Senate Bill No. 508–Committee on Finance

CHAPTER.....

AN ACT relating to education; revising provisions governing the Nevada Plan; removing the provisions requiring a single annual count of pupils enrolled in public schools and requiring school districts to make quarterly reports of average daily enrollment; prospectively removing the provision of funding through the use of special education program units and including a multiplier to the basic support guarantee for pupils with disabilities; revising provisions governing the inclusion of pupils enrolled in kindergarten; revising provisions governing the hold harmless provisions for school districts and charter schools; creating the Contingency Account for Special Education; revising provisions governing certain persons with disabilities; requiring the Department of Education to develop a plan for implementing a multiplier to the basic support guarantee for certain categories of pupils; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Nevada Plan and declares that "the proper objective of state financial aid to public education is to ensure each Nevada child a reasonably equal educational opportunity." (NRS 387.121) To accomplish this objective, the Legislature establishes, during each legislative session and for each school year of the biennium, an estimated statewide average basic support guarantee per pupil for each school district and the basic support guarantee for each special education program unit. (NRS 387.122, 387.1221) The basic support guarantee for each school district is computed by multiplying the basic support guarantee per pupil that is established by law for the school district for each school year by pupil enrollment and adding funding for special education program units. (NRS 387.1221-387.1233; *see, e.g.*, chapter 382, Statutes of Nevada 2013, p. 2053) The calculation of basic support is based upon the count of pupils enrolled in public schools of the school district on the last day of the first school month of the school district, commonly referred to as "the count day." Under existing law, pupils enrolled in kindergarten are counted as six-tenths the count of pupils who are enrolled in grades 1 to 12, inclusive. (NRS 387.1233)

Section 4 of this bill expresses the intent of the Legislature, commencing with Fiscal Year 2016-2017, to provide additional resources to the Nevada Plan expressed as a multiplier of the basic support guarantee to meet the unique needs of certain categories of pupils, including, without limitation, pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. (NRS 387.121) **Section 9** of this bill removes "the count day" and instead requires the school districts to report to the Department of Education "average daily enrollment," which is defined in **section 5** of this bill, on a quarterly basis. (NRS 387.1211) **Section 9** also requires the Department to prescribe a process to reconcile the quarterly reports of average daily enrollment to account for pupils who leave the school district or a public school during the school year. **Section 11** of this bill removes, effective July 1, 2017, the requirement that pupils enrolled in kindergarten be counted as six-tenths and instead includes those pupils

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in the regular reporting of average daily enrollment with the pupils enrolled in grades 1 to 12, inclusive.

Section 30 of this bill repeals, effective July 1, 2016, the provision of funding for special education through special education program units and instead **section 7** of this bill requires that the basic support guarantee per pupil for each school district include a multiplier for pupils with disabilities. (NRS 387.1221, 387.122) **Section 24** of this bill creates the Contingency Account for Special Education Services and requires the State Board of Education to adopt regulations for the application, approval and disbursement of money to reimburse the school districts and charter schools for extraordinary program expenses and related services for pupils with significant disabilities.

Under existing law, if the enrollment of pupils in a school district or a charter school that is located in the school district on the count day is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school for the immediately preceding school year, the largest number from the immediately preceding 2 school years must be used for apportionment purposes to the school district or charter school, commonly referred to as the "hold harmless provision." (NRS 387.1233) **Section 9** of this bill revises this hold harmless provision so that if the enrollment of pupils in a school district or charter school based upon the average daily enrollment during the quarter is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school during the same quarter of the immediately preceding school year, the enrollment of pupils during the quarter in the immediately preceding school year must be used for purposes of apportioning money to the school district or charter school. Also under existing law, there is a hold harmless provision if a school district or a charter school has an enrollment of pupils on count day that is more than 95 percent of the enrollment of pupils in the same school district or charter school for the immediately preceding school year, the larger enrollment number from the current school year or the immediately preceding school year must be used for apportioning money to the school district or charter school. (NRS 387.1233) **Section 9** removes this hold harmless provision.

Section 28 of this bill requires the Department of Education to develop a plan as soon as practicable to provide additional resources to the Nevada Plan expressed as a multiplier of the basic support guarantee to meet the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. The plan must include: (1) the amount of the multiplier for each such category of pupils; and (2) the date by which the plan should be implemented or phased in, with full implementation occurring not later than Fiscal Year 2021-2022. **Section 28** further requires the Department to submit the plan to the Legislative Committee on Education for its review and consideration during the 2015-2016 interim and requires the Committee to submit a report on the plan on or before October 1, 2016, to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Nevada Legislature. **Section 28** also requires the Superintendent of Public Instruction to submit a report on or before October 1, 2016, to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Nevada Legislature that includes: (1) the per pupil expenditures associated with legislative appropriations for pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils; and (2) any recommendations for legislation to address the unique needs of those pupils. **Section 29** of this bill provides for the allocation of funding for pupils with disabilities for Fiscal Year 2016-2017.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 386.513 is hereby amended to read as follows:

386.513 1. The State Public Charter School Authority is hereby deemed a local educational agency for the purpose of directing the proportionate share of any money available from federal and state categorical grant programs to charter schools which are sponsored by the State Public Charter School Authority or a college or university within the Nevada System of Higher Education that are eligible to receive such money. A charter school that receives money pursuant to such a grant program shall comply with any applicable reporting requirements to receive the grant.

2. ~~[If the charter school is eligible to receive special education program units, the Department shall pay the special education program units directly to the charter school.~~

~~3.]~~ As used in this section, "local educational agency" has the meaning ascribed to it in 20 U.S.C. § 7801(26)(A).

Sec. 2. NRS 386.570 is hereby amended to read as follows:

386.570 1. Each pupil who is enrolled in a charter school, including, without limitation, a pupil who is enrolled in a program of special education in a charter school, must be included in the count of pupils in the school district for the purposes of apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, unless the pupil is exempt from compulsory attendance pursuant to NRS 392.070. A charter school is entitled to receive its proportionate share of any other money available from federal, state or local sources that the school or the pupils who are enrolled in the school are eligible to receive. If a charter school receives special education program units directly from this State, the amount of money for special education that the school district pays to the charter school may be reduced proportionately by the amount of money the charter school received from this State for that purpose. The State Board shall prescribe a process which ensures that all charter schools, regardless of the sponsor, have information about all sources of funding for the public schools provided through the Department, including local funds pursuant to NRS 387.1235.

2. All money received by the charter school from this State or from the board of trustees of a school district must be deposited in an account with a bank, credit union or other financial institution in

this State. The governing body of a charter school may negotiate with the board of trustees of the school district and the State Board for additional money to pay for services which the governing body wishes to offer.

3. Upon completion of each school quarter, the Superintendent of Public Instruction shall pay to the sponsor of a charter school one-quarter of the yearly sponsorship fee for the administrative costs associated with sponsorship for that school quarter, which must be deducted from the quarterly apportionment to the charter school made pursuant to NRS 387.124. Except as otherwise provided in subsection 4, the yearly sponsorship fee for the sponsor of a charter school must be in an amount of money not to exceed 2 percent of the total amount of money apportioned to the charter school during the school year pursuant to NRS 387.124.

4. If the governing body of a charter school satisfies the requirements of this subsection, the governing body may submit a request to the sponsor of the charter school for approval of a sponsorship fee in an amount that is less than 2 percent but at least 1 percent of the total amount of money apportioned to the charter school during the school year pursuant to NRS 387.124. The sponsor of the charter school shall approve such a request if the sponsor of the charter school determines that the charter school satisfies the requirements of this subsection. If the sponsor of the charter school approves such a request, the sponsor shall provide notice of the decision to the governing body of the charter school and the Superintendent of Public Instruction. If the sponsor of the charter school denies such a request, the governing body of the charter school may appeal the decision of the sponsor to the Superintendent of Public Instruction. Upon appeal, the sponsor of the charter school and the governing body of the charter school are entitled to present evidence. The decision of the Superintendent of Public Instruction on the appeal is final and is not subject to judicial review. The governing body of a charter school may submit a request for a reduction of the sponsorship fee pursuant to this subsection if:

(a) The charter school satisfies the requirements of subsection 1 of NRS 386.5515; and

(b) There has been a decrease in the duties of the sponsor of the charter school that justifies a decrease in the sponsorship fee.

5. To determine the amount of money for distribution to a charter school in its first year of operation, the count of pupils who are enrolled in the charter school must initially be determined 30 days before the beginning of the school year of the school district,

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based on the number of pupils whose applications for enrollment have been approved by the charter school. The count of pupils who are enrolled in the charter school must be revised ~~[on the last day of the first school month of the school district in which the charter school is located for the school year,]~~ ***each quarter*** based on the ~~[actual number]~~ ***average daily enrollment*** of pupils ~~[who are enrolled]~~ in the charter school ~~[.]~~ ***that is reported for that quarter pursuant to NRS 387.1233.*** Pursuant to subsection 5 of NRS 387.124, the governing body of a charter school may request that the apportionments made to the charter school in its first year of operation be paid to the charter school 30 days before the apportionments are otherwise required to be made.

6. If a charter school ceases to operate as a charter school during a school year, the remaining apportionments that would have been made to the charter school pursuant to NRS 387.124 for that year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the charter school reside.

7. The governing body of a charter school may solicit and accept donations, money, grants, property, loans, personal services or other assistance for purposes relating to education from members of the general public, corporations or agencies. The governing body may comply with applicable federal laws and regulations governing the provision of federal grants for charter schools. The State Public Charter School Authority may assist a charter school that operates exclusively for the enrollment of pupils who receive special education in identifying sources of money that may be available from the Federal Government or this State for the provision of educational programs and services to such pupils.

Sec. 3. NRS 386.570 is hereby amended to read as follows:

386.570 1. Each pupil who is enrolled in a charter school, including, without limitation, a pupil who is enrolled in a program of special education in a charter school, must be included in the count of pupils in the school district for the purposes of apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, unless the pupil is exempt from compulsory attendance pursuant to NRS 392.070. A charter school is entitled to receive its proportionate share of any other money available from federal, state or local sources that the school or the pupils who are enrolled in the school are eligible to receive. ~~[If a charter school receives special education program units directly from this State, the amount of money for special education that the school district pays to the charter school may be reduced proportionately by the amount of money the charter~~

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~~school received from this State for that purpose.]~~ The State Board shall prescribe a process which ensures that all charter schools, regardless of the sponsor, have information about all sources of funding for the public schools provided through the Department, including local funds pursuant to NRS 387.1235.

2. All money received by the charter school from this State or from the board of trustees of a school district must be deposited in an account with a bank, credit union or other financial institution in this State. The governing body of a charter school may negotiate with the board of trustees of the school district and the State Board for additional money to pay for services which the governing body wishes to offer.

3. Upon completion of each school quarter, the Superintendent of Public Instruction shall pay to the sponsor of a charter school one-quarter of the yearly sponsorship fee for the administrative costs associated with sponsorship for that school quarter, which must be deducted from the quarterly apportionment to the charter school made pursuant to NRS 387.124. Except as otherwise provided in subsection 4, the yearly sponsorship fee for the sponsor of a charter school must be in an amount of money not to exceed 2 percent of the total amount of money apportioned to the charter school during the school year pursuant to NRS 387.124.

4. If the governing body of a charter school satisfies the requirements of this subsection, the governing body may submit a request to the sponsor of the charter school for approval of a sponsorship fee in an amount that is less than 2 percent but at least 1 percent of the total amount of money apportioned to the charter school during the school year pursuant to NRS 387.124. The sponsor of the charter school shall approve such a request if the sponsor of the charter school determines that the charter school satisfies the requirements of this subsection. If the sponsor of the charter school approves such a request, the sponsor shall provide notice of the decision to the governing body of the charter school and the Superintendent of Public Instruction. If the sponsor of the charter school denies such a request, the governing body of the charter school may appeal the decision of the sponsor to the Superintendent of Public Instruction. Upon appeal, the sponsor of the charter school and the governing body of the charter school are entitled to present evidence. The decision of the Superintendent of Public Instruction on the appeal is final and is not subject to judicial review. The governing body of a charter school may submit a request for a reduction of the sponsorship fee pursuant to this subsection if:

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(a) The charter school satisfies the requirements of subsection 1 of NRS 386.5515; and

(b) There has been a decrease in the duties of the sponsor of the charter school that justifies a decrease in the sponsorship fee.

