

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**SELECT COMMITTEE ON SCHOOL FUNDING**

**Call to Order:** By CHAIRMAN JOHN COBB, on January 26, 1993, at  
3:00 p.m.

**ROLL CALL**

**Members Present:**

Rep. John Cobb, Chairman (R)  
Rep. Ray Peck, Vice Chairman (D)  
Rep. Bill Boharski (R)  
Rep. Russell Fagg (R)  
Rep. Mike Kadas (D)  
Rep. Angela Russell (D)  
Rep. Dick Simpkins (R)  
Rep. Dave Wanzenried (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Andrea Merrill, Legislative Council  
Eddy McClure, Legislative Council  
Dori Nielson, Office of Public Instruction  
Evy Hendrickson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed. Mr. Erdmann's testimony and the ensuing discussion are verbatim.

**Committee Business Summary:**

Hearing: None  
Executive Action: None

**Dori Nielson, Office of Public Instruction, introduced Jan Thompson, who also is representing the Office of Public Instruction (OPI).**

**Ms. Thompson distributed a handout produced for freshman legislators. She said this graph was used to bring newcomers up to speed on what OPI is currently doing with GTB. EXHIBIT 1.**

The graph indicates that, under current law, the State does not have a guaranteed tax base system per se. It's basically a minimum yield guaranteed to school districts of various size. The calculation entails looking at the wealth per student within a school district as compared to the wealth per student on a statewide average.

Ms. Thompson said her purpose for addressing this committee is to explain where OPI is with the concept of power equalization for guaranteed tax base and how concepts they are developing would impact school districts. Guaranteed tax base was a move in the right direction for school districts as far as funding permissive levies, but the same districts that have mill values per ANB that still significantly exceed the state average are able to levy mills against that wealthier tax base. Lower spending districts have been brought up but higher, wealthier districts have not been brought down to the statewide average. Therefore, the concept of a power-equalized system is being discussed, where school districts above the average would send their money into the state to help compensate districts that fall below the statewide average.

Ms. Thompson said OPI is still in the talking stages on all the concepts and ideas they need to develop. They are trying to determine what the impact is going to be on various school districts and if there will be some conflicts among districts doing a power-equalized system. OPI has also discussed the possibility of including non-levy revenue in a power equalized system.

She said they are also looking at moving transportation and retirement into the general fund to include non-levy revenue sources for those costs. The new fund would include the current general fund, retirement fund, transportation, tuition and some of the smaller, miscellaneous funds.

REP. FAGG asked whether OPI plans to put the plan into a bill for this session. Ms. Thompson said the concepts of what they are trying to develop are in the first draft stage.

REP. FAGG asked if OPI assumes this concept will answer the constitutional problems that are part of the lawsuits Montana is involved in. Ms. Thompson, said the State has moved in that direction. However, districts at the upper end in the first lawsuit are in the upper end of the second lawsuit. In a lot of those districts, non-levy revenue is so high that it eliminates the need to levy any mills whatsoever to fund the over-schedule part of their budget; districts without the luxury of the non-levy revenues have to levy mills on their limited tax base.

Ms. Thompson said from her perspective, power-equalizing mill levies and power-equalizing non-levy revenues available to fund that portion of the budget would guarantee that every mill in every school district of every size would generate the same amount of money statewide.

REP. SIMPKINS asked whether OPI is using power-equalization defined as recapture and not as a GTB term, to which Ms. Thompson answered affirmatively.

REP. PECK asked whether the principle to be put in place would be that, the richer the district, the greater the share the district would send to the state as it increased its levy. Ms. Thompson said that was correct. REP. PECK asked whether the purpose is to discourage high spending districts from spending more. Ms. Thompson replied it may discourage them or it would require they levy what a similar district would have to levy if they didn't have the revenue available.

SEN. CHET BLAYLOCK, Senate District 43, Laurel, asked if any other states are using this procedure. Ms. Thompson said she knows there are states doing it, but she doesn't know which ones.

CHAIRMAN COBB asked if non-levy funds will be brought into the state and how it will be distributed. Ms. Thompson said that funds would come in and OPI would adjust the statewide average up significantly to allow for the amount of non-levy revenue collected.

CHAIRMAN COBB invited the Montana Rural Education Association to discuss the lawsuit it has brought against the State.

(Minutes are verbatim from here.)

Mr. Erdmann: Mr. Chairman, members of the committee, my name is Chip Erdmann, and I am representing the Montana Rural Education Association. And we are the rural school organization that has filed the second funding lawsuit that will commence on February 22 in district court in Helena. The final pretrial conference will be held a week from Friday on February 5th solidifying all the final issues.

Before I get into, I guess, what we set out to accomplish in the lawsuit and also how we intend to prove it, I just want to give a brief summary as to why the lawsuit was filed. I see some old familiar faces from the interim committees but some of you haven't been informed as to what the motivations were behind this lawsuit.

The rural schools in Montana sat on the sidelines essentially during the first underfunded lawsuit and watched that progress and watched as the legislature addressed it in HB 28. As a result of HB 28, a lot of the residents, a lot of the school districts in rural Montana felt that, while there may have been taxpayer equity as a result of HB 28, it certainly didn't address the equitable opportunities for education.

Certainly, one of the areas that upset a lot of people in HB 28 was the imposition of the additional 40 statewide mills which came into the state and was then redistributed on the guaranteed tax base formula; and as that formula was determined using ANB without any weighting in it, the majority share of that went to the larger school districts.

Those were some of the reasons that the rural districts in Montana felt that in the second round of the school litigation, they should be participants in that rather than be onlookers, and they felt they couldn't stand another solution like HB 28. And, in fact, a lot of our districts have done projections; and if HB 28 were allowed to continue, they just couldn't afford to exist in the next eight to ten years.

So, after the second underfunded suit was filed and, essentially, the decision was made before that, the decision was made to file a separate lawsuit setting forth our issues that we felt were distinct and that we were fairly certain would not come up in the underfunded lawsuit, and in fact they have not come up. And I apologize; I only have eight copies of these. I miscounted. I have enough for the committee but not for the staff. These committees keep growing.

What I've handed out is ... the initial handout is just an excerpt from a memorandum that was filed in the district court in Helena in regard to the motions that the Montana Rural Education Association filed respecting the State's output defense. EXHIBIT 2. And, as you're aware, the district court ruled both in the underfunded suit and in the MREA suit that the State would be allowed to present the defense based on outputs.

But in that, we gave an introduction to the court, and I just wanted to ... It's a nice two- or three-page summary as to what the basis of the MREA lawsuit is. Basically, we're looking at two different things. We're looking at the schedules themselves under the foundation program, and it is our contention that the schedules as they are currently devised are arbitrary and that they have no rational basis to the actual costs of educating students in any size district in Montana; and since the constitution requires that the funds for education be equitably ... or distributed in an equitable manner, that violates that portion of the constitution. And also, since the constitution requires that there be opportunity for equal education, or equal educational opportunities, that those aren't met.

The other area that we are addressing is the guaranteed tax base; and we felt that, since that was weighted, was not weighted either in the eligibility or distribution formula, that that didn't provide for educational equity.

Now, there's two kinds of equity that we talk about in these lawsuits. And the underfunded lawsuit, the one that has just concluded, dealt with horizontal equity. And what they did in that lawsuit is that they took school districts of equal size and they looked at the disparities and spending between those school districts. And that is what the majority of their case was based upon were the spending disparities between school districts of equal size. Now, you know, that was their basis in the initial suit; that was their basis in this suit; and I think that most people feel that they'll be successful.

Our lawsuit doesn't address horizontal equity. Our lawsuit addresses vertical equity. And that is, we're saying that students in the smaller school districts should have the same equitable opportunities to an education that students in the large school districts have. And obviously, we're not saying that everything has to be absolutely the same because it can never be the same. But we're saying that the disparities under the current system are so great that there is a great deal of area where improvement can be made.

Now, the foundation system itself addresses that, and it has addressed that historically since it was introduced. The foundation schedule is weighted, and more funds are allocated to smaller school districts; because the legislature realized early on that just due to the efficiency of numbers, it's going to cost more in rural Montana to educate students.

But we have not been able to find any historical data that supports, certainly the initial levels that they were set at; and as you follow those through the years, there is not a lot of rhyme or reason as to why the various increases took place. And as you're all aware, most of the increases over the years were straight percentage increases. And it's our contention, we feel that we can prove that there isn't any rational basis; there isn't any connection between the cost of educating kids and the levels in the foundation program.

One of the real difficulties that we see is the guaranteed tax base; and while the foundation program itself attempts to weight for diversity or for the rural nature of Montana, when you put the guaranteed tax base, a second complete type of funding system, on top of the foundation system, you are eliminating or coming close to eliminating that weighting factor. Because the way the guaranteed tax base is designed and the way it is distributed, those funds flow into larger districts in greater quantity than they do into smaller districts.

And then when you take the overall picture of state funds going into education, the line starts to level out to a considerable degree; so the weighting that was built into the foundation system originally to recognize the sparsity, to recognize this vertical equity that we're talking about was, to a large degree, diminished and, in some cases, eliminated by guaranteed tax base.

