wealth
2 districts have lower taxes and higher expenditures
3 per student than do low-wealth districts. This
4 situation exists because a fairly substantial
5 portion of school district expenditures is in
6 the voted levy amount.

7 * * *

8 Since the voted levy amount has remained large,
9 the inequities caused by it are very significant.

10 1982 Joint Subcommittee Report, p. C-2, and Table 1, p. C-3,
11 Pl. Exh. 101

12 The 1982 Report continued:

13 There is wide disparity in the property wealth
14 available to districts for both permissive and
15 voted area support. . . .

16 * * *

17 This disparity has resulted in inequities in
18 taxpayer burdens and per student expenditures
19 among school districts. There is clear evidence
20 that high property wealth districts have lower
21 tax rates and higher per student expenditures
22 while lower property wealth districts have lower
23 per pupil expenditures and higher tax rates.

24 Id., p. 9

25 152. The Board of Public Education, in their 1975 Report,
Basic Quality Education, recognized the inequity of school
district reliance on revenue generated by local property wealth.

The report states:

At present, public schools in Montana are supported
through various revenue sources established by
state law. However, a majority of school districts
in Montana need voted levies to support their
educational programs. This places a greater
burden on those districts with low taxable valuation.

Board of Public Education 1975 Report, p. 48, Pl. Exh. 100B

1 155. The evidence establishes that the conclusions arrived
2 at in the public reports addressed in the foregoing Findings
3 remain valid at the present time. That is, while minor varia-
4 tions may occur from time to time as a result of current Founda-
5 tion Program schedules, the systematic problems and disparities
6 identified in the previous reports still exist. The present
7 Superintendent of Public Instruction, Mr. Argenbright, recognized
8 this fact in his response to the filing of this lawsuit. He
9 stated at that time:

10 Education in counties with small property tax
11 bases suffers under the current system and is
12 doubly penalized when state funding for education
13 is lacking. Given the current fiscal climate
14 of the legislature, I believe these Plaintiffs
15 were left with no recourse but to sue.

16 Pl. Exh. 160

17 D. Disparities in Total Education Budgets

18 1. Capital Outlay

19 156. An adequate physical plant is an important component
20 of a school district's ability to provide quality education.
21 As Deputy Superintendent of Public Instruction, Dr. Bill Anderson
22 stated in his 1970 Doctoral Thesis: "Quantity alone dictates
23 a need for a minimum number of classrooms and associated support
24 facilities. Quality of education demands an atmosphere conducive
25 to learning." W. Anderson, A Study of Montana's Capital Outlay
Expenditures as They Relate to the Desirability of State Partici-
pation in Funding, p. 7 (1970), Pl. Exh. 105.

1 157. In addition to providing an atmosphere conducive
2 to learning, adequate physical facilities assist schools in
3 recruiting and retaining teachers.

4 158. As previously established in the descriptions of the
5 Debt Service and Building Reserve Funds, the State does not
6 participate in funding Capital Outlay.¹⁸ Thus, a school dis-
7 trict's ability to fund Capital Outlay depends directly on its
8 property wealth, or taxable valuation, along with the willing-
9 ness of voters to approve bond issues or building reserves.
10 (W. Anderson, Depo. Tr. at 14, Anderson Thesis, p. 20, Pl. Exh.
11 105)

12 159. The State of Montana is one of the few states which
13 does not participate in funding school districts' capital
14 expenditures. (Anderson Thesis, p. 20, Pl. Exh. 105)

15 160. The funding of Capital Outlay is a greater burden
16 on property-poor districts, than on property-wealthy districts.
17 As Dr. Bandy stated in his 1980 Report to the Superintendent
18 of Public Instruction:

19 _____
20 ¹⁸A school district is not legally prohibited from funding
21 Capital Outlay expenditures through the General Fund budget.
22 To the extent that a district chose to do so, there technically
23 would be State participation in funding the capital expenditures
24 through the Foundation Program component of the General Fund.
25 As a practical matter, however, only the very wealthiest school
districts could even consider significant capital expenditures
through the General Fund. It is accurate to state, therefore,
that the State does not participate in funding Capital
Outlay.

1 School districts vary greatly in wealth as measured
2 by taxable valuation per AN3. Thus, the cost
3 of a school building program will weigh more
4 heavily on the taxpayers of a poor district
5 than a rich district.

6 Bandy 1980 Report, p. 68, Pl. Exh. 102

7 161. Because the burden of funding capital expenditures
8 is entirely on local taxpayers, the tax burdens associated
9 with Capital Outlay adversely affects a school district's ability
10 to generate revenue for its General Fund through the voted
11 levy. For example, Evergreen Elementary District Superintendent
12 Bob Aumauger testified that his district incurred a \$1.5 million
13 debt for the construction of badly needed additions to its
14 facilities. For the local taxpayers, the debt translates into
15 approximately 37 additional mills levied annually on their
16 property for the support of schools. Consequently, Aumauger
17 testified, he and the school board find it considerably more
18 difficult to ask the voters for any increases in General Fund
19 mills (the voted levy), even though these increases are necessary
20 in light of declining State Foundation Program support. In
21 other words, the tax burden associated with the school district
22 capital debts has a direct effect on the district's ability
23 to fund adequately its General Fund.

24 162. This relationship between Capital Outlay and voter
25 support for the General Fund is illustrated in a much more
drastic fashion by Fergus High School District's experience.
Anita Johnson, chairman of that district's school board,

1 testified that several years ago, the State placed Lewistown's
2 high school on probation for serious problems with its facility.
3 Over a ten-year period, the district trustees ran five bond
4 issues for the construction of a new high school. Three years
5 ago, the bond issue finally passed. Before the passage of
6 that bond issue, the district's voters had never defeated a
7 voted levy. Since the passage of the bond issue, however,
8 the district has lost several mill levy elections. When Johnson
9 testified, Fergus High School District had suffered two General
10 Fund mill levy defeats. On June 30, 1987, following trial,
11 the district's voters defeated the district's third, and final,
12 voted levy request.¹⁹ Consequently, the district must operate
13 for the 1987-88 academic year without any local tax revenues,
14 which constituted approximately one-third of the district's
15 proposed General Fund budget according to Mrs. Johnson.

16 163. The 45% of district taxable valuation limit on capital
17 indebtedness places practical limits on the types of facilities
18 which property-poor districts can construct, independent of
19 voters' willingness to burden themselves with the high mill
20 levies caused by low property wealth. For example, Jim Brugg
21 elementary principal at Florence-Carlton, testified that his
22 elementary district desperately needs a new elementary school.
23

24 ¹⁹Pursuant to a post-trial motion by the Plaintiffs,
25 the Court takes judicial notice of the fact that Fergus High
School District's General Fund levy failed on the third vote.

1 or an addition to the existing building. The present building
2 cannot support the present student population, which has increased
3 approximately 20 pupils per year for the past several years.
4 The district, however, is unable to finance any capital improve-
5 ments because of its low tax base and limited bonding capacity.
6 The district passed a bond issue for school construction in
7 the 1960's, which will not be retired until sometime in the
8 1990's. Until that bond is retired, the district is unable
9 to construct additional facilities.

10 164. Capital-related expenditures, particularly maintenance
11 costs, compete directly with school districts' academic programs
12 for General Fund dollars. This is a significant problem for
13 many school districts. For example, Mr. Bob Walter, Director
14 of Facilities for Billings Public Schools, testified that the
15 annual cost to maintain and repair adequately that district's
16 facilities would be approximately \$1.5 to \$2 million. Until
17 1985, Billings was able to finance its maintenance and repair
18 costs through a series of voter-approved Building Reserve Funds.
19 In 1986, however, Billings voters overwhelmingly rejected the
20 district's Building Reserve Fund levies. Consequently, the
21 budget for maintenance and repair has been severely curtailed.
22 to approximately \$388,000 for the 1987-88 academic year. As
23 Mr. Walter testified, this is a short-sighted, albeit necessary
24 approach; deferred maintenance and repair will only increase
25 costs in the long run. Moreover, all of the dollars to fund

1 the limited maintenance and repair budget will come from the
2 General Fund, thus necessitating curtailments in the school
3 district's academic programs.

4 165. This competition for General Fund dollars between
5 capital expenditures and academic programs, illustrated by
6 the Billings example, was also testified to by many other
7 Plaintiff witnesses.

8 166. In sum, local burdens associated with Capital Outlay,
9 and the lack of State support for such expenditures, exacerbate
10 the inequities which were addressed above with respect to the
11 General Fund budget.

12 2. Teachers' Retirement

13 167. Retirement costs are an essential component of public
14 education, as the State Defendants realize:

15 INTERROGATORY NO. 43: Is it your position that
16 the various aspects of the retirement programs
17 for teachers and school support staff which
18 are funded in Montana by county retirement levies
19 are or are not an essential component of basic
20 quality education?

19 ANSWER: Yes. The various aspects of the teacher
20 retirement program for teachers and school support
21 staff which are funded in Montana by county
22 retirement levies are an essential component
23 of basic education in that the retirement provides
24 incentive to continue in the teaching profession
25 and does provide a process for teachers to achieve
retirement.