5. To determine the amount of money for distribution to a charter school in its first year of operation, the count of pupils who are enrolled in the charter school must initially be determined 30 days before the beginning of the school year of the school district, based on the number of pupils whose applications for enrollment have been approved by the charter school. The count of pupils who are enrolled in the charter school must be revised each quarter based on the average daily enrollment of pupils in the charter school that is reported pursuant to NRS 387.1233. Pursuant to subsection 5 of NRS 387.124, the governing body of a charter school may request that the apportionments made to the charter school in its first year of operation be paid to the charter school 30 days before the apportionments are otherwise required to be made.

6. If a charter school ceases to operate as a charter school during a school year, the remaining apportionments that would have been made to the charter school pursuant to NRS 387.124 for that year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the charter school reside.

7. The governing body of a charter school may solicit and accept donations, money, grants, property, loans, personal services or other assistance for purposes relating to education from members of the general public, corporations or agencies. The governing body may comply with applicable federal laws and regulations governing the provision of federal grants for charter schools. The State Public Charter School Authority may assist a charter school that operates exclusively for the enrollment of pupils who receive special education in identifying sources of money that may be available from the Federal Government or this State for the provision of educational programs and services to such pupils.

Sec. 4. NRS 387.121 is hereby amended to read as follows:

387.121 ***1.*** The Legislature declares that the proper objective of state financial aid to public education is to ensure each Nevada child a reasonably equal educational opportunity. Recognizing wide local variations in wealth and costs per pupil, this State should supplement local financial ability to whatever extent necessary in each school district to provide programs of instruction in both compulsory and elective subjects that offer full opportunity for every Nevada child to receive the benefit of the purposes for which public schools are maintained. Therefore, the quintessence of the

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State's financial obligation for such programs can be expressed in a formula partially on a per pupil basis and partially on a per program basis as: State financial aid to school districts equals the difference between school district basic support guarantee and local available funds produced by mandatory taxes minus all the local funds attributable to pupils who reside in the county but attend a charter school or a university school for profoundly gifted pupils. This formula is designated the Nevada Plan.

2. It is the intent of the Legislature, commencing with Fiscal Year 2016-2017, to provide additional resources to the Nevada Plan expressed as a multiplier of the basic support guarantee to meet the unique needs of certain categories of pupils, including, without limitation, pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. As used in this subsection, "pupils who are at risk" means pupils who are eligible for free or reduced-price lunch pursuant to 42 U.S.C. §§ 1751 et seq., or an alternative measure prescribed by the State Board of Education.

Sec. 5. NRS 387.1211 is hereby amended to read as follows:

387.1211 As used in NRS 387.121 to 387.126, inclusive:

1. "Average daily attendance" means the total number of pupils attending a particular school each day during a period of reporting divided by the number of days school is in session during that period.

2. ***"Average daily enrollment" means the total number of pupils enrolled in and scheduled to attend a public school in a specific school district during a period of reporting divided by the number of days school is in session during that period.***

3. "Enrollment" means the count of pupils enrolled in and scheduled to attend programs of instruction of a school district, charter school or university school for profoundly gifted pupils at a specified time during the school year.

~~[3.]~~ ***4.*** "Special education program unit" means an organized unit of special education and related services which includes full-time services of persons licensed by the Superintendent of Public Instruction or other appropriate licensing body, providing a program of instruction in accordance with minimum standards prescribed by the State Board.

Sec. 6. NRS 387.1211 is hereby amended to read as follows:

387.1211 As used in NRS 387.121 to 387.126, inclusive:

1. "Average daily attendance" means the total number of pupils attending a particular school each day during a period of reporting

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divided by the number of days school is in session during that period.

2. "Average daily enrollment" means the total number of pupils enrolled in and scheduled to attend a public school in a specific school district during a period of reporting divided by the number of days school is in session during that period.

3. "Enrollment" means the count of pupils enrolled in and scheduled to attend programs of instruction of a school district, charter school or university school for profoundly gifted pupils at a specified time during the school year.

~~[4. "Special education program unit" means an organized unit of special education and related services which includes full-time services of persons licensed by the Superintendent of Public Instruction or other appropriate licensing body, providing a program of instruction in accordance with minimum standards prescribed by the State Board.]~~

Sec. 7. NRS 387.122 is hereby amended to read as follows:

387.122 ***1.*** For making the apportionments of the State Distributive School Account in the State General Fund required by the provisions of this title, the basic support guarantee per pupil for each school district and the basic support guarantee for each special education program unit maintained and operated during at least 9 months of a school year are established by law for each school year. ***The formula for calculating the basic support guarantee may be expressed as an estimated weighted average per pupil, based on the total expenditures for public education in the immediately preceding even-numbered fiscal year, plus any legislative appropriations for the immediately succeeding biennium, minus those local funds not guaranteed by the State pursuant to NRS 387.1235.***

2. The estimated weighted average per pupil for the State must be calculated as a basic support guarantee for each school district through an equity allocation model that incorporates:

(a) Factors relating to wealth in the school district;

(b) Salary costs;

(c) Transportation; and

(d) Any other factor determined by the Superintendent of Public Instruction after consultation with the school districts and the State Public Charter School Authority.

3. Not later than July 1 of each even-numbered year, the Superintendent of Public Instruction shall review and, if necessary, revise the factors used for the equity allocation model adopted for the previous biennium and present the review and any

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revisions at a meeting of the Legislative Committee on Education for consideration and recommendations by the Committee. After the meeting, the Superintendent of Public Instruction shall consider any recommendations of the Legislative Committee on Education, determine whether to include those recommendations in the equity allocation model and adopt the model. The Superintendent of Public Instruction shall submit the equity allocation model to the:

(a) Governor for inclusion in the proposed executive budget.

(b) Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature.

4. The Department shall make available updated information regarding the equity allocation model on the Internet website maintained by the Department.

Sec. 8. NRS 387.122 is hereby amended to read as follows:

387.122 1. For making the apportionments of the State Distributive School Account in the State General Fund required by the provisions of this title, the basic support guarantee per pupil for each school district ~~[and the basic support guarantee for each special education program unit maintained and operated during at least 9 months of a school year are]~~ ***is*** established by law for each school year. The formula for calculating the basic support guarantee may be expressed as an estimated weighted average per pupil, based on the total expenditures for public education in the immediately preceding ***even-numbered*** fiscal year, plus any legislative appropriations for the immediately succeeding biennium, minus those local funds not guaranteed by the State pursuant to NRS 387.1235.

2. The estimated weighted average per pupil for the State must be calculated as a basic support guarantee for each school district through an equity allocation model that incorporates:

(a) Factors relating to wealth in the school district;

(b) Salary costs;

(c) Transportation; and

(d) Any other factor determined by the Superintendent of Public Instruction after consultation with the school districts and the State Public Charter School Authority.

3. ***The basic support guarantee per pupil must include a multiplier for pupils with disabilities. Except as otherwise provided in this subsection, the funding provided to each school district and charter school through the multiplier for pupils with disabilities is limited to the actual number of pupils with disabilities enrolled in the school district or charter school, not to exceed 13 percent of***

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total pupil enrollment for the school district or charter school. If a school district or charter school has reported an enrollment of pupils with disabilities equal to more than 13 percent of total pupil enrollment, the school district or charter school must receive an amount of money necessary to satisfy the requirements for maintenance of effort under federal law.

4. Not later than July 1 of each even-numbered year, the Superintendent of Public Instruction shall ***review and, if necessary,*** revise the ***factors used for the*** equity allocation model adopted for the previous biennium and present the ***review and any revisions*** at a meeting of the Legislative Committee on Education for consideration and recommendations by the Committee. After the meeting, the Superintendent of Public Instruction shall ***consider any recommendations of the Legislative Committee on Education, determine whether to include those recommendations in the equity allocation model and*** adopt the ***model. The Superintendent of Public Instruction shall*** submit ***the equity allocation model*** to the ***:***

(a) Governor for inclusion in the proposed executive budget.

(b) Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature.

5. The Department shall make available updated information regarding the ***equity allocation model*** on the Internet website maintained by the Department.

Sec. 9. NRS 387.1233 is hereby amended to read as follows:

387.1233 1. ***On or before October 1, January 1, April 1 and July 1, each school district shall report to the Department, in the form prescribed by the Department, the average daily enrollment of pupils pursuant to this section for the immediately preceding quarter of the school year.***

2. Except as otherwise provided in subsection ~~[2,]~~ ***3,*** basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) Six-tenths the count of pupils enrolled in the kindergarten department ~~[on the last day of the first school month of the school district for the school year,]~~ ***, based on the average daily enrollment of those pupils during the quarter,*** including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school ***.*** ~~[on the last day of the first school month of the school district for the school year.]~~

(2) The count of pupils enrolled in grades 1 to 12, inclusive, ~~[on the last day of the first school month of the school district for the school year,]~~ ***, based on the average daily enrollment of those***

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pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school ~~[on the last day of the first school month of the school district for the school year]~~ and the count of pupils who are enrolled in a university school for profoundly gifted pupils located in the county.

(3) The count of pupils not included under subparagraph (1) or (2) who are enrolled full-time in a program of distance education provided by that school district or a charter school located within that school district ~~[on the last day of the first school month of the school district for the school year.]~~ ***, based on the average daily enrollment of those pupils during the quarter.***

(4) The count of pupils who reside in the county and are enrolled:

(I) In a public school of the school district and are concurrently enrolled part-time in a program of distance education provided by another school district or a charter school ~~[on the last day of the first school month of the school district for the school year,]~~ ***, based on the average daily enrollment of those pupils during the quarter and*** expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(II) In a charter school and are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school ~~[on the last day of the first school month of the school district for the school year,]~~ ***, based on the average daily enrollment of those pupils during the quarter and*** expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(5) The count of pupils not included under subparagraph (1), (2), (3) or (4), who are receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive, ~~[on the last day of the first school month of the school district for the school year,]~~ ***based on the average daily enrollment of those pupils during the quarter and*** excluding the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475 ***.*** ~~[on that day.]~~

(6) Six-tenths the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475 ~~[on the last day of the first school~~

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~~month of the school district for the school year.]~~ ***, based on the average daily enrollment of those pupils during the quarter.***

(7) The count of children detained in facilities for the detention of children, alternative programs and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570 ~~[on the last day of the first school month of the school district for the school year.]~~ ***, based on the average daily enrollment of those pupils during the quarter.***

(8) The count of pupils who are enrolled in classes for at least one semester pursuant to subsection 5 of NRS 386.560, subsection 5 of NRS 386.580 or subsection 3 of NRS 392.070, ***based on the average daily enrollment of pupils during the quarter and*** expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(b) Multiplying the number of special education program units maintained and operated by the amount per program established for that school year.

(c) Adding the amounts computed in paragraphs (a) and (b).

~~[2.]~~ ***3.*** Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district on the last day of the first school month of the school district for the school year is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school on the last day of the first school month of the school district for the immediately preceding school year, the ~~[largest number from among the]~~ immediately preceding ~~[2]~~ school ~~[years]~~ ***year*** must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

~~[3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district on the last day of the first school month of the school district for the school year is more than 95 percent of the enrollment of pupils in the same school district or charter school on the last day of the first school month of the school district for the immediately preceding school year, the larger enrollment number from the current year or the immediately preceding school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.]~~

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4. If the Department determines that a school district or charter school deliberately causes a decline in the enrollment of pupils in the school district or charter school to receive a higher apportionment pursuant to subsection 2 ***,*** ~~[or 3,]~~ including, without limitation, by eliminating grades or moving into smaller facilities, the enrollment number from the current school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

5. ***The Department shall prescribe a process for reconciling the quarterly reports submitted pursuant to subsection 1 to account for pupils who leave the school district or a public school during the school year.***

6. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

~~[6.]~~ ***7.*** Pupils who are incarcerated in a facility or institution operated by the Department of Corrections must not be counted for the purpose of computing basic support pursuant to this section. The average daily attendance for such pupils must be reported to the Department of Education.

~~[7.]~~ ***8.*** Pupils who are enrolled in courses which are approved by the Department as meeting the requirements for an adult to earn a high school diploma must not be counted for the purpose of computing basic support pursuant to this section.

Sec. 10. NRS 387.1233 is hereby amended to read as follows:

387.1233 1. On or before October 1, January 1, April 1 and July 1, each school district shall report to the Department, in the form prescribed by the Department, the average daily enrollment of pupils pursuant to this section for the immediately preceding quarter of the school year.

2. Except as otherwise provided in subsection 3, basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) Six-tenths the count of pupils enrolled in the kindergarten department, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school.

(2) The count of pupils enrolled in grades 1 to 12, inclusive, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school and the count of

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pupils who are enrolled in a university school for profoundly gifted pupils located in the county.

