

1 STATE OF NORTH DAKOTA

IN DISTRICT COURT

2 COUNTY OF WILLIAMS

NORTHWEST JUDICIAL DISTRICT

3 WILLISTON PUBLIC SCHOOL DISTRICT NO. 1)
4 and the following taxpayers and parents of school)
children residing within said district:)

5 GENE A. and TAMARA J. JOHNSON, for and on)
6 behalf of themselves and their children, K. J. J. and B.)
C. J.; JEFF L. NEHRING, for and on behalf of)
7 himself, and on behalf of his children, C. N. and C.)
N.,)

COMPLAINT

Civil No.:

8)
9 GRAFTON PUBLIC SCHOOL DISTRICT NO. 3)
and the following taxpayers and parents of school)
10 children residing within said district:)

11 DANIEL L. and STACEY L. GAUSTAD, for and on)
behalf of themselves and their children, A.D.M.G.)
and B.E.G.,)

12)
13 DEVILS LAKE PUBLIC SCHOOL DISTRICT NO.)
1 and the following taxpayers and parents of school)
14 children residing within said district:)

15 JEFF KLEMETSrud, for and on behalf of himself)
and his child, A. K.; KEVIN P. REGAN, for and on)
16 behalf of him self and his children, M. R. and A. R.,)

17 SURREY PUBLIC SCHOOL DISTRICT NO. 41 and)
the following taxpayers and parents of school children)
18 residing within said district:)

19 RONALD ABERLE, for and on behalf of himself and)
his child, C. A., BELINDA VOLLMER, for and on)
20 behalf of herself and her children T. V., M. V., T. V.)
and J. V., JEFFREY BRUNNER, for and on behalf of)
21 himself and his child, A. B., JoANN VOELLER, for)
and on behalf of herself and her children, A. E. and)
22 J. E.)

23 LARIMORE PUBLIC SCHOOL DISTRICT NO. 44)
and the following taxpayers and parents of school)
24 children residing within said district:)

25 KATHLEEN T. JOSEPHSON, for and on behalf of)
herself and her child, T. T.; MICHAEL KELLY, for)
and on behalf of himself and his children, J. K and)
C. K.,)

1 UNITED PUBLIC SCHOOL DISTRICT NO. 7 and)
 2 the following taxpayers and parents of school children)
 3 residing within said district:)
 4 DOUG and DEBBIE OPLAND, for and on behalf of)
 5 themselves and their children A. O., J. O. and C. O.;)
 6 WILLIAM BRUCE KESTER and MARY KESTER,)
 7 for and on behalf of themselves and their children, K.)
 8 K., K. K.2 and C. K.,)
 9)
 10 HATTON PUBLIC SCHOOL DISTRICT NO. 7 and)
 11 the following taxpayers and parents of school children)
 12 residing within said district:)
 13 CLYDE PLADSON, for and on behalf of himself and)
 14 his child, R. P.,)
 15)
 16 THOMPSON PUBLIC SCHOOL DISTRICT NO. 61)
 17 and the following taxpayers and parents of school)
 18 children residing within said district:)
 19 ANNETTE DOLLESLAGER, for and on behalf of)
 20 herself and her child, R. D.,)
 21)
 22 Plaintiffs,)
 23)
 24 vs.)
 25)
 STATE OF NORTH DAKOTA; JOHN HOEVEN, in)
 his official capacity as Governor of the State of North)
 Dakota; WAYNE G. SANSTEAD, in his official)
 capacity as Superintendent of the North Dakota)
 Department of Public Instruction; KATHI)
 GILMORE, in her official capacity as Treasurer of)
 the State of North Dakota; PAM SHARP, in her)
 official capacity as Interim Director of the Office of)
 Management and Budget of the State of North)
 Dakota.)
 Defendants.)

COME NOW, the Plaintiffs, by and through their attorneys, Crowley, Haughey,
 Hanson, Toole & Dietrich, P.L.L.P., for their Complaint against the Defendants, and allege,
 state and aver as follows:

1 **I. INTRODUCTORY ALLEGATION**

2 1. The present action is brought by the named school districts, along with the
3 named parents, students and taxpayers located within those school districts, to obtain
4 declaratory and equitable relief from a system of public school finance in the State of North
5 Dakota that provides unconstitutionally inadequate funding, and which unconstitutionally,
6 unfairly and arbitrarily results in widely disparate funding, inequitable and inadequate
7 educational opportunities and benefits to school children throughout the State and in unequal
8 and inequitable tax burdens among taxpayers in the school districts across North Dakota, all
9 in violation of numerous provisions of the Constitution of the State of North Dakota and the
10 United States Constitution.

11 **II. PARTIES**

12 **A. Plaintiffs**

13 **1. The School Districts**

14 2. The school districts named herein (“Plaintiff Districts”), like all school
15 districts in North Dakota, are political subdivisions of the State of North Dakota, charged
16 with the operation of the state’s system of public elementary and secondary schools. Each
17 school district is a body corporate and may sue and be sued, contract, and is otherwise
18 empowered to establish and maintain public and elementary schools pursuant to the North
19 Dakota Constitution, statutes and governmental regulations.

20 3. Each school district is governed by a school board elected to administer the
21 public elementary and secondary education system within its respective district according to
22 the Constitution and laws of North Dakota.

23 **2. The Students, Their Parents and the Taxpayers**

24 4. Each Plaintiff District has at least one taxpayer, parent and one minor child
25 named as a plaintiff who attends public elementary or secondary schools within that district.

1 5. The individual plaintiffs described in the following table are North Dakota
 2 residents and parents of minor children who attend public elementary or secondary schools
 3 within the districts designated. Unless otherwise noted, the individual plaintiffs own real
 4 property located within the district and pay real estate and income taxes in North Dakota.
 5 Said plaintiffs sue individually, as taxpayers and parents of children who attend public
 6 school, and on behalf of their minor children, each of whom attend public school.