23 Defendants' Answers to Plaintiffs' First Set of Interrogatories.
24 Pl. Exh. 150

25 168. As previously established, since 1972, retirement

1 costs have been funded entirely through county mill levies,
2 with no State assistance. Although this situation will be
3 slightly mitigated by revenue from Montana's Lottery, pursuant
4 to S. B. 183, the burden of funding retirement costs will still
5 fall substantially on local taxpayers. (Pl. Exhs. 67A, 67B)

6 169. Because retirement costs are funded through property
7 taxes, local property wealth is a primary determinant of the
8 number of mills necessary to fund school districts' Retirement
9 Funds. In other words, counties with relatively higher property
10 wealth can fund their school districts' Retirement Fund budgets
11 with relatively lower tax effort; conversely, low wealth counties
12 must tax at a higher rate to fund their school districts' Retire-
13 ment Fund budgets. Thus, there is almost a direct, inverse
14 relationship between county property wealth and the number
15 of Retirement mills, as is demonstrated in County Retirement
16 Levies: Should The Burden Be Equalized? a 1986 report by Ms.
17 Andrea Merrill, of the Montana Legislative Council:

18 Table II reveals some inequities in county-level
19 taxation to cover school employee retirement
benefits for school fiscal year 1985. . . .

20 --In the lowest quartile of counties by
21 taxable valuation per ANB, 12 of the 14
counties are also included in the highest
22 quartile for size of mill levy to pay
retirement benefits.

23 --In the top quartile of counties by taxable
24 valuation per ANB, 13 of the 14 counties
have the lowest mill levies for retirement.

25 A. Merrill, County Retirement Levies: Should The Burden Be
Equalized? p. 7, Def. Exh. M-242, Attachment E

1 170. The comparison of Fergus and Sidney High School
2 Districts, addressed previously, illustrates this relationship.
3 Taxpayers in Fergus County are taxed 32.02 mills to support
4 teacher retirement, while Richland County taxpayers have only
5 4.47 mills. The disparity in these taxes is almost entirely
6 a function of disparate property wealth in the two counties.
7 Thus, the higher tax burdens shouldered by property owners
8 in Fergus High School District for the support of their school's
9 General Fund budget (42.26 mills) are compounded by higher taxes
10 for retirement costs (32.02 mills), resulting in a total tax
11 rate for these two budgets of 74.28 mills. Conversely, Sidney
12 taxpayers support General Fund spending comparable to Lewistown's,
13 as well as fund retirement costs, with a minimal total tax
14 effort of 15.27 mills--10.8 General Fund mills and 4.47 Retirement
15 mills. (See Pl. Exhs. 61 and 67)

16 171. As in the case of Capital Outlay, tax burdens associated
17 with retirement costs adversely impact on the ability of property-
18 poor school districts to fund their General Fund budgets through
19 the voted levy. There is a limit to the amount of school taxes
20 property owners are willing or able to pay. Moreover, they
21 are given no choice with respect to taxes for retirement costs
22 because retirement levies are not subject to voter approval.
23 Therefore, to the extent that local taxpayers become dissatisfied
24 with high school taxes, they will express their disapproval
25 in voted levy elections, and/or bond issue or building reserve

1 elections. Witnesses from Plaintiff school districts consistently
2 testified that they and their school boards are cognizant of,
3 and sensitive to, these facts, causing them to limit in every
4 possible way their General Fund mill levy requests.

5 172. In sum, the tax burdens of retirement, and the
6 related impact of those burdens on property-poor districts'
7 General Funds, exacerbate the inequities in Montana's school
8 finance system.

9 3. Transportation

10 173. As previously established, while State revenues
11 contribute to the funding of transportation costs, a substantial
12 portion of those costs is funded through local (county and
13 district) property tax revenues. Thus, a school district's
14 relative property wealth is a factor in determining the tax
15 burden associated with transportation.

16 174. When the State fails to fund its share of transporta-
17 tion costs, the burden on the local taxpayer increases further.
18 For example, in 1985-86, the State did not fund its share of
19 transportation costs. Thus, the local districts' share of
20 funding increased from \$16.8 million to \$24.6 million. (Exh.
21 M-250, p. 34)

22 175. The local tax burdens associated with transportation
23 costs contribute, though not to the same degree as Retirement
24 and Capital Outlay tax burdens, to the inequities and disparities
25 in Montana's school finance system.

1 E. Special Education

2 176. State and federal laws mandate that school districts
3 provide "free appropriate public education" to handicapped
4 individuals.

5 177. State financial support for Special Education began
6 in 1953, when the Legislature permitted school districts to
7 include in their ANB accounts cerebral palsy children attending
8 special classes. A "weighted ANB" funding formula was used,
9 by which each handicapped child counted for three ANB in the
10 school district's Foundation Program schedules, in recognition
11 of the additional costs associated with Special Education.

12 178. Following a 1973 legislative study, the Legislature
13 in 1974 changed the funding of Special Education from the "weighted
14 ANB" formula approach, to an "allowable excess cost system."
15 Under this funding formula, the State was to contribute 100%
16 of school districts' Special Education costs, which included
17 direct (salaries for specialists, textbooks, supplies, and
18 equipment, etc.) and indirect (heat, light, maintenance, retire-
19 ments costs of specialists, etc.) costs. Thus, under this
20 fully funded allowable cost formula, there was essentially
21 no burden on local taxpayers for Special Education because
22 State revenues financed these costs. (See Pl. Exh. 116)

23 179. In 1979, the Legislature removed from the allowable
24 costs of Special Education funding, the indirect costs associated
25 with educating handicapped children. Accordingly, State revenues

1 were reduced, and the costs were passed directly to local districts.

2 180. In 1981, the Legislature further limited Special
3 Education funding by placing a limit on the State's Special
4 Education appropriation, resulting in a situation in which
5 direct services were no longer fully funded by State revenues.
6 (Pl. Exhs. 117 and 119) This resulted in increased local burdens
7 associated with funding Special Education costs.

8 181. While State support for Special Education has decreased,
9 the costs of Special Education, and consequently, local burdens,
10 have increased. Because local districts depend primarily on
11 property taxes to generate revenues, inequities exist among
12 school districts in their abilities to meet increasing Special
13 Education costs. That is, wealthier school districts are better
14 able to absorb these increased costs, with less tax effort,
15 than poor districts.

16 182. School districts have limited flexibility in responding
17 to decreases in State revenues for Special Education. First,
18 federal regulations require that to receive federal Special
19 Education funds, school districts must "maintain fiscal effort"
20 that is, they must maintain previous levels of Special Education
21 spending. Second, because of legal protections guaranteed
22 Special Education students, school districts risk litigation
23 if they make significant program cuts in the area of Special
24 Education. (See Pl. Exhs. 159 and 169, App: "Distribution
25 to Public Schools")

1 183. The decline in State support, with corresponding
2 increased local burdens, has created a situation in which
3 regular education programs and Special Education programs compete
4 for a school district's General Fund dollars. For example,
5 Plaintiffs' expert, Dr. William Hickey, Executive Director
6 of Special Services for Anaconda Public Schools, testified
7 that cuts in Special Education funding implemented by the 1987
8 Legislature resulted in cuts in his school district's regular
9 education programs.

10 184. In sum, the costs of Special Education are not
11 equitably funded. Moreover, it is clear that the method of
12 financing Special Education contributes to already existing
13 inequities in Montana's school finance system.

14 F. Initiative 105

15 185. Initiative 105 [I-105] was adopted at the general
16 election in November of 1986. The thrust of I-105 was that
17 future property tax levels on certain classes of property were
18 frozen at 1986 levels, unless the Legislature reduced property
19 taxes prior to July 1, 1987, and established alternative revenue
20 sources.

21 186. The 1987 Montana Legislature did not reduce property
22 taxes and establish alternative revenue sources but instead
23 extended the reach of I-105 with the enactment of Senate Bill
24 71 [S. B. 71]. S. B. 71 extended the freeze on property taxes
25 to all classes of property "in order to avoid constitutional

1 challenges based on discriminatory treatment of taxpayers in
2 tax classes not enumerated in [Initiative 105]" (S. B.
3 71, § 1(1). (See also, Exh. M-329)

4 187. In essence, I-105 and S. B. 71 freeze property taxes,
5 including those used to finance public schools in Montana,
6 at their 1986 levels, subject only to a minor exception in
7 Section 9 in cases of emergency, where increased property taxes
8 are specifically approved by the voters and other specific
9 requirements are met. As a result of the passage of I-105
10 and S. B. 71, in the absence of an emergency as defined in
11 S. B. 71, the only way school districts can raise additional
12 amounts of property taxes (over 1986 levels) is if there is
13 a fortuitous occurrence, such as annexation of real property
14 and improvements into a taxing unit, new construction or
15 expansion of improvements, subdivision of real property,
16 reclassification of property, or a like event. Thus, for all
17 practical purposes, the significant taxable valuation differences
18 among the various school districts in Montana and the resultant
19 inequities that such disparities entail for school funding,
20 are systematically locked in.

21 188. The systematic freezing of property tax amounts
22 at 1986 levels amounts to a societal adoption of a grossly
23 inequitable system of financing public schools. The result
24 is particularly telling with respect to the State's attempted
25 local control argument. The State attempts to justify the

1 substantial revenue and tax inequities with the argument that
2 the tax levels in the various school districts in Montana are
3 a matter of "local choice." While this argument is not persuasive
4 for the reasons set forth in the local control findings, infra,
5 it is even more unpersuasive in light of the tax freeze. Even
6 if a low-wealth district which is presently spending low amounts
7 of money per ANB desired to improve its situation after 1986
8 by making a supreme tax effort, it could not do so because
9 it is "locked in" at the 1986 property tax levels. As a result
10 of I-105 and S. B. 71, there is no discretion allowed these
11 poor districts to improve their lots. Thus, the discrimination
12 inherent in Montana's heavy reliance on property taxes to finance
13 schools is invidious.

14 V. UNEQUAL EDUCATIONAL OPPORTUNITIES

15 A. Introduction

16 189. The foregoing Findings focus, from a statistical
17 standpoint, on the disparities and inequities in Montana's
18 system for financing public education. The significance of
19 these disparities and inequities lies in the fact that they
20 translate into unequal educational opportunities for students
21 in Montana's public schools.

