

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

SOUTH DAKOTA COALITION OF SCHOOLS; MARK DAVIS and BONNIE DAVIS, as individuals and as parents and natural guardians of CHARLIE DAVIS, CARL DAVIS, JOEY DAVIS, and SELENA DAVIS; KAY EBEN, as an individual and as parent and natural guardian of GRACE EBEN and KENDRA EBEN; DAN GRANT and JANE GRANT, as individuals and as parents and natural guardians of DYLAN BAMBAS and ALEXIS BAMBAS; DEBRA BUCHHOLZ and CALVIN BUCHHOLZ, as individuals and as parents and natural guardians of HANNAH BUCHHOLZ and JARED BUCHHOLZ; JULIA ORROCK, as an individual and as parent and natural guardian of LUCIUS ORROCK and DOMINIC ORROCK; JULIE SCHENKEL, as an individual and as parent and natural guardian of NATHAN SCHENKEL and NOAH SCHENKEL; ANITA BACH and TODD BACH, as individuals and as parents and natural guardians of TAYLOR BACH, TYRA BACH, and SETH BACH; MIKE HINTZ and JULIE HINTZ, as individuals and as parents and natural guardians of KAITLIN HINTZ and HANNAH HINTZ; BRAD NELSON and RITA NELSON, as individuals and as parents and natural guardians of CHANTEL NELSON and SHAINA MARESH; SHANE McINTOSH and TAMARA McINTOSH, as individuals and as parents and natural guardians of LANDRY McINTOSH and BENNETT McINTOSH; JIM AKRE and KAY AKRE, as individuals and as parents and natural guardians of TAYLOR AKRE; DAWN BIALAS and KURT BIALAS, as individuals and as parents and natural guardians of MORGAN BIALAS, CONNOR BIALAS, and KEELAN BIALAS; RON SCHOENFELDER and RENE SCHOENFELDER, as individuals and as

CIV. #06-244

**COMPLAINT FOR
DECLARATORY RELIEF**

parents and natural guardians of TAYLOR
SCHOENFELDER, SADIE
SCHOENFELDER, and MOLLY
SCHOENFELDER

Plaintiffs,

vs.

THE STATE OF SOUTH DAKOTA; SOUTH
DAKOTA DEPARTMENT OF EDUCATION;
SOUTH DAKOTA BOARD OF
EDUCATION; Honorable MICHAEL
ROUNDS, in his official capacity as the
Governor of the State of South Dakota; RICK
MELMER, in his official capacity as the
Secretary of Education of the State of South
Dakota; VERNON L. LARSON, in his official
capacity as the Treasurer of the State of South
Dakota,

Defendants.

COME NOW THE PLAINTIFFS, by and through their counsel of record, Ronald Parsons and Scott Abdallah of the law firm of Johnson, Heidepriem, Miner, Marlow and Janklow L.L.P., and for their complaint for declaratory and further relief against the above-named defendants do hereby formally and respectfully state and allege as follows:

I. NATURE OF THIS ACTION

1. In the transcendent decision of *Brown v. Board of Education of Topeka*, brought forth in 1954, the United States Supreme Court declared:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public

responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms.

2. These profound sentiments echoed the inaugural message of the Honorable William Jayne, first Governor of the Dakota Territory, almost a century earlier. Addressing the original Territorial Legislature in 1862, Governor Jayne proclaimed to all future generations of Dakotans that:

[T]he great hope of a free people was dependent upon her educational and militia system. There is no subject more essential and vital to the prosperity and general welfare of the Territory, than the subject of education. The virtue, intelligence, and public happiness of the people, and all that conduces to the advancement of prosperity, wealth, and power of country, is intimately associated with, and dependent upon, the development of the educational interest of the State. In communities where truth, virtue, intelligence, and knowledge prevail, their crime is rare and poverty almost unknown. Every dollar of taxes levied for the support of schools, lessens, by many dollars, the taxes which would be assessed for the support of prisons and poorhouses.

3. "I recognize," Governor Jayne continued, "the difficulties you might encounter in your efforts to establish a practical and efficient system in our, at least present, sparsely settled territory. Let us, at least, take the first steps, and show to all who may be looking to our territory for a future home, that we are not unmindful of the great interests of education and the proper moral and intellectual training of the youth of our land."

4. As has been true since before our state's admission to the union, no domestic priority in South Dakota is more fundamental, more anchored in the genesis of our foundational principles, or more critical to our prosperity, tranquility, and security than ensuring the opportunity for a quality education for all of our children.

5. One of the fundamental obligations of government under the South Dakota Constitution is to provide a free and adequate or quality public education for the children of South Dakota. Pursuant to this constitutional guarantee, the South Dakota Legislature is required to establish and maintain a general and uniform system of free public schools and to adopt all suitable means to secure to the children of South Dakota the advantages and opportunities of education. In addition, the Legislature is required to make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.

6. The requirement that “all suitable means” be adopted to secure the advantages and opportunities of education to all South Dakota children pursuant to a “thorough and efficient system of common schools” means, at a minimum, that public schools must be adequately funded so that the children of South Dakota receive an adequate and quality education that will allow them to become responsible citizens in our democracy who can compete in society on an equal footing both to find productive employment and to qualify for and advance through higher education.

7. South Dakota’s public school funding system fails to provide public school districts, and therefore the children who reside in those districts and attend public schools, with the resources and means needed to provide a quality education. As a result of insufficient resources provided to school districts, students are being denied an education that will equip them to function in society as responsible citizens who can find productive employment, compete in the work force, and qualify for and advance through higher education.

8. The resources provided to school districts by South Dakota’s school finance system bear absolutely no relationship to the actual costs of providing an adequate education for their

students. They do not correspond in any ascertainable or identifiable way to academic content or curriculum requirements, fixed costs, teacher and administrative salaries, special needs and special education costs, or academic achievement and performance standards. In order to be constitutionally adequate, state funding must meet the actual costs required for schools to provide an adequate education, rather than being based upon how much the state determines that it has left over each year to spend on education after allocating funds to other priorities that, while important, are not constitutionally mandated. Competing priorities not grounded in a constitutional obligation must be considered secondary to those of constitutional magnitude.

9. Although our best, brightest, and most advantaged students will always be able to compete with any other students in the nation, the educational inadequacy in South Dakota is reflected in the failure of far too many students to become proficient in basic subjects, such as reading and math, and in declining graduation rates. These distressing consequences result from insufficient resources to provide students, particularly disadvantaged or “at risk” students, with the educational assistance and opportunities necessary to prepare them to function as productive members of society.

10. In recent years, the state has systematically lowered student academic achievement standards for the levels considered to be proficient in math and reading. Even so, according to the South Dakota Department of Education’s own records, one out of every four students in South Dakota is not proficient in math and one out of every five students in South Dakota is not proficient in reading. The state has recently admitted that its official reported statistics for graduation rates in South Dakota have been artificially inflated by as much as twenty percent. Even so, according to the Department’s own records, more than one out of every ten students in South Dakota failed to

graduate in 2005. According to the state, almost one out of every five high school students will fail to graduate this year. Teacher pay is lower in South Dakota than in any other state. As a result, almost one out of every ten classes in South Dakota is taught by teachers who fail to meet teacher qualification standards under the No Child Left Behind Act.

11. Many children live within school districts that are expected to educate disproportionately high percentages of disadvantaged and low-income students. These districts serve lower-income communities suffering from lack of opportunity and high rates of unemployment and underemployment. Often, these districts are poorly endowed with property tax bases to support the provision of an adequate education for their diverse and high-need students. In many districts, the inadequacies of the public school finance system have forced the consolidation of classes and grades, and elimination of critical teaching positions. Some districts have actually reduced the length of the school week from five to four days. The public school finance system is broken, and it is failing South Dakota's children.

12. On January 31, 2006, during a hearing before the Senate Education Committee on Senate Bill 168, Senate Majority Leader Eric Bogue declared that the South Dakota Legislature was "failing to meet our constitutional obligation to K-12 districts on general education." An independent education adequacy study commissioned by an alliance of 130 school districts of all sizes in South Dakota has confirmed the Majority Leader's analysis, determining that South Dakota school districts are severely underfunded and lacking in the financial resources necessary to provide an adequate and basic quality education to South Dakota's children using the State's own mandatory academic content and achievement standards.

13. This is an action brought by South Dakota children and others to bring the South

Dakota Legislature into necessary compliance with its constitutional obligations and enforce, through declaratory and any other necessary relief, education rights guaranteed to all of our children by the South Dakota Constitution.

II. PARTIES

A. THE PLAINTIFFS

The South Dakota Coalition of Schools

14. The SOUTH DAKOTA COALITION OF SCHOOLS (“Coalition”) is an independent non-profit corporation, duly incorporated under the laws of South Dakota. The Coalition was formed for the purpose of promoting sound educational policy within the state and representing the interests of school districts, particularly smaller school districts, and the students they serve.

The Children and their Parents, and the Taxpayers

15. The individual plaintiffs are children who attend public elementary or secondary schools within South Dakota school districts and their parents and natural guardians who reside within or pay taxes in those districts. These plaintiffs sue individually as taxpayers, as parents of children who attend public school in South Dakota, and on behalf of their minor children, each of whom attends public school in South Dakota.

16. The plaintiffs, CHARLIE DAVIS, CARL DAVIS, JOEY DAVIS, and SELENA DAVIS, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Bon Homme 04-2 school district. The plaintiffs, MARK DAVIS and BONNIE DAVIS, are the parents and natural guardians of Charlie, Carl, Joey, and Selena, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor children.

17. The plaintiffs, GRACE EBEN and KENDRA EBEN, are minor children residing in the

State of South Dakota who are enrolled and attend public schools in the Bon Homme 04-2 school district. The plaintiff, KAY EBEN, is the parent and natural guardian of Grace and Kendra, and brings this action in her individual capacity, as a taxpayer, and on behalf of her minor children.

18. The plaintiffs, DYLAN BAMBAS and ALEXIS BAMBAS, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Bon Homme 04-2 school district. The plaintiffs, DAN GRANT and JANE GRANT are the parents and natural guardians of Dylan and Alexis, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor children.

19. The plaintiffs, HANNAH BUCHHOLZ and JARED BUCHHOLZ, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Bon Homme 04-2 school district. The plaintiffs, DEBRA BUCHHOLZ and CALVIN BUCHHOLZ are the parents and natural guardians of Hannah and Jared, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor children.

20. The plaintiffs, LUCIUS ORROCK and DOMINIC ORROCK, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Bon Homme 04-2 school district. The plaintiff, JULIA ORROCK, is the parent and natural guardian of Lucius and Dominic, and brings this action in her individual capacity, as a taxpayer, and on behalf of her minor children.

21. The plaintiffs, NATHAN SCHENKEL and NOAH SCHENKEL, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Bon Homme 04-2 school district. The plaintiff, JULIE SCHENKEL, is the parent and natural guardian of Nathan and Noah, and brings this action in her individual capacity, as a taxpayer, and on behalf of her minor children.

22. The plaintiffs, TAYLOR BACH, TYRA BACH, and SETH BACH, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Florence 14-1 school district. The plaintiffs, ANITA BACH and TODD BACH, are the parents and natural guardians of Taylor, Tyra, and Seth, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor children.

23. The plaintiffs, KAITLIN HINTZ and HANNAH HINTZ, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Florence 14-1 school district. The plaintiffs, MIKE HINTZ and JULIE HINTZ, are the parents and natural guardians of Kaitlin and Hannah, and bring this action in their individual capacity, as taxpayers, and on behalf of their minor children.

24. The plaintiffs, CHANTEL NELSON and SHAINA MARESH, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Florence 14-1 school district. The plaintiffs, BRAD NELSON and RITA NELSON, are the parents and natural guardians of Chantel and Shaina, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor children.

25. The plaintiffs, LANDRY MCINTOSH and BENNETT MCINTOSH, are minor children residing in the State of South Dakota who is enrolled and attends public schools in the Parkston 33-3 school district. The plaintiffs, SHANE MCINTOSH and TAMARA MCINTOSH, are the parents and natural guardians of Landry and Bennett, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor children.

26. The plaintiff, TAYLOR AKRE, is a minor child residing in the State of South Dakota who is enrolled and attends public schools in the Parkston 33-3 school district. The plaintiffs, JIM

AKRE and KAY AKRE, are the parents and natural guardians of Taylor, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor child.

27. The plaintiffs, MORGAN BIALAS, CONNOR BIALAS, and KEELAN BIALAS, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Parkston 33-3 school district. The plaintiffs, DAWN BIALAS and KURT BIALAS, are the parents and natural guardians of Morgan, Connor, and Keelan, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor children.

28. The plaintiffs, TAYLOR SCHOENFELDER, SADIE SCHOENFELDER, and MOLLY SCHOENFELDER, are minor children residing in the State of South Dakota who are enrolled and attend public schools in the Parkston 33-3 school district. The plaintiffs, RON SCHOENFELDER and RENEA SCHOENFELDER, are the parents and natural guardians of Taylor, Sadie, and Molly, and bring this action in their individual capacities, as taxpayers, and on behalf of their minor children.

B. THE DEFENDANTS

29. The STATE OF SOUTH DAKOTA was created pursuant to an Omnibus Bill passed by Congress on February 22, 1889, which included “An act to provide for the division of Dakota into two states, and to enable the people of North and South Dakota to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states.” The South Dakota Constitution was ratified by the people of South Dakota on October 1, 1889. The powers of the government of the state are divided into three distinct departments: the legislative, executive, and judicial, and the powers and duties of each are prescribed by the State Constitution. S.D. CONST. Art. II. The legislative power of the state is vested in the South Dakota Legislature, consisting of a Senate and House of Representatives. S.D. CONST. Art. III, § 1. The executive power

of the state is vested in the Governor. S.D. CONST. Art. IV, § 1. The judicial power of the state is vested in a unified judicial system consisting of a Supreme Court, circuit courts of general jurisdiction, and courts of limited jurisdiction as established by the Legislature. S.D. CONST. Art. V, § 1.