Parents	Students	School District
Gene A. and Tamara J. Johnson; Jeff L. Nehring	K. J. J. and B. C. J.; C. N and C. N.	Williston Public School District No. 1
Daniel L. and Stacey L. Gaustad	A.D.M.G. and B.E.G.	Grafton Public School District No. 3
Jeff Klemetsrud; Kevin Regan	A.K.; M.R. and A.R.	Devils Lake Public School District No. 1
Ronald Aberle; Belinda Vollmer; Jeffrey Brunner; JoAnn Voeller	C. A., T. V., M. V., T. V., J. V., A. B., A. E., J. E.	Surrey Public School District No. 41
Kathleen T. Josephson; Michael Kelly	T. T.; J. K. and C. K.	Larimore Public School District No. 44
Doug and Debbie Opland; William Bruce Kester and Mary Kester	A. O., J. O., C. O., K. K., K. K.2, C. K.	United Public School District No. 7.
Clyde Pladson	R. P.	Hatton Public School District No. 7
Annette Dolleslager;	R. D.	Thompson Public School District No. 61

21
 22 **B. Defendants**

23 6. John Hoeven is the duly elected and acting Governor of the State of North
 24 Dakota and is sued in his official capacity. Governor Hoeven, pursuant to the North Dakota
 25 Constitution, has the responsibility to see that the state's business is well administered and

1 that its laws are faithfully executed, and, in connection therewith, to prevent violation of the
2 Constitution and laws of the State of North Dakota.

3 7. Wayne G. Sanstead is the duly elected and acting Superintendent of Public
4 Instruction for the State of North Dakota and is sued in his official capacity. Superintendent
5 Sanstead is charged with supervising the provision of elementary and secondary education to
6 all students of the State, supervising the establishment and maintenance of public schools,
7 and, in general, is charged with the duty of administering the various laws, regulations, rules
8 and funds associated with public elementary and secondary education in the State of North
9 Dakota.

10 8. Kathi Gilmore is the Treasurer of the State of North Dakota and is sued in her
11 official capacity.

12 9. Pam Sharp is the Interim Director of the Office of Management and Budget of
13 the State of North Dakota and is sued in her official capacity.

14 10. The defendant State of North Dakota is a duly established state within the
15 United States of America. The Defendants are sometimes collectively referred to as the
16 "State" unless otherwise indicated.

17 III. JURISDICTION AND VENUE

18 11. This Court has jurisdiction over the subject matter and the parties to this
19 action. Venue is proper in this Court.

20 IV. FACTS COMMON TO ALL COUNTS

21 A. Definitions

22 12. As used in this Complaint, unless otherwise noted, certain words and phrases
23 are defined as follows:

- 24 a. "Department" or "DPI" means the North Dakota Department of
25 Public Instruction.

- 1 b. "Property poor" or "poor" districts are those school districts with
2 relatively low property valuation per pupil, and "property wealthy"
3 or "wealthy" districts are those school districts with relatively high
4 valuation per pupil.
- 5 c. "Average daily attendance" or "ADA" is the average number of
6 students in actual attendance in a school per day.
- 7 d. "Average daily membership" or "ADM" is the aggregate of the
8 average daily attendance plus the average days of absence.
- 9 e. "Census" reflects all district residents under the age of 18, whether
10 or not they attend public school.
- 11 f. "Average cost-per-pupil" is a district's operating costs divided by
12 the appropriate average daily membership.
- 13 g. "Taxable value per pupil" is the total taxable valuation of a school
14 district, as assessed and equalized by the pertinent county, divided
15 by the census for the district.
- 16 h. "Ending balance" or "ending fund balance" is the amount of
17 money that a school district has left over when it concludes a
18 particular year.

19 Other words and phrases may be defined throughout the Complaint where appropriate.

20 **B. Constitutional Provisions**

21 13. Article VIII, Section 1 of the North Dakota Constitution provides:

22 A high degree of intelligence, patriotism, integrity and morality on
23 the part of every voter in a government by the people being
24 necessary in order to insure the continuance of that government
25 and the prosperity and happiness of the people, the legislative
assembly shall make provision for the establishment and
maintenance of a system of public schools which shall be open to
all children of the state of North Dakota and free from sectarian
control. This legislative requirement shall be irrevocable without
the consent of the United States and the people of North Dakota.

14. Article VIII, Section 2 of the North Dakota Constitution provides:

The legislative assembly shall provide for a uniform system of free
public schools throughout the state, beginning with the primary

1 and extending through all grades up to and including schools of
2 higher education, except that the legislative assembly may
3 authorize tuition, fees and service charges to assist in the financing
4 of public schools of higher education.

5 15. Article VIII, Section 3 of the North Dakota Constitution provides:

6 In all schools instruction shall be given as far as practicable in
7 those branches of knowledge that tend to impress upon the mind
8 the vital importance of truthfulness, temperance, purity, public
9 spirit, and respect for honest labor of every kind.

10 16. Article VIII, Section 4 of the North Dakota Constitution provides:

11 The legislative assembly shall take such other steps as may be
12 necessary to prevent illiteracy, secure a reasonable degree of
13 uniformity in course of study, and to promote industrial, scientific,
14 and agricultural improvements.

15 **C. General Allegations**

16 17. The State, acting through the North Dakota Legislature, has chosen to fund
17 public elementary and secondary education (the “school finance scheme” or “school finance
18 system”) in North Dakota at a level, and in a manner, which is constitutionally inadequate.
19 The constitutional inadequacies of the present funding scheme have recently been validated
20 and verified by a study prepared for DPI by a group of nationally-recognized experts in the
21 school funding arena (sometimes the “DPI Study”).

22 18. The DPI Study was used, in large part, to determine the cost of providing an
23 “adequate” education to all school children in North Dakota. In so doing, the study
24 determined the funding levels needed to assure that all school districts in the state would
25 have sufficient operating funds to be able to meet the requirements and expectations that the
State and the federal government use to hold those districts accountable for student academic
performance. For purposes of the study, an adequate education in North Dakota was
determined to be one that fulfills a set of state-specific, state-level “input” requirements and

1 student expectations as well as a set of federal requirements and expectations.