22 190. One of the primary goals of the Foundation Program
23 when it was enacted, a goal which is consistent with guarantees
24 provided by Montana's Constitution, was to equalize school
25 finance, so as to provide students in Montana's public schools with

1 equal educational opportunities. As the Superintendent of
2 Public Instruction's School Finance and Statistics Reference
3 Manual states:

4 Equalization is a process which increases equality.
5 As used in school finance the term carries two
6 special meanings; equalization is a process
7 by which

8 *All children are provided with equal
9 educational opportunity, and

10 *The fiscal burdens of education are
11 apportioned fairly among taxpayers.

12 Superintendent of Public Instruction, State of Montana, School
13 Finance and Statistics Reference Manual, Topic 1, p. 2, Pl.
14 Exh. 5)

15 191. As previously established, similarly sized school
16 districts in Montana spend widely varying amounts to educate
17 their students. These spending disparities translate into
18 unequal educational opportunities, because the education dollars
19 purchase the resources necessary for providing educational
20 programs and services. Thus, per pupil expenditures is a common
21 measure of educational opportunities, while differences in
22 per pupil expenditures among similar school districts correspond-
23 ingly is a common measure of inequalities in educational oppor-
24 tunities.

25 192. As Plaintiffs' expert, Dr. Arthur Wise²⁰, an expert

²⁰Dr. Wise authored Rich Schools, Poor Schools: The Problem
of Equal Educational Opportunity (1968), a seminal work in the
field of school finance reform. Dr. Wise is presently Director
of the Center for the Study of the Teaching Profession in the
Washington, D. C. office of Rand Corporation.

1 on education and school finance, testified, if there is no
2 rational reason for disparities in expenditures per pupil,
3 it can be concluded that there is inequality of educational
4 opportunity. Further concern is raised when the disparities
5 are related to educationally irrelevant factors, such as wealth.

6 193. Absolute equal expenditures per student is neither
7 necessary, nor desired, in an equitable school finance system.
8 Rather, differences in per student expenditures are acceptable,
9 and desirable, if those differences are the result of education-
10 ally relevant factors such as, for example, the presence of
11 educationally disadvantaged or handicapped children in a
12 school district, school district size, or differences of similar
13 nature.

14 194. The disparities in Montana's school finance system,
15 including per pupil expenditure disparities, along with the
16 relationship of district property wealth to those disparities,
17 demonstrate that the system fails to provide equal educational
18 opportunities to students in Montana's public schools. As
19 the Legislative Council stated in its 1972 Report to the Montana
20 Legislature on the School Foundation Program:

21 The basic value that underlies this study is
22 that it is repugnant to the idea of financial
23 or educational equality that the quality of
24 a child's education is determined by accidents
25 of birth, wealth, or geography; that a child
who lives in a poor district is, by reason of
that fact alone, entitled to lower public
investment in his education than a child in
a rich district. It is unconscionable that

1 a poor man in a poor district must often have
2 to pay taxes at higher rates for the inferior
3 education of his child than the man of means
4 in a rich district pays for the superior
5 education of his child. Yet, incredibly,
6 that is . . . the case in Montana.

7 The Montana method of financing its public schools
8 does not provide educational or fiscal equity.
9 In fact, its structure and funding ensures the
10 continuance of basic inequality in educational
11 revenue raising and expenditure.

12 . . . Furthermore, the wide differences in tax-
13 able valuation per pupil among the various
14 districts of the state dictate that many, and
15 in fact, a majority of the taxpayers in the
16 state are paying significantly more for their
17 share of public school finance than other tax-
18 payers simply because the taxable valuation
19 per pupil in their particular district is
20 significantly lower than the taxable valuation
21 per pupil of their neighbor's district.

22 Legislative Council 1972 Report, pp. 7-8, Pl. Exh. 8

23 These conclusions are equally valid and accurate today.

24 B. Unequal Educational Opportunities

25 195. Administrators, teachers, and school board members
from several Plaintiff school districts identified various
problems and deficiencies in their schools resulting from lack
of money. To be sure, any competent school teacher or adminis-
trator, if asked, can identify areas in which they would like
more or better resources to better educate students. The
problems and deficiencies identified by Plaintiffs' witnesses,
however, are not of this nature. Rather, the evidence demonstra-
tes consistent patterns of serious deficiencies in areas central
to the schools' educational programs and services. The same

1 problems do not exist in all schools, but the patterns are
2 clearly identifiable.

3 196. Many schools have resource-related problems with
4 their science programs. Poor and outdated equipment, for
5 example, was commonly identified as a problem by school witnesses.
6 Inadequate lab facilities and insufficient supplies of science
7 specimens and materials are also problems.

8 197. In the program areas of business education, industrial
9 arts, and home economics, it is important to have adequate
10 equipment for students to use as they learn. As in science
11 programs, "hands on" learning is essential in these program
12 areas. Many Plaintiff districts, however, do not have adequate
13 equipment to provide such "hands on" education. In some instances,
14 the equipment is simply not available, in other instances,
15 the equipment which is available is inadequate or outdated.
16 Bigfork High School, for example, has only manual typewriters,
17 it has no dictation transcription center, and has only one
18 computer in its business department, which is inadequate.
19 Students taking home economics at Lolo have access to only
20 three stoves, they must cut patterns for sewing projects in
21 the hallway, and there is no storage space for their projects
22 in the school.

23 198. Students in today's schools must receive some exposure
24 to, and knowledge of, computers in order to receive an adequate
25 education. Again, however, there is a clear pattern of

1 problems in this area among Plaintiff school districts. Many
2 districts simply have inadequate numbers of computers, others
3 have inadequate facilities in which to teach computer classes
4 (computer labs), and nearly all Plaintiff districts have been
5 forced to purchase less expensive low quality equipment because
6 it is all they can afford.

7 199. Inadequate libraries and resource materials are
8 also common deficiencies among Plaintiff districts. Inadequate
9 stocks of reading materials and reference materials, such as
10 periodicals, encyclopedias, etc., are common. Mr. Byron Webber,
11 a teacher in the Florence-Carlton Elementary School, gave a
12 particularly graphic example of such a shortage. Because there
13 is only one reference cart for the entire school, Mr. Webber
14 purchased at a garage sale a set of 1955 encyclopedias for
15 his classroom. As he pointed out, the encyclopedias work fine
16 when the students are studying the Greeks, but they are somewhat
17 deficient when the space program is the topic of study.

18 200. Several witnesses expressed concern about the ability
19 to teach research skills, or assign projects involving any
20 research, because of inadequate libraries.

21 201. Plaintiff school districts consistently have problem
22 maintaining adequate and current supplies of textbooks. The
23 School Accreditation Standards provide that textbooks should
24 be reviewed at least every five years for possible replacement.
25 For many districts, even if this review process is conducted.

1 it is not possible to purchase new textbooks anyway, due to
2 lack of money. Some districts also pointed out that students
3 must share textbooks in some subject areas, because the district
4 cannot afford to buy enough books for every student.

5 202. In addition to the general text, supplementary materials,
6 such as current literature, workbooks, and the like, are also an
7 important educational resource. In this area, again, the
8 evidence demonstrates a pattern of deficiencies among Plaintiff
9 school districts. The budgets in many districts are so tight
10 that teachers simply are not permitted to purchase supplementary
11 materials, unless they wish to do so at their own expense.

12 203. Many districts experience shortages of basic supplies
13 and materials, such as paper, art supplies, etc., in the latter
14 part of the school year. These shortages create problems and
15 inconveniences, and they demonstrate the tight General Fund
16 budgets within which the school districts operate.

17 204. Gifted and Talented Programs are an important aspect
18 of a quality school system. Most Plaintiff districts either
19 do not have such programs, or their programs are on a limited
20 scale, often involving extra, volunteer time by teachers. East
21 Helena Elementary District, for example, recently built a new
22 facility which includes a classroom intended to be used for
23 gifted and talented education. Because of a lack of money,
24 however, the district cannot afford to fund a Gifted and Talented
25 Program.

1 205. Experience is an important factor in the quality
2 of a teacher. For this reason, school districts prefer to
3 select teachers with experience from among the qualified pool
4 of applicants. This, however, costs more money, because teachers
5 with more experience are higher on the salary schedule.

6 206. Another important factor in teacher quality relates
7 to continuing education or "in-service training." Virtually
8 none of the Plaintiff districts provide financial assistance
9 to their teachers for such programs. Therefore, if a teacher
10 wishes to attend a seminar or conference, he/she must do so
11 at his/her own expense. Similarly, "in-house" programs are
12 very limited.

13 207. The State did not properly introduce into the record
14 substantive or credible evidence which validly compares salary
15 costs among school districts in Montana. Therefore, the Court
16 specifically rejects the State's charts and proposed findings
17 on that subject which were challenged by the Plaintiffs in
18 their post trial motion to strike new exhibits and related
19 proposed findings. (See pp. 11 and 12 of Plaintiffs' brief
20 in support of their motion.) They are not supported by evidence
21 in the record.

22 208. Another area in which Plaintiff districts commonly
23 experience problems is with respect to administrative and
24 support personnel. In East Helena, for example, a district
25 with approximately 900 students, Superintendent Jim Koke

1 using some of Colstrip's used classroom units. The fact that
2 the Colstrip School District, a property rich district, sells
3 used modular units to other Montana school districts, while
4 it has a new facility, is in itself evidence of the disparities
5 and inequities in Montana's school finance system.

6 212. Maintenance problems are also common among Plaintiff
7 school districts. Because of limited resources, districts
8 are forced to defer maintenance and repair in order to avoid
9 significant program cuts. By doing so, however, maintenance
10 problems increase and become more expensive.