30. The SOUTH DAKOTA DEPARTMENT OF EDUCATION (“Department of Education”) is under the supervision of the Governor, who appoints the Secretary of Education with the advice and consent of the Senate. S.D. CONST. Art. IV, § 9. The Department of Education is charged with ensuring that children enter the K-12 education system to learn and progress through that system receiving the full opportunities of a quality public education. Pursuant to statute, the Department of Education is required to develop standards and practices that ensure that, by the third grade, all children, to the best of their abilities, have learned fundamental reading, mathematics, language, science, and technology skills that form the foundation for further learning. SDCL § 13-1-43. The Department of Education is also required to develop standards and practices that ensure that, by completion of the twelfth grade, all students, to the best of their abilities, have learned the educational and personal skills that will allow them to enter adulthood as responsible members of society. SDCL § 13-1-43.

31. The SOUTH DAKOTA BOARD OF EDUCATION consists of nine members appointed by the Governor with the advice and consent of the Senate. SDCL § 1-45-6.1. The Board of Education performs those functions assigned to it by the Legislature. SDCL § 1-45-13. These functions include the approval of academic content standards and the promulgation of administrative rules to establish a state accountability system for schools. SDCL § 13-3-48; SDCL § 13-3-69. The Board of Education’s articulated mission is to “take a prominent role advocating a dynamic quality

education for each student in South Dakota.”

32. The HONORABLE MICHAEL ROUNDS is the duly elected Governor of the State of South Dakota. The Governor is responsible for the faithful execution of the law in the State of South Dakota. S.D. CONST. Art. IV, § 3. The Governor may, by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its civil divisions. S.D. CONST. Art. IV, § 3.

33. RICK MELMER is the duly appointed and confirmed Secretary of the Department of Education (“Secretary of Education”). Pursuant to statute, the Secretary of Education has general supervision over all accredited elementary and secondary schools in the state, including kindergarten, preschool, and summer schools. SDCL § 13-3-1.4.

34. VERNON L. LARSON is the duly elected Treasurer of the State of South Dakota. S.D. CONST. Art. IV, § 7. Pursuant to statute, “[t]he state treasurer shall have charge of and safely keep all public moneys which shall be paid into the state treasury, and pay out the same as directed by law, and perform such other duties as are required of him by law.” SDCL § 1-10-1.

III. JURISDICTION AND VENUE

35. South Dakota circuit courts have original jurisdiction in all cases except as to any limited original jurisdiction granted to other courts by the Legislature. S.D. CONST. Art. V, § 5. This Court has original civil jurisdiction over the parties and subject matter of this action pursuant to SDCL § 16-6-9. This Court also has jurisdiction over the parties and the subject matter of this action pursuant to SDCL § 21-24-1, which provides that “Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not

further relief is or could be claimed,” and SDCL § 21-24-3, which provides that “Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.”

36. Article III, section 27 of the South Dakota Constitution provides that the Legislature shall direct by law in what manner and in what courts suits may be brought against the state. S.D. CONST. Art. III, § 27. Venue is appropriate in the Sixth Judicial Circuit in Hughes County pursuant to SDCL § 15-5-2(2) and SDCL § 15-5-6.

IV. BACKGROUND

A. THE UNITED STATES CONSTITUTION

37. The Constitution of the United States is the basic law of the land. All laws passed by Congress, state constitutions, state legislation, local ordinances, and governmental rules and regulations are subject to the provisions of the Constitution of the United States. While the United States Constitution confers and imposes a wide arena of powers, duties, and limitations on the federal government, at no point does it expressly refer to education.

38. The Tenth Amendment to the United States Constitution provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

39. As a result, education is an area primarily reserved by the United States Constitution to the states, including the State of South Dakota.

B. FEDERAL EDUCATION LEGISLATION

40. Pursuant to the Tenth Amendment, Congress is not directly empowered to enact

legislation controlling educational matters.

41. Congress does, however, have the power to implement the Constitution throughout the nation. Thus, public education systems are subject to legislation passed by Congress to enforce constitutional rights, such as the Civil Rights Act of 1964 enacted to enforce the constitutional right of equal protection under the law.

42. The vast majority of federal statutes directly and substantially affecting education policies offer federal funds to the states conditioned upon the states observing certain prescriptions for the use of those funds. Congress enacts such measures pursuant to article I, section 8, or the “general welfare” clause of the United States Constitution when it offers funds for purposes that it deems to serve the public good. Beginning in the 1960’s, Congress has passed several statutes that require or prohibit certain conduct by state and local authorities in connection with any program or activity receiving federal financial assistance. These broad general prohibitions cover discrimination on the basis of race, color or national origin, gender, and disabilities. If a state elects to accept the federal funds, it is bound by the conditions attached. When Congress offers money to the states primarily for educational purposes, it may attach conditions to the grants. These conditions become contractual when the money is accepted.

43. The federal No Child Left Behind Act, 20 U.S.C. §§ 6301-8923, signed into law by President George W. Bush on January 8, 2002, sets certain educational expectations and requirements for all states, school districts, and schools that receive federal education funding pursuant to the Elementary and Secondary Education Act of 1965, Title I, Part A (“Title I”). Most, if not all, South Dakota school districts receive Title I funds and depend on those funds in the operation of their districts.

44. The stated purpose of the No Child Left Behind Act “is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments.” 20 U.S.C. § 6301. Any state desiring to participate in Title I funding must demonstrate that the state has formulated and adopted “challenging academic content standards and challenging student academic achievement standards” that will be used to carry out the Act. 20 U.S.C. § 6311(b)(1)(D).

45. Under the No Child Left Behind Act, the federal government does not set academic achievement levels required of students. Instead, the states develop and adopt their own academic achievement standards. Such “[c]hallenging academic content standards” must, however, (1) specify what children are expected to know and able to do; (2) contain coherent and rigorous content; and (3) encourage the teaching of advanced skills. South Dakota has adopted such standards in order to participate in Title I funding. SDCL § 13-3-48.

46. Under the No Child Left Behind Act, each participating state must also demonstrate that it has developed an accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make “adequate yearly progress” toward one hundred percent (100%) of students reaching proficiency on certain academic measures, as reported to the United States Department of Education. 20 U.S.C. § 6311(b)(2). South Dakota has established a single, statewide accountability system. SDCL § 13-3-62. Schools and school districts receiving Title I funds that do not make “adequate yearly progress” on student achievement measures will be labeled in need of “improvement.” Schools and school districts in need of “improvement” for two or more consecutive years are subject to a series of

punitive measures, the potential final results ranging from reduction of funds to abolishing or restructuring entire school districts. 20 U.S.C. § 6316(c)(10)(C).

47. The No Child Left Behind Act prohibits the use of Title I funds to “supplant” state allocation of resources to schools. 20 U.S.C. § 6321(b). Title I funds are a supplement to state and local resources. State aid may not be reduced due to receipt of Title I funds. Moreover, states are prohibited from taking into consideration payments made pursuant to the No Child Left Behind Act in determining the eligibility of any school district for state aid, or the amount of state aid, with respect to the free public education of children.

48. Although Title I funds are critical to meeting many of the needs of South Dakota’s school districts, the majority of school districts in the state, including the school districts in which the Plaintiffs reside and attend public schools, lack adequate funding needed in order to properly operate and administer the programs and services that are necessary to meet constitutionally imposed educational standards.

C. THE SOUTH DAKOTA CONSTITUTION

49. Subject to the supremacy of the federal Constitution and federal statutes enacted within Congress’s powers, state constitutions form the basic law of the individual states. A state constitution is a direct product of the people themselves. A state legislature is a creature of the state constitution. The primary function of state constitutions, including the South Dakota Constitution, is to restrict the powers of state legislatures, which otherwise have complete legislative authority except as restricted by federal law. State constitutions may require state legislatures to perform certain acts, such as establishing and maintaining adequate public education systems.

50. Under the Constitution of the State of South Dakota, education is guaranteed as a

fundamental right, and the South Dakota Legislature is charged with the duty to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all, and to adopt all suitable means to secure to the people the advantages and opportunities of education. S.D. CONST. Art. VIII, § 1.

51. Under the Constitution of the State of South Dakota, the South Dakota Legislature is also charged with making such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state. S.D. CONST. Art. VIII, § 15.

D. THE SOUTH DAKOTA LEGISLATURE

52. The public education system in the State of South Dakota is the instrumentality for carrying out a function that its citizens have determined to be desirable and of utmost importance: the education of all the children of all the people. The most abundant source of law affecting public education is found in the statutes enacted by state legislatures. State legislatures have broad authority over public school systems.

53. The South Dakota Legislature has supervisory authority over public education. The South Dakota Legislature may change the educational system in any manner that it deems necessary or expedient *unless* its actions violate a federal or state constitutional provision. The South Dakota Legislature is *always* subject to the requirements and limitations of the state constitution in its actions as they apply to education, just as it is subject to constitutional requirements and limitations regarding any other subject of government.

E. THE ROLE OF COURTS

54. Part of the implicit beauty and security of our peculiar system of American government is the careful equilibrium established in our constitution by which power vested in each of the branches of government is continually checked and balanced by the co-equal power of a coordinate branch. The constitution, statutes, and regulations governing public education permit or require the various divisions of government, including the legislature, the executive branch, and the administrators of our public education system to take certain actions and refrain from taking certain actions. However, such enactments are not self-executing. If a person or entity affected by a legislative enactment or other governmental action believes that it is being improperly implemented in some fashion that runs afoul of a constitutional provision, resort to the courts is available to settle the controversy. Courts cannot act on their own initiative, but may only assume jurisdiction over disputes that have been properly referred to them for decision under the law.

55. Each state has its own judicial system established by its constitution and legislature. It is the constitutional responsibility of South Dakota's circuit courts and, ultimately, the Supreme Court of South Dakota, to adjudicate controversies properly brought before it under the law. In the course of performing their constitutional responsibilities, it is frequently necessary for our courts to interpret the meaning and legal effect of the provisions of the South Dakota Constitution and of laws enacted by the South Dakota Legislature.

56. This constitutional responsibility of the South Dakota courts is frequently performed upon the initiative of the Governor, Attorney General, or other officers of the Executive Department. Article IV of the South Dakota Constitution vests responsibility for the faithful execution of the law in the Governor, who may, by appropriate action or proceeding brought in the name of the state,

enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its civil divisions. S.D. CONST. Art. IV, § 3. Open access to the courts, however, is not limited to the government or government officials. All persons, including the plaintiffs, possess the right to be heard and seek redress from the courts, particularly where a violation of the constitution has been alleged. S.D. CONST. Art. VI, §§ 20 and 26.

57. The South Dakota Constitution thus unites the executive, legislative, and judicial departments of government, along with the people themselves, as co-equal partners in ensuring that our constitutional promises and obligations regarding education are fulfilled.

F. THE SOUTH DAKOTA DEPARTMENT OF EDUCATION

58. In order to administer and control the education function on a state-wide basis each of the fifty states has a central education agency. The limits of the authority and responsibility of these departments are to be found in the respective state constitutions and statutes. Each state has a chief state school officer, usually called the state superintendent of schools or the state commissioner of education. In general, state education departments are charged with policy making for education, one level below the legislature in the hierarchy.

59. The South Dakota Department of Education, presided over by the Secretary of Education, has general supervision over all accredited elementary and secondary schools in the state, including kindergarten, preschool, and summer schools. SDCL § 13-3-1.4. The Department of Education is charged with ensuring that children enter the K-12 education system to learn and progress through that system receiving the full opportunities of a quality public education.

60. The Department of Education is required to prepare and submit for approval of the South Dakota Board of Education academic content standards in language arts, mathematics, social studies, and science for kindergarten through grade twelve pursuant to which each school district is required to adopt and implement clearly defined and measurable course guidelines so as to meet the state academic content standards. SDCL § 13-3-48.

61. The Department of Education is required to implement and administer the state accountability system. SDCL § 13-3-68.

62. The Department of Education is required to establish a uniform system for the gathering and reporting of educational data for the keeping of adequate educational and financial records and for the evaluation of educational progress. SDCL § 13-3-51. An annual written evaluation of the educational progress in the state and in each school district is required to be submitted to the Legislature and made available in each school district to the general public. SDCL § 13-3-51.

G. THE SOUTH DAKOTA BOARD OF EDUCATION

63. The South Dakota Department of Education works jointly with the South Dakota Board of Education, appointed by the Governor, to ensure that children enter the K-12 education system ready to learn. The Board of Education works with the Department of Education to develop standards and practices that ensure that, by the third grade, all children, to the best of their abilities, have learned fundamental reading, mathematics, language, science, and technology skills that form the foundation for further learning, and to develop standards and practices that ensure that, by completion of the twelfth grade, all students, to the best of their abilities, have learned the educational and personal skills that will allow them to enter adulthood as responsible members of

society. SDCL § 13-1-43.

64. The Board of Education's legislatively assigned functions include the approval of academic content standards and the promulgation of administrative rules to establish a state accountability system for schools. SDCL § 13-3-48; SDCL § 13-3-69.

H. THE SOUTH DAKOTA PUBLIC SCHOOL SYSTEM

65. South Dakota's schools are organized into school districts. School districts are governmental agencies of the state created by the state as instrumentalities through which the legislature carries out the state constitutional mandate to provide for a system of public education.