In order to establish the proof for the lawsuit, the Montana Rural Education Association has contracted with Dr. Kern Alexander and Dr. Dick Salmon from the University of Virginia. Both are nationally noted experts, and I've attached their curriculum vita to the material I've handed out. EXHIBITS 3 and

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I've also handed out the plaintiff's summary of expert witnesses that we provided in discovery for the lawsuit. EXHIBIT

5 And what this does, it provides you with a summary of what the expert witnesses will testify to and what we expect they will prove, the proof that will be established in the lawsuit. And I don't want to go through this and waste the time here, but the committee ... you can certainly read it at your leisure, but basically, these individuals are going to testify that there is no relationship between the foundation schedules and any relevant data as to the cost of education in Montana. And it is their conclusion that they're arbitrary and they lead to inequitable opportunities for Montana students. And it goes into here to a bunch of the scientific and statistical analyses that they have done, and they have done a considerable amount of work. I have a filing cabinet drawer almost full of their analysis and graphs and everything. And I'm not going to go into that. It's summarized here, and if I tried to explain it, I'm sure I couldn't do it accurately or certainly couldn't do justice to it. They will be in town, both of them, the week of February 22nd as the trial starts, and we would certainly be more than happy to make them available as resources to this committee. Once they testify, we would be happy to make them available even on a long distance basis. We have asked them to do some work to come up with some solutions, not just say that the system is broken; we've asked them to come up with some suggestions as to how to fix that. And, you know, they will have that information available.

I should state, by the way, just to make it clear that MREA has retained Don Molloy, a Billings attorney, to litigate this, and he is the lead attorney on this. I don't want to give you the impression that I'm the one that's trying this, because I'm not. Don Molloy is representing us and doing a very competent job. But we're more than happy to make those folks available, either if you want to have a session with them or on a one-to-one basis or however you want to do it. But there's obviously some reluctance to turn them loose on the legislature before they testify in the trial. And certainly, once the trial is over, all the research and material that they have provided for us is available for the legislature.

**CHAIRMAN COBB:** Questions from the committee? **REP. SIMPKINS?**

**REP. SIMPKINS:** Well, Chip, I guess this is going to go to court, right? God, it would have been nice if we'd had all this help and everything when we first went through this HB 28, but it always seems to be ... we wait until the train hits the mountain, which we're still waiting for it to hit.

Chip, in your testimony, though, you're talking about eventually we're going to be ... are we going to be challenging curriculum versus curriculum, the large school versus the small school? Foreign language; therefore, every school in Montana should have a foreign language? Are we going to be hitting this in the trial?

Mr. Erdmann: Well, right now the accreditation standards set forth what's required and, certainly, one of the things that is going to be looked at during the trial is the scope of the offerings in various size schools. And, you know, we feel that certainly there are some small rural schools that for their size offer comparable curriculum offerings as do the larger schools in Montana, but those are the very wealthy ones. But there are other, many, you know, the majority of the small districts just don't have the resources to do that under the current foundation system.

And, you know, one of our continual complaints has been that, when you impose caps on a system that are driven by a foundation system that we feel is inequitable to begin with, you're just compounding the problem.

REP. SIMPKINS: The caps have always been a question because the caps haven't worked, we know that. I think everybody knows that. Cause you just cannot have people going to 4% when you're not funding the foundation program at all. It's impossible to play catch-up. But at the same time, now, do you see what I see coming down; this may be totally wrong. Actually, when we keep going to these lawsuits, funding still becomes a crisis in the state of Montana, and you find the legislature actually having to get in and telling what curriculum can be taught in schools and what cannot be taught in schools. Because the easy way to turn around and take care of this and make sure that there's no complaint in the rural communities that Spanish is being taught in Great Falls but we can't teach it out here and we want it out here is to say, put in a law that no Spanish will be taught in the state of Montana public schools.

Mr. Erdmann: REP. SIMPKINS, you know, certainly the intent of our lawsuit is not to head in that direction. And it's hard to speculate on that, and I don't know quite frankly what the constitutional authority of the legislature vis-a-vis the State Board would be in that.

REP. SIMPKINS: Well, we'll find out, I'm sure.

CHAIRMAN COBB: Further questions?

REP. PECK: Chip, I guess I've got a couple of things that in the association's lawsuit ... First of all, I guess I don't understand why courts say we don't want to deal with outcomes. They just don't want to consider that, throw it out, keep it out of here. And then it seems to me like if you asked 100 teachers "How could you become a more effective teacher; how would you be a more effective teacher; just tell me what would be on the top of your list," they would say "a lower number of students in my classroom." Can you respond to those two concerns or questions?

Mr. Erdmann: Well, Mr. Chairman, REP. PECK, I don't know how much more I can comment on Judge Sherlock's order regarding

outputs, other than what he said in the order. He just didn't feel that it was relevant. It was kind of interesting because the motion was primarily based on the fact that it would be a waste of the court's time to hear this evidence because it was so slippery, I guess was the term that they used, that it was hard to get a handle on it. Well, he went ... the judge went a step further and said that, in determining whether or not there was equality of educational opportunity, that kind of evidence simply wasn't relevant. And, you know, obviously, we'll find out from the Supreme Court whether they'll hear that, supervisory control. I don't know the answer to that.

In regard to your second question as to, if you asked teachers or, I guess, maybe what you're getting at, is school districts, "What would you like on your plate if you had your desires?" And that's not the purpose of this nor is there going to be evidence submitted in the trial in that regard. We're not after a wish list; what we're after is trying to define what the constitution means when it says, "the State funds shall be distributed in an equitable manner." You know, does that mean you're going to have to recognize weighting for rural school districts; and if it does, then maybe it should be based on some statistical study as to what the comparable costs are.

We're not after, certainly, rural schools coming up with a wish list and saying, you know, "We want a swimming pool; we want five languages and all of that other stuff." And certainly, while it's easy for people to take our case to the extreme and say they want to be exactly equal as the AA schools, you know, obviously that can't happen and that won't ever happen. What we're trying to do is just narrow the gap as far as the equality is concerned as they are in the horizontal lights.

**REP. PECK:** I guess if you can argue educational opportunity on certain things, the big schools can come back and say to you, "This is a major consideration of educational opportunity, that is, pupil-teacher ratios." Now, if you're going to give little schools some of these good things, we want the same thing that the little schools have. Where does that kind of stuff end?

**Mr. Erdmann:** So you're saying that, if we have an eight-to-one student-teacher ratio, why don't the big schools have an eight-to-one student-teacher ratio? There can be differences based on size and that's one of the educationally relevant factors the first court recognized. And there's always going to be that. And that's one of the areas where you can make distinctions based on size.

**REP. PECK:** I don't mean to get into a debate, but I think this is a factor that you're going to hear in the argument. And I think it's a very valid one among educators. You ask the MEA representatives what they hear from their membership, they would say, they tell us, "Pupil-teacher ratio or classroom load is extremely significant in what kind of job I can do."



**Mr. Erdmann:** And your question is "Where will it all end?" You know, and we've all watched the other states go on to Round 2, Round 3, Round 4, you know; and I would certainly hope that, as a result of the decisions of the court in both these cases, that we're able to utilize those experts that we've spent a lot of money on, quite frankly, and come up with an answer that's going to satisfy the state for a long time.

**CHAIRMAN COBB:** REP. BOHARSKI.

**REP. BOHARSKI:** Mr. Chairman, I guess the lists we had of school districts that are filing the lawsuit in here and you folks coming in, and I'm a little bit frustrated, too, about the fact that we keep ... the way that this process works ... I mean, we do something and then somebody like the judges get to decide that what we did wasn't right; everyone recognizes that we certainly have some obligation to do something, and I don't think anybody knows what it is. But something that everybody seems to forget about, I guess, is ... I mean, we have some solutions, there's no question about it. **REP. SIMPKINS** probably just clarified exactly what they are. We can solve this problem, no sweat, I mean, "Here's how much money you get; here's what you offer"; and we know that if anybody offers more than that or tries to create a better system, all of a sudden we're going to have some disparity in equality. We can't have disparity in equality, so the only thing that we can do is tell this person that they can't make it better because this person can't afford to have it. Or to bring everybody up; and doing a reality check, we obviously can't bring everybody up. That would take \$500 million, and we don't have it and everybody knows it.

Another thing we could do with the rural schools is we could force you to consolidate with the big schools, wipe out disparity and wealth just like that. I mean the solutions are so frightening that to me, if I was a school administrator and sitting in a local school district, I'd be scared to death of these lawsuits. Because the legislature can sit up here and say, "Great, you want equalization, you've got it." In fact, I propose this session that's what we do. We give the people exactly what they want, both to you guys and the big schools. Doesn't that scare the living daylights out of the people that you work for?

**Mr. Erdmann:** Mr. Chairman, **REP. BOHARSKI.** A lot of the changes that you just alluded to may happen or may well have happened whether these lawsuits existed at all.

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**Mr. Erdmann:** ... you're going to afford all this, legitimate concern, the fact that the lawsuits are out there are hopefully there to give the state and the legislature direction on how to solve the problem rather than creating more problems.