11 213. The problems and deficiencies identified in the
12 foregoing Findings result from a lack of money. If the school
13 districts were able to spend more on their educational programs
14 and services, as are other similarly sized school districts
15 in Montana, many of these problems would be addressed. This
16 would translate into improved educational opportunities for
17 students in the Plaintiff districts.

18 C. Comparative Evidence of Unequal Opportunities

19 214. Several Plaintiff witnesses had experience either
20 as teachers or administrators in other Montana districts,
21 including some relatively wealthier districts. Mr. Walt Piipoo,
22 for example, currently Superintendent at Drummond, was previously
23 Superintendent for Geraldine schools. The two school districts
24 are very close in size, at both the elementary and high school
25 levels. Geraldine's taxable valuation, however, is more than

1 twice that of Drummond's. (Pl. Exhs. 25A and 25B) The tax
2 efforts for the elementary schools are comparable, while
3 Geraldine levies more General Fund mills than does Drummond
4 at the high school level. Consequently, Geraldine spends
5 approximately \$1,000 more per ANB than Drummond at the elemen-
6 tary level, and over \$2,000 more per ANB at the high school
7 level. (Id.) Approximately 40% of Geraldine's General Fund
8 revenues derive from the voted levy, while at Drummond, the
9 voted levy supplies approximately 15% of General Fund revenue.
10 This illustrates the fact that wealthier districts are able
11 to rely to a greater extent on the voted levy to generate
12 revenues for the General Fund.

13 215. Mr. Piipo testified unequivocally that Geraldine
14 schools have advantages, and offer opportunities, which Drummond
15 schools cannot afford. Geraldine has much greater budget flex-
16 ibility to address educational needs and goals than does
17 Drummond. Mr. Piipo testified that there is no question that
18 the educational opportunities afforded students in Drummond
19 could be improved if the district had the same amount of money
20 as Geraldine.

21 216. The fact that spending disparities result in unequal
22 educational opportunities was established more systematically
23 by Plaintiffs' experts Dr. Ron Mattson, Mary Pace, and Dr. John
24 Picton. Each of these individuals has many years' experience
25 in Montana public education. They comprised a "Study Team"

1 which was commissioned by the Plaintiffs to do a comparative
2 study of several pairs of school districts in the State. They
3 compared three pairs of elementary districts, and three pairs
4 of secondary districts.²¹ Schools in each pair were of similar
5 size, with one spending considerably more per pupil than the
6 other. In addition to analyzing the budget data for each of
7 these districts, members of the Study Team visited all 12 districts
8 to observe the schools first hand, and to conduct interviews
9 with administrators and teachers.

10 217. The Study Team identified clear differences between
11 the schools in each of the pairs. They found that the better
12 funded schools tended to offer more enriched and expanded
13 curricula than those offered in the schools with less money.
14 The richer schools were also better equipped in the areas of
15 textbooks, instructional equipment, audio-visual instructional
16 materials, and consumable supplies. With respect to buildings
17 and facilities, the districts with more money were better able
18 to maintain their facilities than were the poorer districts.
19 The Study Team concluded:

20 * Availability of funds clearly affect the extent
21 and quality of the educational opportunities.

22
23 ²¹The elementary district pairs were: (1) Glasgow Elementary
24 and East Helena Elementary School Districts, (2) Cut Bank Elementary
25 and Evergreen Elementary School Districts, and (3) Baker
Elementary and Darby Elementary School Districts. The high school
districts were (1) Sidney High School and Laurel High School
Districts, (2) Baker High School and Darby High School Districts,
and (3) Chester High School and Victor High School Districts.

1 * There is a positive correlation between
2 the level of school funding and the level of
educational opportunity.

3 * The better funded districts have a greater
4 flexibility in the reallocation of resources
to programs where there is a need.

5 * The differences in spending between the
6 better funded and underfunded districts are
clearly invested in educationally related
7 programs.

8 * All 12 school districts in this study
9 exhibited a responsible and judicious use of
their financial resources.

10 R. Mattson, M. Pace, and J. Picton, Does Money Make a Difference
11 in the Quality of Education in the Montana Schools? p. 82,
Pl. Exh. 128

12 218. Intervenor-Plaintiff MEA commissioned a study similar
13 to that conducted by Plaintiffs' Study Team. Dr. Gary Gray, an
14 assistant professor in Eastern Montana College's School of Educa-
15 tion, studied educational opportunities in a number of high and
16 low spending school districts in Montana. His methodology
17 differed from that of the Plaintiffs' Study Team, but he arrived
18 at essentially the same conclusions. Dr. Gray used an extensive
19 checklist of indicators to compare educational opportunities
20 among school districts within two expenditure classifications,
21 a low expenditure category, and high expenditure category.²²

22
23 ²²Group I, the low expenditure category, was comprised of
24 the following districts: Fromberg, Superior, Whitehall, Shepaug,
Belgrade, Centerville, Park City, and Stevensville. Group II,
25 the high expenditure category was comprised of the following
districts: Sunburst, Frenchtown, Shelby, and Coltrip.

1 219. Dr. Gray concluded that there are substantial differences
2 in educational opportunities among Montana school districts,
3 which are manifested significantly between the high versus low
4 expenditure categories which he studied. More specifically, he
5 found that wealthier districts offered more science classes,
6 in labs which were typically larger, better stocked with more
7 equipment and consumable supplies, with more storage, and
8 generally more functional than those in poorer districts. Con-
9 sequently, students in wealthier districts had more "hands
10 on" learning experiences than students in poorer districts.
11 Dr. Gray found the same things to be true in the home economics
12 and industrial arts programs. Similarly, schools with more
13 money tended to offer a wider and more enriched range of
14 courses in the language arts, including foreign languages.

15 220. In the specialty areas of physical education, music,
16 and art, the wealthier schools offered more opportunities.
17 Gifted and Talented Programs were much stronger in the high
18 expenditure districts. Consistent with the situation in many
19 Plaintiff districts, Dr. Gray found that many of the low
20 expenditures districts could not even afford to offer a Gifted
21 and Talented Program.

22 221. With respect to computers, he found significant
23 differences, with the high expenditure districts having more
24 and better computers and computer labs. He also found significant
25 differences between the two expenditure categories for library

1 and media center services, with the high expenditure districts
2 having larger and newer book collections, larger periodical
3 collections, larger reference collections, larger audio-visual
4 collections, and better special collections.

5 222. With respect to facilities, high expenditure districts
6 reported that they have not had to defer necessary maintenance
7 or work projects due to a lack of funds, as have low expenditure
8 districts.

9 223. Wealthier districts also offer a wider range of
10 extracurricular activities to students than low expenditure
11 districts. (See G. Gray, A Report on Educational Opportunities
12 in Selected Montana School Districts, Exh. MEA-13)

13 224. In sum, the comparative evidence establishes that
14 spending differences among similarly sized school districts
15 in the State result in unequal educational opportunities for
16 students. Furthermore, the comparative evidence verifies the
17 fact that the deficiencies and problems identified by Plaintiff
18 witnesses are part of a consistent pattern in lower-spending
19 districts, and that such deficiencies and problems are not
20 consistently found in relatively higher spending districts.

21 D. The Significance of Tax Effort Disparities

22 225. Previous Findings have established that significant
23 disparities in tax efforts exist among school districts in
24 Montana. Problems and inequities associated with these
25 disparities impact directly on educational opportunities offered:

1 in Montana's schools.

2 226. Districts with low property wealth are forced to
3 tax at much higher rates to achieve reasonable levels of spending,
4 and even in doing so, are generally not able to spend at the
5 same levels as are relatively wealthier districts. Because
6 their taxpayers are already heavily burdened, school boards
7 in such low wealth/high tax districts are forced to limit their
8 budget requests for political reasons. That is, many educational
9 needs go unaddressed because tax increases would be necessary
10 to pay for them and school boards will not seek such increases
11 for fear of losing the voted levy. This process impacts directly
12 on educational services and opportunities available to students
13 in the districts.

14 227. An associated problem is the fact that low wealth/
15 high tax districts lack budget flexibility. There simply is
16 no room in their budgets to meet unanticipated costs, or revenue
17 shortfalls. Wealthier districts, on the other hand, can generate
18 revenues to meet such needs through requests of their voters,
19 because their voters are not heavily burdened with school taxes.
20 Again, there is a direct impact on students' opportunities
21 in such situations.

22 VI. FEDERAL IMPACT AID

23 228. Public Law 81-874 ("Impact Aid Act") provides federal
24 educational aid funds to certain school districts which are
25 burdened with a substantial federal presence. (P. L. 81-874)

1 [1950], as amended, codified, at 20 U.S.C. §§ 236-240 [1980])

2 The essential purpose of the Act is to provide a replacement
3 for tax base lost because of the presence of federal property,
4 which is not subject to State or local taxation.

5 229. In 1985-86, thirty-two (32) Montana elementary school
6 districts and twenty-eight (28) secondary districts received
7 Impact Aid revenues. (Pl. Exhs. 69 and 71) Impact Aid revenues
8 do not constitute a large proportion of statewide, total school
9 revenues. These revenues are, however, a significant portion
10 of the General Fund budgets for those districts which receive
11 them.

12 230. The Intervenors-Defendants Indian Impact Aid schools
13 are school districts on or near Indian reservations, which
14 have significant portions of their territory in Indian trust
15 status which is not subject to local taxation. Most of these
16 districts receive substantial Impact Aid funds. (Pl. Exhs.
17 73 and 74)

18 231. The Impact Aid Act is not specifically designed
19 for "Indian Impact" schools, rather it is designed for "federal-
20 impact" schools. For example, the Gardiner and West Yellowstone
21 School Districts receive substantial Impact Aid funds because
22 of their proximity to Yellowstone National Park, and the Great
23 Falls School Districts receive these funds because of the
24 presence of Malmstrom Air Base. (Pl. Exhs. 73 and 74) The
25 major recipients of Impact Aid funds in Montana, however, are

1 the Intervenor-Defendants Indian Impact Aid schools.