2 Constitutionally adequate funding for the public education system in North Dakota must be
3 sufficient to produce a “high degree of intelligence, patriotism, integrity and morality” on the
4 part of all North Dakota students.

5 19. As a result of the DPI Study, the school finance experts concluded that the
6 State is severely under-funding education in North Dakota and not giving DPI and the school
7 districts the opportunity to provide an adequate education for the school children of North
8 Dakota. The DPI Study illustrates that state funding for public education in North Dakota
9 falls significantly below that which is required by the North Dakota Constitution.

10 20. It is the State’s primary constitutional responsibility to provide funding at a
11 level sufficient to meet the educational standards imposed upon the districts by the North
12 Dakota Constitution. The State, however, is not providing adequate funding and accordingly
13 the districts are forced to tax at higher and higher levels to attempt to make up the
14 deficiencies in state funding. That places a constitutionally undue burden on all districts and
15 the significance of that burden is amplified in districts like the property poor plaintiff districts
16 in this case. State funding is constitutionally inadequate and the burden placed on property
17 poor districts is constitutionally inequitable.

18 21. The federal No Child Left Behind Act, 20 U.S.C.A. §§ 6301-8923, sets certain
19 educational expectations and requirements for all states, school districts and schools that
20 receive federal education funding via the Elementary and Secondary Education Act of 1965,
21 Title I, Part A (“Title I”). Plaintiff Districts and most, if not all, of the rest of North Dakota
22 school districts receive Title I funds and depend on those funds in the operation of their
23 districts.

24 22. The stated purpose of the No Child Left Behind Act:
25

1 is to ensure that all children have a fair, equal, and significant
2 opportunity to obtain a high-quality education and reach, at a
3 minimum, proficiency on challenging State academic achievement
standards and state academic assessments.

4 20 U.S.C.A. § 6301.

5 23. The purpose of the Act can be accomplished by, among other ways,

6 (1) ensuring that high-quality academic assessments,
7 accountability systems, teacher preparation and training,
8 curriculum, and instructional materials are aligned with
9 challenging State academic standards so that students, teachers,
parents, and administrators can measure progress against common
expectations for student academic achievement;

10 * * * * *

11 (3) closing the achievement gap between high and low-performing
12 children, especially the achievement gaps between minority and
13 nonminority students, and between disadvantaged children and
their more advantaged peers;

14 (4) holding schools, local educational agencies, and States
15 accountable for improving the academic achievement of all
16 students, and identifying and turning around low-performing
schools that have failed to provide a high-quality education to their
students, while providing alternatives to students in such schools to
enable the students to receive a high-quality education;

17 (5) distributing and targeting resources sufficiently to make a
18 difference to local educational agencies and schools where needs
19 are greatest;

20 * * * * *

21 (8) providing children an enriched and accelerated educational
22 program, including the use of school wide programs or additional
services that increase the amount and quality of instructional time;

23 * * * * *

24 Id.

25 24. Pursuant to the No Child Left Behind Act, any state desiring to participate in

1 Title I funding must demonstrate that the state has adopted “challenging academic content
2 standards and challenging student academic achievement standards” that will be used to carry
3 out the Act. “Challenging academic content standards”: (1) specify what children are
4 expected to know and be able to do, (2) contain coherent and rigorous content, and (3)
5 encourage the teaching of advanced skills.

6 25. Under the No Child Left Behind Act, each participating state must also
7 demonstrate that the state has developed an accountability system that will be effective in
8 ensuring that all local educational agencies, public elementary schools and public secondary
9 schools make “adequate yearly progress,” toward 100% of students reaching proficiency on
10 certain state academic measures, as reported to the United States Department of Education.
11 Schools and school districts receiving Title I funds that do not make “adequate yearly
12 progress” on student achievement measures will be labeled in need of “improvement.”
13 Schools and school districts in need of “improvement” for two or more consecutive years are
14 subject to a series of punitive measures, the potential final results ranging from reduction of
15 funds to abolishing or restructuring entire school districts. North Dakota has expressly
16 indicated that student performance at the “proficient” and “advanced” level would be
17 considered proficient for the No Child Left Behind Act. That stated performance mirrors the
18 standards imposed by the North Dakota Constitution.

19 26. The No Child Left Behind Act prohibits the use of Title I funds to “supplant”
20 state allocation of resources to schools. Title I funds are a supplement to state and local
21 resources, and state aid may not be reduced due to receipt of federal formula grants.
22 Moreover, states are prohibited from taking into consideration payments made pursuant to
23 the No Child Left Behind Act in determining the eligibility of any school district for state
24 aid, or the amount of state aid, with respect to the free public education of children.
25

1 27. Title I funds are critical to meeting many of the needs of Plaintiff Districts.

2 28. The Plaintiff Districts, and the majority of other school districts in the state,
3 lack adequate funding necessary to properly operate and administer the programs and
4 services necessary to meet constitutionally imposed educational standards.

5 29. Further, educational programs for children with special education needs are
6 mandated by state and federal law. A school district has no control over the number of
7 children needing special education within its district. The proportion of special needs
8 children in high cost, medium cost and lower cost special education programs generally does
9 not differ substantially between districts. Again, it is the primary responsibility of the State
10 to adequately fund education for special needs children. The State has not done that and to
11 further compound the inadequate funding problem, the statutory formulas for funding special
12 education do not take into account the widely varying financial ability of the various districts
13 to fund special education programs through local taxation. Funding special education
14 programs places a substantial burden on all districts, a burden that is significantly amplified
15 in property poor districts, further exacerbating the disparities that exist in educational
16 opportunities for all students across North Dakota school districts.