**REP. BOHARSKI:** Tell me if you think I'm picking on you, because I'm not trying to do that. But, you know, I guess we can bring the solution forward and solve this problem with no question about that. I guess I would propose doing that; I would say, "Okay, let's give you what you want; let's equalize. We recognize that the taxpayers aren't going to allow us to do certain things. But within some constraints this is what we're going to do and we're going to equalize." My personal feeling is that, once we do that, the local school district and the voters and citizens of Montana are going to be angry enough to perhaps do what I think we need to do which is to amend the constitution to somehow clarify just exactly what it says as far as education. I guess what I'm trying to get, and I don't know whether you can share this information with me or not, is: Are these discussions going on out there in rural Montana in these smaller districts? You know, this thing doesn't look like it's ever going to end; maybe we ought to do something as far as solutions. And I'd appreciate your comments and maybe ...

**Mr. Erdmann:** Mr. Chairman, **REP. BOHARSKI.** Those kinds of conversations have gone on, and our organization has participated in them. And there's been some long and torturous conversations in that regard. Nobody wants these things to go on forever.

And your comment, maybe we should change the constitution, you know, personally I think it's fine the way it is. I think you would have a hard time changing it in Montana with the citizens. But I think that we also have to find out what it means. And, you know, if you're ever going to change it, the first thing you're going to have to do is find out what it means. And if you find out what it means and we find out that we can't afford to live within that definition, then maybe that's a legitimate step to take before the people.

But I think this is just all part of the process. And Montana knew back in 1971 or '72, when they adopted a new constitution. We threw out an 1889 constitution with 100 years of decisions, and we knew pretty much what it said. When we adopted a new one, everybody knew there were going to be court decisions that fleshed that out. It was specifically written to be a bare bones document, and I think that's what we are experiencing.

**CHAIRMAN COBB:** **REP. SIMPKINS.**

**REP. SIMPKINS:** Just a quick thing. When you say that the constitution, they knew; they did know, and you read the Con-Con, they knew what they wanted to do, but we don't operate that way. We don't operate what they thought we'd operate because different boards are not functional the way they were intended to function. And we in the legislature pass some laws that kills the whole process. But when you start talking about guaranteed tax base, there's two ways to look at guaranteed tax base. One: strictly on the idea that it's a taxpayer equity issue; but when you mix

that taxpayer equity as to school equalization as well, I think that's where we get the problem.

So let's say we remove the GTB from any type of equalization; we just say that's just equalizing taxpayer equity, then don't we remove the ... leave that alone ... take the GTB out of the area that you are concerned about, that it's unfair because it's not weighted. All we have to do is equalize the taxpayer equity and then the rest of the formula, we have to weight ... we have to decide on how we're going to weight it. Wouldn't that be about right?

**Mr. Erdmann:** Mr. Chairman, REP. SIMPKINS. You know, there is a step in between there without completely eliminating GTB and that would be to weight GTB.

**REP. SIMPKINS:** Oh, we're not eliminating it; I'm just saying we're isolating it. In other words, we say that GTB is taxpayer activity and has nothing to do with equalization. Now, if we're going to build a formula and allow them to go permissive levy, then we'll put in GTB so you can do that; but as taxpayer equity, rather than using that to figure out the formula in here, how much per student cost is ratios. If we don't mix it, we'd be all right.

**Mr. Erdmann:** You'd have to do more than say that it was just taxpayers equity and it wasn't going to educational equity. I mean, you'd have to show how, in the system, that actually functioned. And, you know, the easy way of doing that is to weight the formula.

**CHAIRMAN COBB:** Further questions? Chip, I have a question. Looking at the memorandum, EXHIBIT 2, especially page 6 and 7; that's the disparity between the schedule between the high category one and category seven. Basically your argument is that we have to have a broader, 4.5 or something ratio. Is that basically the main argument: that the ratio is too close together; and if we somehow put more money up into the category 1 with some of the money, we had the rational basis that at least sustain that ... even if we say, somehow we put the money up there and make the ratio broader, we still need at the time we do that, have some kind of rational basis and from then on we have to continue that rational base. Otherwise you'll sue us again if it's ...

**Mr. Erdmann:** Mr. Chairman, I didn't say that we'll sue you again. That's not part of the presentation.

**CHAIRMAN COBB:** I mean, the question here ... it seems like 6 and 7 are saying the ratios are not wide enough and if we make it wide enough, whether we say this is educationally relevant or not and make them wide enough and put the money up, then you don't have an argument at least for now.

Mr. Erdmann: That's correct. That's just one of the criteria they used to evaluate it and that was just placed in the summary as an example. But quite frankly, if the lower end of the schedules were raised and not in an arbitrary way but in a way that reflects the cost, then that would take away our argument.

CHAIRMAN COBB: At least for now, until some other costs in the future.

Mr. Erdmann: Correct.

REP. PECK: Chip, we sometimes get lost in terminology. Is power equalization the same as weighting GTB in your mind?

Mr. Erdmann: Mr. Chairman, REP. PECK, no.

REP. PECK: What differences do see in it?

Mr. Erdmann: Guaranteed tax base and the difficulty we have with guaranteed tax base is in the formulas that determine who is eligible for it and then how that is distributed once the eligibility is determined. And both of those formulas are driven on the straight ANB ratio. It's not driven on a weighted ratio, for instance, as the foundation program schedules.

REP. PECK: But the question was: if you weighted that, would that be similar to your power equalization?

Mr. Erdmann: That would depend on how the power equalization distribution formula was derived. And I don't have any idea as to what the ideas are there.

REP. PECK: Well, I think she said that there would be a weighting; as you go up in the wealth scale, there would be a greater return to the state for contribution to the lower districts.

Mr. Erdmann: Okay. Well, there would have to be more, if I'm understanding this right, there would have to be more than a weighting based on wealth because that's what is the main driver of the power equalization ideal. It would also have to be a weighting as to size.

REP. PECK: Size and wealth.

Mr. Erdmann: Size and wealth.

CHAIRMAN COBB: Further questions? REP. KADAS.

REP. KADAS: I apologize for missing; I was trying to fix up the remains of a bill that was scattered all over the table in another committee. I'm interested to know whether you think tax effort plays any role in how we provide levels of funding.

**Mr. Erdmann:** Mr. Chairman, REP. KADAS. I haven't thought of that, but I think that ... there would be room to look at that when the legislature is doing an examination of what are the appropriate levels of funding for each category; and whether they are the same category as we now have in the foundation system, I don't know. But there are a lot of different elements that need to be looked at, and I can't tell you right now as to whether or not I think that would be relevant.

**REP. KADAS:** So when figuring out what are the appropriate levels of funding by size, do you think tax effort is a legitimate criteria to be included in that figuring?

**Mr. Erdmann:** I think it would be a legitimate thing to look at. I don't know what the impact or the relevancy would be right now. I just couldn't tell you.

**REP. KADAS:** What are the measures that you would use then as criteria?

**Mr. Erdmann:** The cost associated with providing education; obviously, the various size of the districts; the sparsity; the distance; the geography of the district; the curriculum offerings. All of those criteria should be looked at. And, in fact, the experts that we retained have looked at all that and put figures on it. And, by the way, they think transportation is one of the big drivers of ratios.

**CHAIRMAN COBB:** REP. PECK.

**REP. PECK:** Chip, is the Roy School District a member of your association? ... Did you read the article in the ...

**CHAIRMAN COBB:** Further questions? If not, thank you very much for coming. We appreciate that. It was very informative.

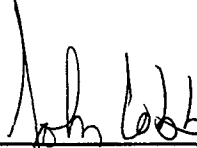
(End of verbatim minutes.)

**REP. SIMPKINS** asked whether, since the committee's plan would not be formulated soon enough, the committee would make an attempt to advise the schools on a percentage, e.g., 104%, so that districts can do budgets. He encouraged the committee to look at this issue.

**CHAIRMAN COBB** said the committee would discuss this on Thursday.

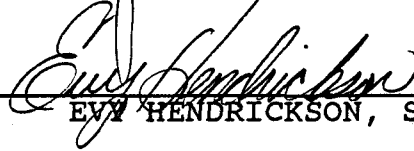
ADJOURNMENT

Adjournment: 5:00 p.m.