2 232. As previously described, the Foundation Program
3 has an equalization mechanism which recaptures revenue from
4 "property-rich" districts and counties, and distributes those
5 funds to "property-poor" districts, in an effort to equalize
6 funding imbalances across the State. (Sections 20-9-331,
7 20-9-333, and 20-9-344 through 20-9-348, MCA) This equalization
8 mechanism considers only revenues generated through the mandatory
9 property tax levies; it does not consider non-tax revenues
10 such as Impact Aid funds. Thus, many districts with reduced
11 tax bases due to the presence of federal property appear to
12 be "poor" within the equalization formula, and therefore qualify
13 for substantial State equalization funds. Those same districts
14 also qualify for and receive Impact Aid funds due to the federal
15 presence. This results, in effect, in a double subsidization
16 for the "poorness" of the federal impact districts: first
17 they get State equalization aid, then they get federal Impact
18 Aid.

19 233. The State of Montana has recognized this problem.
20 In his 1982 study, Stephen R. Colberg of the Office of Public
21 Instruction, wrote:

22 Non-Tax Revenues

23 As indicated above some school districts have
24 access to such large amounts of non-tax revenues
25 that district property taxes are eliminated.
None of Montana's existing funding mechanisms
make any adjustment to state aid payments based
on wealth from non-tax sources.

1 Whenever a district is poor because it contains
2 large tracts of federal land that are not taxable,
3 it becomes eligible for federal impact aid;
4 however, if the same district receives additional
5 state aid because it is poor, then it receives
6 both state and federal compensation for the
7 same cause. As the state effort to equalize
8 among districts becomes more effective, this
9 problem is exaggerated (sic). Districts impacted
10 are those on Indian reservations, national forests
11 and military bases.

12 S. Coiberg, A Study of Guaranteed Tax Base: Supplemental Funding
13 To Improve Equalization Between Low-Wealth and High-Wealth
14 School Districts, p. 9 (1982), Pl. Exh. 102, App. C

15 234. Several Montana school districts which receive Impact
16 Aid funds are property wealthy districts. Colstrip High School
17 District, for example, has a taxable valuation per ANB of
18 \$473,072. Lodge Grass High School District's wealth is even
19 greater, at \$641,639. Both of these districts receive substantial
20 Impact Aid funds.

21 235. A state may include Impact Aid funds in its equaliza-
22 tion formula, if the state's school finance system meets the
23 federal definition of an equalized program, and if the Secretary
24 of Education approves. Montana presently may not include federal
25 Impact Aid funds in the Foundation Program formula, because
the system is not equalized under the federal definition.

26 236. The Intervenors-Defendants presented evidence of
27 the special educational needs of Indian students attending
28 schools within their districts. These districts have special
29 problems with bilingualism, high parental unemployment, alcoholism
30 and generally, low student achievement.

1 237. The Intervenor-Defendants contend that they need
2 their Impact Aid revenues in order to meet their particular
3 problems and needs. There are, however, several flaws with
4 the Intervenor-Defendants' position.

5 238. First, as previously established, the Impact Aid
6 Act is a program to compensate schools which suffer a reduction
7 in tax base because of federal presence, whether it be through
8 national forest or park lands, military bases or Indian trust
9 lands. With a minor exception created by a 1978 amendment,²³
10 the Act is not a program primarily and specifically designed
11 to alleviate problems in Indian education.

12 239. The Intervenor-Defendants receive other federal
13 financial assistance which is specifically designed to provide
14 financial support for schools with special Indian needs. For
15 example, both Lodge Grass and Hardin School Districts received
16 substantial revenues from the Johnson-O'Malley Act, Chapter
17 I funds, Title IV funds, as well as other grants for these
18 purposes.

19 240. A second flaw in the Intervenor-Defendants' position
20 is the fact that many districts which receive Impact Aid funds
21 use those revenues for tax relief, not to fund special education
22 services or programs. For example, Mr. Robert G. Kinna, Super-
23 tendent of the Wolf Point Public Schools, stated in his affidavit
24

25 ²³20 U.S.C. § 2701 P.L. 95-561, November 1, 1978 [Section
1101(a)]

1 entered into the record in this action:

2 In Wolf Point 874 monies do not support programs
3 that are specifically designed for Indian students,
4 but rather are used to relieve the property
5 tax burden on the local taxpayer.

6 Kinna Affidavit, para. 2²⁴

7 At trial, Mr. Harold Tokerud, Superintendent of the Colstrip
8 Public Schools, testified that P.L. 874 funds are also used in his
9 district for property tax relief. Moreover, even though 28%
10 of the Colstrip High School student population is made up of
11 Native Americans, the district does not offer any courses dealing
12 specifically with Indian culture.

13 241. The third flaw in the Intervenor-Defendants' position
14 is that the Impact Aid funding mechanism does not rationally
15 distribute funds in proportion to the special needs or tax
16 base problems of the beneficiary districts. For example, Arlee
17 and Lodge Grass High Schools have similar student enrollment.
18 Lodge Grass has a taxable valuation per ANB of \$641,639 and
19 yet receives \$5,552.52 per ANB in federal Impact Aid revenue.
20 Arlee, on the other hand, has a taxable valuation of only \$8,265
21 per ANB, and receives \$2,568.32 of federal Impact Aid revenue.
22 Thus, while Lodge Grass has a tax base that is 80 times greater
23 than Arlee's, Arlee receives less than one-half of the amount
24 of Impact Aid revenue received by Lodge Grass. Both of the
25 districts, however, have high proportions of Indian students.

²⁴Offered into evidence by stipulation in lieu of testimony.

1 Thus, there is no rational relationship between either district
2 property wealth, or special needs, and the amount of Impact
3 Aid received.

4 242. In sum, while the evidence demonstrates special
5 needs in the Intervenor-Defendants' schools, Impact Aid funds
6 are not distributed in a manner tailored to meet those special
7 needs. Moreover, as Montana's school finance system presently
8 operates, the distribution of Impact Aid funds exacerbates
9 the inequities inherent in the system. In addition, legislative
10 consideration of the school finance system should not be limited
11 by excluding P. L. 874 funds from its scrutiny.

12 VII. THE DEFENSES

13 A. Local Control

14 243. As previously established, local boards of trustees
15 have an important role in the governance and control of school
16 districts. Local control of schools, while not absolute by
17 any means, historically has been an important part of public
18 education in this country, as well as our State.

19 244. The State of Montana has, in recent years, imposed
20 numerous requirements on the operation of public schools, ranging
21 from number of school days, to Accreditation Standards, to
22 teacher certification requirements and similar regulations.
23 State requirements have traditionally been accepted as not
24 inconsistent with the maintenance of local control of the schools.

25 245. The inequities and disparities in Montana's school

1 finance system are neither explained by, nor justified by local
2 control. This is perhaps illustrated most clearly, and simply,
3 by reference to the above comparison of Choteau and Fairfield
4 High Schools. These are two similarly sized schools, in very
5 similar communities in close proximity to one another. Thus,
6 it is reasonable to assume similar attitudes about education
7 and schools. Choteau spends significantly more per student
8 than does Fairfield, but it does so with less than half the
9 tax effort. Obviously, the spending disparity is not the result
10 of greater community support for education in Choteau, or any
11 local policy choice. Rather, the spending disparity is a function
12 of the disparate property wealth in the two districts. (Pl.
13 Exh. 63)

14 246. The evidence systematically demonstrates that the
15 Choteau-Fairfield situation, that is, greater spending with
16 less tax effort, is true on a statewide basis. Thus, spending
17 disparities among Montana school districts are not the result
18 of local control.

19 247. It is inaccurate to suggest, as did the State in
20 its defense, that the achievement of an equitable system of
21 finance for public schools is inconsistent with the preservation
22 of local control. It is also inaccurate to suggest, as did
23 the State, that increased levels of State funding are inconsistent
24 with preservation of local control. A number of eminent experts
25 testified regarding states which have achieved much higher

1 levels of equity than has Montana and yet have preserved a
2 high degree of local control. Even Dr. Everett Edington of
3 New Mexico, an expert, conceded that the state of New Mexico
4 has had a high degree of state funding for public schools and
5 yet has preserved a commendable level of local control. This
6 has also been recognized by the Montana Board of Public Education.
7 (See its 1975 report, Basic Quality Education, Pl. Exh. 100B, p. 47)

8 248. Poorer school districts have less local control
9 than wealthier districts because they have fewer options due
10 to having fewer resources, as recognized by the Board of Public
11 Education in its 1975 report, Basic Quality Education:

12 In keeping with this latter (local control)
13 provision, the Board believes that locally elected
14 boards of trustees must retain significant control
15 over school district budgets. At the same time,
16 the Board believes that further fiscal reform
17 is still needed to remove those restrictions
18 on school board decisions caused by district
19 property values; boards of trustees should have
20 the same options available to them irrespective
21 of local property wealth.

18 * * *

19 In 1974-75 school year, voters statewide approved
20 and paid for budgets averaging more than 30
21 percent above the maximum general fund budget.
22 With so much reliance on local revenues, it
23 is clear that poorer districts do not have the
24 same options as wealthier districts.

22 Board of Public Education 1975 Report, p. 47, Pl. Exh. 100B

23 249. Meaningful local control involves making and imple-
24 menting personnel, curricula, and program decisions, rather
25 than raising local revenues. These meaningful aspects of

1 local control can be maintained, and even enhanced, through
2 more equitable funding of schools.