66. In South Dakota, a school district is defined as any territory organized for the express purpose of operating not less than a thirteen-year school program and governed by an elected school board. SDCL § 13-5-1. There are currently at least 166 organized school districts in the State of South Dakota representing approximately 122,000 students. "Open enrollment" allows for freedom of movement of students between schools. SDCL § 13-28-40.

67. Public education is a statewide responsibility, a legal fact that does not change even though certain aspects of the education function are delegated to local authorities. As instrumentalities of the state, school districts are separate from municipal governments. Even where the boundaries of a municipality and a school district are coterminous, there is no merger of city affairs and school district affairs.

68. Every school district in South Dakota constitutes a school corporation. SDCL § 13-5-15. The local school board is the elected body created according to the laws of the state to serve as the governing board of a school district for the purpose of organizing, maintaining, and locating schools and for providing educational opportunities and services for all citizens residing within the

school district. SDCL § 13-8-1.

69. The school board has general charge, direction and management of the schools of the district and control and care of all property belonging to it. SDCL § 13-8-39. A school board may levy taxes, borrow money, employ any necessary personnel, lease real and personnel property, carry liability and other insurance, or in lieu of insurance make other arrangements, purchase all necessary books and equipment, purchase real property and erect necessary buildings for the operation of such schools. SDCL § 13-8-39.

70. There is no inherent power in school districts to levy taxes. Taxation is a special power which must be specifically conferred upon a subordinate governmental agency by the legislature. The legislature may delegate its power to tax, both as to kinds and rates, to subordinate bodies. State constitutional limitations, of course, must be observed. School taxes are state, not local, in nature, even though they are levied by the local district. A district may be compelled by the state to establish and maintain schools of a given standard, and the part of the burden of financing them may be imposed upon the local district without the consent of its inhabitants.

71. The procedure for distributing funds to the districts of the state by the agencies into whose hands they come is provided by statute in all states. Some provide the manner of distribution and the amount to be received by each district in the state. Others place the distribution within the discretion of indicated boards or officers with only broad restrictions.

72. Because public school systems are so complex that their administration cannot be controlled in detail by specific legislative enactments, state and local boards of education, school administrators, and classroom teachers have the authority to adopt and enforce reasonable rules and regulations for the operation and management of the public school system. However, legislation or

rule-making on any level within the state cannot be in conflict with higher authority. And the state constitution is the highest authority in the state.

**H. SCHOOL LEGISLATION ENACTED BY THE SOUTH DAKOTA LEGISLATURE
PURSUANT TO ARTICLE VIII OF THE SOUTH DAKOTA CONSTITUTION**

1. Legislative findings and policy statements

73. The South Dakota Legislature has expressly recognized that, for the benefit of the people of the State of South Dakota and the improvement of this and future generations of youth, it is essential that all of our youth be given the fullest opportunity to learn and to develop their intellect and their skills to become productive and contributing members of society. SDCL § 13-14-7.

74. The South Dakota Legislature has expressly recognized that each year a number of our young people fail to complete the essentials of learning and thereby become a burden to the rest of society. SDCL § 13-14-7.

75. The South Dakota Legislature has expressly recognized that during the first hundred years of statehood, South Dakota and its citizens have been committed to education as fundamental to the success of the state and its people, and that during the succeeding one hundred years of statehood, this commitment must be expanded to make sure that all of our state's young people are trained and ready to achieve economic and social self-sufficiency. SDCL § 13-14-7.

76. It is the express policy of the South Dakota Legislature that education is a state and local function. SDCL § 13-13-11(1).

77. It is the express policy of the South Dakota Legislature that school districts exist for the purpose of operating a school or schools to provide the people of each local community adequate opportunity to avail themselves of a free public elementary and secondary education program. SDCL § 13-6-2(1).

78. It is the express policy of the South Dakota Legislature that it is essential for all children and youth in the state to have access to an adequate educational program in a public school, and it has been expressly recognized by the South Dakota Legislature that many existing school districts do not contain sufficient taxable property to provide educational opportunities equal in comparison with the educational opportunities available in many other school districts. SDCL § 13-6-2(2).

79. It is the express policy of the South Dakota Legislature that each proposed school district must meet the requirements and standards for school districts as provided by the legislature and must contain sufficient human and material resources to support an education program which will meet the current minimum requirements for accreditation as adopted by the South Dakota Board of Education. SDCL § 13-6-2(3).

2. Standards and Accountability

a. Academic content standards

80. All public schools in the state are required to provide instruction in substantial conformity to the accreditation standards adopted by the South Dakota Board of Education. SDCL § 13-33-1. The Secretary of Education is required to prepare and submit for approval of the South Dakota Board of Education academic content standards in language arts, mathematics, social studies, and science for kindergarten through grade twelve. SDCL § 13-3-48. Each school district is required to adopt and implement clearly defined and measurable course guidelines so as to meet the state academic content standards. SDCL § 13-3-48.

81. School districts are required to include regular courses of instruction in the Constitutions of the United States and the State of South Dakota. SDCL § 13-33-4. In addition,

character development instruction must be given in all public and nonpublic elementary and secondary schools in the state to impress upon the minds of the students the importance of citizenship, patriotism, honesty, self discipline, self respect, sexual abstinence, respect for the contributions of minority and ethnic groups to the heritage of South Dakota, regard for the elderly, and respect for authority. SDCL § 13-33-6.1.

82. Instruction in any school is required to be of such quality that it promotes a mastery of the English language in oral and written communications. SDCL § 13-33-11.

b. Academic achievement standards

83. For students entering the ninth grade in the 2006-07 school year and thereafter, school districts must require that each student enrolls in courses of instruction necessary to complete the recommended high school program established by the State Board of Education pursuant to SDCL § 13-1-12.1, unless excused by agreement of the student's parent or guardian and a school administrator or counselor that the student should instead take courses of instruction necessary to complete the basic high school program also established by the State Board of Education. SDCL § 13-33-19.

c. The State accountability system

84. Every public school district in South Dakota is required to annually administer the same assessment to all students in grades three to eight, inclusive, and in grade eleven to measure the academic progress of each student. SDCL § 13-3-55. In addition, every public school district is required to annually administer to all students in grades five and nine an achievement test to assess writing skills. SDCL § 13-3-55.

85. SDCL § 13-3-62 requires the establishment of a single, statewide accountability system to hold public schools and public school districts accountable for the academic achievement of their students and to ensure that all public school districts make adequate yearly progress in continuously and substantially improving the academic achievement of their students.

86. The state accountability system is implemented and administered by the Department of Education. SDCL § 13-3-68. The South Dakota Board of Education has promulgated administrative rules to establish the state accountability system. SDCL § 13-3-69; South Dakota Administrative Rules Article 24:42 (State Accountability System).

87. The state accountability system must be based on the South Dakota Content Standards in reading and mathematics approved by the South Dakota Board of Education. SDCL § 13-3-63. The yearly progress of students is required to be measured by the state academic assessments as prescribed by the Legislature and must take into account the achievement of all public elementary and secondary school students in reading and mathematics annually. SDCL § 13-3-63.

88. Four levels of academic achievement are required to be defined, including a proficient level, known as “South Dakota’s achievement standards.” SDCL § 13-3-66. These levels are required to be used to categorize public schools and public school districts based on the comparison of their achievement levels in mathematics and reading to the state’s annual objectives. SDCL § 13-3-66. The additional academic indicator for public K-8 elementary schools is the rate of student attendance. SDCL § 13-3-63. The additional academic indicator for public 9-12 high schools is the annual rate of graduation. SDCL § 13-3-63.

89. Pursuant to the state accountability system, all students must meet or exceed the state’s proficient level of academic achievement as measured by the state’s assessments no later than

the 2013-2014 school year. SDCL § 13-3-64.

3. The Public School Finance System

90. The State of South Dakota currently funds the system of public education through a combination of state revenues derived from general taxation, apportionment from the permanent school fund, revenues derived from school district property tax levies, and other local sources pursuant to Article VIII, § 15 of the South Dakota Constitution.

91. The South Dakota Legislature requires each school board to prepare and approve a budget for each fiscal year and to adopt a levy in dollars sufficient to meet the school budget. SDCL § 13-11-2. The school district is required to report the amount budgeted to the county auditor prior to October first of each year. The county auditor is required to spread a levy in dollars and cents over the taxable property of the school district sufficient to raise the money requested by the school district, subject to the legal dollars and cents limitations on any of the funds as provided by law. SDCL § 13-11-3.

92. School district funds are all moneys received by the school district or schools within the district or as a result of any activity carried on by the school. SDCL § 13-16-1. A school district's total budget is comprised of the local assessments that it is permitted to raise, state aid, and other revenue sources. Examples of other revenue sources are state and county apportionment, bank franchise tax, gross receipt taxes, interest, contributions, and all federal revenue. SDCL § 13-16-1.

a. Local Assessments

93. As the result of a political commitment to provide property tax relief in the amount of thirty percent, control was taken away from the local school boards and arbitrary limitations were placed on a school district's ability to tax property within the district regardless of need. These

limitations bear no relation to the actual cost of providing an adequate education to students.

94. All school district funds must be placed in either the general fund, capital outlay fund, special education fund, public service enterprise fund, trust or agency fund, bond redemption fund, or 874 fund as defined by the South Dakota Legislature. SDCL § 13-16-2. In general, there are four funds that school districts use to operate: (1) the pension fund; (2) the special education fund; (3) the capital outlay fund; and (4) the general fund.

95. The PENSION FUND or retirement fund is used solely to support the retirement of employees within the district. The employee uses six percent of his or her annual salary and the school district uses its retirement fund to match the employee contribution. State law permits a local assessment within the district of up to 30 cents per \$1,000 of assessed property valuation for the retirement fund. A school is not permitted to opt out of this limitation in order to cover shortfalls within the retirement fund. Instead, the school must use other funding sources (i.e. the general fund) to cover any shortfall.

96. The SPECIAL EDUCATION FUND is used solely to fund special education needs within a school district. SDCL § 13-37-16. Each school district is required to provide all of its resident children in need of special education or special education and related services with a free appropriate public education as defined by the South Dakota Board of Education. SDCL § 13-37-1.3. School districts may assess \$1.40 per \$1,000 of assessed property valuation for the special education fund. SDCL § 13-37-16. Regardless of actual need, a school is not permitted to opt out of this limitation.

97. The CAPITAL OUTLAY FUND of the school district is a fund provided by law to meet expenditures which result in the acquisition or lease of or additions to real property, plant, or equipment. SDCL § 13-16-6. Such expenditures must be for land, existing facilities, improvement

of grounds, construction of facilities, additions to facilities, remodeling of facilities, or for the purchase or lease of equipment. SDCL § 13-16-6. The school board of any school district may authorize an annual levy of a tax not to exceed three dollars per thousand dollars of taxable valuation for the capital outlay fund. SDCL § 13-16-7. Regardless of actual need, a school is not permitted to opt out of this limitation.

98. Thus, the maximum that a school district may assess is \$4.70 per \$1,000 of assessed valuation within the district for the retirement fund (\$0.30), special education fund (\$1.40), and capital outlay fund (\$3.00), regardless of actual need.

99. The GENERAL FUND of the school district is a fund provided by law to meet all the operational costs of the school district, excluding capital outlay fund and special education fund expenditures, and to redeem all outstanding warrants against the general fund. SDCL § 13-16-3. The general fund accordingly is the source from which almost all of the school district's funding requirements must be met.

100. In 2005 and for each year thereafter, for every \$1,000 of assessed valuation of property, each school district could tax only up to the following limitations for its general fund: \$3.32 for Agricultural Land; \$5.34 for Residential Land; \$4.32 for Rural Residential Land; \$11.45 for Other/Commercial Property. SDCL § 10-12-42. These limitations were arbitrarily set by the South Dakota Legislature and bear no relation to the actual cost of providing an adequate education to the school districts. The revenue generated locally from these statutorily capped assessments goes directly into the school's general fund. However, this revenue generally accounts for only approximately half of the revenue in a school district's general fund. The remainder comes from "State Aid."

b. State Aid

101. The State of South Dakota uses a formula to calculate the amount of funding distributed to a school district each year for its general fund. Funding is calculated on a per-student basis. Current law only permits the state to increase the amount of state aid that it distributes per student each year by the rate of inflation, or up to a *maximum* of three percent. Regardless of actual need or actual costs, state law prohibits the state from increasing its share of the funding formula by more than three percent per year.

102. When determining the amount of general state aid distributed to a school district, the state first determines what is has misleadingly labeled the district's "School Need." A district's "School Need" is defined as the district's Average Daily Membership (ADM) of students from the previous school year multiplied by the per student dollar allocation that is arbitrarily set by the Legislature without any tangible consideration of the district's actual financial needs.

103. For purposes of calculating general aid to school districts, "average daily membership" is generally defined as the average number of resident and nonresident kindergarten through twelfth grade pupils enrolled in all schools operated by the school district during the previous regular school year, minus the average number of pupils for whom the district receives tuition, plus the average number of pupils for whom the district pays tuition. SDCL § 13-13-10.1(1).

104. Before being multiplied by the per student allocation to determine the amount of a school district's need, the average daily membership is subject to a potential adjustment. The "Adjusted average daily membership" is calculated as follows: (a) for districts with an average daily membership of 200 or less, the average daily membership is multiplied by 1.2; (b) for districts with an average daily membership of less than 600 but greater than 200, the average daily membership is

raised to the 0.8293 power and the result is multiplied by 2.98; (c) for districts with an average daily membership of 600 or more, the average daily membership is multiplied by 1.0. SDCL § 13-13-10.1(2). The resulting adjusted average daily membership is then multiplied by the per student allocation to determine a school district's "School Need."