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REP. JOHN COBB, Chairman



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EVI HENDRICKSON, Secretary

JC/eh

HOUSE OF REPRESENTATIVES  
 53RD LEGISLATURE - 1993  
 SELECT COMMITTEE ON SCHOOL FUNDING

ROLL CALL

DATE 1-26-93

NAME	PRESENT	ABSENT
JOHN COBB, CHAIRMAN	✓	
RAY PECK, VICE CHAIRMAN	✓	
BILL BOHARSKI	✓	
RUSSELL FAGG	✓	
MIKE KADAS	✓	
ANGELA RUSSELL	✓	
DICK SIMPKINS	✓	
DAVE WANZENRIED	✓	

# Elementary GTB

## Statewide & District Mill values per ANB

(Taxable Value + ANB)

X 48.90

X 22.50

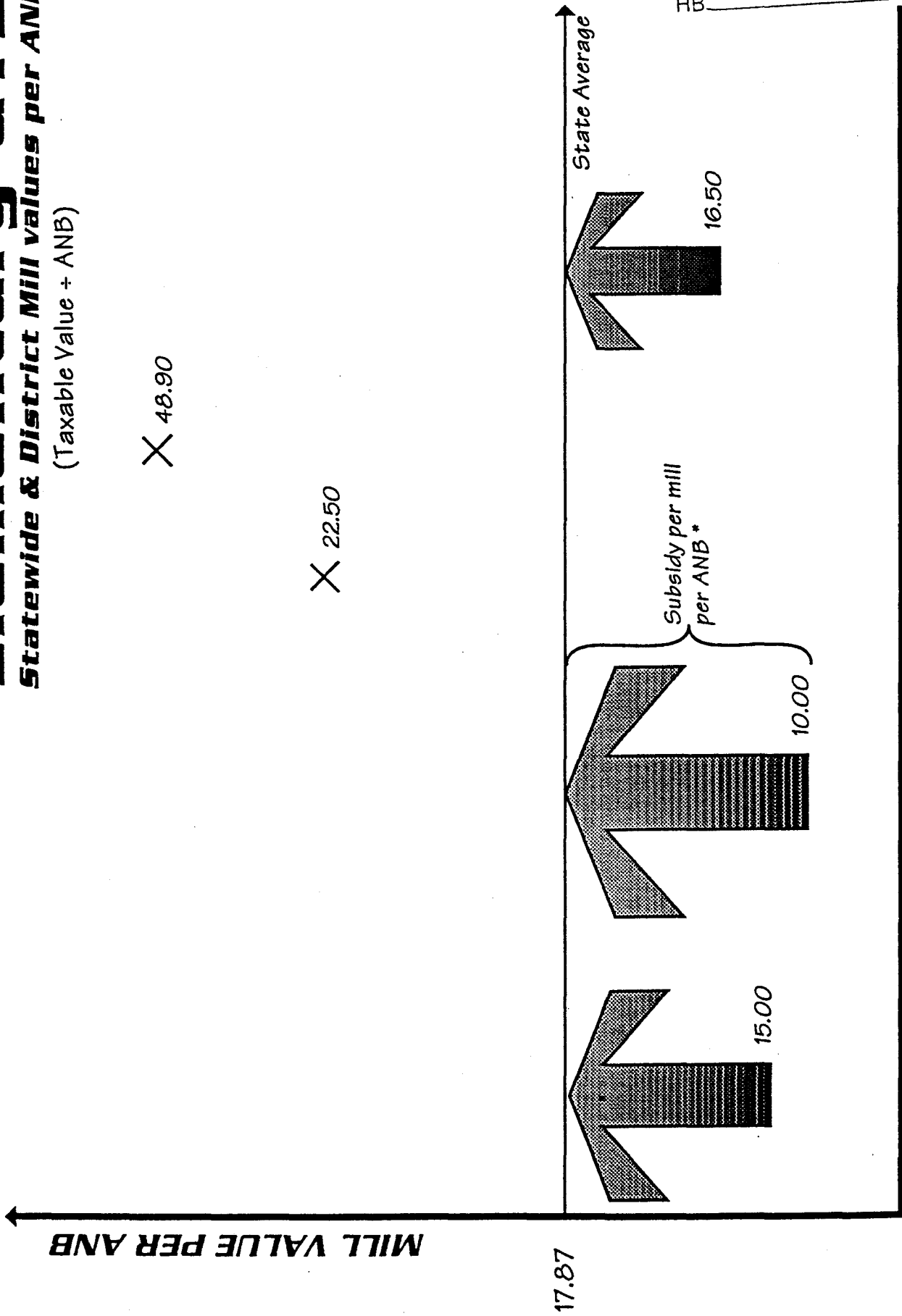


EXHIBIT 1  
 DATE 1-26-93  
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D I S T R I C T S



MEMORANDUM

I.

INTRODUCTION

This case, filed by The Montana Rural Education Association ("MREA"), challenges Montana's current school finance as unconstitutional under Art. X, § 1 of the Montana Constitution, and the Equal Protection Clause, Art. II, § 4.

The MREA is an unincorporated association of public elementary and secondary school districts located in rural communities throughout Montana. It is concerned about all aspects of the K-12 public education system in rural Montana, not only on behalf of member districts and their students, but for other, similarly situated districts and students throughout the State as well.

The MREA brought this action because it is particularly concerned with two fundamental constitutional premises: (1) all public school students in Montana are guaranteed equality of educational opportunity regardless of where they live; and (2) the State must equitably distribute adequate funds for all schools in Montana.

The MREA Plaintiffs support the positions advanced by the Plaintiffs in the companion case in this Court, Helena Elementary School District No. 1, No. BDV-91-1334 ("Helena Elementary II"). That case is predicated in large part on principles of stare decisis, based on the Montana Supreme Court's holding in Helena Elementary School Dist. No. 1 v. The State of Montana, 769 P.2d 684 (1989) ("Helena Elementary I").

The MREA Plaintiffs support and join in the efforts of the Helena Elementary II Plaintiffs. In addition, the MREA Plaintiffs will focus on some

1 issues that distinguish this case from Helena Elementary II. These  
2 distinctions can perhaps best be summarized with reference to the concepts  
3 of "horizontal equity" and "vertical equity" in school finance. Both  
4 horizontal and vertical equity refer to efforts to insure that students  
5 throughout the State, regardless of the size or location of their school  
6 district, have equal educational opportunities.

7 Horizontal equity seeks to insure that all similarly situated school  
8 districts are funded equitably. That is, for similarly-sized districts, the  
9 school finance system should not result in significant spending disparities  
10 because those spending disparities cause disparities in educational  
11 opportunities. The proof in Helena Elementary I focused on horizontal  
12 equity issues, as will much of the proof in Helena Elementary II. See, e.g.,  
13 Helena Elementary I, *supra*, 769 P.2d at 686. ("The evidence . . . established  
14 disparities of spending per pupil as high as 8 to 1 in comparisons between  
15 similarly-sized school districts."); 769 P.2d at 688 ("In sum, the comparative  
16 evidence establishes that spending differences among similarly sized school  
17 districts in the State result in unequal educational opportunities for  
18 students.").

19 The MREA Plaintiffs believe the evidence introduced by the Plaintiffs  
20 in Helena Elementary II will establish that horizontal equity has not been  
21 achieved in Montana, and the current school finance system is, therefore,  
22 unconstitutional.

23 The MREA Plaintiffs will introduce further proof that will focus on  
24 vertical equity issues. Essentially, vertical equity seeks to insure that where  
25 there are educationally-relevant differences between school districts that

1 affect the costs of educating students, those differences are adequately and  
2 equitably addressed through the school finance system. In particular,  
3 because it costs more to educate students in smaller, rural schools, the  
4 school finance system should adequately and equitably distribute funds to  
5 insure that students in smaller schools receive the educational opportunities  
6 equal to those in larger schools. Indeed, the Foundation Program Schedules  
7 theoretically recognize this.

8 The MREA Plaintiffs will introduce proof to show that Montana's  
9 current school finance system is not achieving vertical equity. As part of this  
10 proof, for example, the MREA Plaintiffs will challenge the current levels and  
11 categories for funding as set forth in the foundation program schedules --  
12 proof that was not introduced in Helena Elementary I, nor will it presumably  
13 be introduced in Helena Elementary II. In addition, the MREA Plaintiffs will  
14 introduce proof that the guaranteed tax base aid ("GTB Aid") components of  
15 the current school finance system adversely affect funding for smaller, rural  
16 schools.

17 As a result, the current school finance system violates not only the  
18 equality of educational opportunity guarantee of subsection (1) of Art. X, § 1,  
19 but it also violates subsection (3), which mandates that state funds in support  
20 of elementary and secondary education are to be ". . . fund[ed] and  
21 distribute[d] in an equitable manner to the school districts. . . ." Mont.  
22 Const. Art. X, § 1(3).

23 Thus, there are both important similarities and significant distinctions  
24 between this case and Helena Elementary II. Among the similarities is a  
25 common position with respect to the State's defense in this case, and in

1 Helena Elementary II, based on comparative test score results on certain  
2 standardized tests ("outputs defense").

3 The purpose of these motions is to request that the Court rule as a  
4 matter of law that the State's outputs defense is without merit. Alternatively,  
5 Plaintiffs request that the Court enter an order in limine precluding the  
6 State from introducing evidence of comparative test score results under  
7 Mont.R.Evid. 403.

8 II.

9 DISCUSSION

10 A. THE COURT SHOULD GRANT PARTIAL SUMMARY JUDGMENT AND  
11 DECLARE THAT THE STATE'S "OUTPUTS/BASIC QUALITY  
12 EDUCATION" DEFENSE IS WRONG AS A MATTER OF LAW.

- 13 1. MREA Joins In, and Incorporates by Reference,  
14 Those Portions of the Motion for Partial Summary  
15 Judgment and Supporting Brief, filed by the Helena  
16 Elementary II Plaintiffs in the Companion Case, that  
17 Relate to the State's "Outputs" Defense.