3 B. "Inputs" Versus "Outputs" Debate: Money Makes No
4 Significant Difference

5 250. A number of previous Findings have established that
6 per pupil expenditure data is a proper measure of educational
7 opportunities because money purchases the resources necessary
8 for providing quality educational programs, and thus translates
9 directly into opportunities available to students. Thus,
10 disparities in educational inputs result in disparities in
11 educational opportunities.

12 251. Attempts to measure educational opportunity by focus-
13 ing on educational "outputs," as measured by student performance
14 on standardized tests, graduation rates, college performance,
15 etc., are seriously flawed. A wide range of factors, such
16 as innate intelligence, socio-economic status, educational
17 level of parents, family stability, and others, have a demonstrable
18 effect on a child's educational success and achievement. In
19 providing public education, the State has little control over
20 many of these factors. The State can, however, provide equal
21 equal educational opportunities, even if it cannot guarantee
22 them equal achievement and success.

23 252. Plaintiffs' experts, Dr. Stephen Klein, psychologist
24 and Dr. Wise, identified a number of problems with using stan-
25 dardized test scores as a measure of educational opportunities

1 At the outset, in order to even begin to use comparative test
2 scores effectively, it is critical to control the inputs that
3 go into the analysis. Accomplishing this, however, is extremely
4 difficult, if not impossible. Another problem is that many
5 schools "teach to the tests," either by orienting their educa-
6 tional program to the standardized tests which are given, or
7 by actually coaching students during the exam process. Addi-
8 tionally, standardized tests do not measure many of the less
9 objective, but equally important outcomes expected from the
10 educational process, such as communication skills, work habits,
11 aesthetic appreciation, etc. Finally, comparison of test scores
12 from among different types of tests produces seriously flawed
13 results. In sum, attempts to use standardized test results
14 as a measure of educational opportunities have little or no
15 validity.

16 253. The State Defendants planted seeds throughout trial,
17 attempting to show an absence of relationship between money
18 spent on education and educational outputs. No concrete or
19 credible evidence, however, was introduced to support this
20 theory. Moreover, Dr. John Pincus, an expert who had been
21 identified, but who did not testify, was very blunt in the
22 contract proposal he had made to the State proposing a cost-
23 quality research study which was never pursued:

24 Although it is useful to review this educational
25 effectiveness literature, as part of the basis
for testimony, its applicability to Montana

1 conditions is not clear, in view of the diversity
2 of results of the existing body of research
and the absence of any such prior studies of
3 Montana conditions.

(Read into the record pursuant to Mont. R. Evid. 613)

4 In essence, Dr. Pincus' observations are consistent with the
5 comments of the Wyoming Supreme Court with respect to this issue:
6

7 . . . our exploration of the subject has resulted
8 only in discovery of a quagmire of speculation,
so slippery that it evades any secure grasp for
judicial decision making.

9 Washakie County School District No. 1 v. Herschler, 606 P.2d
10 310, 334 (Wyo.), cert. denied, 449 U.S. 824 (1980)

11 254. In addition to the many technical flaws inherent
12 in attempting to measure educational opportunities by outputs
13 analysis, such an approach defies common sense, as Dr. Bandy
14 commented in his 1980 Report to the Superintendent of Public
15 Instruction:

16 It should be remembered that school boards call
17 for levies and people approve them because they
18 believe they should or must to meet mandates
and to provide good education. Boards do not
call for levies and people do not approve them
for fun!

19 Bandy, 1980 Report, p. 39, Pl. Exh. 102

20 Moreover, Montana's Foundation Program itself is premised on
21 the notions that increased expenditures on education relate
22 to increased quality, and that inequitable expenditures result
23 in inequality of opportunity.

24 255. As previous Findings have established, the comparative
25 evidence of unequal opportunities between poorer and richer

1 school districts in Montana demonstrates the direct relationship
2 between money and educational opportunities. This relationship
3 was further buttressed by the testimony of witnesses from the
4 Troy School District, a Plaintiff district. As a result of
5 the opening of a silver mine, Troy has experienced a four-fold
6 increase in taxable valuation in the last six years. This
7 has enabled the Troy School District to decrease its voted
8 millage from 105 mills in 1980-81 to approximately 50 mills.
9 At the same time, spending at the elementary level has increased
10 from \$1,600 per student to \$2,400 per student, and in the high
11 school, it has increased from approximately \$1,800 per student
12 to \$3,900 per student. These spending increases have translated
13 directly into improved educational opportunities in the Troy
14 School District, as Superintendent Rick Hill and Ron Higgins,
15 an industrial arts teacher, so graphically demonstrated through
16 their testimony.

17 256. In the 1970's, Mr. Higgins taught very limited
18 industrial arts courses in a converted bus barn. The facility
19 itself was dismally inadequate, and it was poorly equipped.
20 As a result of the improved economic lot of the district, a
21 new shop was built. Troy is now able to offer a much broader
22 range of programs to more students, in a fine facility with
23 state-of-the-art equipment. Student interest as well as achievement
24 have noticeably improved.

25 257. Superintendent Hill testified that the improvement

1 in the industrial arts program are typical of improvements
2 throughout the school system. The district now pays for teachers
3 to attend seminars and conferences, as well as providing quality
4 in-house staff development programs. The district's textbook
5 adoption program is now current, teachers are able to order
6 supplies and resource materials, and high quality computer equip-
7 ment has been purchased.

8 258. With respect to the facilities, Troy is now able
9 to budget sufficient monies for maintenance and repair, and
10 has the flexibility through increased General Fund reserves
11 to meet unanticipated facilities-related expenses, such as
12 roof repairs, extraordinary energy costs, etc.

13 259. The district's improved budget flexibility was
14 particularly evident by the fact that because it anticipated
15 cuts in the Foundation Program, the district was able to request
16 a 2% contingency fund to cover Foundation Program revenue short-
17 fall. The voted levy request, with this contingency, passed
18 with no problem. The Legislature did in fact implement such
19 cuts, and the district was able to absorb the decrease in State
20 revenues without any impact on its educational programs and
21 services.

22 260. In sum, dollars make a difference in the quality
23 of educational opportunities afforded in Montana's schools.

24 C. Accreditation Standards

25 261. As previously established, the Montana Board of

1 Public Education promulgates and enforces, with the assistance
2 of the Office of the Superintendent of Public Instruction,
3 the Montana School Accreditation Standards. These Standards
4 are minimum standards only, designed to provide a starting
5 point from which local schools can develop quality educational
6 programs. As the Standards themselves state:

7 The accreditation standards outline a minimum
8 instructional program. Schools are urged to
9 consider this a starting point from which they
10 can expand course offerings to meet the
11 increasingly specialized needs of students and
12 society.

13 Board of Public Education, Montana School Accreditation Standards
14 & Procedures Manual, p. 23 (1986), Ex. M-338

15 262. The testimony of superintendents, teachers, and trustees
16 clearly establish that from a professional educator's perspective,
17 the minimum Accreditation Standards in no way define a quality
18 education.

19 263. For example, Lyle Eggum, East Helena Elementary
20 School principal and former OPI Elementary District Supervisor,
21 testified that the Accreditation Standards are only a beginning
22 point for quality education. By far the majority of schools
23 in Montana try to exceed them.

24 264. Ralph Kroon, of the Montana Rural Education Center,
25 was unable to cite any authority equating quality education
with the Accreditation Standards. Rather, Kroon testified
that he hoped school districts would exceed the Accreditation
Standards in order to provide students a quality educational

1 program and enhanced educational opportunity.

2 265. The State Defendants erroneously contend that the
3 Accreditation Standards define a "basic quality education,"
4 and that State revenues are sufficient to meet the Accreditation
5 Standards. First, the term "basic quality education" is ill-
6 defined and elusive. Whatever the concept means, it is not
7 defined by the Accreditation Standards, as the Board of Public
8 Education, itself has emphasized:

9 The Board recognizes that the accreditation
10 standards do not fully describe basic quality
11 education.

11 * * *

12 At the present time, education in Montana is
13 prescribed by state statutes and state standards
14 for school accreditation. Neither of the statutes
15 nor the standards define basic quality education.

14 Board of Public Education 1975 Report, p. 31, Pl. Exh. 100B

15 266. Even if the minimum Accreditation Standards define
16 basic quality education, the evidence demonstrated that the
17 State, through the Foundation Program, does not cover the cost
18 of meeting those standards.

19 Mr. Rod Svec, Superintendent of Hardin Public Schools, has
20 conducted the only thorough and systematic study of the cost
21 of meeting the Accreditation Standards. Mr. Svec concluded,
22 based on a very conservative analysis, that State revenues fall
23 significantly short of fully funding the cost of meeting
24 Accreditation Standards.
25

1 267. Superintendent Argenbright testified that the demands
2 for quality education exceed the amount of money provided by
3 the Foundation Program. Moreover, Superintendent Argenbright
4 could not point to a single source -- other than the briefs of
5 the Office of Public Instruction attorneys -- which equates
6 basic quality education with the minimum Accreditation Standards.

7 268. Steve Gaub, the Superintendent of Outlook schools,
8 was more blunt:

9 Q. If you had to finance your school just from
10 what the foundation program gives you, plus
11 the permissive, . . . would you have problems?

12 A. (Gaub) We wouldn't exist.

13 Gaub Depo. Tr., p. 9

14 269. Even under the State's own definition of "basic
15 quality education," the State cannot prove the Foundation Program
16 levels of funding are sufficient. As the State Defendants
17 realize, teachers' retirement is a necessary component of an
18 education program:

19 INTERROGATORY NO. 43: Is it your position that
20 the various aspects of the retirement programs
21 for teachers and school support staff which
22 are funded in Montana by county retirement levies
23 are or are not an essential component of basic
24 quality education?