105. The per student allocation established by the Legislature is arbitrary and bears no demonstrable relation to the actual cost of providing an adequate education to a student. The state typically arrives at the per student allocation at the end of the legislative session based upon the amount of money left over after all of the other allocations have been made. For the fiscal year 2005, the "per student allocation" by the state was \$4,086.56. SDCL § 13-13-10.1(4). Each fiscal year thereafter, the per student allocation is the previous fiscal year's per student allocation increased by the "index factor," which adjusts for inflation. SDCL § 13-13-10.1(4), (3). For the year 2006, the per student allocation was \$4,237.72.

106. Once a district's "School Need" is determined pursuant to the arbitrary formula described above, the state subtracts the amount of local taxes collected by the school district itself through the assessment of property taxes and pays the difference to the school district in a lump sum of general state aid. In other words, the state only provides a percentage of the amount that it arbitrarily determined to be the per student allocation, usually close to fifty percent. The remainder must come from the local assessments described above. In many districts, local assessments are inadequate to close the gap.

c. The "Opt-Out"

107. School districts are limited by law regarding the amount they are able to assess to make up any shortfalls in its general fund without "opting out" of those limitations pursuant to a

local vote. If a school district is unable to provide a constitutionally adequate education using the funds available under the system established by the Legislature, its only potential means of even attempting to increase its funding level is a local popular election to raise tax assessments on property located within the district, which may seek voters' permission to raise additional revenues for a school district's general fund purposes only. SDCL § 10-12-43. No additional revenue may be raised for a school district's capital outlay, pension, or special education funds, regardless of actual need. SDCL § 10-12-43.

108. In order to exceed the arbitrary limitations established by the legislature, the local school board must authorize an "opt-out" election, which must then be approved by a majority of the voters in the school district. SDCL § 10-12-43. At least two thirds of the members of a school board are required to authorize an opt-out election. SDCL § 10-12-43. If a school board has five members, accordingly, four of the members must authorize an opt-out election in order for it to proceed to the voters. The majority of voters in all such elections do not have children attending public schools.

V. LEGAL CLAIMS

COUNT I: VIOLATION OF ARTICLE VIII OF THE SOUTH DAKOTA CONSTITUTION

109. The Plaintiffs respectfully reallege paragraphs 1 – 108 and all previous allegations and incorporate them as if set forth in full.

110. This is an action for declaratory relief pursuant to SDCL § 15-6-57 and the Uniform Declaratory Judgments Act, SDCL Ch. 21-24. The Plaintiffs seek a declaration that the South Dakota public school finance system described above violates their education rights conferred upon the people of South Dakota by Article VIII (Education and School Lands) of the South Dakota Constitution by failing to employ all suitable means to adequately provide for a quality education,

and seek enforcement of their constitutional rights pursuant to injunctive and any other available and necessary relief.

111. Article VIII, section one of the South Dakota Constitution provides: “The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.”

112. Article VIII, section fifteen of the South Dakota Constitution provides: “The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.”

113. These constitutional provisions and the balance of Article VIII of the South Dakota Constitution secure, at a minimum, the right to a free, adequate and quality public education to all South Dakota children.

A. CONSTITUTIONAL HISTORY OF ARTICLE VIII (EDUCATION AND SCHOOL LANDS)

114. The constitutional history of Article VIII of the South Dakota Constitution establishes that the right to a free, adequate and quality public education is a fundamental right under the South Dakota Constitution, that ensuring sufficient and adequate financing of public education was of primary importance to the framers of the South Dakota Constitution, and that the issue of education was in the highest echelon of public concerns considered and addressed by the framers of the South Dakota Constitution.

The Pre-territorial Lineage of Education Rights

115. South Dakota's constitutional provisions regarding education trace their lineage to fundamental values expressed in organic law that predates the United States Constitution. While the Constitutional Convention was framing and debating the United States Constitution, the Congress of the Confederation passed the Northwest Ordinance of July 13, 1787. This basic territorial statute provided for the government of the territory north of the Ohio River and set the pattern for all later territorial governments. On the subject of education, Article Three of the Northwest Ordinance provides, in part, "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

116. The establishment of a type of school government and of school support was entirely a responsibility of the various state and territorial legislatures. In the country's early years, founding fathers recognized that the rugged individualism of the new American character must be tempered with republican civic virtues. Public education advocates such as Thomas Jefferson and John Adams expressed the urgent need to afford educational opportunity to the nation's citizens, believing that without an educated citizenry, the future of our fledgling democracy would be in jeopardy.

117. In the nineteenth century, Horace Mann and other proponents of the common school movement took seriously the vision of education opportunity that had been earlier articulated by the founders. These reformers began to implement that vision by replacing the prior patchwork of private schools, religious schools, and pauper schools with a single common school system made available to the children of the rich and the children of the poor. The drive to implement these reforms culminated in the latter half of the nineteenth century in the incorporation in dozens of state constitutions of provisions that guaranteed the establishment of a system of free common schools in

which all of the children of the state might receive an adequate and basic quality education.

118. The philosophy of public education was in its infancy when the Dakota Territory came into being, but it was universally acknowledged that education was essential for good citizens and good government. The early statesmen and politicians enacted school laws for Dakota as they knew them from other states. From the time that the Dakota Territory was first organized, its public schools were of vital importance in beginning to fuse the various nationalities into a common capability and pride of citizenship.

119. As expressed by General W. H. H. Beadle, author of Article VIII of the South Dakota Constitution, "The American people think first, last and all the time about the education of their children. The person who has the authority and the opportunity to direct this sentiment in the best way possible is guilty of great dereliction if he does not do it. Its importance has never been overestimated. The words of Horace Mann are more true today than when he spoke them: 'We must educate! We must educate, or perish by our own prosperity.' It may be truly declared that the people in territorial days were more zealous, unselfish and self-sacrificing than they are now in this rich state. They would have a school, if it met in a log or sod shanty or in a room in a private home, or in the first little church."

120. The first educational activities in the Dakota Territory likely occurred at some of the military and trading posts along the Missouri River, where the sons and daughters of officers attached to the garrisons, traders, helpers, and others were given an elementary education. The very first regular school in South Dakota that has been definitively established was held in the garrison of Fort Randall, situated just where the south boundary of the state touches the west bank of the Missouri. It was taught during the winter of 1857-58 by a relative of Captain J. B. S. Todd, a close

relative of President Abraham Lincoln's wife, Mary Todd Lincoln. Its pupils included both immigrant white population and some local children of Indian ancestry.

121. An impulse was given to educational effort in territorial days by the fact that the people came from Minnesota, Iowa, Wisconsin and other states where revival in educational plans and efforts was active, where normal schools and colleges were opening and at work, and educational advantages were good and public sentiment vigorous. When these settlers first came to the territory, the lack of schools and their need of them here were as marked as their desire for homes. The first private and church schools that they established are accounted as the beginnings of South Dakota's public school system.

122. The first recorded regular school sessions in the Dakota Territory are believed to have been taught by Dr. Franklin Caulkins in a room over McHenry's store in Vermillion in 1859. Classes taught by Miss Ann E. Hoyt of Yankton began to be held shortly thereafter in the pioneer church building in Vermillion.

123. The first school house in the Dakota Territory was a small, sod-roofed log cabin built at Bon Homme under the leadership of John H. Shober in May of 1860. In May of 1860, Miss Anna J. Bradford began conducting classes in her sod house school with ten pupils.

124. A log school house was constructed in the winter of 1864-65 at the foot of the big ravine in Vermillion. Schools have been active continuously in South Dakota every since.

The Organic Act and Territorial Development of Education

125. The Organic Act of March 2, 1861, passed by Congress, Ch. 86, 12 Statutes at Large 239, provided for a temporary government for the territory of Dakota. Section 14 of the Organic Act required that after the territory has been surveyed under the direction of the United States

government, “sections 16 and 36 in each township of Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, shall be reserved for the purposes of being applied to schools in the several territories herein named, and in the states and territories hereafter to be enacted out of the same.” The organic law of the Dakota Territory thus reserved a substantial portion of the territory as school lands to be dedicated for the support of public education.

126. In his first message to the first Territorial Legislature in 1862, Territorial Governor William Jayne stated: “the great hope of a free people was dependent upon her educational and militia system. There is no subject more essential and vital to the prosperity and general welfare of the Territory, than the subject of education. The virtue, intelligence, and public happiness of the people, and all that conduces to the advancement of prosperity, wealth, and power of country, is intimately associated with, and dependent upon, the development of the educational interest of the State. In communities where truth, virtue, intelligence, and knowledge prevail, their crime is rare and poverty almost unknown. Every dollar of taxes levied for the support of schools, lessens, by many dollars, the taxes which would be assessed for the support of prisons and poorhouses.”

127. On May 13, 1862, Territorial Governor William Jayne signed “An Act for the Regulation and Support of Common Schools,” passed by the first territorial legislature. The act, modeled largely on the school laws then existing in the State of Wisconsin, established the first school code and the common school district as a corporation for school purposes. A “county superintendent of public instruction” was to be appointed for each county to organize the schools and issue teaching certificates.

128. The next school legislation passed by the territorial legislature was an act approved January 16, 1864, that made the governor, secretary and treasurer of the territory a territorial board of

education and appointed an annual meeting at the capital. The board was required to appoint a superintendent of public instruction who, by law, was secretary of the board. In 1864, Territorial Governor Newton Edmunds appointed Mr. James S. Foster as the first Territorial Superintendent of Public Instruction. The first educational record appearing upon the books of the office of the superintendent is the minutes of the first meeting of the first board of education, held in the office of Territorial Governor Newton Edmunds on December 13, 1863.

129. Superintendent Foster was the guiding spirit of the early period of territorial development for schools. His program gave evidence of being influenced by the philosophy of Horace Mann, the great American educator statesman. The foundation for popular education, for free schools and for universal education was laid in the 1860's. The seven annual reports authored by Superintendent Foster are proof of his untiring efforts to establish a system of free public schools.

130. As pioneer families arrived in greater numbers and settled permanently in the Dakota Territory, the demand for schools naturally increased. Each succeeding legislature enacted laws that made it possible for more and more schools to be established. The early schools were "subscription schools," since sufficient taxable area to support public education did not exist. When taxable wealth made possible organization of schools in certain localities, local communities adopted the district type of school government, modeled after the New England plan. By December 12, 1865, there were four legally organized districts in the territory: three districts in Union County and one in Bon Homme County. In Yankton, Clay, Todd, and other counties, private schools were being operated and maintained.

131. The first general teachers institute was held at Elk Point in 1867, to which all teachers were invited. The institute was a great success and marked the beginning of widespread campaign,

led by General Beadle and others, to develop a strong public school system that would carry into statehood.

132. The 1860's thus saw the enactment of the original school laws, establishment of the Territorial Board of Education and the office of Territorial Superintendent of Public Instruction, establishment of the office of County Superintendent of Schools, establishment of the first Teacher's institute, and free schools established for all children of all races.

133. In his annual report for 1867, Superintendent Foster wrote: "The time is not far off for public schools to become thoroughly established along the Missouri slope. Our brightest anticipations are in a fair way to be realized. A good school has been established and schools opened in every hamlet. A free school system is in practical operation with all its various machinery of District, County, and Territorial Officers."

134. From 1867 to 1878, youth of school age in the Dakota Territory increased from 1,550 to 12,201 and the number of children enrolled in public schools increased from 421 to 7,156. The 1870's saw the preparation and installation of the first standard course of study (which included McGuffey's Readers and Spellers, Quackenbos' Arithmetic, Cornell's Geographies, Harvey's Grammar, and Quackenbos' U.S. History), the adoption of a fiscal year procedure for schools, the establishment of the Dakota Territory's first high school organized in Yankton pursuant to a special charter issued by the Legislature, and enactment of the first Territorial Code in 1877, drafted with the assistance of General Beadle, which included revised and expanded school laws.

General W.H.H. Beadle
Father of Public Education in South Dakota

135. In 1879, General W. H. H. Beadle, a decorated veteran of the Civil War, was appointed as territorial superintendent and held the office until April of 1885. Upon his appointment

by Territorial Governor William A. Howard, General Beadle stated that if he agreed to serve, he wanted two things well understood: that the school laws should be fully and adequately reformed, including the township system, and that in order to ensure that public education would always be well endowed, no school lands should ever be sold for less than their appraised value, and never for less than ten dollars an acre. These conditions sought by General Beadle foreshadowed the very phraseology that he would later author for the Committee on Education and School Lands at the constitutional convention of 1885 and which were incorporated into the South Dakota Constitution.

136. General Beadle was authorized and directed to visit the capitals of other states to study the history and policy of those states concerning their school systems and the preservation of school lands. As directed by the Territorial Legislature: "The superintendent shall also make careful study of the laws and experience of such northwestern states as have had donations from the United States of public lands for the aid of schools; the methods and limitations adopted by each for the sale of such lands, and the manner in which the proceeds thereof were invested for the benefit of schools. He shall study the successes of such states and their failures in this respect, and show under what laws and systems the best results were secured in any such state. He shall make a digest of such examinations and embody it in his report for the year 1880, and therewith shall suggest such drafts of constitutional provisions and statute laws, with reasons therefore, derived from such study as in his opinion will be best suited to secure the best results from the school lands in Dakota when it shall become a state or states. To this end he may for a reasonable time visit the capitols of not more than five such states and confer and advise with persons of experience upon these subjects."

137. Among the state capitols visited and studied by General Beadle were those of Iowa, Minnesota, Wisconsin, Illinois, Indiana, and Michigan.

138. In pursuance of his official duties, General Beadle sought out the advantages and defects of the various methods by which state lands in the northwestern states that he visited had been transformed into school funds. The administration of school lands granted by Congress had attracted a great amount of attention. In many older states, the history of these federal grants in aid of education was not such as to occasion much pride. Instead of providing a liberal educational endowment as intended, or even assisting materially in the initial organization of a public school system, these lands, because of the inefficient and corrupt way in which they were managed, had frequently been squandered. This experience firmly impressed itself in General Beadle's mind, and he was determined that steps should be taken immediately to prevent a repetition in Dakota of the maladministration that was prevalent elsewhere.