18 The Helena Elementary II Plaintiffs filed a Motion for Partial Summary  
19 Judgment and Supporting Brief, dated October 21, 1992, which presents  
20 two issues for partial summary judgment: (1) whether the State's system for  
21 funding "capital outlay" is unconstitutional as a matter of law, and (2)  
22 whether the State's primary defense, that spending/opportunity disparities  
23 do not make a difference, is wrong as a matter of law.

24 The MREA Plaintiffs support the Helena Elementary II Plaintiffs'  
25 position on capital outlay, but that matter is not directly at issue in the MREA

EXHIBIT 3

DATE 1-26-93

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# KERN ALEXANDER

March 1991

## BUSINESS ADDRESS

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Blacksburg, Virginia 24061  
Telephone: (703) 231-9716

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Telephone: (703) 951-3787

## Education

### Postdoctoral Study

Diploma in Educational  
Studies (with distinction)

University of Oxford  
Pembroke College  
Oxford, England

### Graduate

Doctor of Education  
(Educational Administration)

Indiana University  
Bloomington, Indiana

Master of Arts  
(Education, History)

Western Kentucky University  
Bowling Green, Kentucky

### Undergraduate

Bachelor of Arts  
(English, History)

Centre College of Kentucky  
Danville, Kentucky

## PUBLICATIONS

### *Books*

American Public School Law, (3rd Ed.), West Publishing Company, St. Paul, Minnesota (with  
D. Alexander), (in press), 1991, 1000 pp.

Attracting and Compensating America's Teachers, Harper & Row, Ballinger Division, New  
York (edited with Monk), 1988, 289 pp.

- Values in Conflict: Funding Priorities for Higher Education, Harper & Row, Ballinger Division, New York (edited with McKeown), 1986, 333 pp.
- American Public School Law, (2nd Ed.), West Publishing Company, St. Paul, Minnesota (with D. Alexander), 1985, 817 pp.
- The Law of Schools, Students, and Teachers, West Publishing Company, St. Paul, Minnesota (with D. Alexander), 1984, 407 pp.
- The Economics and Financing of Education, Prentice-Hall, Inc., Englewood Cliffs, New Jersey (with Johns and Morphet), 1983, 371 pp.
- School Law, West Publishing Company, St. Paul, Minnesota, 1980, 939 pp.
- Educational Need in the Public Economy, University of Florida Press, Gainesville, Florida, 1976, 359 pp.
- Public School Law 1975, West Publishing Company, St. Paul, Minnesota (with Corns and McCann), 1975, 347 pp.
- Futures in School Finance: Working Toward a Common Goal, Phi Delta Kappa, Bloomington, Indiana (edited with Jordan), 1974, 221 pp.
- Constitutional Reform of School Finance, Lexington Books, D. C. Heath Company, Lexington, Massachusetts (edited with Jordan), 1973, 228 pp.
- Public School Law 1973, West Publishing Company, St. Paul, Minnesota (with Corns and McCann), 1973, 246 pp.
- College and University Law, The Michie Company, Charlottesville, Virginia (with Solomon), 1972, 738 pp. (Supplement published 1977, 102 pp.)
- Financing Education, Fiscal and Legal Alternatives, Charles E. Merrill Company, Columbus, Ohio (with Johns and Jordan), 1972, 420 pp.
- Alternative Programs for Financing Education, National Education Finance Project, Vol. 5 (with Johns), 1971, 363 pp.
- Status and Impact of Educational Finance Programs, National Educational Finance Project, Vol. 4 (edited with Johns and Stollar), 1971, 336 pp.
- Planning to Finance Education, National Education Finance Project, Vol. 3 (edited with Johns and Jordan), 1971, 463 pp.
- Economic Factors Affecting the Financing of Education, National Educational Finance Project, Vol. 2 (edited with others), 1970, 372 pp.
- Dimensions of Educational Need, National Educational Finance Project, Vol. 1 (edited with Johns and Rossmiller), 1969, 242 pp.
- Public School Law, Cases and Materials, West Publishing Company (with Corns and McCann), 1969, 734 pp.
- Integration and Education, Rand McNally and Company (edited with Beggs), 1969, 192 pp.

EXHIBIT 3  
DATE 1-26-93

State Public School Finance Programs, U. S. Office of Education, 1967, 350 pp.

### *Other Short Books*

School Finance in Transition, Institute for Educational Finance, University of Florida, Gainesville, Florida (edited with Jordan), 1973, 230 pp.

Legal Aspects of Educational Choice: Compulsory Attendance and Student Assignment, NOLPE Series, Commissioned by ERIC Clearinghouse on Educational Management, 1973, 74 pp.

Financing the Public Schools, A Search for Equality, Phi Delta Kappa Commission on Alternative Designs for Funding Education, Phi Delta Kappa, Bloomington, Indiana (with Hickrod and others), 1973.

Future Directions for School Financing, National Educational Finance Project (with Johns and others), 1971, 61 pp.

Teachers and Torts. Liability for Pupil Injury, The Maxwell Company, June, 1970, 125 pp.

Constitutional Rights of Students, Department of Educational Administration, University of Florida, and Florida Department of Education (edited with Campbell), 1970, 113 pp.

Beyond the Minimum, Kentucky Foundation Program Study, Kentucky Education Association, 1967, 142 pp.

Current Legal Problems in Education (ed.), Kentucky Department of Education, 1966, 86 pp.

Law and the Kentucky Teacher, Beanblossom Publishers, 1966, 94 pp.

An Analysis of Church/State Problem in Kentucky, Kentucky Department of Education, 1964, 80 pp.

### *Journal Articles and Chapters in Books*

"The Incompatibility of Legislative Prerogative and the Common School Ideal," Harvard Journal on Legislation, Summer 1991, Vol. 28, No. 2, (in press).

"Equity, Equality and the Common Good in Educational Financing," Spheres of Justice in Education, (eds. Versteegen and Ward), Harper Business, A Division of Harper Collins Publishers, 1991, pp. 269-294.

"Equitable Financing, Local Control and Self-Interest," The Impacts of Litigation and Legislation on Public School Finance, (eds., Underwood and Versteegen), Harper & Row Publishers, Ballinger Division, New York, 1990, pp. 293-309.

"Is Legislative Power Plenary," Florida Insight, (Gainesville: Holland Law Center, University of Florida), Vol. 1, No. 5, pp. 4-5, July 7, 1989.

"Equity and Excellence: Are They Mutually Exclusive?," in The School as a Community of Leaders, (Eds. Vivian Williams and Joe Richardson), The Norham Centre for Leadership Studies, St. Peter's College, Oxford University, March, 1989, pp. 52-53.

"Educational Fiscal Policy and Judicial Deference," (reprint, selected by University Council for Educational Administration for Special Book of Readings), School Leadership: A

Contemporary Reader, edited by Joel L. Burdin (Newbury Park: Sage Publications, 1989), pp. 103-122.

"Executive Leadership and Educational Reform in Florida," The Fiscal, Legal and Political Aspects of State Reform of Elementary and Secondary Education, (eds., Mueller and McKeown), Harper & Row Publishers, Ballinger Division, New York, 1986, pp. 145-168.

"Equalization Among Florida School Districts," Journal of Education Finance, Vol. 9, No. 1, Summer, 1983.

"Adam Smith, Religion and Tuition Tax Credits," Journal of Education Finance, Vol. 8, No. 4, Spring, 1983.

"Legal Relationships, Student Teacher/University," Journal of Physical Education, Recreation and Dance, Vol. 53, No. 6, June, 1982.

"Educational Fiscal Policy and Judicial Deference," Educational Administration Quarterly, Vol. 18, No. 3, Summer, 1982.

"Concepts of Equity," Financing Education: Overcoming Inefficiency and Inequity (eds. McMahan and Geske), University of Illinois Press, Urbana, Illinois, 1982, pp. 193-214.

"The Potential of Substantive Due Process for School Finance Litigation," Journal of Education Finance, Vol. 6, No. 4, Spring, 1981, pp. 456-470.

"Financing Education in the 80's," UCEA Review, University Council of Education Administration, Fall, 1980, Vol. 21, No. 3, pp. 8-10.

"Government and Education" (with Kimbrough and Wattenbarger), Florida's Politics and Government, edited by Dauer, University Presses of Florida, Gainesville, Florida, 1980, pp. 442-447.

"Judicial Review of Education Policy: The Teachings of Tameside," British Journal of Educational Studies, Vol. 26, No. 3, 1978, pp. 224-233.

"Administrative Prerogative: Restraints of Natural Justice on Student Discipline," Journal of Law and Education, Vol. 7, No. 3, 1978, pp. 331-358.

"Federal General Aid to Education," School Finance Act of 1977 and Equalization Efforts, Hearings, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C., 1977, pp. 24-41.

"The Wealth Tax as an Alternative Revenue Source for Public Schools," Journal of Education Finance, Spring, 1977, Vol. 2, No. 4, pp. 451-452.

"The Value of an Education," Journal of Education Finance, Spring, 1976, Vol. 1, No. 3, pp. 429-467.

"Educating the Handicapped: Fiscal and Human Resources," Financing of Special Education in the United States, Vol. 5, Leadership Series in Special Education, edited by Arnold M. Rehman and Theodore F. Rigger, University of Minnesota, 1976.