25 ANSWER: Yes. The various aspects of the teacher
retirement program for teachers and school
support staff which are funded in Montana by
the county retirement levies are an essential
component of basic education in that the retirement
provides incentive to continue in the teaching profes-
sion and does provide a process for teachers to
achieve retirement.

Answers to Plaintiffs' First Set of Interrogatories, Pl. Exh. 150

1 As previous Findings demonstrate, until 1988, teachers' retire-
2 ment is completely financed by county property tax levies (i.e.,
3 there is no equalization or state participation). While the
4 situation will be somewhat mitigated starting in 1988 because
5 of the lottery initiative, there will still be substantial
6 reliance on local property taxes for that purpose. Thus,
7 the Foundation Program level of funding is insufficient to
8 finance a "basic quality education," even under the State
9 Defendants' own definition.

10 270. In sum, the Montana School Accreditation Standards
11 are minimum standards only, and do not provide the basis for
12 defining quality education.

13 D. State Fiscal Difficulties

14 271. Mr. David Hunter, State Budget Director, testified
15 regarding the fiscal difficulties which the State of Montana
16 has faced in recent years. The ostensible purpose of this
17 evidence was to suggest that the resources necessary to address
18 meaningfully the disparities and inequities in the school finance
19 system are not available, and that for that reason, nothing
20 should be done to mandate change.

21 272. The fiscal difficulties experienced in this State
22 in recent years have had adverse impacts on funding for education,
23 as well as nearly every other area of public expenditure.
24 Specifically, Foundation Program support has been cut, as has
25 funding for Special Education. The impact of such declines

1 in State support falls most heavily on property poor districts.
2 As previous Findings establish, Foundation Program revenues
3 constitute a greater proportion of those districts' General
4 Fund budgets, because of their inability to generate as much
5 over-schedule revenue through the voted levy as relatively
6 wealthier districts. Thus, when State support declines, poorer
7 districts have a difficult time making up for the revenue short-
8 fall. In contrast, relatively wealthier districts have greater
9 flexibility, and can better absorb decreases in State revenues.

10 273. The inequities inherent in the school finance system
11 are exacerbated by economic difficulties at the State level.
12 Thus, such difficulties do not justify perpetuating the
13 inequities and disparities, rather, the situation is further
14 evidence of the need for reform.

15 274. The effects of local economic conditions on school
16 districts also demonstrate fundamental inequities in the system.
17 Among Plaintiff witnesses were administrators and teachers
18 from the Anaconda, Libby, and Laurel School Districts. Each
19 of these communities have gone through very difficult economic
20 times in recent years. As a result, their property tax bases
21 have declined, resulting in decreased voted levy revenues.
22 In Anaconda and Libby, enrollment has declined, but not in
23 a manner corresponding to declining revenues; that is, many
24 costs remain, even though there are fewer students. Laurel
25 has experienced a different problem: it has lost jobs and

1 tax base, but is experiencing steady and significant enrollment
2 increases with greater numbers of families moving to Laurel,
3 and commuting to Billings for work. As a consequence, budget
4 demands are increasing, while the district's ability to meet
5 those demands is decreasing.

6 The inequity lies in the fact that the school finance
7 system fails to provide adequate protection against the vagaries
8 of local economic conditions, such as those experienced in
9 the above three communities in recent years. This primarily
10 results from the excessive reliance on local revenues to fund
11 education.

12 275. The Superintendents of Troy and Absarokee School
13 Districts, Mr. Rick Hill and Mr. Mike Reynolds, respectively,
14 testified to quite different situations. A silver mine has
15 moved into Troy, and a platinum mine is being developed in
16 the Absarokee High School District. As a result, each district
17 taxable valuations are increasing significantly, and their
18 districts are reaping the benefits. While both administrators
19 quite naturally enjoy the situation in which they find them-
20 selves, they each testified that in their opinion, a school
21 finance system which makes the educational opportunities avail-
22 able to a child so dependent on something as serendipitous,
23 and educationally irrelevant, as the presence of a mining
24 operation in that child's school district is fundamentally
25 flawed and unfair.

1 upon the expertise and experience of national experts in educa-
2 tion and school finance, several of whom appeared before this
3 Court, as well as those experts in this State who have the
4 working knowledge and understanding of our school finance system,
5 which will be so necessary to implement successful changes
6 and improvements.

7 280. The experts who testified at trial explained a
8 variety of mechanisms and funding approaches which can be
9 utilized to achieve school finance equity. Various combinations
10 of these approaches are in use in other states. As Dr. Augenblick
11 testified, however, any remedies for school finance inequities
12 must be tailored to the specific circumstances of the State.

13 281. It is not for this Court to mandate specific remedies.
14 Deciding upon acceptable, and effective changes in the system
15 will involve important public policy choices which can best
16 be made through the legislative process, with input and direc-
17 tion from the executive and administrative arms of State govern-
18 ment.

19 282. The Court adopts as Findings of Fact any matters
20 of fact which may be included in the Conclusions of Law below.

21 CONCLUSIONS OF LAW

22 1. To the extent that the foregoing Findings of Fact
23 incorporate Conclusions of Law or the application of law to
24 fact, they are incorporated herein as Conclusions of Law.

25 2. The constitutional provisions pertinent to the

1 disposition of this case are Article II, section 4, and Article
2 X, section 1, which provide in pertinent part as follows:

3 Section 4. Individual dignity . . . No
4 person shall be denied the equal protection
of the laws. . . .

5 Mont. Const. Art. II, § 4 (1972)

6 Section 1. Educational goals and duties.

7 (1) It is the goal of the people to establish
8 a system of education which will develop the
9 full educational potential of each person.
Equality of educational opportunity is guaranteed
to each person of the state.

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

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

18 Mont. Const. Art. X, § 1 (1972)

19 3. The right to education is fundamental under the Montana
20 Constitution. [State ex rel. Bartmess v. Board of Trustees,
21 ___ Mont. ___, 726 P.2d 801 (1986); Butte Community Union v.
22 Lewis, ___ Mont. ___, 712 P.2d 1309 (1986); Pfost v. State,
23 ___ Mont. ___, 713 P.2d 495 (1985)]

24 4. The inequities and disparities inherent in Montana's
25 present system of funding public elementary and secondary

1 schools result in unequal educational opportunities among
2 Montana's public schools, thus adversely impacting on the
3 fundamental right to education.

4 5. Montana's present system of funding public elementary
5 and secondary schools discriminates on the basis of the wealth
6 of school districts, a suspect classification. [Washakie County
7 School District No. 1 v. Herschler, 606 P.2d 310, 334 (Wyo.),
8 cert. denied, 449 U. S. 924 (1980)] ("[The fact that . . .
9 [the school finance system] falls far short of raising the
10 level of poor counties to that of rich counties, clearly,
11 indicates that funds are distributed upon the basis of wealth
12 or lack of it. The classification is therefore suspect.")

13 6. For purposes of equal protection analysis, the State's
14 funding system is subject to strict scrutiny and must be based
15 upon a compelling State interest. (Bartmess, supra; Butte
16 Community Union, supra; Pfost, supra)

17 7. Disparities in per pupil expenditures among school
18 districts do not per se constitute a violation of the equal
19 protection clause of the Montana Constitution. Rather, spending
20 disparities may be permissible if they are the result of, and
21 are closely tailored to, educationally-relevant factors. The
22 spending disparities, and related disparities in educational
23 opportunity, however, result largely from disparities in local
24 property wealth -- a factor which is absolutely irrelevant
25 to education. (See Washakie, supra) ("To allot more

1 educational dollars to the children of one district than to
2 those of another merely because of the fortuitous presence
3 of [high tax base] property is to make the equality of a
4 child's education dependent upon the location of private, com-
5 mercial, industrial, and mineral establishments -- an irrelevant
6 measure for purposes of school financing.") Thus, Montana's
7 school finance system is not rational, much less necessary
8 to achieve a compelling state interest.

9 8. The role of local school boards in governing Montana's
10 schools is recognized in Article X, section 8 of Montana's
11 Constitution, which provides that the "supervision and control
12 of schools in each school district shall be vested in a board
13 of trustees to be elected as provided by law." [Mont. Const.
14 Art. X, § 8 (1972)] Thus, local control of schools is a legitimate
15 and constitutionally-predicated interest. Local control, however,
16 is not absolute. [School District No. 12 Phillips County v.
17 Hughes, 170 Mont. 267, 276, 552 P.2d 328 (1976)] ("There is
18 no doubt that the local boards of trustees are subject to
19 legislative control and do not have control over the local
20 schools to the exclusion of other governmental entities.")

21 9. There is no logical, demonstrable relationship between
22 local control of schools and the spending disparities and
23 inequities among Montana's School Districts. To the contrary,
24 under the present school finance system, property poor school
25 districts lack the ability to make many meaningful decisions

1 regarding educational programs and needs due to the lack of
2 resources. Thus, the present system actually diminishes local
3 control in property poor districts. [See Serrano v. Priest,
4 96 Cal.Rptr. 601, 487 P.2d 1241, 1260 (1971) (Serrano I), later
5 approved, 135 Cal.Rptr. 345, 557 P.2d 929 (1976) (Serrano II),
6 cert. denied, 432 U. S. 907 (1977)]

7 10. Meaningful local control of schools can be maintained,
8 and increased for many districts, with an equitable system
9 of school finance.

10 11. The State of Montana's fiscal difficulties do not
11 constitute a legal defense to the educational inequalities
12 which are created and fostered by the State's school finance
13 system. [Butte Community Union, supra; Pfost, supra; White
14 v. State, 661 P.2d 1272, 40 St.Rptr. 507 (1983)] That is,
15 fiscal difficulties do not constitute a compelling state interest,
16 justifying the inequalities created by the school finance system.