(3) The count of pupils not included under subparagraph (1) or (2) who are enrolled full-time in a program of distance education provided by that school district or a charter school located within that school district, based on the average daily enrollment of those pupils during the quarter.

(4) The count of pupils who reside in the county and are enrolled:

(I) In a public school of the school district and are concurrently enrolled part-time in a program of distance education provided by another school district or a charter school, based on the average daily enrollment of those pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(II) In a charter school and are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school, based on the average daily enrollment of those pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(5) The count of pupils not included under subparagraph (1), (2), (3) or (4), who are receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive, based on the average daily enrollment of those pupils during the quarter and excluding the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475.

(6) Six-tenths the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475, based on the average daily enrollment of those pupils during the quarter.

(7) The count of children detained in facilities for the detention of children, alternative programs and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570, based on the average daily enrollment of those pupils during the quarter.

(8) The count of pupils who are enrolled in classes for at least one semester pursuant to subsection 5 of NRS 386.560, subsection 5 of NRS 386.580 or subsection 3 of NRS 392.070,

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based on the average daily enrollment of pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(b) ~~[Multiplying the number of special education program units maintained and operated by the amount per program established for that school year.~~

~~(c)]~~ Adding the amounts computed in ~~[paragraphs]~~ ***paragraph*** (a) ***.*** ~~[and (b).]~~

3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district ~~[on the last day of the first school month of the school district for]~~ ***based on the average daily enrollment of pupils during the quarter of*** the school year is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school ~~[on]~~ ***based on the average daily enrollment of pupils during*** the ~~[last day of the first school month of the school district for]~~ ***same quarter of*** the immediately preceding school year, the ***enrollment of pupils during the same quarter of the*** immediately preceding school year must be used for purposes of ~~[apportioning money]~~ ***making the quarterly apportionments*** from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

4. If the Department determines that a school district or charter school deliberately causes a decline in the enrollment of pupils in the school district or charter school to receive a higher apportionment pursuant to subsection 2, including, without limitation, by eliminating grades or moving into smaller facilities, the enrollment number from the current school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

5. The Department shall prescribe a process for reconciling the quarterly reports submitted pursuant to subsection 1 to account for pupils who leave the school district or a public school during the school year.

6. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

7. Pupils who are incarcerated in a facility or institution operated by the Department of Corrections must not be counted for the purpose of computing basic support pursuant to this section. The

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average daily attendance for such pupils must be reported to the Department of Education.

8. Pupils who are enrolled in courses which are approved by the Department as meeting the requirements for an adult to earn a high school diploma must not be counted for the purpose of computing basic support pursuant to this section.

Sec. 11. NRS 387.1233 is hereby amended to read as follows:

387.1233 1. On or before October 1, January 1, April 1 and July 1, each school district shall report to the Department, in the form prescribed by the Department, the average daily enrollment of pupils pursuant to this section for the immediately preceding quarter of the school year.

2. Except as otherwise provided in subsection 3, basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) ~~[Six-tenths the count of pupils enrolled in the kindergarten department, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school.~~

~~(2)]~~ The count of pupils enrolled in ***kindergarten and*** grades 1 to 12, inclusive, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school and the count of pupils who are enrolled in a university school for profoundly gifted pupils located in the county.

~~[(3)]~~ ***(2)*** The count of pupils not included under subparagraph (1) ~~[or (2)]~~ who are enrolled full-time in a program of distance education provided by that school district or a charter school located within that school district, based on the average daily enrollment of those pupils during the quarter.

~~[(4)]~~ ***(3)*** The count of pupils who reside in the county and are enrolled:

(I) In a public school of the school district and are concurrently enrolled part-time in a program of distance education provided by another school district or a charter school, based on the average daily enrollment of those pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph ~~[(2).]~~ ***(1).***

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(II) In a charter school and are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school, based on the average daily enrollment of those pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph ~~[~~(2).~~]~~ ***(1).***

~~[~~(5)~~]~~ ***(4)*** The count of pupils not included under subparagraph (1), (2) ~~[,]~~ ***or*** (3) ***,*** ~~[or (4),]~~ who are receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive, based on the average daily enrollment of those pupils during the quarter and excluding the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475.

~~[~~(6)~~]~~ ***(5)*** Six-tenths the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475, based on the average daily enrollment of those pupils during the quarter.

~~[~~(7)~~]~~ ***(6)*** The count of children detained in facilities for the detention of children, alternative programs and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570, based on the average daily enrollment of those pupils during the quarter.

~~[~~(8)~~]~~ ***(7)*** The count of pupils who are enrolled in classes for at least one semester pursuant to subsection 5 of NRS 386.560, subsection 5 of NRS 386.580 or subsection 3 of NRS 392.070, based on the average daily enrollment of pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph ~~[~~(2).~~]~~ ***(1).***

(b) Adding the amounts computed in paragraph (a).

3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district based on the average daily enrollment of pupils during the quarter of the school year is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school based on the average daily enrollment of pupils during the same quarter of the immediately preceding school year, the enrollment of pupils during the same quarter of the immediately preceding school year must be used for purposes of making the quarterly apportionments from the State

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Distributive School Account to that school district or charter school pursuant to NRS 387.124.

4. If the Department determines that a school district or charter school deliberately causes a decline in the enrollment of pupils in the school district or charter school to receive a higher apportionment pursuant to subsection 2, including, without limitation, by eliminating grades or moving into smaller facilities, the enrollment number from the current school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

5. The Department shall prescribe a process for reconciling the quarterly reports submitted pursuant to subsection 1 to account for pupils who leave the school district or a public school during the school year.

6. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

7. Pupils who are incarcerated in a facility or institution operated by the Department of Corrections must not be counted for the purpose of computing basic support pursuant to this section. The average daily attendance for such pupils must be reported to the Department of Education.

8. Pupils who are enrolled in courses which are approved by the Department as meeting the requirements for an adult to earn a high school diploma must not be counted for the purpose of computing basic support pursuant to this section.

Sec. 12. NRS 387.124 is hereby amended to read as follows:

387.124 Except as otherwise provided in this section and NRS 387.528:

1. On or before August 1, November 1, February 1 and May 1 of each year, the Superintendent of Public Instruction shall apportion the State Distributive School Account in the State General Fund among the several county school districts, charter schools and university schools for profoundly gifted pupils in amounts approximating one-fourth of their respective yearly apportionments less any amount set aside as a reserve. Except as otherwise provided in NRS 387.1244, the apportionment to a school district, computed on a yearly basis, equals the difference between the basic support and the local funds available pursuant to NRS 387.1235, minus all the funds attributable to pupils who reside in the county but attend a charter school, all the funds attributable to pupils who reside in the county and are enrolled full-time or part-time in a program of

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distance education provided by another school district or a charter school and all the funds attributable to pupils who are enrolled in a university school for profoundly gifted pupils located in the county. No apportionment may be made to a school district if the amount of the local funds exceeds the amount of basic support.

2. Except as otherwise provided in subsection 3 and NRS 387.1244, the apportionment to a charter school, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides minus the sponsorship fee prescribed by NRS 386.570 and minus all the funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school. If the apportionment per pupil to a charter school is more than the amount to be apportioned to the school district in which a pupil who is enrolled in the charter school resides, the school district in which the pupil resides shall pay the difference directly to the charter school.

3. Except as otherwise provided in NRS 387.1244, the apportionment to a charter school that is sponsored by the State Public Charter School Authority or by a college or university within the Nevada System of Higher Education, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides, minus the sponsorship fee prescribed by NRS 386.570 and minus all funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school.

4. Except as otherwise provided in NRS 387.1244, in addition to the apportionments made pursuant to this section, an apportionment must be made to a school district or charter school that provides a program of distance education for each pupil who is enrolled part-time in the program. The amount of the apportionment must be equal to the percentage of the total time services are provided to the pupil through the program of distance education per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2) of paragraph (a) of subsection ~~[1]~~ *2* of NRS 387.1233 for the school district in which the pupil resides.

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5. The governing body of a charter school may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the charter school, an apportionment 30 days before the apportionment is required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A charter school may receive all four apportionments in advance in its first year of operation.

6. Except as otherwise provided in NRS 387.1244, the apportionment to a university school for profoundly gifted pupils, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the university school is located plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the university school is located. If the apportionment per pupil to a university school for profoundly gifted pupils is more than the amount to be apportioned to the school district in which the university school is located, the school district shall pay the difference directly to the university school. The governing body of a university school for profoundly gifted pupils may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the university school, an apportionment 30 days before the apportionment is required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A university school for profoundly gifted pupils may receive all four apportionments in advance in its first year of operation.

7. The Superintendent of Public Instruction shall apportion, on or before August 1 of each year, the money designated as the "Nutrition State Match" pursuant to NRS 387.105 to those school districts that participate in the National School Lunch Program, 42 U.S.C. §§ 1751 et seq. The apportionment to a school district must be directly related to the district's reimbursements for the Program as compared with the total amount of reimbursements for all school districts in this State that participate in the Program.

8. If the State Controller finds that such an action is needed to maintain the balance in the State General Fund at a level sufficient to pay the other appropriations from it, the State Controller may pay out the apportionments monthly, each approximately one-twelfth of the yearly apportionment less any amount set aside as a reserve. If such action is needed, the State Controller shall submit a report to

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the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau documenting reasons for the action.

Sec. 13. NRS 387.124 is hereby amended to read as follows:

387.124 Except as otherwise provided in this section and NRS 387.528:

1. On or before August 1, November 1, February 1 and May 1 of each year, the Superintendent of Public Instruction shall apportion the State Distributive School Account in the State General Fund among the several county school districts, charter schools and university schools for profoundly gifted pupils in amounts approximating one-fourth of their respective yearly apportionments less any amount set aside as a reserve. Except as otherwise provided in NRS 387.1244, the apportionment to a school district, computed on a yearly basis, equals the difference between the basic support and the local funds available pursuant to NRS 387.1235, minus all the funds attributable to pupils who reside in the county but attend a charter school, all the funds attributable to pupils who reside in the county and are enrolled full-time or part-time in a program of distance education provided by another school district or a charter school and all the funds attributable to pupils who are enrolled in a university school for profoundly gifted pupils located in the county. No apportionment may be made to a school district if the amount of the local funds exceeds the amount of basic support.

2. Except as otherwise provided in subsection 3 and NRS 387.1244, the apportionment to a charter school, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides minus the sponsorship fee prescribed by NRS 386.570 and minus all the funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school. If the apportionment per pupil to a charter school is more than the amount to be apportioned to the school district in which a pupil who is enrolled in the charter school resides, the school district in which the pupil resides shall pay the difference directly to the charter school.

3. Except as otherwise provided in NRS 387.1244, the apportionment to a charter school that is sponsored by the State Public Charter School Authority or by a college or university within the Nevada System of Higher Education, computed on a yearly

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basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides, minus the sponsorship fee prescribed by NRS 386.570 and minus all funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school.

4. Except as otherwise provided in NRS 387.1244, in addition to the apportionments made pursuant to this section, an apportionment must be made to a school district or charter school that provides a program of distance education for each pupil who is enrolled part-time in the program. The amount of the apportionment must be equal to the percentage of the total time services are provided to the pupil through the program of distance education per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph ~~[(2)]~~ *(1)* of paragraph (a) of subsection 2 of NRS 387.1233 for the school district in which the pupil resides.

5. The governing body of a charter school may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the charter school, an apportionment 30 days before the apportionment is required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A charter school may receive all four apportionments in advance in its first year of operation.

6. Except as otherwise provided in NRS 387.1244, the apportionment to a university school for profoundly gifted pupils, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the university school is located plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the university school is located. If the apportionment per pupil to a university school for profoundly gifted pupils is more than the amount to be apportioned to the school district in which the university school is located, the school district shall pay the difference directly to the university school. The governing body of a university school for profoundly gifted pupils may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the university school, an apportionment 30 days before the apportionment is

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required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A university school for profoundly gifted pupils may receive all four apportionments in advance in its first year of operation.

7. The Superintendent of Public Instruction shall apportion, on or before August 1 of each year, the money designated as the "Nutrition State Match" pursuant to NRS 387.105 to those school districts that participate in the National School Lunch Program, 42 U.S.C. §§ 1751 et seq. The apportionment to a school district must be directly related to the district's reimbursements for the Program as compared with the total amount of reimbursements for all school districts in this State that participate in the Program.