139. The long-established practice of Congress to grant to each incoming state for school purposes the sixteenth and thirty-sixth sections of each township caused those sections to be withdrawn from entry during the territorial period, but these lands were not available for use until the state was admitted. Instead, they lay idle, or often suffered from trespass. To save the school lands and the endowment that they represented for public education, not only would statehood need to be attained, but a constitutional guarantee was required to prevent the same waste through fraud and premature disposal that had taken place in other states.

140. On February 15, 1882, General Beadle issued a report entitled "Dakota Schools," which summarized the state of the public school system in the Dakota Territory as the decade in which statehood would be achieved began. It included a recommendation for adoption of the township system for schools, which was adopted and passed by the territorial legislature in 1883.

141. As explained in his report, one of the primary goals of General Beadle's structuring of the public school system in the Dakota Territory, as subsequently embodied in Article VIII of the South Dakota Constitution authored by Beadle, was to provide an adequate, quality public education to every student, free to all and adequately financed by the state, that was sufficient to allow admission into institutions of higher learning: "The great body of common schools of the state should be so organized as to work in harmony under one general plan, and enable every person to prepare for admission from the lowest grade to the highest education the state can give by successive stages of study and qualification. The common schools can be supported by the grant of school lands if managed with wisdom and integrity, and the other state schools can each be fully endowed by the lands granted for that purpose. Thus all will be supported by the state and equally free and open to all as they may be qualified. The normal schools, the agricultural college, and indeed, largely the university are for the sons and daughters of the great body of the people. To enable them to qualify for these privileges the common school system must be properly arranged or they will be reserved for those from favored cities and towns."

142. General Beadle's plan was for the constitution of the prospective state to forbid the sale or disposal of the school lands at a sum less than ten dollars per acre, at a time when Iowa was selling similar lands at prices ranging from two to four dollars per acre. The motivation behind the drive for such a constitutional provision was to ensure that public education would always be well endowed in South Dakota.

The Statehood, Education and School Lands Movement

143. The conception of South Dakota's statehood movement is attributed to a Thanksgiving dinner attended by Territorial Governor William Howard, U.S. Attorney Hugh J.

Campbell, General Beadle, then territorial superintendent of public instruction, and Dr. Joseph Ward, founder and president of Yankton College. This Thanksgiving dinner was held in Yankton at the home of Rev. Stewart Sheldon, brother-in-law of Dr. Ward, in November of 1879. Dr. Ward had given General Beadle's proposals regarding education and school lands his ardent support. General Beadle and Dr. Ward were successful in coupling the sentiment of the southern portion of Dakota for division with the plan for saving the school lands.

144. At this historic Thanksgiving dinner meeting and from that moment forward, the two most important issues concerning statehood were the division of the territory into two states to be admitted into the union, rather than a single state of Dakota, and ensuring that the State of South Dakota would have a well endowed, thorough and efficient public school system to provide a free, adequate and quality public education using all suitable means, including preserving the school lands and all income derived therefrom in perpetual trust for future generations.

145. The school lands had been set apart by the organic act when the Dakota Territory was first surveyed. With the help of the Department of the Interior, General Beadle and others arranged for the publication of circulars warning squatters and trespassers upon the reserved school lands that they would be prosecuted and their investments and asserted rights lost upon the organization of the state. U.S. Attorney Hugh Campbell began vigorously prosecuting anyone who settled, cut timber, or otherwise trespassed upon school lands. A declaration of principles was drafted and circulated, and clubs and associations were organized around the school land and statehood movements.

146. In 1880, General Beadle had traveled to rural Ohio to meet with President-Elect James A. Garfield in order to seek more direct and powerful government protection for the school lands to promote the financial well-being of public education. As later described by General Beadle,

“If one had heard all that conversation at Garfield’s farm home, one would have believed that there would be an effort toward general legislation for all the territories, prescribing a uniform school system and protecting the school lands; and it would have been well for the future states. But Garfield was assassinated.”

147. As the school lands and statehood movement was explained by General Beadle, “it was plain from the early days that division would surely come. The victory for that was really won when fully entered upon, and was as good as assured in 1883, when the first or preliminary convention was held. Still, it took long and faithful labor to complete it with statehood, November 2, 1889. But the school land problem was not solved until the last moment. It was a new thing; that territories should be divided and statehood gained was guaranteed by the ordinance of 1787, the general provisions of which were extended by the congress over all the northwest, including the Dakotas. That South Dakota should stand for a price ‘not less than its appraised value and never less than ten dollars an acre,’ when Iowa was selling such lands near out southeastern border at \$2.50 to \$4.00 per acre and when no state had ever placed a limitation higher than ‘double minimum,’ that is \$2.50 per acre, was a surprising demand.”

148. R.F. Pettigrew, then a territorial delegate to Congress, had been endeavoring to secure the passage of an enabling act for statehood that would fix \$2.50 per acre as the limitation for sale of school lands. Pettigrew asked General Beadle and other leaders of the school lands and statehood movement if that limitation would be sufficient. In response, General Beadle “argued that such a limitation was no better than none, and that when statehood had come the first legislature might be worse than the one that moved the capital to Bismarck, and all its members might be made rich by an act selling a million or a million and a half acres of school lands at one bargain to a syndicate who

should have two or three years to select and pay for the lands thus bargained for!”

149. In response to efforts to lower his proposed limitation, General Beadle was steadfast. As he would later write: “Under the less than decidedly encouraging conditions should we change the proposition to a lower limit? No, never! We stood by the original, first, declaration, and in the language that finally went into the constitution. We never wavered one moment, but declared that success would be certain on that line.”

Education Rights in the Draft Constitution of 1883

150. In 1883, Territorial Governor Ordway, a thoroughly unpopular character in the annals of South Dakota history, vetoed a bill passed by the territorial legislature calling for a constitutional convention. Despite this veto, an anticipatory constitutional convention was assembled by defiant and committed statehood advocates in Sioux Falls on September 4, 1883, at which a draft constitution was prepared. The Committee on Education and School Lands submitted a report recommending several constitutional provisions related to securing the right to a public education. Section one of the proposed article related to Education and School Lands provided as follows: “The stability of a Republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the Legislature to establish a general and uniform system of public schools.” Section two of the proposed article required all proceeds from the sale of public lands granted by the United States for the use of public schools to be placed in “a perpetual fund for the maintenance of the public schools in the State.” Section four of the proposed article provided that public school lands could only be sold at a price to be determined by a board of appraisal “[b]ut in no case shall any land be sold at less than ten dollars per acre.” Section five of the proposed article provided as follows: “The Legislature shall make such provision by taxation or otherwise as, with the revenue

from the permanent school fund, shall secure a thorough and efficient system of common schools throughout the state.”

151. After the constitution of 1883 had been completed and adopted by the convention, it was submitted to a vote of the people and ratified by a vote of 12,336 to 6,814. The constitution and a petition seeking admission to the union was then presented to the United States Congress. Admission, however, was not forthcoming.

*The Constitutional Convention of 1885
and Drafting of Article VIII (Education and School Lands)*

152. Undaunted and ever more determined, the Territorial Legislature authorized and provided for a constitutional convention in 1885. The constitutional delegates were chosen at an election held on June 30th, and the convention convened in Sioux Falls on September 8, 1885.

153. The leaders of statehood movement in South Dakota and members of the constitutional convention were heavily influenced by their experiences in New England, where many of the framers had roots. Under the direction of General Beadle, the South Dakota public school system was modeled on the township organization of schools in New England.

154. At the Constitutional Convention of 1885, the Committee on Education and School Lands was chaired by Rev. James More. Dr. Joseph Ward was a member of the committee.

155. General Beadle served as the clerk for the Committee on Education and School Lands and was the author of Article VIII of the South Dakota Constitution entitled “Education and School Lands.”

156. In early 1884, a group of speculators had secretly made an offer to purchase a large block of the lands reserved for schools. As later revealed by General Beadle, “their suggestion or proposition, early in 1884, was that if no high limitation were placed upon the sale of the school and

endowment lands by the state constitution, they would make an offer to the first state legislature, or government, to purchase one million acres of these lands at five dollars per acre, the lands to be selected and paid for year by year, but all that amount within five years from the date of the contract. They were to select the lands from time to time and pay for them when the patent issued to them. . . . I refused to have anything to do with it or to cease from the advocacy of the ten-dollar limitation supported by the active friends of statehood.”

157. As General Beadle explained, “[t]his scheme was one of the causes for greater vigor than ever in pushing the advocacy of the proposed constitutional limitation to the last minute and its final success at Sioux Falls. Some general argument from the big land holdings in North Dakota and declarations of danger to the school lands in the future state from capitalist speculators were made in our discussions and they had their effect. So it came to be vaguely understood and is mentioned in history that some such scheme was on foot. . . . The scheme made it more pressing to win at Sioux Falls if possible, and the final decision of the committee and the convention was the most joyful news I ever received. This proposal influenced somewhat the language of Article VIII of the constitution, and the reader of that can see clauses that would circumvent every such plan.”

158. Regarding the funding of education, the early prevailing opinion at the 1885 convention was that school lands should be quickly made available for purchase, so that the proceeds might be available to assist settlers while they were struggling with the difficulties and hardships incident to the establishment of new communities. A minority view, having large confidence in the future of South Dakota and believing the lands so liberally given by the general government for the promotion of education would rapidly advance in price, and if retained until needed by settlers, at a minimum price of ten dollars per acre, when sold would accumulate a magnificent endowment for

the common schools of the new state. After much discussion, this became the prevailing view, and the committee ultimately unanimously approved fixing the minimum price at which school lands should be offered at not less than either the appraised value or ten dollars per acre.

159. As explained by Chairman More, “[s]ome members of the committee had seen the school lands in the older states hastily sold, to the great detriment of the later history of school development in those states, and the fund of which the lands should have been the basis depleted by serious losses, because not sufficiently guarded, and all desired to so frame the constitutional provisions that the accumulated fund should be safely protected.”

160. As General Beadle described his authorship of Article VIII, “Taking all of their ideas, suggestions and work, I sat in their committee room while they were attending sessions of the convention and drew the article upon ‘Education and School Lands’ as it appears in our state constitution, except that some amendment was made in convention to a section relating to investment and security. This they read and re-read, and it won their approval slowly, one by one. It was that formal and complete document, not oral discussions and misunderstandings, that won the case. I was ready to reply to all questions. At times, at least, they treated me like a member of their committee, but I was careful not to speak with the least authority. Some earnest persuasion was used with individual members and I talked most freely with Dr. Ward that he might, if possible, meet all objections. Rev. J. J. More and Dr. Ward endorsed the paper fully from the first reading, with enthusiasm. Finally, near the very close of the session, the committee made a unanimous report, presenting the article as drawn. I had meanwhile gone over it section by section, clause by clause and word by word, and made every punctuation mark, all in fair and legible hand. They would read this over repeatedly. It looked complete. Should the majority, against Chairman More and Dr.

Ward, prepare another report and draw another article upon another plan? It did not seem easy. Let me assure the reader that it is not. That \$300 worth of experience I had enjoyed writing upon the 'codes of 1877' was a great help to me. Asked privately by a member of the convention if I would draw another article upon a modified plan with a lower limitation, I respectfully declined and stood by the draft exactly as made. Meanwhile I talked with members of the convention personally, as opportunity offered, and with those of the committee. The unanimous report was made, and but a short time before adjournment it was adopted by the convention! Then the people adopted the constitution. The dearest thing to me in my public life was an accomplished fact."

161. As related by Chairman More, "In working out the details of their report the committee were greatly assisted by General W. H. H. Beadle, then of Yankton, who at their request met regularly with them during the last half of the session of the convention. His thorough knowledge of the conditions in the territory, obtained during his administration of the office of superintendent of schools for the territory, and his sound and discriminating judgment were of incalculable service in perfecting what has been pronounced a very perfect constitutional provision for well endowed public schools. The state owes much to General Beadle for the generous, broad-minded and magnificent service he has rendered her school interests."

162. As the result of the efforts of General Beadle and others, the Sioux Falls Constitution of 1885, which ultimately became the South Dakota Constitution when South Dakota was admitted as a state, made the provision of a free and adequate, quality public education the right of all South Dakotans and took steps to ensure that there would always be adequate financial provision from the state to ensure this fundamental right.

163. To those ends, Article VIII, section one of the South Dakota Constitution provided: “The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.”

164. Article VIII, sections two through fourteen made detailed provisions for the protection of school lands and endowment of a perpetual fund for the maintenance of public schools in the state. Those sections required that a permanent school fund be created, into which should go all the proceeds from the sale of the public school lands, the five percent granted by the United States on all sales of federal lands within the state, and such moneys as should fall to the state by escheat, gifts and donations. School lands could not be sold for less than ten dollars per acre, substantially higher than their fair market value at the time. The school fund was to remain forever inviolate. It might be increased, but could never be diminished, and all losses were to be made good by the state. The interest and income derived therefrom, together with the net proceeds of all fines from the violation of state laws, and such other sums as might be provided by law, was to be used solely for the maintenance of the public schools “for the equal benefit of all the people of the state.”

165. Article VIII, section fifteen of the South Dakota Constitution provided: “The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.”

166. In framing the South Dakota constitution, the delegates to the constitutional convention fully intended to circumscribe the Legislature’s powers on a variety of subjects, including

education. “The object of Constitutions,” as one delegate declared, “is to limit the legislature.”