17 12. Because Montana's school finance system is not based
18 upon a compelling State interest, it violates Article II,
19 section 4 of the Montana Constitution of 1972.

20 13. Even if education is not a fundamental right, it
21 certainly is a right of "extreme importance" under the Montana
22 Constitution. (Bartmess, 726 P.2d at 804) Thus, the school
23 finance system is subject to at least the middle-tier level
24 of constitutional analysis. (Bartmess, supra; Butte Community
25 Union, supra)

1 14. Students' rights to equal educational opportunities
2 are of paramount importance. On the other hand, there is no
3 governmental or public policy interest to be served in maintaining
4 Montana's inequitable school finance system. (See Bartmess,
5 726 P.2d at 805) ("The standard of review used under Montana's
6 middle-tier constitutional analysis is a 'balancing of the
7 rights infringed and the governmental interest to be served
8 by such infringement.'" Butte Community Union, 712 P.2d at
9 1314) Thus, even under middle-tier analysis, Montana's school
10 finance system violates the equal protection provision of Article
11 II, section 4 of the Montana Constitution.

12 15. Subsection (1) of Article X, section 1, provides
13 an independent and additional guarantee of equality of educational
14 opportunity. [Montana Constitution, Article X, section 1(1)]
15 (See also Bartmess, 726 P.2d at 804. "The provisions of Art.
16 X demonstrate that there are constitutional rights and obligations
17 which extend to all sides of the question of education. There
18 is the right to equality of educational opportunity guaranteed
19 to each person. . . .")

20 16. The drafters of the Montana Constitution clearly
21 had educational "inputs" or expenditures in mind when they
22 adopted the equality of educational opportunity provision.
23 Thus, educational inputs, as measured by expenditures on educa-
24 tional programs and services, are a proper measure of educational
25 opportunity. (See Washakie, supra, at 334. "Equality of dollar

1 input is manageable. There is no other viable criterion or
2 test that the appellees show to exist, and our exploration
3 of the subject has resulted only in discovery of a quagmire
4 of speculation, so slippery that it evades any secure grasp
5 for judicial decision making. It is nothing more than an illusion
6 to believe that the extensive disparity in financial resources
7 does not relate directly to quality of education." (Serrano
8 II, supra, at 939. "There is a distinct relationship between
9 cost and the quality of educational opportunities afforded.")

10 17. The spending disparities among the State's school
11 districts translate into a denial of equality of educational
12 opportunity. Montana's school finance system therefore violates
13 Article X, section 1(1) of the Montana Constitution.

14 18. The Montana School Accreditation Standards promulgated
15 by the Board of Public Education are minimum standards only.
16 Whether revenues from the Foundation Program are sufficient
17 to permit schools to achieve accreditation status is essentially
18 irrelevant, because the school finance system is rendered con-
19 stitutionally infirm by the pervasive disparities and unequal
20 opportunities among school districts in the State, regardless
21 of whether even the lowest spending districts meet minimum
22 standards. As the Supreme Court of Arkansas aptly stated:

23 However, even were the complaining districts
24 shown to meet the bare requirements of educational
25 offerings, that is not what the constitution
demands. For some districts to supply the barest
necessities and others to have programs generously

1 endowed does not meet the requirement of the
2 constitution. Bare and minimal sufficiency
3 does not translate into equal educational
4 opportunity. 'Equal protection is not
5 addressed to minimal sufficiency but
6 rather to the unjustifiable inequalities
7 of state action.' San Antonio School
8 District v. Rodriguez, 411 U. S. 1, 70,
9 93 S. Ct. 1278, 1315, 36 L.Ed.2d 16 (1972).
10 Marshall, J. dissenting.

11 Dupree v. Alma School District No. 30, 279 Ark. 340, 651 S.W.2d
12 90, 93 (1983)

13 (See also Horton v. Meskill, 172 Conn. 615, 376 A.2d 359,

14 373. "This court has never suggested that because some
15 'adequate' level of benefits is provided to all, discrimination
16 in the provision of services is therefore constitutionally
17 excusable. The Equal Protection Clause is not addressed to
18 the minimal sufficiency but rather to the unjustifiable inequal-
19 ities of state action. It mandates nothing less than that
20 'all persons similarly circumstanced shall be treated alike.'"

21 (Citations omitted) Thus, the Montana School Accreditation
22 Standards do not define either the constitutional rights of
23 students or the constitutional responsibilities of the State
24 of Montana for funding its public elementary and secondary
25 schools.

19. The essential purpose of P. L. 81-874, codified at
20 U.S.C. §§ 236-240 (1980), is to replace local tax base lost
21 because of the presence of federal property, which is not subject
22 to State or local taxation. With one minor exception, contained
23 in section 3(d)(2)(D) of the Act, P. L. 81-874 is not a program

1 primarily and specifically designed to alleviate problems in
2 Indian education.

3 20. A state may factor P. L. 81-874 revenue into its school
4 finance equalization system only if the system meets the federal
5 definition of an equalized program, subject to the determination
6 of the Secretary of Education. [See Gwinn Area Community Schools
7 v. State of Michigan, 741 F.2d 840 (6th Cir. 1984)] Montana
8 presently does not and may not factor P. L. 81-874 revenue into
9 the Foundation Program equalization formula, because Montana's
10 system does not meet the federal definition of an equalized
11 program.

12 21. The Montana Constitution expressly recognizes the
13 "distinct and unique cultural heritage of the American Indians
14 and is committed in its educational goals to the preservation
15 of their cultural integrity." [Mont. Const. Art. X, § 1(2)
16 (1972)] Neither the distribution of P. L. 81-874 funds, nor
17 the manner in which such funds are treated in Montana's school
18 finance system, are rationally related to the ideals expressed
19 in Mont. Const. Art. X, § 1(2). To the contrary, the distribut
20 and treatment of P. L. 81-874 funds exacerbate the inequities
21 and unequal opportunities inherent in Montana's school financ
22 system.

23 22. It is properly the function of this Court to determine
24 whether legislative enactments are constitutional. [See e.g.,
25 State v. Toomey, 135 Mont. 35, 44, 335 P.2d 1051 (1958). "[W]ith

1 reference to the subjects upon which it assumes to speak the
2 Constitution is conclusive upon the legislature. . . . [T]he
3 office of interpreting legislative and constitutional provisions
4 lies exclusively in the courts." Mont. Const. Art. VII, § 1
5 (1972)] As the Wyoming Supreme Court stated:

6 We have already made clear our view and will
7 amplify on it, that the matter of education involves
8 a fundamental interest of great public importance.
9 This is no more a political question than any
10 other challenge to the constitutionality of statutes.
11 Declaring the validity of statutes in relation
12 to the constitution is a power vested in the
13 courts as one of the checks and balances contemplated
14 by the division of government into three departments --
15 legislative, executive and judicial -- ever since
16 first enunciated in Marbury v. Madison, 1803,
17 5 U.S. (1 Cranch) 137, 2 L.Ed. 60. . . .

18 Washakie, supra, 606 P.2d at 318

19 Thus, that this case raises public policy issues of great
20 magnitude is no reason to refrain from exercising this Court's
21 constitutional function; to the contrary, because individual
22 constitutional protections of equally great magnitude are
23 involved, it is particularly proper and important that this
24 Court act, and declare Montana's school finance system unconstitu-
25 tional. The Montana Legislature has long been aware of, and
has had countless opportunities to correct, the inequities
created and fostered by the school finance system. A generation
of students has passed through the public school system since
the people of Montana adopted their Constitution of 1972,
guaranteeing equal protection of the laws, and equality of

1 educational opportunity to all citizens of the State. It is
2 now time for this Court to protect the constitutional rights
3 of Montana's citizens against further and increasing infringe-
4 ments, and for the Legislature finally to address meaningfully
5 the problems inherent in Montana's school finance system.

6 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

7 1. For the reasons previously expressed, Montana's system
8 of financing elementary and secondary schools is in violation
9 of the Montana Constitution of 1972.

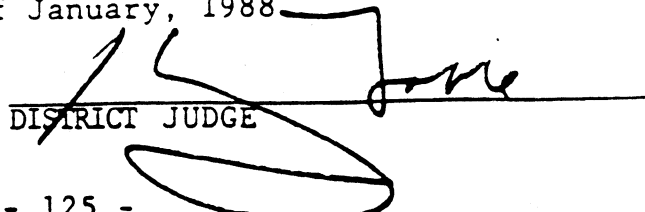
10 2. The relief granted by this Court is prospective and
11 in order to provide the Legislature with the opportunity to
12 search for and present an equitable system of school financing
13 in this State, this decision will become effective upon October
14 1, 1989. (Washakie, 606 P.2d at p. 340)

15 3. The school system of the State of Montana shall continue
16 under existing statutes until October 1, 1989. The validity
17 and enforceability of past and future acts, bonded indebtedness,
18 and obligations incurred under applicable statutes are not
19 affected by this decision. (Washakie, 606 P.2d at p. 340)

20 4. This Court retains jurisdiction until a constitutional
21 body of legislation is enacted and it will, from time to time,
22 take such action as may be necessary to assure conformity with
23 this decision. (Washakie, 606 P.2d at p. 340)

24 DATED this 13th day of January, 1988

25


DISTRICT JUDGE

1 pc: James H. Goetz
James P. Molloy
2 John W. Larson
Rick Bartos
3 John North
W. William Leaphart
4 Loren O'Toole
Donald A. Garrity
5 Ben Hilley
Emilie Loring
6 Terry G. Spear
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