17 30. Another indicator illustrating that the present school funding scheme is not in
18 compliance with the North Dakota Constitution is average cost-per-pupil data which
19 represents the amount a school district spends on a per pupil basis. The DPI Study indicates
20 that the cost-per-pupil spending in the vast majority of school districts in North Dakota falls
21 below the adequacy level needed to provide an adequate education to North Dakota students.
22 The cost-per-pupil spending in the vast majority of the school districts in North Dakota is
23 wholly inadequate to meet the standards imposed by the Constitution of the State of North
24 Dakota. The disparities in cost-per-pupil spending among all of the districts in North Dakota
25

1 also illustrate the constitutional inequities between property poor and property wealthy
2 districts.

3 31. Recruiting and retaining highly qualified teachers is essential in supporting
4 higher achievement for children. The Plaintiff Districts, and most other districts in the state,
5 lack adequate funding necessary to recruit and retain highly qualified teachers for all classes.

6 32. School districts in North Dakota, including the Plaintiff Districts, are required
7 by law to purchase all textbooks, equipment and supplies necessary for their respective
8 schools. Plaintiff Districts and many other districts from around the state lack the resources
9 to purchase all textbooks, equipment and supplies necessary for their schools.

10 33. School facilities in North Dakota must be funded primarily from local district
11 revenue—the state provides no state aid for the capital costs of school facilities other than a
12 low-interest state loan fund which is a source of financing to school districts with capital
13 needs and which must be repaid. Districts with greater property wealth are better able to
14 raise revenue for capital expenditures for school facilities. Poor districts are further
15 disadvantaged by the need to levy a greater millage for capital facilities which reduces the
16 millage available for current operating expenditures. Property poor districts that must build
17 or remodel school facilities must use more of their millage for capital costs and less on the
18 direct educational needs of children, or let their facilities further deteriorate.

19 34. The constitutional inadequacies inherent in the North Dakota school finance
20 system places North Dakota children at risk of failure to become active and productive
21 citizens in our democracy, to find meaningful, satisfying employment and to qualify for
22 higher education.

23 35. In addition to constitutionally inadequate funding, the present system results
24 in widely disparate and unequal funding among North Dakota's school districts thereby
25

1 resulting in inequitable and inadequate educational opportunities and benefits to North
2 Dakota's public school children.

3 36. The North Dakota Legislature has mandated that public elementary and
4 secondary education in North Dakota be funded primarily by the following methods:

- 5 (a) Local taxpayers pay ad valorem property tax which is levied upon
6 each District's taxable property value as assessed and equalized by
7 each county. This amount is distributed locally in the school
8 district from which it was derived.
- 9 (b) "State Aid" is a combination of items which is distributed through
10 a statutory formula. Each District's entitlement is calculated by
11 adding the tuition apportionment payments and per student
12 payments, both of which are listed below, special education
13 payments, and teacher compensation payments for which a district
14 is eligible and subtracting a "deduct" consisting of (1) the product
15 of a number of mills, currently 34 mills, times the taxable
16 valuation of property in the District, and (2) the amount of the
17 unobligated general fund balance in excess of 75% of its actual
18 expenditures plus twenty thousand dollars.
- 19 (c) State "per student payments" consist of a product of a cost factor
20 established by the Legislature, times the number of students
21 registered in that district, times the per student payment established
22 by the Legislature, currently \$2509. "Teacher compensation" aid
23 was implemented in the 2001-03 biennium and took money away
24 from the per pupil aid and distributed money on a per teacher
25 basis.
- (d) State "tuition apportionment payments" are made from the state
tuition fund and are per pupil payments from the State funded by
interest and income from the common schools trust fund, fines
from the violation of state laws, and lease proceeds from school
lands.
- (e) District mill levies for capital projects.
- (f) School activity and school lunch program funds.
- (g) State transportation grants.

1 (h) Supplemental state payments paid according to statutory formulas.

2 (i) Special education funding from state and federal government,
3 along with vocational education funding from State sources.

4 (j) Miscellaneous federal sources which are designated to individual
5 school districts, including, but not limited to, Taylor Grazing Act
6 funds which are distributed to the counties in proportion to the
7 total acres of Taylor Grazing Act lands within the county.

8 (k) "In lieu" taxes, such as coal conversion tax on plants that convert
9 coal into electricity, a coal severance tax, an oil and gas gross
10 production tax, and an oil extraction tax and a tax on mutual and
11 cooperative telephone companies, which are in lieu of property
12 taxes on the minerals or facilities involved. The State distributes a
13 portion of those tax revenues to school districts in the counties
14 where the taxes originate.

15 37. Of the above-mentioned mechanisms for funding public education in North
16 Dakota, the vast majority of such funding comes from local ad valorem property taxes and
17 per student payments, i.e., items (a) and (c) listed in the previous paragraph.

18 38. Historically, the financing methods chosen by the Legislature have changed
19 from time to time; however, since 1973, the principal components of the present system have
20 been North Dakota's system of elementary and secondary public education financing.

21 39. There are significant disparities between assessed valuations and valuations
22 per pupil in the various North Dakota school districts. The Plaintiff Districts have
23 significantly less taxable value per pupil within their boundaries than many of the school
24 districts throughout North Dakota and, hence, these property poor Plaintiff Districts raise
25 significantly less revenue than their property wealthy counterparts at the same tax rates. To
equalize per pupil spending, or, at least, to attempt to meet a level of funding necessary to
provide a basic education, a property poor district must tax at substantially higher tax rates
than its property wealthy neighboring districts. That is, the impact of the current legislative
scheme compels the Plaintiff Districts to tax property owners in those districts at a much

1 higher rate than their fellow North Dakotans who reside in property wealthy school districts
2 simply to meet basic educational needs, if not to equalize per pupil spending with their
3 wealthier counterparts.

4 40. The gap is widening with respect to disparities in taxable valuation between
5 property poor and property wealthy districts. Legislative modifications, such as those in
6 Senate Bill 2421, to the mechanisms for funding public education in North Dakota will not
7 and cannot reverse the trend.

8 41. School districts, and the school children who reside within them, have no
9 control over the amount of taxable value upon which school taxes can be levied.