8. If the State Controller finds that such an action is needed to maintain the balance in the State General Fund at a level sufficient to pay the other appropriations from it, the State Controller may pay out the apportionments monthly, each approximately one-twelfth of the yearly apportionment less any amount set aside as a reserve. If such action is needed, the State Controller shall submit a report to the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau documenting reasons for the action.

Sec. 14. NRS 387.1243 is hereby amended to read as follows:

387.1243 1. The first apportionment based on an estimated number of pupils and special education program units and succeeding apportionments are subject to adjustment from time to time as the need therefor may appear, including, without limitation, an adjustment made for a pupil who is not properly enrolled in or attending a public school, as determined through an independent audit or other examination conducted pursuant to NRS 387.126 or through an annual audit of the count of pupils conducted pursuant to subsection 1 of NRS 387.304.

2. The apportionments to a school district may be adjusted during a fiscal year by the Department of Education, upon approval by the State Board of Examiners and the Interim Finance Committee, if the Department of Taxation and the county assessor in the county in which the school district is located certify to the Department of Education that the school district will not receive the tax levied pursuant to subsection 1 of NRS 387.195 on property of the Federal Government located within the county if:

(a) The leasehold interest, possessory interest, beneficial interest or beneficial use of the property is subject to taxation pursuant to

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NRS 361.157 and 361.159 and one or more lessees or users of the property are delinquent in paying the tax; and

(b) The total amount of tax owed but not paid for the fiscal year by any such lessees and users is at least 5 percent of the proceeds that the school district would have received from the tax levied pursuant to subsection 1 of NRS 387.195.

➥ If a lessee or user pays the tax owed after the school district's apportionment has been increased in accordance with the provisions of this subsection to compensate for the tax owed, the school district shall repay to the State Distributive School Account in the State General Fund an amount equal to the tax received from the lessee or user for the year in which the school district received an increased apportionment, not to exceed the increase in apportionments made to the school district pursuant to this subsection.

3. On or before August 1 of each year, the board of trustees of a school district shall provide to the Department, in a format prescribed by the Department, the count of pupils calculated pursuant to subparagraph (8) of paragraph (a) of subsection ~~[1]~~ *2* of NRS 387.1233 who completed at least one semester during the immediately preceding school year. ~~[The count of pupils submitted to the Department must be included in the final adjustment computed pursuant to subsection 4.~~

~~4. A final adjustment for each school district, charter school and university school for profoundly gifted pupils must be computed as soon as practicable following the close of the school year, but not later than August 25. The final computation must be based upon the actual counts of pupils required to be made for the computation of basic support and the limits upon the support of special education programs, except that for any year when the total enrollment of pupils and children in a school district, a charter school located within the school district or a university school for profoundly gifted pupils located within the school district described in paragraphs (a), (b), (c) and (e) of subsection 1 of NRS 387.123 is greater on the last day of any school month of the school district after the second school month of the school district and the increase in enrollment shows at least:~~

~~(a) A 3 percent gain, basic support as computed from first month enrollment for the school district, charter school or university school for profoundly gifted pupils must be increased by 2 percent.~~

~~(b) A 6 percent gain, basic support as computed from first month enrollment for the school district, charter school or university school for profoundly gifted pupils must be increased by an additional 2 percent.~~

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~~5.]~~ *4.* If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils exceeds the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the additional amount due must be paid before September 1. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils is less than the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the difference must be repaid to the State Distributive School Account in the State General Fund by the school district, charter school or university school for profoundly gifted pupils before September 25.

Sec. 15. NRS 387.1243 is hereby amended to read as follows:

387.1243 1. The first apportionment based on an estimated number of pupils ~~[and special education program units]~~ and succeeding apportionments are subject to adjustment from time to time as the need therefor may appear, including, without limitation, an adjustment made for a pupil who is not properly enrolled in or attending a public school, as determined through an independent audit or other examination conducted pursuant to NRS 387.126 or through an annual audit of the count of pupils conducted pursuant to subsection 1 of NRS 387.304.

2. The apportionments to a school district may be adjusted during a fiscal year by the Department of Education, upon approval by the State Board of Examiners and the Interim Finance Committee, if the Department of Taxation and the county assessor in the county in which the school district is located certify to the Department of Education that the school district will not receive the tax levied pursuant to subsection 1 of NRS 387.195 on property of the Federal Government located within the county if:

(a) The leasehold interest, possessory interest, beneficial interest or beneficial use of the property is subject to taxation pursuant to NRS 361.157 and 361.159 and one or more lessees or users of the property are delinquent in paying the tax; and

(b) The total amount of tax owed but not paid for the fiscal year by any such lessees and users is at least 5 percent of the proceeds that the school district would have received from the tax levied pursuant to subsection 1 of NRS 387.195.

➥ If a lessee or user pays the tax owed after the school district's apportionment has been increased in accordance with the provisions of this subsection to compensate for the tax owed, the school district shall repay to the State Distributive School Account in the State

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General Fund an amount equal to the tax received from the lessee or user for the year in which the school district received an increased apportionment, not to exceed the increase in apportionments made to the school district pursuant to this subsection.

3. On or before August 1 of each year, the board of trustees of a school district shall provide to the Department, in a format prescribed by the Department, the count of pupils calculated pursuant to subparagraph (8) of paragraph (a) of subsection 2 of NRS 387.1233 who completed at least one semester during the immediately preceding school year.

4. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils exceeds the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the additional amount due must be paid before September 1. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils is less than the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the difference must be repaid to the State Distributive School Account in the State General Fund by the school district, charter school or university school for profoundly gifted pupils before September 25.

Sec. 16. NRS 387.1243 is hereby amended to read as follows:

387.1243 1. The first apportionment based on an estimated number of pupils and succeeding apportionments are subject to adjustment from time to time as the need therefor may appear, including, without limitation, an adjustment made for a pupil who is not properly enrolled in or attending a public school, as determined through an independent audit or other examination conducted pursuant to NRS 387.126 or through an annual audit of the count of pupils conducted pursuant to subsection 1 of NRS 387.304.

2. The apportionments to a school district may be adjusted during a fiscal year by the Department of Education, upon approval by the State Board of Examiners and the Interim Finance Committee, if the Department of Taxation and the county assessor in the county in which the school district is located certify to the Department of Education that the school district will not receive the tax levied pursuant to subsection 1 of NRS 387.195 on property of the Federal Government located within the county if:

(a) The leasehold interest, possessory interest, beneficial interest or beneficial use of the property is subject to taxation pursuant to

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NRS 361.157 and 361.159 and one or more lessees or users of the property are delinquent in paying the tax; and

(b) The total amount of tax owed but not paid for the fiscal year by any such lessees and users is at least 5 percent of the proceeds that the school district would have received from the tax levied pursuant to subsection 1 of NRS 387.195.

➥ If a lessee or user pays the tax owed after the school district's apportionment has been increased in accordance with the provisions of this subsection to compensate for the tax owed, the school district shall repay to the State Distributive School Account in the State General Fund an amount equal to the tax received from the lessee or user for the year in which the school district received an increased apportionment, not to exceed the increase in apportionments made to the school district pursuant to this subsection.

3. On or before August 1 of each year, the board of trustees of a school district shall provide to the Department, in a format prescribed by the Department, the count of pupils calculated pursuant to subparagraph ~~[(8)]~~ *(7)* of paragraph (a) of subsection 2 of NRS 387.1233 who completed at least one semester during the immediately preceding school year.

4. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils exceeds the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the additional amount due must be paid before September 1. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils is less than the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the difference must be repaid to the State Distributive School Account in the State General Fund by the school district, charter school or university school for profoundly gifted pupils before September 25.

Sec. 16.5. NRS 387.1244 is hereby amended to read as follows:

387.1244 1. The Superintendent of Public Instruction may deduct from an apportionment otherwise payable to a school district, charter school or university school for profoundly gifted pupils pursuant to NRS 387.124 if the school district, charter school or university school:

(a) Fails to repay an amount due pursuant to subsection ~~[5]~~ *4* of NRS 387.1243. The amount of the deduction from the quarterly apportionment must correspond to the amount due.

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(b) Fails to repay an amount due the Department as a result of a determination that an expenditure was made which violates the terms of a grant administered by the Department. The amount of the deduction from the quarterly apportionment must correspond to the amount due.

(c) Pays a claim determined to be unearned, illegal or unreasonably excessive as a result of an investigation conducted pursuant to NRS 387.3037. The amount of the deduction from the quarterly apportionment must correspond to the amount of the claim which is determined to be unearned, illegal or unreasonably excessive.

➥ More than one deduction from a quarterly apportionment otherwise payable to a school district, charter school or university school for profoundly gifted pupils may be made pursuant to this subsection if grounds exist for each such deduction.

2. The Superintendent of Public Instruction may authorize the withholding of the entire amount of an apportionment otherwise payable to a school district, charter school or university school for profoundly gifted pupils pursuant to NRS 387.124, or a portion thereof, if the school district, charter school or university school for profoundly gifted pupils fails to submit a report or other information that is required to be submitted to the Superintendent, State Board or Department pursuant to a statute. If a charter school fails to submit a report or other information that is required to be submitted to the Superintendent, State Board or Department through the sponsor of the charter school pursuant to a statute, the Superintendent may only authorize the withholding of the apportionment otherwise payable to the charter school and may not authorize the withholding of the apportionment otherwise payable to the sponsor of the charter school. Before authorizing a withholding pursuant to this subsection, the Superintendent of Public Instruction shall provide notice to the school district, charter school or university school for profoundly gifted pupils of the report or other information that is due and provide the school district, charter school or university school with an opportunity to comply with the statute. Any amount withheld pursuant to this subsection must be accounted for separately in the State Distributive School Account, does not revert to the State General Fund at the end of a fiscal year and must be carried forward to the next fiscal year.

3. If, after an amount is withheld pursuant to subsection 2, the school district, charter school or university school for profoundly gifted pupils subsequently submits the report or other information required by a statute for which the withholding was made, the

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Superintendent of Public Instruction shall immediately authorize the payment of the amount withheld to the school district, charter school or university school for profoundly gifted pupils.

4. A school district, charter school or university school for profoundly gifted pupils may appeal to the State Board a decision of the Superintendent of Public Instruction to deduct or withhold from a quarterly apportionment pursuant to this section. The Secretary of the State Board shall place the subject of the appeal on the agenda of the next meeting for consideration by the State Board.

Sec. 17. NRS 387.191 is hereby amended to read as follows:

387.191 1. Except as otherwise provided in this subsection, the proceeds of the tax imposed pursuant to NRS 244.33561 and any applicable penalty or interest must be paid by the county treasurer to the State Treasurer for credit to the State Supplemental School Support Account, which is hereby created in the State General Fund. The county treasurer may retain from the proceeds an amount sufficient to reimburse the county for the actual cost of collecting and administering the tax, to the extent that the county incurs any cost it would not have incurred but for the enactment of this section or NRS 244.33561, but in no case exceeding the amount authorized by statute for this purpose. Any interest or other income earned on the money in the State Supplemental School Support Account must be credited to the Account.

2. On and after July 1, 2015, the money in the State Supplemental School Support Account is hereby appropriated for the operation of the school districts and charter schools of the state, as provided in this section. The money so appropriated is intended to supplement and not replace any other money appropriated, approved or authorized for expenditure to fund the operation of the public schools for kindergarten through grade 12. Any money that remains in the State Supplemental School Support Account at the end of the fiscal year does not revert to the State General Fund, and the balance in the State Supplemental School Support Account must be carried forward to the next fiscal year.

3. On or before February 1, May 1, August 1 and November 1 of 2016, and on those dates each year thereafter, the Superintendent of Public Instruction shall transfer from the State Supplemental School Support Account all the proceeds of the tax imposed pursuant to NRS 244.33561, including any interest or other income earned thereon, and distribute the proceeds proportionally among the school districts and charter schools of the state. The proportionate amount of money distributed to each school district or charter school must be determined by dividing the number of

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students enrolled in the school district or charter school by the number of students enrolled in all the school districts and charter schools of the state. For the purposes of this subsection, the enrollment in each school district and the number of students who reside in the district and are enrolled in a charter school must be determined as of ~~[the last day of the first school month]~~ ***each quarter*** of the ~~[school district for the]~~ school year. This determination governs the distribution of money pursuant to this subsection until the next ~~[annual]~~ ***quarterly*** determination of enrollment is made. The Superintendent may retain from the proceeds of the tax an amount sufficient to reimburse the Superintendent for the actual cost of administering the provisions of this section, to the extent that the Superintendent incurs any cost the Superintendent would not have incurred but for the enactment of this section, but in no case exceeding the amount authorized by statute for this purpose.