Ratification of the Constitution of 1885

167. The constitution of 1885 was adopted by the people by a vote of 25,132 to 6,522. The Sioux Falls constitution became important to the people of South Dakota, and the constitutional article related to education and school lands became, in the words of General Beadle, “more and more a sacred thing. Now that it was done, almost the entire people became proud of it and stood by the whole movement for that reason.”

168. The Sioux Falls convention did not finally dissolve when the constitution was completed in 1885, but met again in 1886 and kept alive the statehood aim. Committees went before Congress and the President and argued for South Dakota’s admission to the union.

169. The Sioux Falls Press of July 15, 1886 reported: “After the adjournment of the constitutional convention yesterday, the state league held a session and renewed its pledge to work untiringly for division and admission.”

The Omnibus Bill and Enabling Act

170. On February 22, 1889, Congress finally passed an Omnibus Bill providing for the admission of North Dakota, South Dakota, Montana, and Washington as states. Regarding education, section four of our Enabling Act provided “That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.” This guarantee was adopted essentially verbatim in Article XXVI (Schedule and Ordinance), § 18 of the South Dakota Constitution.

171. The Enabling Act also made extensive grants of land to the incoming states. Under the Act, sections thirteen and thirty-six of each township, or whenever necessary, indemnity lands in

lieu thereof, were given to the new states for the use of the common schools. This grant of school lands was substantial. In South Dakota, the school lands amounted to approximately 1/25th, or four percent, of all of the land within the state. Five percent of the proceeds of federal land lying within the several states was also to be paid into the permanent fund to be expended only for the support of schools.

172. The Enabling Act also made the school lands clause developed by General Beadle the law for all of the incoming western states. Regarding the sale of school lands, section fourteen of the Enabling Act further provided that “all lands herein granted for educational purposes shall be disposed of . . . at a price of not less than ten dollars per acre, the proceeds to constitute a permanent fund, the interest of which only shall be extended in the support of said schools.” Unsold lands could be leased, but only “for periods of not more than five years, in quantities not exceeding one section to any person or company.”

173. The instructions from Congress to make liberal education provisions and secure the school funds for the endowment of public education were unnecessary in the case of South Dakota, which had already done so in framing the constitution of 1885 as an expression of how vitally education connected itself in the public mind with good government. Indeed, the tireless efforts of General Beadle and others in Dakota may be fairly described as the impetus for inclusion of the restrictions on the disposal of school lands within the Omnibus Bill passed by Congress.

174. Pursuant to the terms of the Omnibus Bill, the question of whether the Sioux Falls Constitution of 1885 should be ratified or a new constitution drafted in its place was put to the people of South Dakota. Congress acted wisely in allowing South Dakota to retain the Sioux Falls Constitution, which had continually increased in the esteem of the people of the territory, and there

was great opposition locally to any plan that looked to the framing of a new constitution. On May 14, 1889, the people overwhelmingly voted to hold a convention to ratify the Sioux Falls Constitution.

*The Constitutional Convention of 1889
and Ratification of the South Dakota Constitution*

175. A constitutional convention for that purpose was convened in Sioux Falls on July 4, 1889. Owing to the prior ratification by the people of the constitution of 1885, the powers of the convention were limited to certain specific things, such as the changing of the boundaries and name of the state to reflect the division of the Dakota Territory into two separate states. Article VIII of the South Dakota Constitution relating to Education and School Lands remained essentially unaltered from the constitution of 1885, and the principles for which General Beadle and others had battled so long in Dakota were thus permanently adopted.

176. On October 1, 1889, the South Dakota Constitution was adopted by the people of South Dakota by a vote of 70,131 to 3,267. On November 2, 1889, President Benjamin Harrison issued his proclamation admitting South Dakota to the Union on an equal footing with the original states.

An enduring constitutional legacy

177. The primacy of education in the hearts and mind of the framers of our constitution did not diminish after statehood was achieved. Pattison F. McClure, Dakota territorial commissioner of immigration from 1887 to 1889, wrote, upon the admission of South Dakota to the union, "The interest displayed in educational matters is always an index of the religious and moral culture of a community. This holds true of Dakota, where the ratio of schools and colleges to the population is borne out in the number of churches established and pastors supported by the Territory. Towering

church spires on the prairie, like signal-lights of the harbor, point out each city, town or modest village. No matter how recent the settlement, how ambitious the strife for worldly possessions, the church and school are there, the site and foundations for which occupy the first cares of every new community.”

178. According to General Beadle, the successive governors of the territory and state of South Dakota were educated and capable individuals who were all “strong friends of popular education and desirous of building up the school system” and that “[t]his high commendation of our governors in respect to education applies alike to Republicans, Democrats and Populists.”

179. South Dakota’s first Governor, Gov. Arthur C. Mellette, in one of his first messages to the new state, stressed that one of the primary provinces of the new government was “to promote a common education, which is the preserver of all.” Governor Mellette instructed the first South Dakota Legislature that “No more sacred trust devolves upon this body than the legislation necessary to faithfully protect and increase to its greatest possible limit, the common school fund as provided by Article VIII of the constitution. This article has outlined your duties and it remains for you to enforce its provisions under proper penalties and to provide any further safeguards you may deem necessary.”

180. The first session of South Dakota Legislature was convened in 1890. Much of its time was spent on the vastly important educational bill. Leading educators from all parts of the state were present to secure its enactment and ensure the soundness of its provisions. General Beadle and State Superintendent Pinkham met with the education committees of both houses continuously for many days. The newly enacted school laws were modeled much after the school laws of Indiana, where General Beadle was born and had practiced law following the Civil War, before moving to the

Dakota Territory and securing his place in our history.

181. In its Fourth Annual Review of the Progress of South Dakota for 1904, the State Historical Society wrote “All the state educational institutions, from the common schools to the university, as well as the private schools and colleges, are in a flourishing condition. While education has ever been a topic of first interest in South Dakota, the year has seen renewed zeal and activity upon educational lines. The new uniform certification law has perceptibly raised the standard of the teaching force. The financial condition of the schools is excellent.”

182. The following year, in 1905, the State Historical Society reported that “[a]ll of the educational interests of the state are in prosperous condition.”

183. In 1906, the State Historical Society reported, “[T]he educational outlook is propitious. Education is of the first importance, because it is necessary to the development of every other resource. Few if any of the states in our union have started out with as many advantages in this line as South Dakota. She came on the floor at the right time to receive the full benefit of the apportionment of school land by the general government. Again, South Dakota has been fortunate in having for its first officials men of broad mind and good judgment, who have been careful not to squander the school funds, but to use them in such a way that coming generations would receive the greatest benefit. The result is that the state now has a princely educational endowment, the income of which is already munificent, and will continue to increase.”

184. In his seminal study, “The Constitutions of the Northwest States,” published by the University of Nebraska Press in 1924, John D. Hicks wrote: “These provisions regarding school lands constitute one of the most notable pieces of ‘legislation in the constitution’ adopted by the new states, and wherever carried out in the spirit which their framers intended, they have met with

success. In South Dakota, especially, the permanent fund has been managed with rare wisdom. None of it has ever been borrowed by the state, as so often happens elsewhere, and not a single loss has ever been recorded. In 1906, the total value of the fund, invested and prospective, was estimated at \$33,254,677, and the revenue was so large that many school districts depended upon it for the greater part of the support of their schools. More than \$300,000, approximately twelve per cent of the total common school revenue, was derived this same year from the permanent school fund.”

185. South Dakota’s constitutional history accordingly quickens and breathes historical life into the promise to all future generations contemplated by the provisions of Article VIII of the South Dakota Constitution that every child is constitutionally entitled to a free, adequate and quality public education established using all suitable means available to the South Dakota Legislature. Despite this glorious constitutional endowment, however, more recent decades have seen the educational promises made to our children recede deeper and deeper into the fog of historical memory until they were in jeopardy of being forgotten altogether.

B. THE CONSTITUTIONAL RIGHT TO AN ADEQUATE AND QUALITY PUBLIC EDUCATION

1. Education adequacy in the fifty states

186. The movement to ensure adequate funding for a quality education has deep roots in the constitutional history of South Dakota and many other states. Nationwide, legal actions seeking to ensure that all students are provided the resources they need for a meaningful education and to meet state performance standards have been successful in 20 of 26 cases since 1989. These legal actions have challenged state methods for funding public schools based upon state constitutional provisions similar to the educational provisions found in the South Dakota Constitution.

187. Decisions by state supreme courts enforcing state constitutional rights to an adequate education have revived and enhanced the principles of the American public school tradition and re-established education as a child's inviolable right. In addition, by strengthening and highlighting the educational standards designed by state lawmakers, promoting dialogue with state legislatures and education departments, and ensuring that schools have the resources and instructional capacity to provide all of their students with the opportunity for a quality education, such legal actions and the decisions of state supreme courts enforcing state constitutional education rights have presented states with the opportunity to fulfill the promise of standards-based educational reform.

188. There is virtual consensus among the many state courts to address state constitutional education rights that the constitutional standard for an adequate, basic quality education is an education that prepares students to function productively as capable citizens in a democratic society and to compete effectively in the economy. This consensus is also reflected in the 1998 report of a Task Force of the National Conference of State Legislatures, which stated, "State policy makers and the courts should apply the test of 'adequacy' as a primary criterion in examining the effectiveness of any existing or proposed state school finance system."

2. Education adequacy in South Dakota

189. The provision of sufficient funding for school districts to provide an adequate education to all South Dakota children is not a policy decision, it is a constitutional requirement. With the advent of South Dakota's state educational standards, state academic achievement requirements, and the state accountability system, the concept of an adequate education has a documented context.

190. As detailed above, South Dakota has adopted state educational standards and academic achievement requirements, enforced by an accountability system, with which school districts and students are required by law to comply. At a minimum, a constitutionally adequate educational system provides the funds and resources necessary to allow school districts and students to meet the standards and requirements to which they are held accountable under the laws established by the South Dakota Legislature.

191. In addition, the constitutional standard for a basic quality education is an education that prepares South Dakota students to (1) function productively as capable voters, jurors, and civic participants in a democratic society; and (2) compete effectively in the economy.

192. The types of knowledge and skills that South Dakota students need to be effective citizens and workers are: (1) sufficient ability to read, write, and speak the English language and sufficient knowledge of fundamental mathematics and physical science to enable them to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable them to make informed choices with regard to issues that affect them personally or affect their communities, states, and nation; (3) sufficient intellectual tools to evaluate complex issues and sufficient social and communication skills to work well with others and communicate ideas to a group; and (4) sufficient academic and vocational skills to enable them to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

193. The essential resources that South Dakota students need to acquire this knowledge and these skills are: (1) qualified teachers, principals, and other personnel; (2) appropriate class sizes; (3) high-quality early childhood and pre-school services; (4) adequate school facilities; (5)

supplemental programs and services for students from high-poverty backgrounds including summer and after-school programs; (6) appropriate programs and services for students with disabilities and English language learners; (7) instrumentalities of learning, including textbooks, libraries, laboratories, and computers; and (8) a safe and orderly learning environment

194. As with virtually any enterprise, the provision of an adequate and quality education costs money. Educational opportunity and quality are, in substantial part, a function of the dollars allocated by the Legislature to those priorities. The extensive evidence compiled during the trials of over two dozen education adequacy litigations has demonstrated that the most substantial explanation for poor academic performance is the severe resource deficiencies that plague many school systems. South Dakota is no different. Where severe deficiencies in financial resources exist, a proportionately higher number of South Dakota students fail to meet minimum proficiency standards and are otherwise denied the advantages and opportunities of an adequate and basic quality education.

195. In order to satisfy the South Dakota Constitution's mandate to provide all children with the advantages and opportunities of an adequate and quality education, therefore, the South Dakota Legislature must provide for adequate systemic funding based on actual costs, rigorous educational content and teacher qualification standards, an accountability system that includes comprehensive planning, and the ability to use test results and other school quality data to build instructional capacity for effective and permanent school improvement.

C. THE SOUTH DAKOTA PUBLIC SCHOOL FINANCE SYSTEM VIOLATES PLAINTIFFS' CONSTITUTIONAL RIGHTS TO AN ADEQUATE AND QUALITY PUBLIC EDUCATION

1. The public school finance system does not provide sufficient funding for school districts to provide an adequate and quality education to all students.

196. It has been apparent for some time that the public school finance system in South Dakota is broken. The actual costs of operation for even the largest and most efficient school districts far exceeds the per-pupil spending allowed by the state-aid formula. As recently as June 20, 2006, Senator Ed Olson, chairman of the Senate Education Committee, acknowledged that the State of South Dakota is currently under-funding education.

197. School districts are limited by law to three percent or less growth in expenditures per year regardless of actual need. There is no such limitation on other state expenditures. This limitation is unconstitutional where it prevents any student from receiving an adequate education.

198. "Opt outs" were intended for the purpose of allowing school districts to *enhance* the educational programs of the schools, which would be proper in a system of school finance that was working. Because of insufficient funding, however, districts across South Dakota are attempting to opt out simply to try to maintain existing basic programs and minimum staffing levels.

199. At least 98 school districts of all sizes have attempted at least 194 times in the past ten years to opt out of the property tax limitations in order to maintain operations, representing almost sixty percent of all school districts in the state. Many have been unsuccessful in passing opt outs that were necessary in order to maintain existing, basic programs and continue to provide even a minimally adequate education to their students.

200. In many school districts, including districts in which the plaintiffs reside, the financial situation has reached the level of desperation. School districts typically cut their programs to the

bone before asking voters to approve an opt out election. In many schools districts, the school building facilities are falling into disrepair and school districts lack the necessary funds to renovate or construct new facilities.

201. Because of insufficient funding, some schools have had to consolidate classes and even grades. Other schools have shortened to a four day school week.