"Judicial Standards of Equality," Critical Issues in Educational Finance, edited by Thomas and Floyd, Virginia Institute for Educational Finance, 1975, pp. 16-47.



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- "Due Process Rights of Teachers," Legal Rights of Teachers and Students, edited by Alexander, Johnston, and Conley. The Maxwell-King Company, Louisville, Kentucky, 1974, pp. 25-42.
- "Constitutionality of the Title I ESEA Formula: Inverted and Regressive" (with Lavit), School Finance in Transition, National Conference on School Finance, 1973, pp. 109-133.
- "Constitutionality of Alternative Models," Section VII, Planning School Finance Programs, R. L. Johns and Edgar L. Morphet, National Educational Finance Project, 1972.
- "Tort Liability Spreads to Students, Faculty," Nation's Schools, Vol. 87, No. 3, March, 1971.
- "Planning and Decision Making" (with Hamilton), Planning Annual and Long Range Programs of Vocational Education for Rural Areas According to Vocational Amendments of 1968, Edwin L. Kurth and Raymond P. Perkins, Office of Education, National Center for Educational Research and Development, 1970.
- "A Conceptual Approach to Teaching School Law," NOLPE School Law Journal, Vol. 1, No. 1, Fall, 1970.
- "National Educational Finance Project" (with Johns and Rossmiller), Fiscal Planning for Schools in Transition, Proceedings of the Twelfth National Conference on School Finance, Committee on Educational Finance, National Education Association, 1970, pp. 162-170.
- "History of Kentucky Department of Education," Education in the States: Historical Development and Outlook, Chapter 17, Council of Chief State School Officers and National Education Association, edited by Edgar Fuller, 1969.
- "Financing School Construction: Trends and Methods," COMPACT, Vol. 2, No. 6, 1968.
- "What Teacher Aides Can--and Cannot--Do," Nation's Schools, Vol. 82, No. 2, 1968.
- "The National Educational Finance Project," COMPACT, Education Commission of the States (ECS), Vol. 2, No. 6, 1968.
- "Trends and Issues in School Finance," Interdependence in School Finance: The City, the State, the Nation, National Education Association, 1968.
- "Blueprint for South Carolina Educational Progress," South Carolina Schools, South Carolina Department of Education, Columbia, South Carolina, Vol. 19, No. 3, Spring, 1968, pp. 16-17.
- "Federal General Aid for Education," I.S.B.A. Journal, Indiana School Boards Association, Bloomington, Indiana, November, 1967.
- "Putting Quality in Local School Programs," Kentucky School Journal, Kentucky Education Association, Louisville, Kentucky, Vol. 45, No. 5, January, 1967, pp. 28-29.

## PROFESSIONAL EXPERIENCE

University	Virginia Polytechnic Institute and State University,
Distinguished	Blacksburg, Virginia, 1988 to present
Professor	A specially funded and designated, tenured, university-wide professorship. "The University Distinguished Professorship is a pre-eminent faculty rank bestowed by the University Board of Visitors upon members of the

University Faculty whose scholarly attainments have attracted national and/or international recognition. The rank of University Distinguished Professor is conferred by the University and is to be considered a University (as distinct from a collegiate or departmental) appointment. \*\*\* [The] principal responsibility will be to serve the University well by giving [his] talents to the development and sharing of [his] competencies where, in [his] judgment, they will be most effectively employed."

**President**

Western Kentucky University, Bowling Green, Kentucky, 1985 to 1988. (Western is a university of 14,000 students, encompassing 5 colleges and Graduate School. The University budget is approximately \$100 million.)

Progress and initiatives while chief executive officer included:

- (1) Enrollment increased by approximately 3000 students.
- (2) Entering freshman test (ACT) scores increased three years in succession.
- (3) Instituted development program for private giving.
- (4) Created and opened a new community college as part of the university.
- (5) Created and opened a new branch campus at Glasgow, Kentucky, with initial enrollment of 1000 students.
- (6) Created Asian Studies Center.
- (7) Established consortium among 4 Chinese institutions of higher education and 28 American institutions, coordinated by WKU.
- (8) Created and opened Center for Local Government Services.
- (9) Developed University Strategic Five-Year Plan.
- (10) Expanded extended campus programs.
- (11) Developed a new facility plan, including a Greek Row, 6 residential halls, recreation facility, and library.
- (12) Obtained special legislative appropriation for funding of \$10 million for new recreation facility and acquired Council of Higher Education approval for construction of new residential facilities.

**Professor**

Department of Educational Administration, College of Education, University of Florida, 1970 to 1985.

**Director**

Institute for Educational Finance, University of Florida, 1972-1982. The Institute is an interdisciplinary research and training arm of the University. Established in 1972 by the Board of Regents, the Institute personnel includes professors and staff from the fields of educational administration, economics, public finance, and business management. The Institute has been the recipient of many major grants from state and federal agencies.

**Education Policy  
Coordinator**

State of Florida, Office of the Governor, Governor D. Robert Graham, 1982-85.

Responsibilities included planning, budgeting, and coordinating of educational activities for the State University System, Community Colleges, and Public Schools. Duties of the position included:  
(a) Administration of the Governor's Education Office. The Education Office encompassed eleven professional positions assigned to planning and budgeting for universities, community colleges, public schools, vocational education, Board of Regents Central office, medical schools

and hospitals, Institute for Food and Agricultural Sciences, School for Deaf and Blind, and capitol facilities.

(b) Received, restructured, and modified budget requests submitted by Chancellor, Director of Community Colleges, and Commissioner of Education.

(c) Coordinated, prepared, and submitted educational budget requests to the Legislature (total Education Budget in excess of \$6 billion).

(d) Formulated, wrote, and prepared Governor's substantive legislative package for education.

(e) Coordinated the State Board of Education agenda and promulgating regulations for the State University System, Community Colleges, and Public Schools (Governor is Chairman of SBE in Florida).

(f) Negotiated educational legislation with lobby groups; e.g., State Chamber of Commerce, Associated Industries, School Boards Association, United Faculties of Florida, and public school teachers' unions.

(g) Managed state education funds in accordance with appropriation requirements, including release of funds, approving and establishing faculty positions for the State University System, and control of faculty salary rates for the nine state universities.

**Director**

National Educational Finance Project (a nationwide study of educational fiscal policy involving all fifty state education agencies. Staff for the project included over 100 professors and research associates in addition to other auxiliary research personnel. Primary activities for the project were conducted by the Florida Department of Education through the Board of Regents and the University of Florida. Ancillary research and training functions were carried on in eleven major universities across the country, including University of California, University of Chicago, Indiana University, University of Illinois, Columbia University, and others), 1972-74.

**Associate Professor**

Department of Educational Administration, College of Education, University of Florida, 1968-70.

**Associate Director**

National Education Finance Project, Gainesville, Florida, 1968-72.

**Chief**

Financial Practices Section, Office of Construction, U.S. Office of Education, Washington, DC (Position involved the administration of Public Law 815 grants to state and local education agencies), 1967-68.

**Program Coordinator  
and School Law  
Specialist**

Division of State Agency Cooperation, Bureau of Elementary and Secondary Education, U.S. Office of Education, Washington, DC (Position was charged with the responsibility to implement Title V of the Elementary and Secondary Education Act of 1965. Specifically, the funds were used to establish planning bureaus in all fifty state education agencies. This office was charged with assisting state agencies in restructuring their organizational and staffing patterns to facilitate long-range educational planning), 1966-67.

**Director**

Division of Statistical Services and Legislative Liaison, Kentucky Department of Education (All statistical analysis and reporting was a function of this division. During this period the initial strides were taken toward creating a state education management information system.

July, 1992

**RICHARD G. SALMON**

***Educational Background***

Ed.D. University of Florida Major: Educational Administration 1969  
Dissertation "The Equalization of the Financial Support in Nine Selected States"  
Ed.S. University of Florida Major: Educational Administration 1968  
M.Ed. University of Florida Major: Educational Administration 1967  
B.S.E. University of Florida Major: Industrial Arts Education 1961

**Full-time Employment Assignment:**

Virginia Polytechnic Institute and State University

Professor, Educational Administration, Division of Administrative and Educational Services (May 1989 to present). Responsibilities include graduate teaching, conducting research, and field service.

**Consultant Assignments (selected):**

United States Department of Education, Office of General Counsel, Bureau of Impact Aid, Washington, DC. (1986-92) paid consultant.

Virginia Education Association, Division of Research, Statistics, and Retirement Services, Richmond, Virginia. (1978-92) paid consultant.

Office of the Governor, State of West Virginia, Charleston, West Virginia. (1989-90) paid consultant.

State of Alaska, Office of Attorney General, Juneau, Alaska. (1986-88) paid consultant.

State of Texas, Select Committee on Tax Equity and Select Committee on School Finance Reform, Austin Texas. (1988) paid consultant.

State of West Virginia, Blue Ribbon Commission on School Finance Reform, Charleston, West Virginia. (1988) paid consultant.

***Awards and Recognition (selected)***

Requested to serve as expert witness by the United States Department of Education in a Federal trial, In the Matter of Fourteen South Dakota School Districts v. United States Department of Education.