10 42. The student population in North Dakota varies considerably from district to
11 district and has changed significantly over the years. Some districts have grown and
12 continue to grow, others have remained relatively static, and some have decreased. The
13 variations are a function of multiple factors, including the agrarian and mineral production
14 economies of the state. Overall, the state is experiencing a population shift from rural to
15 urban areas within the state, combined with migration out of the state.

16 43. Mill levies imposed upon local taxpayers in the various school districts
17 throughout North Dakota also vary significantly. For example, as to general fund mill levies
18 in high school districts, in the 2002-03 year, taxpayers in Williston School District No. 1
19 taxed themselves at 238.72 mills, while taxpayers in TGU School District No. 60 taxed
20 themselves at 122.92 mills. As to general fund mill levies in elementary districts, taxpayers
21 in Mapleton School District No. 7 taxed themselves at 140.09 mills, while taxpayers in
22 Billings County School District No. 1 taxed themselves at 38.12 mills. The state average for
23 general mills levied for the 2002-03 year was 190.78.

24 44. The trend with respect to mill levies is a consistent increase in total mills
25

1 levied and a widening gap between high and low mill levies. The ranges between the high
2 and low mill levies among the various districts demonstrate a consistent, growing disparity
3 and cumulatively show the extremes.

4 45. In any given year, the Plaintiff Districts generally have average costs per pupil
5 which fall below the state average and significantly below the standard of adequacy imposed
6 by the Constitution of the State of North Dakota. This deviation from the average is
7 principally caused by the interplay of three factors: first, and most important, inadequate
8 funding by the State; second, the State's decision to force localities to fund a significant and
9 substantial portion of public education, and third, the wide disparity in property value within
10 the school districts across North Dakota.

11 46. There is a direct correlation between a district's taxable value per pupil and its
12 available state and local revenues per pupil for public education. Districts in North Dakota
13 that have high property wealth tend to have greater revenue for education, while low wealth
14 districts tend to have less state and local revenues. For the most part, however, even those
15 high property value districts are unable to generate sufficient revenue on top of that provided
16 by State Aid to meet the adequacy standards imposed by the Constitution of the State of
17 North Dakota. On the other hand, there is little relationship between property tax rates and
18 district wealth which indicates that wealthier districts tend to raise more revenue from
19 property taxes with relatively low mill rates. In property poor districts, taxpayers pay higher
20 property tax levies to obtain lower school revenues per pupil than their wealthier neighboring
21 districts. A number of poor districts exert substantial local tax effort and still are among the
22 lowest spending (poorest) districts in the state, spending at levels significantly below the
23 levels necessary to meet the adequacy guarantees of the Constitution of the State of North
24 Dakota. Wealthy districts that make the same tax effort have far greater expenditures per
25

1 pupil, and even then often fall below the constitutionally mandated adequacy standards.

2 47. Overall, there is significant and substantial disparity in the average costs per
3 pupil between property poor and property wealthy districts. The amount some property
4 wealthy districts can spend for its students, both in proportion and in gross dollars, compared
5 to their fellow property poor North Dakotans is staggering.

6 48. The trend with respect to average costs per pupil is that the gap between
7 property poor and property wealthy districts is increasing. Recent revisions made to the
8 school finance system which were implemented by the legislature in Senate Bill 2421 will
9 have no appreciable effect on the increasing level of disparity in average costs per pupil
10 between property wealthy and property poor districts and do nothing to address the adequacy
11 standards imposed by the Constitution of the State of North Dakota.

12 49. As with other financial transactions, educational quality and adequacy costs
13 money. Adequate educational opportunity and quality are a function of available dollars.

14 50. While school districts have authority to levy separate levies for a variety of
15 purposes, including the general fund, cooperative programs, high school tuition, high school
16 transportation, special education, judgments, asbestos removal, bonding and so on, not all
17 districts have the same authority to levy property taxes for education. North Dakota laws
18 allow school district electors to decide whether district taxing authority for schools may be
19 unlimited or restricted to applicable statutory maximums. Some districts have the authority
20 to levy an unlimited mill levy. Other districts cannot exceed a maximum mill levy of 185
21 mills without a vote of the people or legislative authorization.

22 51. Disparities in average costs per pupil among North Dakota school districts are
23 not adequately offset or equalized by the current legislative funding scheme. Although, the
24 current legislative funding system provides some assistance to offset and equalize those
25

1 disparities, as currently designed, the system is constitutionally inadequate and inequitable.
2 State Aid, in the amount and manner presently distributed, to school districts in North Dakota
3 has little equalizing effect and does little to overcome differences in the ability of the districts
4 to generate property tax revenue or revenues from county sources. Under the present
5 legislative scheme, both state per student payments and state tuition apportionment are
6 similar across district wealth classifications. It is ultimately the State's constitutional
7 responsibility to fund elementary and secondary education at a level that is both adequate and
8 equitable to the students in the school districts across North Dakota. A well-designed
9 funding scheme can and will provide assistance to offset and equalize those disparities.

10 52. The mill "deduct" is intended to work as an equalization factor, equalizing
11 State Aid revenue among school districts with relative lower and higher assessed local
12 property value, so that State Aid payments to those school districts with higher assessed
13 valuations are reduced. However, the mill deduct, even as scheduled to increase as the result
14 of the newly-enacted Senate Bill 2421, is entirely inadequate to sufficiently equalize or
15 provide for the maintenance of an adequate and uniform system of public education. One
16 reason why the North Dakota school finance system has become more unequal over time is
17 the failure of the mill deduct to keep pace with consistent increases in local mills levied to
18 pay for schools. As a result, wealthy districts in terms of assessed valuation per pupil receive
19 nearly the same amount of State Aid per pupil as do poorer districts in assessed valuation per
20 pupil. The mill deduct does not, and cannot, equalize revenues among North Dakota school
21 districts as it was originally intended.

22 53. Each mill of school tax over and above the State Aid deduct contributes to
23 inequalities in school spending based on district taxable wealth. These unequalized local
24 mills allow wealthy districts to use each mill that is not included in the deduct to expand and
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1 exacerbate their spending advantage over property poor districts. These unequalized local
2 mills also allow wealthy districts to have higher expenditures per pupil with lower tax rates
3 than property poor districts. Even then, most of those property wealthy districts are unable to
4 provide sufficient additional funds to meet the adequacy standards imposed by the
5 Constitution of the State of North Dakota.