4. The money received by a school district or charter school from the State Supplemental School Support Account pursuant to this section must be used to improve the achievement of students and for the payment of salaries to attract and retain qualified teachers and other employees, except administrative employees, of the school district or charter school. Nothing contained in this section shall be deemed to impair or restrict the right of employees of the school district or charter school to engage in collective bargaining as provided by chapter 288 of NRS.

5. On or before November 10 of 2016, and on that date each year thereafter, the board of trustees of each school district and the governing body of each charter school shall prepare a report to the Superintendent of Public Instruction, in the form prescribed by the Superintendent. The report must provide an accounting of the expenditures by the school district or charter school of the money it received from the State Supplemental School Support Account during the preceding fiscal year.

6. As used in this section, "administrative employee" means any person who holds a license as an administrator, issued by the Superintendent of Public Instruction, and is employed in that capacity by a school district or charter school.

Sec. 18. NRS 387.303 is hereby amended to read as follows:

387.303 1. Not later than November 1 of each year, the board of trustees of each school district shall submit to the Superintendent of Public Instruction and the Department of Taxation a report which includes the following information:

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(a) For each fund within the school district, including, without limitation, the school district's general fund and any special revenue fund which receives state money, the total number and salaries of licensed and nonlicensed persons whose salaries are paid from the fund and who are employed by the school district in full-time positions or in part-time positions added together to represent full-time positions. Information must be provided for the current school year based upon the school district's final budget, including any amendments and augmentations thereto, and for the preceding school year. An employee must be categorized as filling an instructional, administrative, instructional support or other position.

(b) The school district's actual expenditures in the fiscal year immediately preceding the report.

(c) The school district's proposed expenditures for the current fiscal year.

(d) The schedule of salaries for licensed employees in the current school year and a statement of whether the negotiations regarding salaries for the current school year have been completed. If the negotiations have not been completed at the time the schedule of salaries is submitted, the board of trustees shall submit a supplemental report to the Superintendent of Public Instruction upon completion of negotiations or the determination of an arbitrator concerning the negotiations that includes the schedule of salaries agreed to or required by the arbitrator.

(e) The number of employees who received an increase in salary pursuant to subsection 2, 3 or 4 of NRS 391.160 for the current and preceding fiscal years. If the board of trustees is required to pay an increase in salary retroactively pursuant to subsection 2 of NRS 391.160, the board of trustees shall submit a supplemental report to the Superintendent of Public Instruction not later than February 15 of the year in which the retroactive payment was made that includes the number of teachers to whom an increase in salary was paid retroactively.

(f) The number of employees eligible for health insurance within the school district for the current and preceding fiscal years and the amount paid for health insurance for each such employee during those years.

(g) The rates for fringe benefits, excluding health insurance, paid by the school district for its licensed employees in the preceding and current fiscal years.

(h) The amount paid for extra duties, supervision of extracurricular activities and supplemental pay and the number of

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employees receiving that pay in the preceding and current fiscal years.

(i) The expenditures from the account created pursuant to subsection 4 of NRS 179.1187. The report must indicate the total amount received by the district in the preceding fiscal year and the specific amount spent on books and computer hardware and software for each grade level in the district.

2. On or before November 25 of each year, the Superintendent of Public Instruction shall submit to the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau, in a format approved by the Director of the Department of Administration, a compilation of the reports made by each school district pursuant to subsection 1.

3. In preparing the agency biennial budget request for the State Distributive School Account for submission to the Department of Administration, the Superintendent of Public Instruction:

(a) Shall compile the information from the most recent compilation of reports submitted pursuant to subsection 2;

(b) May increase the line items of expenditures or revenues based on merit salary increases and cost of living adjustments or inflation, as deemed credible and reliable based upon published indexes and research relevant to the specific line item of expenditure or revenue;

(c) May adjust expenditures and revenues pursuant to paragraph (b) for any year remaining before the biennium for which the budget is being prepared and for the 2 years of the biennium covered by the biennial budget request to project the cost of expenditures or the receipt of revenues for the specific line items; ***and***

(d) May consider the cost of enhancements to existing programs or the projected cost of proposed new educational programs, regardless of whether those enhancements or new programs are included in the per pupil basic support guarantee for inclusion in the biennial budget request to the Department of Administration **.** ~~[; and~~

~~(e) Shall obtain approval from the State Board for any inflationary increase, enhancement to an existing program or addition of a new program included in the agency biennial budget request.]~~

4. The Superintendent of Public Instruction shall, in the compilation required by subsection 2, reconcile the revenues of the school districts with the apportionment received by those districts from the State Distributive School Account for the preceding year.

5. The request prepared pursuant to subsection 3 must:

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(a) Be presented by the Superintendent of Public Instruction to such standing committees of the Legislature as requested by the standing committees for the purposes of developing educational programs and providing appropriations for those programs; and

(b) Provide for a direct comparison of appropriations to the proposed budget of the Governor submitted pursuant to subsection 4 of NRS 353.230.

Sec. 19. NRS 387.304 is hereby amended to read as follows:

387.304 The Department shall:

1. Conduct an annual audit of the count of pupils for apportionment purposes reported ***each quarter*** by each school district pursuant to NRS 387.123 and the data reported by each school district pursuant to NRS 388.710 that is used to measure the effectiveness of the implementation of a plan developed by each school district to reduce the pupil-teacher ratio as required by NRS 388.720.

2. Review each school district's report of the annual audit conducted by a public accountant as required by NRS 354.624, and the annual report prepared by each district as required by NRS 387.303, and report the findings of the review to the State Board and the Legislative Committee on Education, with any recommendations for legislation, revisions to regulations or training needed by school district employees. The report by the Department must identify school districts which failed to comply with any statutes or administrative regulations of this State or which had any:

(a) Long-term obligations in excess of the general obligation debt limit;

(b) Deficit fund balances or retained earnings in any fund;

(c) Deficit cash balances in any fund;

(d) Variances of more than 10 percent between total general fund revenues and budgeted general fund revenues; or

(e) Variances of more than 10 percent between total actual general fund expenditures and budgeted total general fund expenditures.

3. In preparing its biennial budgetary request for the State Distributive School Account, consult with the superintendent of schools of each school district or a person designated by the superintendent.

4. Provide, in consultation with the Budget Division of the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau, training to the financial officers of school districts in matters relating to financial accountability.

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Sec. 20. NRS 388.450 is hereby amended to read as follows:

388.450 1. The Legislature declares that ~~[the basic support guarantee for each special education program unit established by law]~~ ***funding provided*** for each school year establishes financial resources sufficient to ensure a reasonably equal educational opportunity to pupils with disabilities ***residing in Nevada through the use of the multiplier to the basic support guarantee prescribed by NRS 387.122*** and ***to*** gifted and talented pupils residing in Nevada.

2. Subject to the provisions of NRS 388.440 to 388.520, inclusive, the board of trustees of each school district shall make such special provisions as may be necessary for the education of pupils with disabilities and gifted and talented pupils.

3. The board of trustees of a school district in a county whose population is less than 700,000 may provide early intervening services. Such services must be provided in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and the regulations adopted pursuant thereto.

4. The board of trustees of a school district shall establish uniform criteria governing eligibility for instruction under the special education programs provided for by NRS 388.440 to 388.520, inclusive. The criteria must prohibit the placement of a pupil in a program for pupils with disabilities solely because the pupil is a disciplinary problem in school. The criteria are subject to such standards as may be prescribed by the State Board.

Sec. 21. NRS 388.700 is hereby amended to read as follows:

388.700 1. Except as otherwise provided in this section, for each school quarter of a school year, the ratio in each school district of pupils per licensed teacher designated to teach, on a full-time basis, in classes where core curriculum is taught:

(a) In kindergarten and grades 1 and 2, must not exceed 16 to 1, and in grade 3, must not exceed 18 to 1; or

(b) If a plan is approved pursuant to subsection 3 of NRS 388.720, must not exceed the ratio set forth in that plan for the grade levels specified in the plan.

➥ In determining this ratio, all licensed educational personnel who teach a grade level specified in paragraph (a) or a grade level specified in a plan that is approved pursuant to subsection 3 of NRS 388.720, as applicable for the school district, must be counted except teachers of art, music, physical education or special education, teachers who teach one or two specific subject areas to more than one classroom of pupils, and counselors, librarians, administrators, deans and specialists.

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2. A school district may, within the limits of any plan adopted pursuant to NRS 388.720, assign a pupil whose enrollment in a grade occurs after the ~~[last day of the first month]~~ ***end*** of ***a quarter during*** the school year to any existing class regardless of the number of pupils in the class if the school district requests and is approved for a variance from the State Board pursuant to subsection 4.

3. Each school district that includes one or more elementary schools which exceed the ratio of pupils per class during any quarter of a school year, as reported to the Department pursuant to NRS 388.725:

(a) Set forth in subsection 1;

(b) Prescribed in conjunction with a legislative appropriation for the support of the class-size reduction program; or

(c) Defined by a legislatively approved alternative class-size reduction plan, if applicable to that school district,

➥ must request a variance for each such school for the next quarter of the current school year if a quarter remains in that school year or for the next quarter of the succeeding school year, as applicable, from the State Board by providing a written statement that includes the reasons for the request and the justification for exceeding the applicable prescribed ratio of pupils per class.

4. The State Board may grant to a school district a variance from the limitation on the number of pupils per class set forth in paragraph (a), (b) or (c) of subsection 3 for good cause, including the lack of available financial support specifically set aside for the reduction of pupil-teacher ratios.

5. The State Board shall, on a quarterly basis, submit a report to the Interim Finance Committee on each variance requested by a school district pursuant to subsection 4 during the preceding quarter and, if a variance was granted, an identification of each elementary school for which a variance was granted and the specific justification for the variance.

6. The State Board shall, on or before February 1 of each odd-numbered year, submit a report to the Legislature on:

(a) Each variance requested by a school district pursuant to subsection 4 during the preceding biennium and, if a variance was granted, an identification of each elementary school for which variance was granted and the specific justification for the variance.

(b) The data reported to it by the various school districts pursuant to subsection 2 of NRS 388.710, including an explanation of that data, and the current pupil-teacher ratios per class in the grade levels specified in paragraph (a) of subsection 1 or the grade

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levels specified in a plan that is approved pursuant to subsection 3 of NRS 388.720, as applicable for the school district.

7. The Department shall, on or before November 15 of each year, report to the Chief of the Budget Division of the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau:

(a) The number of teachers employed;

(b) The number of teachers employed in order to attain the ratio required by subsection 1;

(c) The number of pupils enrolled; and

(d) The number of teachers assigned to teach in the same classroom with another teacher or in any other arrangement other than one teacher assigned to one classroom of pupils,

➥ during the current school year in the grade levels specified in paragraph (a) of subsection 1 or the grade levels specified in a plan that is approved pursuant to subsection 3 of NRS 388.720, as applicable, for each school district.

8. The provisions of this section do not apply to a charter school or to a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive.

Sec. 22. NRS 392A.083 is hereby amended to read as follows:

392A.083 1. Each pupil who is enrolled in a university school for profoundly gifted pupils, including, without limitation, a pupil who is enrolled in a program of special education in a university school for profoundly gifted pupils, must be included in the count of pupils in the school district in which the school is located for the purposes of apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, unless the pupil is exempt from compulsory school attendance pursuant to NRS 392.070.

2. A university school for profoundly gifted pupils is entitled to receive its proportionate share of any other money available from federal, state or local sources that the school or the pupils who are enrolled in the school are eligible to receive.

3. If a university school for profoundly gifted pupils receives money for special education program units directly from this State, the amount of money for special education that the school district pays to the university school for profoundly gifted pupils may be reduced proportionately by the amount of money the university school received from this State for that purpose.

4. All money received by a university school for profoundly gifted pupils from this State or from the board of trustees of a school

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district must be deposited in an account with a bank, credit union or other financial institution in this State.

5. The governing body of a university school for profoundly gifted pupils may negotiate with the board of trustees of the school district in which the school is located or the State Board for additional money to pay for services that the governing body wishes to offer.

6. To determine the amount of money for distribution to a university school for profoundly gifted pupils in its first year of operation in which state funding is provided, the count of pupils who are enrolled in the university school must initially be determined 30 days before the beginning of the school year of the school district in which the university school is located, based upon the number of pupils whose applications for enrollment have been approved by the university school. The count of pupils who are enrolled in a university school for profoundly gifted pupils must be revised ~~[on the last day of the first school month of the school district in which the university school is located for the school year,]~~ ***each quarter*** based upon the ~~[actual number]~~ ***average daily enrollment*** of pupils ~~[who are enrolled]~~ in the university school ~~[.]~~ ***reported for the preceding quarter pursuant to subsection 1 of NRS 387.1233.***

7. Pursuant to subsection 6 of NRS 387.124, the governing body of a university school for profoundly gifted pupils may request that the apportionments made to the university school in its first year of operation be paid to the university school 30 days before the apportionments are otherwise required to be made.