Requested to serve as expert witness by the plaintiffs in a Kentucky state trial, Council for Better Education v. Martha Layne Collins et al. (1987-88).

Requested to serve as expert witness by the United States Department of Education in a Federal trial, Appeal of Southwest Region School District v. Alaska Department of Education and United States Department of Education, (1986).

Requested to serve as an expert witness by the United States Department of Education in a federal trial, Gwinn Area Community Schools et al. v. U.S. Department of Education, Marquette, Michigan, (1984).

Presently serving on the Board of Editors and Managing Editor, Journal of Education Finance, Virginia Tech, Blacksburg, Virginia (1980-88).

***Professional Papers Delivered (selected)***

St. Peters College, Oxford University, "Structure and Trends of State Systems of Public School Finance in the United States," Oxford, England, August, 1989 (International Conference).

American Education Finance Association, "Status of Public School Finance Programs in the United States, 1986-87," Tampa, Florida, March, 1988, General Session Speaker, (National Conference).

Ontario Institute on Studies in Education, "State School Finance Programs in the United States," Toronto, Canada, February, 1988, (Federal Conference).

National School Boards Association, "Thinking Creatively about Education Finance," Miami Beach, Florida, October, 1986, (National Conference).

National Organization on Legal Problems in Education (NOLPE), Chicago, Illinois, November, 1985, "Academic and Fiscal Sanctions Available to States as a Result of Reform Legislation," (National Conference).

***Professional Publications (selected)***

**Textbooks**

Salmon, Richard G., Christina Dawson, Stephen Lawton and Thomas L. Johns, (Eds.), Public School Finance Programs of the United States and Canada, 1986-87. Blacksburg, Virginia: American Education Finance Association, 1988 (472 pages).

Jordan, K. Forbis, Mary P. McKeown, Richard G. Salmon, and L. Dean Webb, School Business Administration. Beverly Hills, California: Sage Publications, Inc., 1985 (416 pages).

**Chapters in Textbooks and Monographs (selected):**

Salmon, Richard G., and Dee Bodkins, "School Personnel and Pupils with Chronic Infectious Diseases: Implications for Public School Administrators," Chapter in NOLPE manual for School Principals. Camp, William and Julie Underwood (Eds.), forthcoming issue (16 pages).

Richard Salmon

Salmon, Richard G. and Mary F. Hughes, "School Administrators, the Courts, and Chronic Infectious Diseases," Chapter 10 in Current Issues in School Law. Chicago, IL: NOLPE, 1989 (12 pages).

Salmon, Richard G. and M. David Alexander, "State Legislative Responses to School Finance Equity Litigation," Chapter 11 in The Impact of Litigation and Legislation on Public School Finance. (Eds., Julie Underwood and Deborah Versteegen) American Education Finance Association Yearbook, 1989 (24 pages).

Salmon, Richard G. and M. David Alexander, "The Influence of Litigation and Legislation on Public School Finance," Chapter in American Education Finance Yearbook, 1990 issue. (Forthcoming).

Salmon, Richard G., "Teacher Salaries: Progress Over the Decade," Chapter 11 in Alexander, Kern and David H. Monk, Public School Teacher Compensation. American Education Finance Association Yearbook, 1987 (20 pages).

Salmon, Richard G., Mary Jane Connelly, and M. David Alexander, "Public School Finance Litigation," Chapter in Wood, Craig, Contemporary School Business Administration. Reston, Virginia: ASBO International, 1986 (41 pages).

Articles, Journals (selected):

Salmon, Richard G., "The Measurement of Fiscal Equalization Pursuant to Federal Impact Aid, P.L. 81-874, Section 5(d)(2): Recommendations for Improvement," Journal of Education Finance, Forthcoming Issue (25 pages).

Versteegen, Deborah and Richard G. Salmon, "Closing the Gap: An Equity Analysis of the Virginia System of School Finance," Journal of Education Finance, Forthcoming Issue (16 pages).

Versteegen, Deborah and Richard G. Salmon, "Virginia Education Finance Reform: Has Equity and Excellence Been Achieved?" Journal of Education Finance, Vol. 14, Fall, 1988 (14 pages).

Salmon, Richard G. and M. David Alexander, "State Fiscal Assistance to Private Education: Gradual Erosion of the Wall of Separation Between Church and State," Religion and Public Education, Vol. 15, No. 1, 1988 (7 pages).

Salmon, Richard G., "State/Local Fiscal Support of Public Elementary and Secondary Education: A Look Backward and Prospects for the Future," Journal of Education Finance, Vol. 12, No. 4, Spring, 1987 (11 pages).

Salmon, Richard G., "Funding The Standards of Quality," Virginia Journal of Education. February, 1986, pp. 18-22.

Salmon, Richard G. and M. David Alexander, "Child Abuse and Neglect: Implications for Educators," West's Education Law Reporter, Vol. 28, No. 1, 1986.

Technical Reports (selected):

Salmon, Richard G., Understanding Virginia School Finance. Blacksburg, Virginia: Virginia Polytechnic Institute and State University, 1991 (24 pages).

\*\*\*\*END\*\*\*\*

Richard Salmon

4

Verstegen, Deborah and Richard G. Salmon, Closing the Gap? An Equity Analysis of Funding for Education in the Commonwealth of Virginia. Richmond, Virginia: Virginia Education Association, December, 1989 (26 pages).

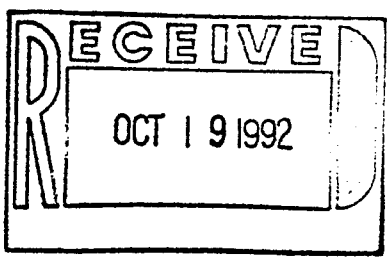
Salmon, Richard G., Mary F. Hughes and James Armstrong, An Assessment of Public School Service Personnel Compensation in West Virginia: 1986-87, Blacksburg, Virginia: Virginia Polytechnic Institute and State University, 1988 (106 pages).

Salmon, Richard G., Financing Public Schools in West Virginia: Issues and Recommendations. Charleston, West Virginia: Blue Ribbon Commission on School Finance Reform, 1987 (15 pages).

Salmon, Richard G., The Kentucky Public School Finance System: Fiscal Evidence. Evidence prepared for use in The Council for Better Education v. Martha Lane Collins. Frankfort, Kentucky, 1987 (150 pages).

EXHIBIT 5  
DATE 1-26-93  
HB \_\_\_\_\_

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4 10 North 27th Street, Suite 350  
5 Billings, Montana 59103-1617  
6 Telephone: (406) 248-7521



7 Charles E. Erdmann, II  
8 ERDMANN LAW OFFICE  
9 Post Office Box 5418  
10 1134 Butte Avenue  
11 Helena, Montana 59604  
12 Telephone: (406) 442-8813

13 Attorneys for Plaintiffs

14 MONTANA FIRST JUDICIAL DISTRICT, LEWIS & CLARK COUNTY

15 MONTANA RURAL EDUCATION )  
16 ASSOCIATION aka MREA, JOHN )  
17 KAMMERZELL, HOWARD MOSS, )  
18 DOUGLAS J. CLARK, DALE SAILER, )  
19 and GEORGE BAILEY, as natural persons )  
20 and parents of minor children who )  
21 attend public elementary or high schools )  
22 within the State of Montana; DUTTON )  
23 ELEMENTARY DISTRICT NO. 28 and )  
24 DUTTON HIGH SCHOOL DISTRICT NO. )  
25 28 OF TETON COUNTY; PEERLESS )  
ELEMENTARY SCHOOL DISTRICT NO. )  
2 AND PEERLESS HIGH SCHOOL )  
DISTRICT NO. 2 OF DANIELS COUNTY, )

NO. BDV-91-2065

Plaintiffs,

vs.

PLAINTIFFS' SUMMARY OF  
EXPERT WITNESSES AND  
LAY WITNESSES

THE STATE OF MONTANA; and  
MONTANA BOARD OF PUBLIC  
EDUCATION,

Defendants.

COMES NOW the plaintiffs, and identify the following persons that the  
plaintiffs will call or may call as expert witnesses at trial.



1 Plaintiffs are aware that the both the "Underfunded Plaintiffs" and the  
2 State have identified witnesses (including Dr. Dori Nielsen, John Campbell)  
3 to describe the components and mechanics of Montana's system of funding  
4 public elementary and secondary schools. The MREA plaintiffs assume that,  
5 for the convenience of all parties and the court, the suitable agreements can  
6 be reached with respect to making of such evidence part of the record in  
7 this case. To the extent it could be necessary to supplement the record, the  
8 MREA plaintiffs could call Dr. Nielsen and/or Mr. Campbell to provide  
9 further testimony as it more specifically relates to the issues in this case. In  
10 that event, the MREA plaintiffs would intend to coordinate with the  
11 witnesses and the State to arrange for the witnesses' cooperation, and for  
12 disclosure of the matters upon which the witnesses will be called to testify.

13 Additionally, the MREA plaintiffs may call a number of administrators  
14 from member districts as identified herein. Those witnesses qualify as  
15 experts in their fields. Some administrators qualify as experts in the  
16 components and mechanics of Montana's school funding system, particularly  
17 as it relates to smaller, rural school districts. Some of those administrators  
18 may testify about those matters, as well as about their background and  
19 experience in dealing with problems relating to funding rural school  
20 districts.