6 54. Another factor which has contributed to the growing lack of uniformity,
7 adequacy and equality in educational expenditures, opportunities and benefits in North
8 Dakota is that some types of taxable wealth are not subject to any equalized formula,
9 including revenues provided school districts from oil, gas and coal taxes which are in lieu of
10 property taxes.

11 55. The flat grant distribution from the permanent school trust, i.e. the tuition
12 apportionment payment, does little to equalize educational funding in North Dakota because
13 the wealthiest districts receive the same amount per pupil from the fund as do the poorest
14 districts. A flat grant, unless it approaches 100% of costs, fails to equalize.

15 56. Disparities and inadequate revenue among school districts have caused
16 corresponding disparities in educational uniformity, adequacy and opportunity that is directly
17 and unconstitutionally based upon local property wealth. Students residing in property
18 wealthy school districts have substantial and marked educational opportunities over students
19 in property poor districts, in terms of both quality and quantity, in such areas as curriculum,
20 faculties, professional and administrative staff, facilities, textbooks and libraries, equipment
21 and technology, extracurricular activities, programs and special services. Money is the
22 driving force in the ability of a district to purchase educational goods and services, and the
23 differentials in costs per pupil of the magnitude that exist among school districts in North
24 Dakota translate into wide disparities in adequate educational opportunities for the school
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1 children of the state.

2 57. Children residing in property wealthy districts have a distinct advantage over
3 children residing in property poor districts and have far greater educational opportunities than
4 their fellow North Dakotans.

5 58. The school finance system in North Dakota is demonstrably inadequate and
6 has created and continues to create significant inadequate and unequal educational access and
7 opportunities among the school districts as a result of lower per pupil expenditures and
8 differential access to property wealth in some school districts over others, thereby resulting in
9 a serious disadvantage for some children and an advantage to others that can only be
10 explained by a lack of adequate and uniform resources.

11 59. Property poor districts are not as able as property wealthy districts to meet
12 their student's education needs and to prepare them for successful matriculation to college,
13 for the social and work world, or for the demands of our current democratic society in
14 general.

15 60. The following are non-exclusive examples of constitutionally objectionable
16 features of the North Dakota school finance system:

- 17 (a) inadequate funding by the state as required by the North Dakota
18 Constitution;
- 19 (b) disparities in current costs per pupil that are the result of
20 inadequate State Aid and variations in school district taxable
wealth;
- 21 (c) the mill deduct in the State Aid formula which fails to equalize,
22 and will continue to fail to equalize and compensate, for variations
in district wealth;
- 23 (d) the low level of per student payments and other State Aid which
24 fails to ensure adequacy and substantial equality of resources for
25 children in similarly situated school districts;

- 1 (e) the use of cost weighting factors that are inaccurate and
2 unjustifiably benefit districts with large amounts of taxable wealth;
- 3 (f) the flat grant allocation of tuition apportionment payments which
4 ignores the vast differences in taxable wealth among school
5 districts and operates as a minimum guarantee for wealthy
6 districts;
- 7 (g) the features of the special education funding program that
8 exacerbate existing resource disparities by giving higher spending
9 districts an advantage in obtaining state reimbursement of special
10 education costs and require school districts to fund a large share of
11 the extra costs of special education programs from the disparate tax
12 basis of school districts;
- 13 (h) the features of the state aid for vocational education that exacerbate
14 existing resource disparities;
- 15 (i) the state system for funding school facilities under which a primary
16 source for funding school facilities is the unequal taxable wealth of
17 school districts;
- 18 (j) the payment of state aid to wealthy districts that are able to
19 maintain large ending fund balances, (although the ability of
20 districts to maintain large ending fund balances has recently been
21 limited by Senate Bill 2421);
- 22 (k) the failure of the state to ensure that resource differences among
23 school districts are based on factors relevant to the education of
24 North Dakota children rather than on the unequal taxable wealth of
25 North Dakota school districts.

61. The present school finance system in North Dakota, as currently drafted, does not provide a means to determine adequacy of funding to ensure that all North Dakota elementary and secondary public school students receive sufficient funding to meet the adequacy standards imposed by the Constitution of the State of North Dakota. Neither does the present school finance system, as currently drafted, eliminate the revenue and expenditure differences that exist among school districts in the State of North Dakota.

62. The inadequacies and inequities of North Dakota's school finance system

1 results in serious harm to students in Plaintiff Districts.

2 **V. SPECIFIC CLAIMS FOR RELIEF**

3 **Count 1**

4 63. The allegations contained in paragraphs 1 through 62, above, are incorporated
5 herein by this reference.

6 64. Article VIII, Section 1 of the North Dakota Constitution provides:

7 A high degree of intelligence, patriotism, integrity and morality on
8 the part of every voter in a government by the people being
9 necessary in order to insure the continuance of that government
10 and the prosperity and happiness of the people, the legislative
11 assembly shall make provision for the establishment and
12 maintenance of a system of public schools which shall be open to
all children of the state of North Dakota and free from sectarian
control. This legislative requirement shall be irrevocable without
the consent of the United States and the people of North Dakota.

13 65. Among other things, the North Dakota Constitution requires an educational
14 system that produces a high degree of intelligence for all the school children of the state. The
15 State has defined that standard to mean that North Dakota students will perform at a
16 “proficient and advanced” level. The “high degree of intelligence” standard imposed by the
17 Constitution is a discreet, mandatory standard, not merely aspirational, prefatory language.

18 66. The duty is that of the State, not the local communities, to establish an
19 educational system and to adequately fund that system in order to produce a high degree of
20 intelligence among North Dakota’s public school students. Thereafter, it is likewise the duty
21 of the State, not the local communities, to maintain that educational system. Such a duty is a
22 continuing duty requiring the maintenance of such a system even as conditions of life and the
23 state change over the years.