8. If a university school for profoundly gifted pupils ceases to operate pursuant to this chapter during a school year, the remaining apportionments that would have been made to the university school pursuant to NRS 387.124 for that school year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the university school reside.

9. If the governing body of a university school for profoundly gifted pupils uses money received from this State to purchase real property, buildings, equipment or facilities, the governing body of the university school shall assign a security interest in the property, buildings, equipment and facilities to the State of Nevada.

Sec. 23. NRS 392A.083 is hereby amended to read as follows:

392A.083 1. Each pupil who is enrolled in a university school for profoundly gifted pupils, including, without limitation, a pupil who is enrolled in a program of special education in a university school for profoundly gifted pupils, must be included in

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the count of pupils in the school district in which the school is located for the purposes of apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, unless the pupil is exempt from compulsory school attendance pursuant to NRS 392.070.

2. A university school for profoundly gifted pupils is entitled to receive its proportionate share of any other money available from federal, state or local sources that the school or the pupils who are enrolled in the school are eligible to receive.

3. ~~[If a university school for profoundly gifted pupils receives money for special education program units directly from this State, the amount of money for special education that the school district pays to the university school for profoundly gifted pupils may be reduced proportionately by the amount of money the university school received from this State for that purpose.~~

~~4.]~~ All money received by a university school for profoundly gifted pupils from this State or from the board of trustees of a school district must be deposited in an account with a bank, credit union or other financial institution in this State.

~~[5.]~~ ***4.*** The governing body of a university school for profoundly gifted pupils may negotiate with the board of trustees of the school district in which the school is located or the State Board for additional money to pay for services that the governing body wishes to offer.

~~[6.]~~ ***5.*** To determine the amount of money for distribution to a university school for profoundly gifted pupils in its first year of operation in which state funding is provided, the count of pupils who are enrolled in the university school must initially be determined 30 days before the beginning of the school year of the school district in which the university school is located, based upon the number of pupils whose applications for enrollment have been approved by the university school. The count of pupils who are enrolled in a university school for profoundly gifted pupils must be revised each quarter based upon the average daily enrollment of pupils in the university school reported for the preceding quarter pursuant to subsection 1 of NRS 387.1233.

~~[7.]~~ ***6.*** Pursuant to subsection 6 of NRS 387.124, the governing body of a university school for profoundly gifted pupils may request that the apportionments made to the university school in its first year of operation be paid to the university school 30 days before the apportionments are otherwise required to be made.

~~[8.]~~ ***7.*** If a university school for profoundly gifted pupils ceases to operate pursuant to this chapter during a school year, the

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remaining apportionments that would have been made to the university school pursuant to NRS 387.124 for that school year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the university school reside.

~~[9.]~~ ***8.*** If the governing body of a university school for profoundly gifted pupils uses money received from this State to purchase real property, buildings, equipment or facilities, the governing body of the university school shall assign a security interest in the property, buildings, equipment and facilities to the State of Nevada.

Sec. 24. Chapter 395 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Contingency Account for Special Education Services is hereby created in the State General Fund to be administered by the Superintendent of Public Instruction. The Superintendent of Public Instruction may accept gifts and grants of money from any source for deposit in the Account. Any money from gifts and grants may be expended in accordance with the terms and conditions of the gift or grant, or in accordance with this section.

2. The interest and income earned on the sum of:

(a) The money in the Account; and

(b) Unexpended appropriations made to the Account from the State General Fund,

➥ must be credited to the Account. Any money remaining in the Account at the end of a fiscal year does not revert to the State General Fund, and the balance in the Account must be carried forward to the next fiscal year.

3. The money in the Account may only be used for public schools and public education, as authorized by the Legislature.

4. The State Board shall adopt regulations for the application, approval and disbursement of money commencing with the 2016-2017 school year to reimburse school districts and charter schools for extraordinary program expenses and related services which:

(a) Are not ordinarily present in the typical special education service and delivery system at a public school;

(b) Are associated with the implementation of the individualized education program of a pupil with significant disabilities, as defined by the State Board, to provide an appropriate education in the least restrictive environment; and

(c) The costs of which exceed the total funding available to the school district or charter school for the pupil.

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Sec. 25. NRS 395.070 is hereby amended to read as follows:

395.070 1. The Interagency Panel is hereby created. The Panel is responsible for making recommendations concerning the placement of persons with disabilities who are eligible to receive benefits pursuant to this chapter. The Panel consists of:

(a) The Administrator of the Division of Child and Family Services of the Department of Health and Human Services;

(b) The Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services;

(c) The Director of the Department of Health and Human Services; and

(d) The Superintendent of Public Instruction.

2. A member of the Panel may designate a person to represent him or her at any meeting of the Panel. The person designated may exercise all the duties, rights and privileges of the member he or she represents.

3. The Panel shall ~~[:~~

~~(a) Every time a person with a disability is to be placed pursuant to subsection 2 of NRS 395.010 in a foster home or residential facility, meet to determine the needs of the person and the availability of homes or facilities under the authority of the Department of Health and Human Services after a joint evaluation of that person is completed by the Department of Education and the Department of Health and Human Services;~~

~~(b) Determine the appropriate placement of the person, giving priority to homes or facilities under the authority of the Department of Health and Human Services over any home or facility located outside of this State; and~~

~~(c) Make a recommendation concerning the placement of the person.~~~~]~~ ***perform such duties as prescribed by the State Board.***

Sec. 26. NRS 354.598005 is hereby amended to read as follows:

354.598005 1. If anticipated resources actually available during a budget period exceed those estimated, a local government may augment a budget in the following manner:

(a) If it is desired to augment the appropriations of a fund to which ad valorem taxes are allocated as a source of revenue, the governing body shall, by majority vote of all members of the governing body, adopt a resolution reciting the appropriations to be augmented, and the nature of the unanticipated resources intended to be used for the augmentation. Before the adoption of the resolution, the governing body shall publish notice of its intention to act thereon in a newspaper of general circulation in the county for at

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least one publication. No vote may be taken upon the resolution until 3 days after the publication of the notice.

(b) If it is desired to augment the budget of any fund other than a fund described in paragraph (a) or an enterprise or internal service fund, the governing body shall adopt, by majority vote of all members of the governing body, a resolution providing therefor at a regular meeting of the body.

2. A budget augmentation becomes effective upon delivery to the Department of Taxation of an executed copy of the resolution providing therefor.

3. Nothing in NRS 354.470 to 354.626, inclusive, precludes the amendment of a budget by increasing the total appropriation for any fiscal year to include a grant-in-aid, gift or bequest to a local unit of government which is required to be used for a specific purpose as a condition of the grant. Acceptance of such a grant and agreement to the terms imposed by the granting agency or person constitutes an appropriation to the purpose specified.

4. A local government need not file an augmented budget for an enterprise or internal service fund with the Department of Taxation but shall include the budget augmentation in the next quarterly report.

5. Budget appropriations may be transferred between functions, funds or contingency accounts in the following manner, if such a transfer does not increase the total appropriation for any fiscal year and is not in conflict with other statutory provisions:

(a) The person designated to administer the budget for a local government may transfer appropriations within any function.

(b) The person designated to administer the budget may transfer appropriations between functions or programs within a fund, if:

(1) The governing body is advised of the action at the next regular meeting; and

(2) The action is recorded in the official minutes of the meeting.

(c) Upon recommendation of the person designated to administer the budget, the governing body may authorize the transfer of appropriations between funds or from the contingency account, if:

(1) The governing body announces the transfer of appropriations at a regularly scheduled meeting and sets forth the exact amounts to be transferred and the accounts, functions, programs and funds affected;

(2) The governing body sets forth its reasons for the transfer; and

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(3) The action is recorded in the official minutes of the meeting.

6. In any year in which the Legislature by law increases or decreases the revenues of a local government, and that increase or decrease was not included or anticipated in the local government's final budget as adopted pursuant to NRS 354.598, the governing body of any such local government may, within 30 days of adjournment of the legislative session, file an amended budget with the Department of Taxation increasing or decreasing its anticipated revenues and expenditures from that contained in its final budget to the extent of the actual increase or decrease of revenues resulting from the legislative action.

7. In any year in which the Legislature enacts a law requiring an increase or decrease in expenditures of a local government, which was not anticipated or included in its final budget as adopted pursuant to NRS 354.598, the governing body of any such local government may, within 30 days of adjournment of the legislative session, file an amended budget with the Department of Taxation providing for an increase or decrease in expenditures from that contained in its final budget to the extent of the actual amount made necessary by the legislative action.

8. An amended budget, as approved by the Department of Taxation, is the budget of the local government for the current fiscal year.

9. On or before January 1 of each school year, each school district shall adopt an amendment to its final budget after the ~~[count]~~ ***average daily enrollment*** of pupils is ~~[completed]~~ ***reported for the preceding quarter*** pursuant to subsection 1 of NRS 387.1233. The amendment must reflect any adjustments necessary as a result of the ~~[completed count of pupils.]~~ ***report.***

Sec. 27. NRS 701B.350 is hereby amended to read as follows:

701B.350 1. The Renewable Energy School Pilot Program is hereby created. The goal of the Program is to encourage the development of and determine the feasibility for the integration of renewable energy systems on school properties.

2. The Commission shall adopt regulations for the Program. Such regulations shall include, but not be limited to:

(a) A time frame for implementation of the Program;

(b) The allowed renewable energy systems and combinations of such renewable energy systems on school property;

(c) The amount of capacity that may be installed at each school property that participates in the Program;

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(d) A process by which a school district may apply for participation in the Program;

(e) Requirements for participation by a school district;

(f) The type of transactions allowed between a renewable energy system generator, a school district and a utility;

(g) Incentives which may be provided to a school district or school property to encourage participation; and

(h) Such other parameters as determined by the Commission and are consistent with the development of renewable energy systems at school properties.

3. The Program shall be limited to 10 school properties. Not more than 6 school properties from any one school district may participate in the Program.

4. The Commission shall adopt the regulations necessary to implement the Program not later than March 1, 2008.

5. The Commission shall prepare a report detailing the results of the Program and shall submit the report to the Legislature by December 1, 2008.

6. As used in this section:

(a) "Commission" means the Public Utilities Commission of Nevada.

(b) "Owned, leased or occupied" includes, without limitation, any real property, building or facilities which are owned, leased or occupied under a deed, lease, contract, license, permit, grant, patent or any other type of legal authorization.

(c) "Renewable energy system" has the meaning ascribed to it in NRS 704.7815.

(d) "School district" ~~[has the meaning ascribed to it in NRS 395.0075.]~~ ***means a county school district created pursuant to chapter 386 of NRS.***

(e) "School property" means any real property, building or facilities which are owned, leased or occupied by a public school as defined in NRS 385.007.

(f) "Utility" has the meaning ascribed to it in NRS 701B.180.

Sec. 28. 1. As soon as practicable after the effective date of this section, the Department of Education shall develop a plan to provide additional resources to the Nevada Plan expressed as a multiplier of the basic support guarantee to meet the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. In developing the plan, the Department of Education shall review and consider the recommendations made by the Task Force on K-12 Public

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Education Funding created by chapter 500, Statutes of Nevada 2013, at page 3181. The plan must include, without limitation:

(a) The amount of the multiplier to the basic support guarantee to be used for each such category of pupils; and

(b) The date by which the plan should be implemented or phased in, with full implementation occurring not later than Fiscal Year 2021-2022.

2. The Department of Education shall submit the plan developed pursuant to subsection 1 to the Legislative Committee on Education for its review and consideration during the 2015-2016 interim. The Legislative Committee on Education shall:

(a) Review and consider the recommendations made by the Task Force on K-12 Public Education Funding created by chapter 500, Statutes of Nevada 2013, at page 3181;

(b) Consider the appropriateness and likely effectiveness of the plan developed pursuant to subsection 1 in meeting the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils; and

(c) On or before October 1, 2016, submit a report to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Legislature that includes, without limitation:

(1) Any provision of the plan developed pursuant to subsection 1 that should be implemented or phased in, with full implementation occurring not later than Fiscal Year 2021-2022;

(2) The amount of the multiplier to the basic support guarantee to be used for each category of pupils addressed by the plan; and

(3) Any recommendations for legislation.