202. Because of insufficient funding, teachers, administrators, and other positions are being reduced or eliminated. The first teaching positions to be eliminated are frequently those designated to assist special needs, at risk, or remedial students who have fallen behind or failed to meet minimum proficiency levels in reading or math.

203. Because of insufficient funding, compensation of teachers, administrators, and other personnel is embarrassingly low and being effectively further reduced by budgetary measures that many school districts have been forced to enact. South Dakota currently ranks 51st, or dead last, in average teacher salary among the fifty states and the District of Columbia. Nowhere in the United States are teachers paid less than in South Dakota. As the result of low salaries, reductions in compensation, and the reduction of positions from full-time to half time, many school districts, particularly districts in smaller communities, are unable to attract and retain qualified teachers, administrators, and other personnel. In many districts, the attrition rate of qualified staff has reached critical levels.

204. Because of insufficient funding, school districts are not able to offer the pre-kindergarten programs, or adequate special education, English language, and remedial programs, that are necessary to ensure that all of our children receive an adequate and quality education.

2. The failure to sufficiently fund education, based on actual costs, is denying children their constitutional right to an adequate and quality public education.

205. As a result of the unconstitutional inadequacy of South Dakota's public school finance system, South Dakota children are being denied their constitutional rights to an adequate, quality public education, resulting in serious harm to the plaintiffs.

a. At least one out of every four South Dakota students is not proficient in reading or math.

206. According to the South Dakota Department of Education records, approximately one out of every four students in South Dakota is not proficient in math. This result would be even worse if the state had not lowered the standard for being considered proficient in math after so many students failed to meet the original standard in 2003.

207. According to South Dakota Department of Education records, approximately one out of every five students in South Dakota is not proficient in reading. This result would be even worse if the state had not lowered the standard for being considered proficient in reading after so many students failed to meet the original standard in 2003.

208. The South Dakota state accountability system requires schools and districts to meet state expectations for student performance in reading and math based on the Dakota STEP test. These tests measure the proficiency of South Dakota students in those basic subjects.

209. Every public school district is required to annually administer these assessment tests to all students in grades three to eight, inclusive, and in grade eleven, to measure the academic progress of each student. SDCL § 13-3-55. Each state-designed test is required to be correlated with the state's content standards. SDCL § 13-3-55.

210. In the initial year of Dakota STEP testing of students in 2003, a particularly egregious number of South Dakota students failed to meet proficiency levels on the tests. The state then lowered most of the standards for what was considered to be proficient in math and reading, and lowered standards again after the tests results were released in 2004. The proficiency standards for various grade levels in math and reading have been lowered by as much as 23 percent in the past three years.

211. For example, in 2003, an eleventh grade student was required to correctly answer 71 percent of the questions on the reading section of the Dakota STEP test in order to be considered proficient by the state. In 2005, after the standards were lowered, an eleventh grade student was only required to answer 48 percent of the reading questions correctly in order to be considered proficient. In 2003, a seventh grade student was required to correctly answer 58 percent of questions on the math section in order to be considered proficient by the state. In 2005, after the standards were lowered, a seventh grade student was only required to answer 48 percent of the math questions correctly in order to be considered proficient.

212. In 2003, 41 percent of all students in all grades statewide were not proficient in Math and 29 percent of all students in all grades statewide were not proficient in Reading. In grades three through eight, 43 percent of students were not proficient in Math and 27 percent of students were not proficient in Reading. In grades nine through twelve, 31 percent of students were not proficient in Math and 42 percent of students were not proficient in Reading.

213. In 2004, after the state lowered the standards for math and reading proficiency, 28 percent of all students in all grades statewide were not proficient in Math and 22 percent of all students in all grades statewide were not proficient in Reading. In grades three through five, 24

percent of students were not proficient in Math and 18 percent of students were not proficient in Reading. In grades six through eight, 34 percent of students were not proficient in Math and 24 percent of students were not proficient in Reading. In grades nine through twelve, 26 percent were not proficient in Math and 26 percent were not proficient in Reading.

214. In 2005, after the state lowered the standards for math and reading proficiency, 26 percent of all students in all grades statewide were not proficient in Math and 19 percent of all students in all grades statewide were not proficient in Reading. In grades three through five, 21 percent of students were not proficient in Math and 15 percent of students were not proficient in Reading. In grades six through eight, 30 percent of students were not proficient in Math and 19 percent of students were not proficient in Reading. In grades nine through eleven, 24 percent were not proficient in Math and 26 percent were not proficient in Reading.

215. In the current year, the state as a whole has failed to meet the South Dakota accountability system's Adequate Yearly Progress (AYP) requirements in Math. More than 102 schools, or almost fourteen percent of all of the schools in South Dakota, have been identified as schools in need of improvement as determined by the state's own accountability system. At least five school districts as whole, including the state's two largest school districts (Sioux Falls and Rapid City), have been designated as districts in need of improvement by the state's own accountability system.

b. More than one out of every ten South Dakota students fails to graduate.

216. According to South Dakota Department of Education records, more than one out of every ten registered students in South Dakota currently fails to graduate from high school. The state has recently admitted, however, that its graduation rates have been artificially inflated. The state

now anticipates that almost one out of every five high school students in South Dakota will fail to graduate this year.

217. In 2005, almost 11 percent of all registered students in South Dakota failed to graduate from high school.

218. Registered students in minority groups have been hit particularly hard by low graduation rates.

219. In 2005, almost 34 percent, or approximately one out of every three, Indian or Native American students in South Dakota failed to graduate.

220. In 2005, more than 25 percent, or one out of every four, Black or African American students in South Dakota failed to graduate.

221. In 2005, 42 percent, or more than two out of every five, Hispanic students in South Dakota failed to graduate.

222. In 2005, almost 19 percent, or approximately one out of every five, Asian or Pacific Islander students in South Dakota failed to graduate.

223. In 2005, almost 18 percent, or approximately one out of every five, students from economically disadvantaged backgrounds failed to graduate.

224. In 2005, almost 19 percent, or approximately one out of every five, students with disabilities failed to graduate.

c. Almost one out of every ten classes in South Dakota is taught by teachers who fail to meet teacher qualification standards.

225. As Governor Rounds has observed, "The classroom teacher—it all begins there. The better the teacher, the better the education." No state in the United States pays its public school teachers less than South Dakota. Among the fifty states and the District of Columbia, South Dakota

ranks 51st, or dead last, in average teacher salary. This failure to adequately pay teachers has had a disastrous effect on the ability of school districts to attract, recruit, and retain qualified teachers, which in turn has had a detrimental effect on the quality of the education available to South Dakota's public school students.

226. The NCLB Act calls for all teachers of core academic subjects to meet minimum teacher qualification standards in order to be rated "highly qualified." These minimum qualifications are that the teacher has full certification, a bachelor's degree, and demonstrated competence in subject knowledge and teaching.

227. According to South Dakota Department of Education records, almost one out of every ten classes held in South Dakota is taught by a teacher that has failed to meet the NCLB Act's teacher qualifications standard. The public school finance system is failing our children in violation of the South Dakota Constitution.

228. In 2003, at least 11.3 percent of all classes statewide were taught by teachers who failed to meet these teacher qualification standards.

229. In 2004, at least 7.3 percent of all classes statewide were taught by teachers who failed to meet these teacher qualification standards.

230. In 2005, at least 7.3 percent of all classes statewide were taught by teachers who failed to meet the teacher qualification standards.

3. The deleterious effects of the education funding crisis on our children are evident in individual school districts.

231. The inadequate funding provided by the South Dakota Legislature for public education has had a deleterious effect on school districts and the children attending their schools. The following school districts are illustrative, not because they are "worst-case" scenarios, but

because collectively they are representative of the current situation in the typical, average school district in South Dakota.

a. Florence 14-1

232. In the Florence 14-1 school district, where some of the plaintiff children reside, the public school finance system is failing our children.

233. Because of inadequate funding, the Florence school district has been forced to enact cuts that have eliminated and consolidated several administrative and teaching positions. The district superintendent has been forced to take on the additional responsibilities of high school principal, junior high school principal, and special education director. The elementary school principal's position has been eliminated. Elementary teachers are attempting to cover the administrative duties of that position. At least one teacher position on a staff already cut to the bone has been reduced to part-time.

234. Because the Florence school district is comprised of land containing so many lakes, the property tax base is exceedingly limited and already overburdened. As a result, 79 percent of Florence's budget comes from state aid and an opt out election is simply not feasible.

235. In Florence schools, five percent of all students currently fail to graduate.

236. In Florence schools, 38 percent of all students in all grades, and 32 percent of all high school students, fail to meet proficiency standards in math.

237. In Florence schools, 31 percent of all students in all grades, and 46 percent of all high school students, fail to meet proficiency standards in reading.

238. Thus, more than one out of every three students in Florence schools fails proficiency in math. Almost one out of every three students in Florence schools fails proficiency in reading.

Almost one out of every three high school students in Florence fails proficiency in math. And almost half of all high school students in Florence fail proficiency in reading.

b. Garretson 49-4

239. In the Garretson 49-4 school district, as well, the public school finance system is failing our children.

240. Inadequate funding is resulting in draconian changes that are denying children the right to an adequate public education. In March of this year, Garretson attempted a \$275,000 opt-out to attempt to maintain existing programs as much as possible. The opt out failed. In June, a second attempt to approve a \$175,000 increase over four years also failed.

241. As a result, the school district was forced to make at least \$215,000 in additional funding cuts. These cuts include eliminating grade sections, combining a section of fourth and fifth graders to be simultaneously taught by one teacher, increasing class sizes, reducing the elementary school principal's position and salary from full-time to 60 percent, eliminating a secretarial position, eliminating the guidance counselor position, eliminating the assistant football coach position, reducing the art teacher from full time to half time, reducing the home economics teacher from full time to half time, eliminating the business computer teaching position, eliminating a teacher's aid position in the elementary school, making a twenty percent cut in the school supplies budget, cutting back the hours of its technology coordinator, and having both the technology coordinator and the high school principal (who is also the middle school principal) begin teaching classes. Additional cuts are forecasted for the 2007-08 school year.

242. In Garretson schools, at least 14 percent of all students in all grades, and 20 percent of all high school students, fail to meet proficiency standards in math.

243. In Garretson schools, at least 14 percent of all students in all grades, and 20 percent of all high school students, fail to meet proficiency standards in reading.

244. Thus, almost one out of every six students in the Garretson schools is not proficient in math. Almost one out of every six students in the Garretson schools is not proficient in reading. One out of every five high school students in Garretson fails proficiency in math. And more than one out of every five high school students in Garretson fails proficiency in reading.

c. Bon Homme 04-2

245. In the Bon Homme 04-02 school district, in the county where the first sod school house in the Dakota Territory was established, and where some of the plaintiff children reside, the public school finance system is failing students.

246. In 2001, due to severe funding shortfalls, Bon Homme tried to opt-out twice, seeking \$300,000 or \$600,000 in order to maintain basic services for students. Both attempts failed. As a result, the district was forced to make nearly half a million dollars in cuts from existing staff and programs. More than twelve teaching and staff positions were eliminated. The district closed middle schools in Springfield and Tabor. Sixth, seventh, and eight grade children from those areas were moved to Tyndall. A ten percent across the board cut in existing programs was instituted for each department. Support staff hours were cut. Sports programs were reduced. Now, five years later, the district is faced with still another funding shortfall. Beginning in 2006-07, the school week will be reduced from five days to four, which the district hopes will allow for the reduction of yet another full-time teaching position.

247. In 2003, 38 percent of all students in the Bon Homme school district failed to meet proficiency standards in math, and 30 percent of all students failed to meet proficiency standards in

reading. In 2004, 23 percent of all students failed to meet proficiency standards in math, and 24 percent failed to meet proficiency standards in reading. In 2005, 18 percent of all students failed to meet proficiency standards in math, and 14 percent failed to meet proficiency standards in reading.

d. Parkston 33-3

248. In the Parkston 33-3 school district, where some of the Plaintiff children reside, the school has been forced to cut five positions due to inadequate funding. Due to inadequate funding, class sections have been eliminated and class sizes have increased. A \$50,000 cut in school supplies and travel budget was implemented. The school district has been forced to eliminate three elementary school teachers, including its reading and math teachers designated to assist children in grades one through six that were testing below basic levels of proficiency. The equivalent of at least four positions at the high school have been eliminated. A remedial position that assisted German-speaking children in learning English before entering kindergarten has also been eliminated.

249. In Parkston schools, more than six percent of all students currently fail to graduate.

250. In Parkston schools, 17 percent of all students in all grades, and 25 percent of all high school students, fails to meet proficiency standards in math.

251. In Parkston schools, 18 percent of all students in all grades, and 34 percent of all high school students, fails to meet proficiency standards in reading.

252. Thus, almost one out of every five students in the Parkston schools fails proficiency in math. Almost one out of every five students in the Parkston schools fails proficiency in reading. One out of every four high school students in Parkston fails proficiency in math. And more than one out of every three high school students in Parkston fails proficiency in reading.

e. Todd County 66-1

253. In the Todd County 66-1 school district, 35.48 percent of all students, or more than one out of every three students, currently fails to graduate.

254. In Todd County schools, approximately 11.7 percent of all classes, or more than one out of every ten classes, is taught by teachers that have failed to meet the NCLB Act's teacher qualifications standards.

255. In Todd County schools, 67 percent of all students in all grades, or more than two out of every three students, fails to meet proficiency standards in math. And 77 percent of all high school students, or almost four out of every five students in high school, fails to meet proficiency standards in math.