24 67. Among other things, but primarily due to unconstitutionally inadequate
25 legislative funding, the Plaintiff Districts cannot provide the level of education and

1 educational opportunities mandated by the North Dakota Constitution. That impact is further
2 exacerbated by the property wealth based school finance system and the reliance on local ad
3 valorem property taxation to fund a significant portion of that system and places a
4 disproportionate and constitutionally defective burden on the Plaintiff Districts.

5 68. At most, the Plaintiff Districts, and most other school districts in North
6 Dakota, provide a basic education at a level which does not rise to the level of higher
7 thinking skills required by the Constitution.

8 69. The State, acting through the legislature and DPI, has not established, and is
9 not maintaining or funding, an educational system that meets the constitutional adequacy
10 standard in all of the school children of the state, and, therefore, the school finance system, as
11 it currently exists in North Dakota, is unconstitutional.

12 **Count 2**

13 70. The allegations contained in paragraphs 1 through 69, above, are incorporated
14 herein by this reference.

15 71. Each Plaintiff has a right to substantive due process of law.

16 72. Substantive due process of law forbids the State from infringing upon
17 fundamental liberty interests unless the infringement is narrowly tailored to serve a
18 compelling state interest. Political choices burdening fundamental rights must be subjected
19 to close analysis in order to preserve substantive values of equity and liberty.

20 73. The right to an education and, more particularly, the right to an adequate and
21 equal educational opportunity, is a fundamental right in North Dakota and is subject to the
22 strict scrutiny analysis referred to in the preceding paragraph.

23 74. The present school finance system in North Dakota is constitutionally
24 inadequate and infringes Plaintiffs' right to an adequate and equal education, and the
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1 infringement (i.e., the method and adequacy of financing public education in North Dakota)
2 is not narrowly tailored to serve any compelling state interest.

3 75. Even if the right to an adequate and equal educational opportunity were not a
4 fundamental right in North Dakota, the North Dakota Legislature has exercised its power to
5 provide a constitutionally-guaranteed public education to the children of the state in an
6 arbitrary, unreasonable and/or discriminatory manner, and the method adopted has no
7 reasonable relation to providing an adequate and equal education for the children of the state,
8 all in violation of plaintiffs' substantive due process rights.

9 **Count 3**

10 76. The allegations contained in paragraphs 1 through 75, above, are incorporated
11 herein by this reference.

12 77. The North Dakota Constitution requires that the system of free public schools,
13 which the State, acting through the legislature and DPI, is required to establish and maintain,
14 be adequate and uniform throughout the State.

15 78. Again, the State, not the local communities, is required to establish and
16 maintain a system of public schools which is adequate and uniform throughout the state.
17 Such a duty is a continuing duty requiring the maintenance of a uniform system even as
18 conditions of life and the state change over the years.

19 79. The current school finance scheme adopted by the legislature results in
20 inadequate and vastly disparate funding and educational opportunity between property poor
21 and property wealthy districts, all as alleged more thoroughly above. The quality of a
22 student's education in North Dakota is directly dependent upon where that student resides.
23 The State, therefore, has not established and is not maintaining an adequate and uniform
24 system of public education as is required by the North Dakota Constitution, and the school
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1 finance system, as adopted by the legislature, is unconstitutional.

2 **Count 4**

3 80. The allegations contained in paragraphs 1 through 79, above, are incorporated
4 herein by this reference.

5 81. Among other things, the North Dakota Constitution mandates that the
6 legislature establish and maintain a system of education which secures a reasonable degree of
7 uniformity in course of study for all the students of the state.

8 82. The duty is on the State, not the local communities, to establish and maintain
9 an educational system which secures a reasonable degree of uniformity in course of study.
10 Such a duty is a continuing duty, requiring a system which secures a reasonable degree of
11 uniformity in course of study even as conditions of life and the state change over the years.

12 83. There is a lack of uniformity in course of study between the Plaintiff Districts
13 and their property wealthy counterparts. While the students in property wealthy districts
14 enjoy a fuller complement of curriculum options, and faculty, facilities, equipment and
15 technology to support those curriculum options, students in property poor districts must be
16 satisfied with more basic course offerings.

17 84. The disparity in course offerings between property wealthy and property poor
18 districts is caused by the school finance system as adopted in North Dakota and, in particular,
19 upon inadequate funding by the legislature and the high reliance of local ad valorem property
20 taxation to fund education. Property poor districts cannot afford to pay for the courses of
21 study and educational experiences (or the faculty, facilities, equipment and technology to
22 support those courses of study) that their fellow property wealthy districts are more able to
23 provide.

24 85. A "uniform" system of education is a statewide combination or arrangement
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1 of free public schools which conform to a pattern or unvarying standard not different at
2 different places. The present school finance system fails to meet that requirement.

3 86. The State has, in large part, improperly delegated its constitutional obligation
4 to finance a "uniform" system of free public schools to the various school districts which
5 have vastly different amounts of taxable wealth and corresponding differences in their
6 respective abilities to meet that burden. The state, (as opposed to the localities), is not
7 meeting its burden of maintaining a uniform system of education in violation of the North
8 Dakota Constitution.

9 87. The school financing scheme, as adopted in North Dakota, results in an
10 educational system which does not provide a reasonable degree of uniformity in course of
11 study for all the school children of the state. The North Dakota school finance system is
12 unconstitutional.

13 **Count 5**

14 88. The allegations contained in paragraphs 1 through 87, above, are incorporated
15 herein by this reference.

16 89. The equal protection provisions of the North Dakota Constitution, Article I,
17 Sections 21 and 22 require, respectively, that no citizen or class of citizens shall be granted
18 privileges or immunities which, upon the same terms, are not granted to all citizens and that
19 all laws of a general nature shall have a uniform operation.