3. On or before October 1, 2016, the Superintendent of Public Instruction shall submit to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Nevada Legislature:

(a) A report of the per pupil expenditures associated with legislative appropriations for pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils.

(b) Any recommendations for legislation to address the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils.

4. During the 2017-2019 biennium and the 2019-2021 biennium, the Department of Education shall review and, if necessary, revise the plan developed pursuant to subsection 1 based

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upon data available on the costs and expenditures associated with meeting the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. The Department shall submit any revisions to the plan after its review to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature following the 2017-2019 and 2019-2021 bienniums, respectively.

5. As used in this section, "pupils who are at risk" means a pupil who is eligible for free or reduced-price lunch pursuant to 42 U.S.C. §§ 1751 et seq., or an alternative measure prescribed by the State Board of Education.

Sec. 29. 1. Notwithstanding the provisions of NRS 387.122, as amended by section 8 of this act, the Department shall calculate an amount of funding for each pupil with a disability for Fiscal Year 2016-2017 by dividing the total count of such pupils by the money appropriated by the Legislature for such pupils in Fiscal Year 2016-2017. The Department shall report this multiplier to the basic support guarantee to the State Board of Education, the Interim Finance Committee and the Governor.

2. Except as otherwise provided in subsections 3 and 4, the funding provided to each school district and charter school pursuant to subsection 1 must not exceed 13 percent of total pupil enrollment for the school district or charter school.

3. If a school district or charter school has reported an enrollment of pupils with disabilities equal to more than 13 percent of total pupil enrollment, the school district or charter school is entitled to receive an amount of money equal to the amount necessary to satisfy requirements for maintenance of effort under federal law.

4. A school district or charter school may not receive less funding pursuant to subsection 1 for Fiscal Year 2016-2017 than the amount per pupil with a disability that the school district or charter school received from the State in Fiscal Year 2015-2016.

Sec. 30. NRS 387.1221, 395.001, 395.0065, 395.0075, 395.008, 395.010, 395.030, 395.040, 395.050 and 395.060 are hereby repealed.

Sec. 31. 1. This section and sections 2, 4, 5, 7, 9, 12, 14, 16.5, 17, 18, 19, 21, 22, 24 and 26 to 29, inclusive, of this act become effective upon passage and approval.

2. Sections 1, 3, 6, 8, 10, 15, 20, 23, 25 and 30 of this act become effective on July 1, 2016.

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3. Sections 11, 13 and 16 of this act become effective on July 1, 2017.

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OFFICIAL REPORT

OF THE

DEBATES AND PROCEEDINGS

IN THE

CONSTITUTIONAL CONVENTION

OF THE

State of Nevada,

ASSEMBLED AT CARSON CITY, JULY 4TH, 1864,

TO

FORM A CONSTITUTION AND STATE GOVERNMENT.

ANDREW J. MARSH, OFFICIAL REPORTER.

SAN FRANCISCO:
FRANK EASTMAN, PRINTER.
1866.

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SEC. 2. The Governor and other State and judicial officers, except Justices of the Peace, under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

SEC. 3. For any reasonable cause, to be entered on the journals of each House, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court and Judges of the District and County Courts shall be removed from office on the vote of two-thirds of the members elected to each branch of the Legislature, and the Justice or Judge complained of shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person, or by counsel, in his defense; *provided*, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or nonfeasance in the performance of his duties.

The question was taken by yeas and nays, and the vote was—yeas, 17; nays, 9—as follows:

Yeas—Messrs. Belden, Brady, Chapin, Collins, Crosman, Frizell, Folsom, Gibson, Hawley, Lockwood, Murdock, Nourse, Sturtevant, Tagliabue, Warwick, Wetherill, and Mr. President—17.

Nays—Messrs. Banks, Brosnan, DeLong, Dunne, Hovey, Kennedy, Mason, McClinton, and Proctor—9.

So the article was ordered to be engrossed for a third reading.

EDUCATION.

Mr. COLLINS, from the Committee on Education, submitted the following report:

Mr. President: Your Standing Committee on Education, to which was referred Article XII, entitled Education, beg leave to report, for the adoption of the Convention, the following article:

ARTICLE XII.

EDUCATION.

SECTION 1. The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom in return upon such educational advantages as it may provide. The Legislature shall therefore encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two years from the —— day of January, 1865, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

SEC. 3. All lands, including the 500,000 acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841; the sixteenth and thirty-second sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; and all lands and parcels of lands that have been or may hereafter be granted or appropriated by the United States to this State; all estates that may escheat to the State, all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land-warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

SEC. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils possessing such qualifications as may be prescribed by the Board of Regents.

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said Common Schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said university and common schools; *provided*, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall, for the first four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department, in such manner as to make it most effective and useful. *Provided*, that all the proceeds of the public lands donated by Act of Congress, approved July 2, A. D. 1862, for a college for the benefit of agriculture and mechanic arts, shall be invested by the Board of Regents in a separate fund to be appropriated exclusively for the benefit of the two first-named departments to the University, as set forth in Section 4, above. And the Legislature shall provide that, if through neglect or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace such amount so lost in said fund, so that the interest and principal of said fund shall remain forever undiminished.

All of which is respectfully submitted.

JOHN A. COLLINS, Chairman.

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Mr. DUNNE. I move that the article reported be taken up and considered now.

Mr. DELONG. I would prefer to see it printed first.

Mr. CHAPIN. Could it not be published in the Virginia papers of to-morrow morning?

Mr. DELONG. It can be printed here, I understand. It is too late to send it to Virginia, for publication to-morrow morning. The attention of the Convention has been turned with a very jealous eye towards matters of legislation, and I am apprehensive that if we consider the article now, we might adopt or incorporate in it some provisions which would not meet with our approval, if we had it before us in print. This matter of religious and sectarian influence in the public schools, is, of all things, most calculated to arouse suspicions and jealousies in the public mind, and if the enemies of the Constitution can see anything in our action on that subject to carp at, they will be sure to make the greatest possible amount of capital out of it.

Mr. COLLINS. I would ask if this article cannot be taken up just as well now, the sections being read carefully by the Secretary, one by one, discussed, and amended if necessary, as we come to them? It seems to me, if gentlemen will be attentive, it may be done—and I will state that one feature which has been regarded as obnoxious, has been removed by the committee.

Mr. DELONG. How is it in regard to the positive requirement to send all children to school so much time in each year?

Mr. COLLINS. The committee has removed that provision.

Mr. DELONG. I will withdraw my opposition.

The question was taken on Mr. Dunne's motion to consider the article at the present time, and it was agreed to.

Mr. HAWLEY. I move that the Convention resolve itself into Committee of the Whole—the President *pro tem.* remaining in the chair—for the consideration of this article.

The question was taken, and the motion was agreed to.

COMMITTEE OF THE WHOLE—EDUCATION.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. CROSMAN in the chair,) and took up Article XII, entitled Education.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

The SECRETARY read Section 1, as follows:

SECTION 1. The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon s ch educational advantages as it may provide. The Legislature shall therefore encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two years from the —— day of January, 1865, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

Mr. JOHNSON. I wish to inquire of the Chairman of the Judiciary Committee—I have not yet examined his report, and I admit that the fault is my own—whether it is contemplated to have a separate judicial election?

Mr. BROSNAN. There is no special election contemplated to be held for judicial officers; they are to be elected at the general election, at the same time as other officers.

Mr. JOHNSON. I made the inquiry with a view to proposing an amendment, if necessary; because I observe that the section as read provides for the election of Superintendent of Public Instruction at the general election.

Mr. DUNNE. I do not know that I understand altogether this enunciation of a doctrine in the first section. If I understand it correctly—and I will inquire of the chairman of the committee whether I am right or not—the doctrine enunciated is substantially this: that the State has a right to establish educational institutions, including therein moral instruction, and has a right to insist upon the attendance and reception of such moral instruction as the State may establish, or provide for in such institutions, on the part of all the children of the State.

Mr. COLLINS. That is, in the general sense of morality. It was the view of the chairman, and I think the committee generally agreed with him on that point, that the State may properly encourage the practice of morality, in contradistinction to sectarian doctrines. For instance, if a child insist on the practice of using profane language, I presume it should be made the duty of the School Superintendent, the teacher, or the Board of Education, to insist that he shall either refrain from such practice, or be expelled. There must be power somewhere to exact conformity to the general ideas of morality entertained by civilized communities.

The CHAIRMAN. The question is on the adoption of Section 1.

COMPULSORY ATTENDANCE ON SCHOOLS.

Mr. BROSNAN. For my own information, in order that I may be able to vote intelligibly, I will ask that Section 2 of this article be read.

The SECRETARY read Section 2, as follows:

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Mr. HAWLEY. I wish to call the especial attention of the gentleman from Storey to that provision. I wish also to call the attention of the Convention to the clause in this section, in

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the old Constitution, which has been stricken out, reading as follows:

"The Legislature shall, within two years, pass such laws as shall make it compulsory with parents and guardians that all white children under their charge, between the ages of six and fourteen years, shall receive educational instruction for at least three months in each year, unless physically or mentally incapacitated."

That clause has been stricken out by the committee, and in lieu thereof the language of the section just read is proposed, providing that the Legislature may pass such laws as will best tend to secure a general attendance of children, in each of the school districts, on the public schools.

Mr. DeLONG. I thought from the first reading the language was, "to require attendance."

Mr. HAWLEY. It is, "tend to secure a general attendance."

Mr. BROSNAN. I only desired to have the section read in order to be able to vote intelligently on the preceding section.

Mr. HAWLEY. I will suggest to the chairman whether it would not be better to strike out the first sentence of Section 1, which seems to be merely in the nature of a preamble. Will the Secretary read it?

The SECRETARY read, as follows:

"The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon such educational advantages as it may provide."

Mr. HAWLEY. I know that the provision of the former Constitution, making it compulsory on parents to send their children to school, met with a great deal of opposition. And for myself I certainly consider it entirely at variance with the spirit of our institutions. Now inasmuch as the language of that portion of the section seems to assert the same doctrine, and inasmuch as it is in fact at variance with the provision contained in the second section, as reported, with all respect to the committee I will move to amend by striking out that clause, and also the word "therefore" in the succeeding clause, so that the section will commence—"The Legislature shall encourage by all suitable means," etc.

Mr. COLLINS. The chairman of the committee certainly has no objection to striking out that language, although, in his opinion, it only expresses the true doctrine.

Mr. DUNNE. Although I shall be in favor of striking out that preamble, yet it will not be for the reason which has been assigned, of discarding the idea of exacting the attendance of children on the schools. I believe that should be done, and I believe the provision should be substantially the same as in the former Constitution, but with some amendments, which are obviously necessary. In order to reach that end. I will make a motion that we pass over the section for the present.

Mr. COLLINS. I will state the reason for the insertion of that preamble. In the first place, let me suggest to the Convention that it only declares the right of the Legislature to exact attendance upon school—some school. It does not say that children shall be compelled to attend the public school, but that the State has the right to exact attendance upon such educational advantages and facilities as may be provided. The Constitution framed last year, which forms the basis of our action, declared that all children should be required to attend school at least three months in each year, but that provision has been removed, and we propose instead to give the Legislature permission to make laws providing for and encouraging a general attendance at school. It seems to me that if the Legislature should have that right, then this preamble is correct, and if not, then the preamble has no business here. I am not tenacious about it, myself, however, though I really think there should be some provision by which the children of the State, growing up to be men and women, should have the privilege secured to them of attending school—that they should even be required to attend school somewhere. We have no right, and we cannot afford to allow children to grow up in ignorance. The public is interested in that matter, and it is one of too great importance to be neglected. Even if parents are too parsimonious to send their children to school, or for other reasons are indisposed to give them the educational advantages which the State has been at great expense to offer, I do not think the public can afford it. My opinion is, therefore, that it is the duty of the State to furnish the children the means of education, and then, as a corollary, if it is the duty of the State to furnish tuitional facilities, it is the duty of the children to attend upon them. There are many children who are daily squandering their time, and what is far worse, contracting habits which will ultimate in crime in some form, and if we shall adopt some provision by which the authorities can exact their attendance upon the schools, they may be saved from an evil destiny, and the State will certainly be the better for it.

The question was taken on the amendment offered by Mr. Hawley, and it was agreed to.

Mr. CHAPIN. The striking out of the word "therefore," follows, as a matter of course, I suppose?

The CHAIRMAN. It will be considered as a part of the amendment adopted.