21  
22 1. Identity:

23 Dr. Kern Alexander  
24 Virginia Polytechnic Institute and State University  
25 College of Education  
Division of Administrative and Educational Services  
235 University City Office Building  
Blacksburg, Virginia 24061

1 John O'Neal  
2 Virginia Polytechnic Institute and State University  
3 College of Education  
4 Division of Administrative and educational Services  
5 235 University City Office Building  
6 Blacksburg, Virginia 24061

7 Richard Salmon  
8 Virginia Polytechnic Institute and State University  
9 College of Education  
10 Division of Administrative and educational Services  
11 235 University City Office Building  
12 Blacksburg, Virginia 24061

13 Dr. Kern Alexander, Dr. Richard Salmon and John O'Neal, Virginia  
14 Polytechnic Institute and State University, College of Education, Division of  
15 Administrative and Educational Services, 235 University City Office Building,  
16 Blacksburg, VA 24061.

17 Plaintiffs have retained Dr. Kern Alexander and Dr. Richard Salmon to  
18 conduct an analysis of Montana's school finance system in general, and its  
19 effect on rural and small schools, in particular. Dr. Alexander and Dr. Salmon  
20 are nationally-recognized experts on school finance and have extensive  
21 experience, knowledge, and expertise on issues relating to rural and small  
22 schools. Mr. John O'Neal is a Ph.D. Candidate at Virginia Tech, and works  
23 closely with Dr. Alexander and Dr. Salmon. Under their auspices, he has  
24 input and analyzed extensive data and information about Montana's school  
25 system, all of which was provided by the State in response to discovery  
requests. A copy of curriculum vitae for Dr. Alexander and Dr. Salmon is  
attached. Mr. O'Neal's will be provided.

Plaintiffs anticipate that Dr. Alexander and Dr. Salmon will testify at  
trial, either separately or as a team, depending on arrangements to be

1 worked out with the State and the Court. Plaintiffs do not anticipate calling  
2 Mr. O'Neal as a witness at trial unless his testimony is necessary for  
3 foundation or background purposes, relating to the data and exhibits offered  
4 by Plaintiffs as evidence at trial.

5 Dr. Alexander and/or Salmon may testify about characteristics of school  
6 districts in Montana (individually, and aggregated by sizes and for the State  
7 as a whole), including information regarding:

- 8 a) ANB enrollments;
- 9 b) foundation program revenues, guaranteed tax base aid revenues,  
10 non-tax revenues, and tax revenues (including millages);
- 11 c) taxable valuation;
- 12 d) general fund expenditures;
- 13 e) transportation revenues and expenditures;
- 14 f) salary and personnel costs;
- 15 g) curriculum and program offerings;
- 16 h) accreditation standards.

17 Based upon their study and analyses, Dr. Alexander and/or Dr. Salmon  
18 may testify about the impact of Montana's school funding system on rural and  
19 small schools. They may testify that the Foundation Program Schedules, as a  
20 measure of need in the Foundation Program, are inadequate in the  
21 identification and quantification of the costs incurred by school districts in  
22 providing equal educational opportunity.

23 They may testify that there is no significant relationship between the  
24 Foundation Schedules and educationally relevant data or requirements to  
25 provide the cost of educating children in rural or other schools. Based upon

1 information evaluated by them, the Foundation Schedules are arbitrary and  
2 lead to inequitable opportunities to Montana rural primary and secondary  
3 students.

4 They may also testify that among elementary districts, both absolute  
5 size and sparsity have a statistically significant relationship with General  
6 Fund Expenditures. However, a proxy of sparsity (miles pupils are  
7 transported per ANB per year) better predicts costs associated with  
8 providing educational opportunities than do the absolute size of school  
9 districts or the Foundation Program Schedules.

10 For high school districts, the absolute size of school districts better  
11 predicts General Fund Expenditures than either sparsity (miles per ANB per  
12 year) or the size schedules contained in the Foundation Program Schedules.  
13 They may explain, in this regard, that the sparsity index for high school  
14 districts is complicated by the fact that high school districts obtain  
15 transportation services from elementary districts and other agencies.

16 They may also testify that regression analyses for both elementary and  
17 high school districts further indicates that absolute size and sparsity each  
18 have statistically significant correlations with general fund expenditures  
19 when controlling for wealth, effort, foundation program funding, and  
20 guaranteed tax base subsidy.

21 For high school districts, the foundation program and guaranteed tax  
22 base allocation account for only 18.12 per cent of the variance in the general  
23 fund expenditures when controlling for wealth, effort, absolute size and  
24 sparsity. For elementary districts, the figure is 20.70 percent.

25 Drs. Alexander and Salmon may testify that among Montana high school

1 districts there exists wide disparities in curricular offerings. An analysis of  
2 the "best available" high school programs in each Foundation Program  
3 Schedule determined that the smaller size high school districts offered a  
4 substantially less enriched curriculum than their larger counterparts and  
5 that there is no rational educationally based reason for the disparities. They  
6 may testify that the Foundation Program Schedule does not provide a  
7 weighting of sufficient magnitude to compensate small high school districts  
8 for the differential costs required for a "best available curriculum" in their  
9 respective schedule category.

10 The experts may further testify that the Foundation Program Schedule  
11 currently weights the smallest high school district category, Category 1 at  
12 2.89 times the largest category, Category 7. Furthermore, they may opine  
13 that if one in actuality, assumes that equal educational opportunity requires  
14 that teachers be compensated in a relatively comparable manner, and that  
15 the "best available curriculum" is provided within the respective size  
16 schedules, then the ration of Category 1 to Category 7 should be 4.45 to 1  
17 (\$17,156/\$3,856). The calculation is based on a percentage function  
18 General Fund Expenditures by function code as established for selected  
19 "model" schools' best available curriculum in each respective Foundation  
20 Program Schedule Category.

21 Alternatively, the experts may testify, If the appropriate weightings to  
22 high school districts are determined by staffing ratio analyses derived from  
23 generated costs for selected model schools' "best available curriculum"  
24 based on necessary staffing as provided by the selected model school  
25 districts, then the cost ratio between the Category 1 and Category 7 school

1 districts is 4.22 to 1. Under either scenario, evaluation of the data, based  
2 upon what is in fact, available in Montana schools demonstrates that the  
3 existing weighting of the Foundation Schedules do not reflect the actual  
4 costs of providing the same or similar opportunities to students in similarly  
5 sized schools, nor do they reflect the cost disparities in providing actual  
6 opportunities to students in dissimilarly sized schools. The experts may  
7 testify that the current formula is arbitrary and that it is possible to provide a  
8 funding mechanism based on the current Foundation Program theory of  
9 funding education, that more realistically and equitably funds equal  
10 opportunities for students in Montana schools. They may testify that  
11 examination of the current schedules demonstrates not only inequities in  
12 actual funding but also that the current schedules do not achieve their  
13 apparent purpose of accommodating the higher costs of providing equal  
14 educational opportunities to students in smaller or rural schools.

15 The experts may testify that the pattern deficiencies in the Foundation  
16 Program Schedule weightings for elementary school districts are similar to  
17 those found in the high school districts. When weightings are determined  
18 for selected model elementary school districts through use of the budget  
19 percentage methodology, the differential between Foundation Program  
20 Schedule Category 1 and Category 6c is 3.37 to 1. When the staffing ratio  
21 methodology is applied to the model elementary school districts for  
22 comparative purposes, the ratio between Foundation Program Schedule  
23 Category 1 to Category 6c is found to be 3.53 to 1. The current Foundation  
24 Program Schedule weights the Category 1, 3.09 times that of Category 6c.

25 Dr. Alexander and/or Salmon may testify that Montana rural school

1 districts are adversely affected by the manner in which funding is provided  
2 and allocated to rural school districts, specifically the Foundation Schedules  
3 and the driving force they serve as it relates to caps on expenditures and  
4 supplemental assistance through Guaranteed Tax Base payments.

5 They may testify that the eligibility and allocation formulas for  
6 guaranteed tax base aid are inequitable, and adversely affect smaller, rural  
7 school districts. In this regard, they may testify that by failing to include a  
8 weighting factor in the guaranteed tax based aid program, the effect ha been  
9 to significantly reduce the desired effects of the weighting factors included  
10 in the foundation program schedules (i.e., to achieve some degree of  
11 "vertical equity" in school funding in Montana).

12 In conclusion, Dr. Alexander and/or Dr. Salmon may testify that  
13 Montana's school finance system in general, and the foundation program  
14 classifications and funding inequities described above, in particular,  
15 adversely affect the quality of education afforded to students in the plaintiff  
16 school districts.

17 2. Identity:

18 Rodney Svee  
19 1004 Rangeview  
20 Hardin, Montana 59034

21 Mr. Svee is superintendent of Hardin Public Schools, and is an  
22 experienced Montana educator and administrator. He has extensive  
23 experience and knowledge in matters relating to accreditation standards for  
24 both the state of Montana and the Northwest Association of Schools and  
25 Colleges. A copy of his curriculum vitae is attached.