

Defendant)

Plaintiffs, for their cause of action, allege:

NATURE OF ACTION

1. This case challenges the constitutionality of Montana's system of funding its public elementary and secondary schools. Due to long-standing structural and substantive deficiencies in the State's funding system, as more particularly described below, the State has failed to meet its constitutional obligations under Article X, section 1, and Article II, Section 4 of the Constitution of the State of Montana.

PARTIES

2. The Plaintiffs in this case include eleven Montana public school districts from large and small communities throughout Montana. The school districts are organized under Montana law, with the capacity to sue and be sued. These public school districts are representative of districts throughout the State. They bring this action on behalf of all students in Montana's basic elementary and secondary school system to protect and vindicate the students' constitutional rights to be educated in free quality public schools that are adequately and equitably funded.

3. Plaintiff MEA-MFT is a labor organization with more than 16,000 members, including teachers in Montana's public

schools. The MEA-MFT advocates for its members and the students, parents, and school districts its members serve by, among other things, promoting and advancing free, quality, public education for all Montana children.

4. Plaintiffs Alan and Nancy Nicholson, Gene Jarussi, Peter and Cheryl Marchi, and Michael and Susan Nicosia are all taxpayers and parents of children attending public schools in Montana. They bring this action on behalf of their own children, and on behalf of all children attending Montana's public elementary and secondary schools.

5. All of the Plaintiffs are adversely affected by the failure of the State of Montana to fund public elementary and secondary education in an adequate and equitable manner.

6. The Defendant State of Montana is a duly established State within the United States of America. It is obligated under the Montana Constitution of 1972 to provide adequate funding for a basic system of free quality public elementary and secondary schools in which all students are guaranteed equality of educational opportunity.

FACTUAL ALLEGATIONS

7. Public elementary and secondary schools in Montana must comply with minimum accreditation, and performance and content standards. These standards are promulgated by the Montana Board of Public Education pursuant to its authority and responsibility

under Article X, section 9(3) of the Montana Constitution. In addition, public schools must meet other legal obligations and mandates imposed under federal, state, and local laws, administrative rules and/or regulations.

8. School Boards in each school district are constitutionally vested, under Article X, Section 8 of the Constitution, with the responsibility for supervising and controlling local schools, including assuring their compliance with state and federal obligations and mandates.

9. The Superintendent of Public Instruction is vested with the responsibility for the general supervision of the public schools and school districts, and for carrying out a wide ranging and extensive set of statutory obligations.

10. The State of Montana historically has not funded, and currently does not fund public elementary and secondary education in a manner that is based on a determination of the costs of providing a quality education to Montana's public school students. Rather, State funding for public elementary and secondary education is determined by the amount of revenue the legislature deems is available in any particular biennium, without determining whether that revenue is sufficient to provide a basic system of free quality public elementary and secondary schools in the state. The State of Montana also fails to determine whether school districts, the Board of Public

Education, and the Superintendent of Public Instruction have the resources needed to perform their obligations as established by the Constitution and laws of Montana and federal law.

11. Montana's current school funding system grew out of persistent and recurring problems that existed with the Montana School Foundation Program, which was originally enacted in the late 1940's. Those problems included a consistent pattern of declining state support for public education over time, resulting in a corresponding excessive reliance on permissive and voted levies, causing increased burdens on local school districts and taxpayers. These problems, in combination with other factors, resulted in wide variations in the resources available to educate students in various school districts, and wide variations in the tax burdens imposed on local taxpayers for the support of public education.

12. The framers of the 1972 Montana Constitution incorporated Article X, section 1 expressly and directly for the purpose of addressing the persistent and recurring problems with Montana's school funding system. At that time, the State funded approximately 65% of statewide general fund revenues in the public elementary and secondary school districts. The framers determined that level of support was insufficient, and drafted the Constitutional provisions to compel the State of Montana to do more than historically had been done to adequately and

equitably fund a system of free quality public schools.

13. Following the adoption of the 1972 Constitution, the State failed adequately to address the problems with funding for public elementary and secondary education. As a consequence, a constitutional challenge was instituted, resulting in the Montana Supreme Court's decision declaring the entire school funding system unconstitutional in *Helena Elementary School Dist. No. 1 v. State*, 236 Mont. 44, 769 P.2d 684 (1989).

14. In response to the Supreme Court's decision, the Montana Legislature promised to remedy deficiencies in the school funding system by focusing on principles of equity and to do so comprehensively, not just in the general fund budgets of school districts:

The Legislature recognizes its responsibility to devise an equalized system of school funding and recognizes that measures in addition to the provisions in this bill are necessary to fully address equalization of funding and expenditures for transportation, retirement, capital improvements, and other needs of the districts and that equitable funding methods for these needs should be addressed by the Fifty-Second Legislature.