20 90. The right to an adequate and equal educational opportunity in North Dakota is
21 the constitutionally guaranteed fundamental right of every child in the state. In addition to
22 the fundamental right of an adequate and equal educational opportunity, the children of North
23 Dakota have additional fundamental rights, including: (1) the fundamental right to a uniform
24 educational system, (2) the fundamental right to an educational system which fosters a high
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1 degree of intelligence, and (3) the fundamental right to an educational system which secures
2 a reasonably uniform course of study for all school districts.

3 91. The constitutional standard of equal protection in North Dakota proscribes any
4 system which makes the quality of a child's education a function of district wealth rather
5 than the wealth of the state as a whole.

6 92. Despite the fundamental character of education under the North Dakota
7 Constitution, the North Dakota school finance system classifies its recipients on the basis of
8 the taxable wealth of a school district, as measured by its taxable valuation per pupil, and tax
9 revenue generated from in lieu property tax sources, both in violation of the equal protection
10 provisions of the North Dakota Constitution. That same system denies students in property
11 poor districts their fundamental rights to an equal educational opportunity, to a uniform
12 system of education, to an educational system which fosters a high degree of intelligence,
13 and to an educational system which secures a reasonably uniform course of study for all
14 school districts.

15 93. Due to the fundamental nature of the above-described rights, the appropriate
16 level of review is strict scrutiny; however, whether the appropriate level of review is strict
17 scrutiny, intermediate scrutiny or rational basis scrutiny, the state's interest in funding
18 education on the basis of the taxable wealth of a school district is not sufficient justification
19 to deny students in property poor districts their above-described fundamental rights.

20 94. The state's classification (property poor versus property wealthy financing of
21 education) does not promote a compelling governmental interest, and/or the distinctions
22 drawn by that classification are not necessary to promote any legitimate governmental
23 interest.

24 95. There is no close correspondence between the statutory classification and the
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1 legislative goal of funding education in North Dakota. The amount of taxable wealth per
2 pupil in school districts bears little or no relationship to the delegated constitutional
3 obligation to educate children in the district or in the state.

4 96. The legislative classification even fails to satisfy the rational basis test—the
5 legislative classification is patently arbitrary and bears no rational relationship to a legitimate
6 governmental purpose. The North Dakota school finance system arbitrarily and irrationally
7 denies to the children residing in the Plaintiff Districts the following: equal educational
8 opportunities, the right to a uniform system of education, the right to an educational system
9 which fosters a high degree of learning, and the right to an educational system which secures
10 a reasonably uniform course of study.

11 97. The North Dakota school finance system violates the equal protection
12 provisions of the North Dakota Constitution.

13 **Count 6**

14 98. The allegations contained in paragraphs 1 through 97, above, are incorporated
15 herein by this reference.

16 99. By establishing and maintaining an educational system which is based, in
17 large part, upon the taxable wealth of the various school districts, the State has created a
18 classification among taxpayers residing in the respective districts. Due to the State's decision
19 to place the burden of financing a substantial portion of education on the local taxpayers,
20 property poor school districts are forced to tax at a much higher rate than property wealthy
21 districts simply to receive a minimal basic education. Thus, taxpayers residing in property
22 poor districts have a much larger tax burden in providing a constitutionally-required
23 education for the children within their districts than do taxpayers residing in property wealthy
24 districts. The state has effectively created a classification based upon the wealth of a school
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1 district

2 100. Classifications based on wealth are subject to strict scrutiny review; however,
3 regardless of which test applies, the classification here fails to meet any such test, and the
4 school finance system, which places an undue and disproportionate tax burden on taxpayers
5 residing within property poor districts, is unconstitutional.

6 101. The classification based upon the wealth of a school district fails to promote a
7 compelling governmental interest and/or the distinctions drawn by the classification are not
8 necessary to further any legitimate governmental purpose.

9 102. There is no close correspondence between the statutory classification and the
10 legislative goals of providing an education which meets the Constitutional requirements
11 discussed above.

12 103. The classification based upon wealth of a school district is also patently
13 arbitrary and bears no rational relationship to any legitimate governmental purpose, including
14 the purpose of funding education in North Dakota as mandated by the Constitution.

15 **VI. RELIEF SOUGHT**

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

- 17 1. That the Court enter a declaratory judgment declaring:
- 18 (a) That the North Dakota public school finance system for elementary
19 and secondary schools violates Article VIII, Section 1 of the North
20 Dakota Constitution.
- 21 (b) That the North Dakota public school finance system for elementary
22 and secondary schools violates Article VIII, Section 2 of the North
23 Dakota Constitution.
- 24 (c) That the North Dakota public school finance system for elementary
25 and secondary schools violates Article VIII, Section 4 of the North
Dakota Constitution.
- (d) That the North Dakota public school finance system for elementary

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and secondary schools violates Article I, Section 21 of the North Dakota Constitution.

(e) That the North Dakota public school finance system for elementary and secondary schools violates Article I, Section 22 of the North Dakota Constitution.

(f) That the North Dakota public school finance system for elementary and secondary schools violates substantive due process rights and is unconstitutional.

2. That the Court retain jurisdiction and maintain judicial oversight to assure that the Legislature acts appropriately to correct the constitutional inadequacies of the public school funding scheme that presently exists in North Dakota.

3. That the Court grant Plaintiffs their costs and attorneys' fees incurred in the prosecution of this action.


4. That the Court grant such other and further relief as the Court deems necessary and proper to effectuate the declaratory and equitable relief ordered by the Court.

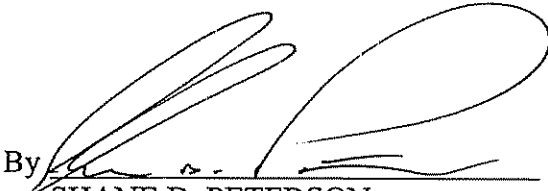
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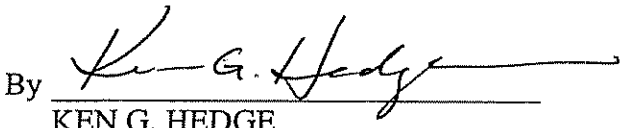
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Dated this 9th day of October, 2003.

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