256. In Todd County schools, more than 50 percent of all students in all grades, or one out of every two students, fails to meet proficiency standards in reading. And more than 56 percent of all high school students, or more than one out of every two students in high school, fails to meet proficiency standards in reading.

f. Sioux Falls 49-5 and Rapid City 51-4

257. In the state's two largest school districts, Sioux Falls 49-5 and Rapid City 51-4, the public school finance system is also failing students.

258. In 2003, 45 percent of all students in the Sioux Falls school district failed to meet proficiency standards in math, and 30 percent of all students failed to meet the proficiency standards in reading. In 2004, more than 29 percent of all students failed to meet proficiency in math, and more than 21 percent failed to meet proficiency in reading. In 2005, 25 percent of all students failed to meet proficiency in math, and 17 percent failed to meet proficiency in reading.

259. In 2003, 47 percent of all students in the Rapid City school district failed to meet proficiency standards in math, and 29 percent of all students failed to meet proficiency standards in reading. In 2004, 35 percent of all students failed to meet proficiency in math, and 23 percent failed to meet proficiency in reading. In 2005, 32 percent of all students failed to meet proficiency in math, and 18 percent failed to meet proficiency in reading.

4. South Dakota school districts join together to commission an independent education funding adequacy study.

260. The indispensable first step toward providing schools with sufficient funding to provide a constitutionally adequate and basic quality education is assessing the actual cost of doing so. It is essential to determine what resources and conditions schools need in order to enable their students to meet the state's learning standards and how much funding is required to build and maintain those necessary resources and conditions.

261. To answer these questions, many states have turned to professional studies to obtain rationally based, objective information on how to fund public education so that all students have a genuine opportunity. An education adequacy study determines the amount of funds actually needed to make available the education services required to provide children an opportunity to meet the applicable state learning standards. Since 1991, at least 43 such studies have been undertaken under the direction of states or individual school districts in at least 32 states.

262. In 2005, the South Dakota Legislature passed SB 157, requiring a two-year state study on how the current school aid funding formula worked. To assist with this study, the state retained a nationally recognized expert in the area of education finance, John Myers, lead consultant of Augenblick, Palaich and Associates, Inc. ("APA"). Along with his partner Dr. John Augenblick, Myers had been previously commissioned by the South Dakota Legislative Research Council in 1989

to conduct an extensive analysis of South Dakota's then existing school funding formula, focusing in particular on the "equity" of the system. Virtually all of the recommendations made by Augenblick and Myers regarding equity at that time were adopted by the South Dakota Legislature in the 1990's.

263. The 2005 study being conducted pursuant to SB 157 is intended to address how the system could be made more efficient by reallocating existing funds. It purposefully omitted studying the question of the *amount* of funding actually needed by school districts to provide an adequate education to South Dakota's children. To its critics, this is akin to investigating how to most efficiently rearrange the deck chairs on a sinking ship, without seeking to discover what actually needs to be done in order to prevent the vessel from going under.

264. In the spring of 2005, in order to do what the Legislature refused to do and know what the Legislature refused to know, the Associated School Boards of South Dakota (ASBSD), on behalf of the South Dakota Alliance for Education representing more than 130 school districts of all sizes in South Dakota, was forced to commission an education adequacy study to determine, in a scientific and unbiased manner, the adequacy of K-12 education funding in South Dakota and to determine the actual cost of providing an adequate education to a child in South Dakota.

265. In order to ensure that the study would be unbiased and consistent with the work being done in conjunction with the state study, the Alliance retained the same education finance expert who had been twice selected and retained by the State of South Dakota, John Myers of Augenblick, Palaich and Associates, Inc., and who was already assisting the state with its "efficiency" study.

266. Myers and his firm have conducted previous education adequacy studies in more than twenty other states. APA has worked with policy makers in more than half of the states to evaluate

state school finance systems and to find ways to link school finance to education accountability and improvement. The firm has helped to create school finance systems being used in Colorado, Kansas, Kentucky, Louisiana, Mississippi, New Hampshire, Ohio, and, of course, South Dakota.

267. In conducting the education adequacy study for the South Dakota public schools system, the Alliance commissioned Myers to develop formulas to calculate the base cost per pupil amount and the cost of serving students with and without special needs for K-12 districts of varying size. The formulas were designed to reflect the cost of meeting the state's own accountability expectations for school districts.

5. The independent education adequacy study confirms that South Dakota schools are drastically underfunded.

268. The education adequacy study, completed in January of 2006 and entitled "Estimating the Cost of an Adequate Education in South Dakota," is attached to this complaint as **EXHIBIT A** and hereby incorporated by this reference.

269. The education adequacy study measured actual spending in South Dakota school districts for 2003-2004 against actual need, and determined that education spending fell dramatically short of adequate levels. Depending on the data gathering and analysis method employed, the annual shortfall was determined to be between \$133.6 million and \$405.7 million.

270. The education adequacy study employed two well-established data gathering and analysis methods in its study of South Dakota's school finance system: (1) the Successful School District approach; and (2) the Professional Judgment approach.

a. The Successful School District Approach

271. The Successful School District approach determines adequacy by examining expenditures in what are deemed to be successful school districts. This approach is based on the

assumption that one can determine an adequate spending level based on examining the expenditures of school districts that actually do generally manage to meet state standards. The Successful School District analysis is done prior to the Professional Judgment analysis.

272. Under the Successful School District approach, a base, per-student cost is determined by examining the spending of school districts that appear to successfully meet state performance standards and other criteria. In this study, 41 of South Dakota's then existing 170 school districts qualified as successful schools. The base cost, however, does not include the added costs required to adequately educate special needs students (those who are at-risk, in special education, or English language learners). To add those cost adjustments, the Successful School District approach must use the special need student cost "weights" ascertained using the Professional Judgment Approach. In addition, the Successful School District Approach uses the data developed by the Professional Judgment Approach that estimates the impact of district size on overall cost.

b. The Professional Judgment Approach

273. The Professional Judgment approach is based on the assumption that a group of experienced professional educators (panel members) can specify with reasonable precision the resource needs of schools and school districts to a specific set of performance expectations and that the cost of such resources can be professionally estimated. The Professional Judgment approach uses the Successful School District results to help identify school districts from which some Professional Judgment panel members are selected.

274. The Professional Judgment approach relies on panels of experienced educators and education service experts to specify the resources needed for different size schools and districts to educate their students to meet state and federal performance expectations. Panelists review current

state and federal academic standards and requirements and are asked to outline the resources they believe are needed to meet those requirements in large, medium, and small K-12 districts. As with the Successful School District approach, this process produces a base, per-student cost. In addition, the Professional Judgment approach examines, through the expertise of its panel of professionals, the added cost of adequately educating children with special needs and the cost impacts of district size. The added costs weights identified by the Professional Judgment approach can be separately applied to both the Professional Judgment and Successful School District base costs.

c. Key Findings of the Education Adequacy Study

275. The following table represents the education adequacy study’s findings regarding the minimum base, per student costs for South Dakota school districts to provide an adequate education to South Dakota students using the Successful School District (SSD) and Professional Judgment (PJ) approaches:

BASE PER-STUDENT COST BY DISTRICT SIZE

<u>District Size (in students)</u>	<u>SSD</u>	<u>PJ</u>	<u>Ratios</u>
100	\$7,904	\$10,662	1.35
200	\$6,667	\$8,992	1.35
300	\$6,172	\$8,325	1.35
400	\$6,010	\$8,107	1.35
500	\$5,931	\$7,999	1.35
1,000	\$5,632	\$7,596	1.35
2,500	\$5,314	\$7,167	1.35
5,000	\$4,784	\$6,453	1.35
10,000	\$4,717	\$6,362	1.35

276. This base cost per student, however, does not address all of the costs that schools and districts face. For example, the base cost only addresses the price of educating those students who

do not have any special needs. As a result, funds must also be calculated and provided to address the added cost of educating at-risk students and students in special education or English language learning (ELL) programs. The calculated added cost weights for providing an adequate education to such students is demonstrated in the following table:

WEIGHTED COSTS FOR STUDENTS WITH SPECIAL NEEDS

District Size (in students)	<u>Special Education</u>			<u>At-Risk</u>	<u>ELL</u>
	<i>Mild</i>	<i>Moderate</i>	<i>Severe</i>		
100	0.66	1.25	4.33	0.24	0.39
200	0.66	1.25	4.33	0.24	0.39
300	0.66	1.58	4.32	0.27	0.47
400	0.73	1.64	4.30	0.31	0.54
500	0.78	1.70	4.29	0.35	0.60
1,000	0.94	1.86	4.21	0.46	0.77
2,500	1.14	2.08	3.99	0.60	0.99
5,000	1.30	2.24	3.62	0.71	1.17
10,000	1.31	2.26	3.57	0.72	1.18

277. After calculating the base per student cost of providing an adequate education and adding the student rates as described above, the education adequacy study was able to arrive at actual costs per student, according to district size, of providing an adequate education for South Dakota students under the Successful School District and Professional Judgment approaches.

278. Those per student costs were then compared with the *arbitrary* amount per student that the South Dakota Legislature actually used in determining the level of funding that school districts are required to operate under using a combination of revenue raised through local assessments and state aid.

279. Under the SUCCESSFUL SCHOOL DISTRICT APPROACH, the education adequacy study determined that only 28 of 170 South Dakota school districts were spending at the level necessary to

provide an adequate education. Those school districts, which enrolled 6,652 students, spent approximately \$8.1 million in excess of the amount determined to adequate using the Successful School District approach, or an average of \$1,215 per student in excess of what was needed. However, 142 South Dakota school districts were spending *less* than the minimum amount needed to provide an adequate education to its students. *These districts were deficient in funding by a total of \$133.6 million in the year 2003-04, a deficit of \$1,148 per student on average.* These figures do not include special education costs, as South Dakota funds special education separately. Overall current special education spending was an additional \$28 million below what was necessary to provide an adequate education to special needs children using the Successful School District approach.

280. Under the PROFESSIONAL JUDGMENT APPROACH, the education adequacy study determined that only 9 of 170 South Dakota school districts were spending at levels necessary to provide an adequate education. Those districts, which enrolled 998 students, spent \$1.3 million (or \$1,316 per student) in excess of what was necessary to provide an adequate education. However, 161 South Dakota school districts were spending less than the amount necessary to provide an adequate education using the Professional Judgment approach. *These districts were deficient in funding by a total of \$405.7 million in 2003-04, or a deficit of \$3,324 per student on average.* Again, these figures do not include special education costs, as South Dakota funds special education separately. Overall current special education spending was an additional \$78 million below what was necessary to provide an adequate education to special needs children using the Professional Judgment approach.

281. Thus, the gap between the funding necessary for South Dakota school districts to provide an adequate education to our children and the funding actually provided by the South Dakota

Legislature under the South Dakota public school finance system described above, ranges from between \$133.6 million and \$405.7 million (or between \$1,148 and \$3,324 per student) per year, with an additional deficit of between \$28 million and \$78 million per year for special needs children, depending on the data collection and analysis method employed.

282. The failure of the South Dakota Legislature to use all suitable means to adequately fund public education has wreaked havoc upon the ability of South Dakota school districts to provide, and the opportunity for South Dakota children to receive, an adequate and quality education in South Dakota's elementary and secondary schools.

283. South Dakota school districts will never be able to ensure that all of their students graduate being proficient in reading and math, as required under the law, and are able to become responsible citizens, advance through higher learning institutions, obtain gainful employment, and compete in today's economy if the South Dakota Legislature persists in its failure to provide the minimum levels of funding necessary to achieve those objectives.

284. By failing to ensure that public school districts have the resources necessary to provide an adequate and quality education to our children, the South Dakota public education finance system, as established by the statutes and regulations described above, distressingly, but most assuredly, violates Article VIII of the South Dakota Constitution and denies plaintiffs and all South Dakota children their constitutional rights to an adequate and quality public education.

VI. PRAYER FOR RELIEF

WHEREFORE, the plaintiffs respectfully pray for the following relief:

- (1) That the Court enter judgment in favor of the plaintiffs and declare as follows:

- a. Education is a fundamental right under the South Dakota Constitution;
 - b. Article VIII of the South Constitution guarantees that all South Dakota children are entitled to a free, adequate and quality public education.
 - c. The constitutional standard for an adequate and quality education under the South Dakota Constitution is an education that prepares South Dakota students to (i) meet state imposed academic standards and achievement requirements; (ii) function productively as capable voters, jurors, and civic participants in a democratic society; (iii) find meaningful employment and compete effectively in the economy; and (iv) qualify for higher education.
 - d. In order to meet constitutional requirements, education funding available to school districts must be based on the actual cost of providing all students with an adequate and quality education, and the South Dakota Legislature must actually provide education funding at sufficient levels for school districts to do so.
 - e. The South Dakota public school finance system, as currently established by the South Dakota Legislature and described above, violates Article VIII, sections 1 and 15 of the South Dakota Constitution and violates plaintiffs' constitutional education rights.
- (2) That the Court issue appropriate writs of mandamus, writs of prohibition, and/or interim and permanent injunctive relief to bring the defendants into compliance with Article VIII of the South Dakota Constitution, to prohibit the defendants from administering, enforcing and/or funding those provisions of the public school financing system that are unconstitutional, and to remedy the continuing violation of plaintiffs' constitutional education rights;
 - (3) That the Court retain jurisdiction and maintain judicial oversight to assure that the Legislative and Executive Departments act appropriately to correct the constitutional inadequacies of the public school finance system that presently exists in South Dakota;

- (4) That the Court grant plaintiffs their costs and attorney fees incurred in this action; and
- (5) That the Court grant such other and further relief as it deems necessary and proper to effectuate the declaratory relief so ordered.

Dated this 21st day of June, 2006.

**JOHNSON, HEIDPRIEM, MINER,
MARLOW & JANKLOW, L.L.P.**

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