House Bill 28, Sp. L. June 1989.

15. Although the State of Montana implemented measures that reduced some of the expenditure disparities that existed under the former system, the fundamental problems remained. Moreover, the State failed to address funding and expenditures for

educational costs outside the general fund budgets of school districts including, but not limited to, capital outlay.

16. The State did not try to determine the costs of quality education, or the adequacy of funding for public schools in response to the Supreme Court's 1989 decision in *Helena Elementary*. To the contrary, the State relied on historical expenditure patterns to adjust then-existing funding formulas in ways designed to reduce per pupil expenditure disparities.

17. The funding system was again challenged in companion lawsuits filed in 1991, which led to trials before this Court in 1993. In response to those challenges and the proof submitted in this Court, the State of Montana again changed the school funding system through the enactment of House Bill 667. The new funding system differed substantially enough from the previous system to render the pending lawsuits moot. It did not, however, address many of the fundamental and structural deficiencies that continue to exist in Montana's school funding system. The new funding system also created new problems and deficiencies, as alleged below.

18. Through the enactment of House Bill 667 in 1993, the Legislature imposed minimum and maximum budgetary constraints on school districts. The budget minimums and maximums vary according to the type of school district (elementary or high school) and the number of students in the district (as defined by

relevant statutes). The primary purpose of these minimum and maximum budget constraints was to prevent wide disparities in per pupil general fund expenditures among districts of comparable size.

19. In establishing the general fund distribution formulas set forth in the 1993 statutes, the State of Montana again did not take any steps to determine the components of a quality education, or the costs and resources necessary to provide a quality education to students in Montana's public elementary and secondary schools. Rather, the Legislature devised the funding formula to distribute the revenues it deemed were available for elementary and secondary education, in a way designed to prevent wide general fund expenditure disparities among districts of comparable size.

20. As a consequence, the funding system enacted through House Bill 667 is not based on an accurate or reliable evaluation of educationally relevant factors. In addition, the State failed to incorporate any mechanisms in the funding system to prevent the recurrent pattern of declining state support for K-12 education or to make sure that funding levels keep current with inflation and cost increases.

21. Montana's general fund distribution formula provides substantially less funding for elementary than for high school educational programs. These funding differentials do not reflect

true cost differences, and are not based on educationally relevant factors.

22. Montana's funding formula is too dependent upon enrollment. In districts with declining enrollments, it assesses automatic cuts in funding that far exceed the savings accrued from such enrollment declines. Thus, a relatively small decline in a district's enrollment has a disproportionately significant adverse effect on the district's ability to budget for the costs of a quality program. This problem is exacerbated for districts that operate near or at the budget maximums established by law.

23. In legislative sessions in the 1990s and in 2001, the State of Montana continued the pattern of providing decreasing state support for public elementary and secondary education over time. As has been the case historically, this has resulted in excessive reliance on permissive and voted levies to support K-12 public education in the State.

24. State funding has failed to keep current with cost and inflationary increases experienced in Montana's public schools. As a consequence, Montana's public school districts face persistent and growing problems in attempting to provide quality education to Montana's public school students.

25. Due to funding problems, a substantial number of public schools are unable to comply fully with the minimum accreditation and performance and content standards.

26. As a further result of inadequate and inequitable state support for public elementary and secondary education, school districts throughout Montana have been forced to cut programs, staff, resources and services. These cuts have adversely affected the quality of the educational programs and services offered to students.

27. Public K-12 education in Montana is facing a crisis situation with respect to the ability to attract and retain quality educators. In 1980, the average salary for teachers in Montana ranked 28th nationally. In 2001, Montana has fallen to 47th or 48th among the states in average teacher salaries. This trend corresponds to a fall in Montana's national ranking in total per-pupil expenditures from 15th to 30th among the states.

28. Graduates from Montana's teacher education programs are increasingly leaving Montana to teach in other states.

Increasing numbers of experienced Montana educators are also making the same choice. A large percentage of the educators in Montana's public elementary and secondary school districts are reaching retirement age. As these quality and experienced educators retire, it is increasingly difficult for districts to find and keep quality educators. This, in turn, adversely impacts districts' abilities to provide quality education to students in Montana's public elementary and secondary schools.

29. One of the areas in which school districts have faced

increasing demands, mandates and costs is special education. As these costs have increased, the State of Montana's funding support for special education costs have declined. Increases in federal spending on special education have not been sufficient to offset the declines in state support. As a result, local school districts and taxpayers face increased burdens in meeting the mandates and costs relating to special education. The failure to adequately fund special education costs adversely affects districts' abilities to meet general fund budget needs.

30. Many school districts are forced to defer or cut facilities maintenance and construction needs. Some school districts are badly in need of new school buildings, but are unable to build them due to the State's failure to provide an adequate and equitable system for funding capital outlay.

31. Based on changes in federal and state laws, school districts also face increased costs and resource needs relating to testing, assessment, and the other components associated with the "standards based reform" movement in public education. The problems and inadequacies in Montana's school funding system make it difficult, and in some cases not possible, to satisfy these new requirements. These new requirements also cause increased costs and resource needs for the Superintendent of Public Instruction and the Board of Public Education. The State of Montana, however, fails adequately to address funding for these

increasing demands and requirements at the local and state level.

32. Since the adoption of House Bill 667, the State of Montana has enacted various provisions that are designed to provide school districts partial relief from minimum and maximum budgetary constraints. These include such things as technology and building reserve funds, flex funds, and other such provisions. These mechanisms are inconsistent, unstable and inequitable methods of attempting to provide partial relief from the effects of general fund maximum budget constraints and rely, almost exclusively, on local voted levies as a funding source. The ability and willingness of districts to use these mechanisms varies, and is affected by local property wealth and other factors that are not rationally related to the State's obligation to provide equitable and adequate funding for all students.

33. Although the minimum and maximum budgetary constraints have reduced general fund expenditure disparities among similarly sized school districts, school funding in Montana since 1993 has been growing increasingly inequitable, particularly when non-general fund expenditures are considered. In addition, the combined effect of the budgetary constraints and declining state support has been to "equalize down," rather than to provide funding adequate to assure a basic system of free quality public elementary and secondary schools in which all students are guaranteed equality of educational opportunity.

COUNT I

ARTICLE X, SECTION 1

34. Plaintiffs incorporate and re-allege the allegations in paragraphs 1 through 33, above.

35. Article X, section 1(1) of the Montana constitution obligates the Defendant State of Montana to design and implement a school funding system that guarantees all students equality of educational opportunity.

36. Article X, section 1(2) "establishes a special [obligation] in Montana for the education of American Indian children, which must be addressed as part of the school funding" system. *Helena Elementary School Dist. No. 1 v. State*, 236 Mont. at 58, 769 P.2d at 693.

37. The State of Montana is obligated to fund and distribute in an equitable manner its share of the cost of a basic system of free quality public elementary and secondary schools, pursuant to Article X, section 1(3).

38. The State of Montana has historically and consistently failed, and it currently is failing, to meet its constitutional obligations under Article X, section 1 of the Montana Constitution.

39. In order to adequately address the persistent and recurring problems with Montana's school funding system, this Court should compel the Legislature to take specific steps as identified below so long-lasting and meaningful reforms are implemented.

COUNT II

ARTICLE II, SECTION 4

40. Plaintiffs incorporate and re-allege the allegations in paragraphs 1 through 39, above.

41. The right to education is fundamental under the Montana Constitution.

42. The inequities and disparities that have historically and persistently existed under Montana's school funding system result in unequal educational opportunities among students in Montana's public schools and therefore adversely impact the fundamental right to education in violation of Article II, section 4 and its corollary Article X, section 1(3) of the Montana Constitution.

COUNT III

ATTORNEYS FEES

43. Plaintiffs incorporate and re-allege the allegations in paragraphs 1 through 42, above.

44. Plaintiffs are entitled to an award of attorneys fees

and costs pursuant to the private attorney general doctrine. See *Montanans v. Board of Land Commissioners*, 199 MT 263, 296 Mont. 402, 989 P.2d 800.

WHEREFORE, Plaintiffs pray for relief from the Court as follows:

1. That the Court enter a declaratory judgment pursuant to the Montana Declaratory Judgments Act, declaring the system for funding public elementary and secondary education in Montana unconstitutional;

2. That the Court provide declaratory and injunctive relief, compelling the State of Montana to:

A) study and determine the components of free quality public elementary and secondary education;

B) study and determine the costs of delivering that quality education to all students in Montana, including costs that vary based on student or district characteristics;

C) implement a funding system that is based on educationally relevant factors and tailored to meet the costs of delivering a quality education;

D) fully fund, and equitably distribute the State's share of the cost of the public elementary and secondary school system;

E) include a cost-adjustment factor in the funding

system;

F) establish a mechanism for periodic monitoring of and adjustments to the funding system to assure it reflects current costs of delivering quality education, and to prevent a recurrence of the historical trends of declining state support and failure to keep pace with increasing costs;

3. That the Court retain jurisdiction for a period of time sufficient to assess whether the State has complied fully with the mandates of its declaratory and injunctive orders;

4. That the Court award attorneys fees to Plaintiffs pursuant to the private attorney general doctrine; and

5. For such further relief as the Court deems appropriate, together with an award of Plaintiffs' costs incurred herein.

DATED this 3rd day of September, 2002.

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