TERM OF SUPERINTENDENT.

Mr. BROSNAN. I move to further amend the section by filling the blank in relation to the term of the office of the Superintendent of Public Instruction with the word "first," so as to read, "whose term of office shall be two years from the *first* day of January, 1865," etc.

Mr. JOHNSON. Perhaps it would be better to make it read the first Monday of January Then it will correspond with the terms of the other officers of the Executive Department of the Government.

Mr. BROSNAN. It will be necessary to use the words "commencing on."

Mr. JOHNSON. No; not "commencing on." The terms of the other officers commence on Tuesday; if you say "from the first Monday," the term will commence on Tuesday, like other officers.

Mr. BROSNAN. Very well; then let it read "from the first Monday in January."

The question was taken on the amendment as modified, and it was adopted.

The question was taken on the adoption of Section 1 as amended, and it was adopted.

SECTARIAN INSTRUCTION.

The SECRETARY read Section 2, as follows:

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Mr. WARWICK. Will the Chairman of the committee explain a little, as to what is meant here by "sectarian?" It says that any school district "which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund,' etc. Does that mean that they have no right to maintain Catholic schools, for example?

Mr. COLLINS. This provision has reference only to public schools, organized under the general laws of the State. It is not to be supposed that the laws enacted under it will stand in the way of, or prevent any Catholic school from being organized or carried on; but the provision prevents the introduction of sectarianism into the public schools.

Mr. WARWICK. That is entirely proper, but it seems to me that it might better be worded a little differently. It says, "which shall allow instruction of a sectarian character *therein*"—not in the school, but in the district. I do not suppose that is the intention.

Mr. COLLINS. You will find that it has reference only to public schools, and to the appropriation of the public funds. If they permit sectarian instruction, they are deprived of the use of the public funds, so that it has direct reference to the public schools, and clearly cannot refer to anything else.

Mr. WARWICK. I would like to examine that a little more carefully.

Mr. McCLINTON. I think all the objection can be easily obviated, and leave the section substantially as it is, by making a very slight change. Suppose we say, "in the public schools of said district."

Mr. WARWICK. That is the idea, exactly. It seems to me, as it now reads—and the gentleman will correct me if I am wrong—that it is not in the school, but in the school district that shall establish or allow instruction of a sectarian character, that this penalty is to be applied. It says:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived," etc.

The word "district" evidently governs the sentence, and that is where the change ought to be made, so that the prohibition of sectarian instruction may apply, not to the districts, but to the schools.

Mr. McCLINTON. I will make a motion to amend the section by striking out the word "therein," and inserting instead the words, "in the public schools of said district."

Mr. HAWLEY. I wish to inquire of the gentleman from Lander whether he imagines that the language of the section as it now stands would make any difference in regard to payments of the school-money, under the law, in a case, for instance, where, under the laws of the State, parties may have organized a Catholic school, entirely separate and distinct from the public schools? Does the gentleman think that the mere fact of the existence of that Catholic school in the district could have any possible influence in preventing the payment of the school-money under the law? In other words, I ask him whether he believes that any school district could be held responsible for the action of private parties, in organizing sectarian schools within such district?

Mr. WARWICK. No, sir; that would be manifestly unjust, and that is the reason why I want this amendment. I do not want the school district to lose on account of the establishment of a Catholic school, a Methodist, a Baptist, or any other school, and therefore I say the language should be such as will not be open to the slightest imputation of that construction.

Mr. HAWLEY. Very well; I will consent to the amendment, so far as I am concerned.

Mr. COLLINS. I wish to call the attention of the Convention one moment to the language of the section as it now stands. I desire to make any change that will be an improvement, but if the sentence is already clear, we should certainly take care to avoid tautology. Now I will read the section again, and emphasize the words as I think they ought to be, and gentlemen will see, I think, that a multiplication of those phrases is scarcely necessary, and certainly it would not sound very well. If we can secure the same sense, without a change of phraseology that would destroy the euphony of the sentence, we should certainly do so, in accordance with the laws of composition. Now let us see how it should read:

"The Legislature shall provide for a uniform system of *common schools*, by which a school shall be established and maintained in each *school district*, at least six months in every year."

The subject of the sentence is "common schools," and "a school" to be established "in each school district." These are the words

which should receive the stress of the voice. Then follows:

"And any school district neglecting to establish and maintain *such a school*, or which shall allow instruction of a sectarian character *therein*—"

In what?

Mr. WARWICK. In the district.

Mr. COLLINS. No, sir; in "such a school." That is the only proper construction. If the word "therein" does not refer to "such a school," then I do not understand the English language.

Mr. WARWICK. If the "district" does not stand in the nominative case, then I am not able to parse the sentence.

Mr. COLLINS. But what effect can that have? It only goes to show that it is the district which is to be deprived of its proportion of the school fund, for "district" is the nominative governing the verb "deprived." I would not object to any change there with a view to perspicuity, but I really do not think this is necessary.

Mr WARWICK. If the gentleman thinks it is correct, all right; I hope the amendment will be withdrawn.

Mr. McCLINTON. I will withdraw it. I merely offered it for the sake of obviating any possible objection of that nature that might be made.

COMPULSORY ATTENDANCE—AGAIN.

Mr. DUNNE. I stated at the time the amendment was proposed, which was subsequently adopted, to strike out a part of Section 1, that I believed it to be a right which the State has to exact attendance from the pupils. I believe, also, that the only objection of any considerable weight which was urged to that compulsory clause contained in the Constitution submitted to the people last year, was the fact that it made no distinction between children whose parents reside in populous places, where there are abundant facilities for sending them to the public schools, and those residing in out-of-the-way places where it would be very difficult and sometimes impossible. I think it would be a wise measure to insist, that in incorporated cities and towns, at least, children shall be compelled to attend school, and we ought certainly to insert a provision of that kind in this article. It is in such places that children grow up surrounded by temptations which are not to be found, to the same extent, at any rate, in the rural districts. Our cities are always the hot-beds of crime, and schools of vice for the rising generation. It is from the cities, and from the class of children in them which neglects to attend the public schools, that most of our criminals come, and I maintain that where facilities for attending school are afforded, it should be made compulsory upon parents to send their children. And the reason why I think so is this: Ours being a Democratic form of government, every person upon arriving at mature age who was born in the country or has been naturalized according to law, who has not been convicted of crime, etc., has a voice in the administration of the public affairs of the country—in the making and administering of the laws—and I consider it only a fair proposition that he should not have that privilege unless he has some knowledge of the nature of the duties which devolve upon him. Therefore when the State has provided a system of public instruction, a means of obtaining education, it should also require that all who are to become its citizens, and take part in the formation of its laws, shall avail themselves of those means, or go so far at least as to know how to read and write.

Mr. HAWLEY. So far as towns and cities are concerned, I am not aware that I should very strenuously object to such a requirement, but there is one question which I have not heard satisfactorily answered, and that is, what are the means by which attendance is to be compelled?

Mr. DUNNE. That is a question which has received its solution in many countries.

Mr. HAWLEY. I know it has in Prussia, but where else?

Mr. DUNNE. In Scotland, also. Whether it has been done in any of the United States, I do not know; but I see no difficulty in the way of providing that between the ages of six and fourteen years, for example, all children shall attend school at least long enough to learn how to read and write. And I do not think that in a country like this any American citizen should be permitted to exercise the elective franchise unless he is able to read and write. That is my view of the subject, and for the purpose of testing the sense of the Convention, I will move, when it shall be in order, that a special committee of three be appointed to prepare and report an amendment providing that all children residing in incorporated cities and towns, between the ages of —— years, shall attend the public schools for at least three months in each year.

Mr. HAWLEY. Will the gentleman allow me a word or two further in the way of a suggestion? In drawing up this article we have provided that the Legislature may pass such laws as are best calculated to secure the attendance of children. My idea on that subject is, or was this: that the most practicable method of securing attendance would be to pass a law providing that unless a certain proportion of the children in each district shall attend, the district shall be deprived of its proportion of the interest on the school-money. The result of that would be that parents would feel more interest in having a full attendance, and would take it upon themselves to visit those who are less careful, and urge them to send their children. By that means, I think the interests of education would be best subserved and promoted. And the query arises, in my own mind at all events, whether under that general provision authorizing the Legisla-

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ture to make such laws as are best calculated to secure attendance, it would not be authorized even to pass a law which should compel them to attend? It seems to me that if the word "may" is equivalent to the word "shall," and that point appears to be very generally conceded, then the Legislature already has all the power necessary. I am free to say, however, that I believe the incorporation of the provision as it stood in the former Constitution would be likely to array a large class of ignorant people against the Constitution, and against education. That is my own view of the matter. Still, I am perfectly content to leave it to the friends of education in the Convention, although I would submit to the gentleman from Humboldt, whether under the provisions of the section as it now stands, the Legislature would not have the power to compel attendance?

Mr. DUNNE. In regard to the power conferred upon the Legislature to secure general attendance, I like that provision, and so far as that is concerned, it is applicable all the year round. I have no doubt but that it would give power to temporarily suspend the attendance of children who may not be regular in their attendance, and that would be a great step towards preventing irregularity in that respect. A question has sometimes been raised as to the legality of the action of Boards of Education where they have attempted to compel scholars to be regular, and to that end have passed orders that if a scholar is absent a certain number of days or weeks in a month, he shall forfeit altogether his right to attend. There have been doubts as to the constitutional power of a Board of Education to make and enforce such an order, and I think this provision would go perhaps no further than to give power and force to an ordinance providing that unless a scholar is somewhat regular in his attendance, he may forfeit his right to remain in the school. But that is not the class which I wish to reach. I am aiming to reach that class which does not attend at all; to reach those parents who keep their children away for selfish motives, who take them away from school in order, perhaps, that they may earn a little money, and so deprive them of the advantages of education. I could not let this matter pass without bringing it to the attention of the Convention, and I propose merely to test the sense of the Convention as to the propriety of requiring all children between certain ages, to be specified, to attend school at least three months in each year.

Mr. COLLINS. I should dislike to have incorporated cities and towns designated in this article as the only places in the State where parents are unwilling to send their children to school, or to give them educational facilities. I admit that the evil is as prevalent in towns, possibly, as in the country, but in many country places there is very general neglect to provide good schools, and to induce children to attend them. Outside of cities and towns there are many men who have themselves been reared without education, and who look upon it as having a tendency to disqualify or unfit young men and women for hard work. Seeing no prospect before their children but a life of labor like their own, they regard education as objectionable on that ground especially. There are also, perhaps, a good many who retain their children from school on account of indifference, or from mercenary motives. Many keep their children at hard work, or, worse than that, allow them to run about in idleness, when they ought to be at school. I think, therefore, that if the provision is to be adopted, it should be made to extend further than merely to embrace incorporated towns. I would have it apply all over the State, and I am in favor of every appliance that can properly and justly be brought to bear upon the whole community, to exact from them such obedience to the requirements of the laws of the State as shall give to every child in the State some kind of education. If a parent is disposed to send his children to other than a public school, or to bring a governess or tutor into his own house to instruct his children, I see no objection to it, and the provision, of course, would not affect those cases; but where there is indisposition on the part of parents, whether resulting from their own ignorance, indifference, or avarice, the Board of Education should have some means of exacting the attendance of the children.

But I would not confine it to cities and towns. I would go out into the settlements—into your agricultural valleys, for example—where will be found the greatest amount of neglect and indifference. It is not in the large cities that you are most likely to encounter these evils. The best schools on the globe are found in the large cities of Europe and the United States. In the large towns is where schools always flourish, and they are supported and attended by all classes, more or less; but in the agricultural districts, in the remote and sparsely settled portions of the State, the influences which are most favorable for the promotion of the cause of education, are not so active, nor so much felt. There is not the same contact of mind with mind, men are not so much stimulated by ambition, and they do not so much value or appreciate the advantages of education, because they do not see so much of its influences upon the individual, the family, or the public at large. I was very reluctant, in committee yesterday, to accept the proposition to remove the clause requiring compulsory attendance of children on the schools, and I shall be perfectly willing to confer on the Legislature the power to exact attendance by law, at such times and in such places as may be deemed expedient. I know that in Virginia we suffer very much for the want of such a power, and if the Boards of Education had power to exact attendance for three months or six months in the year, it would be a great advantage to the

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Territory. I know of many instances where it would have an extremely beneficial influence, and I am in favor of extending it all over the State. Rather than confine it, however, to particular places, I would prefer to let the section remain as it is. Then if the Board of Education of Storey County asks for such power, the Legislature may grant it, and the good influence arising therefrom will shine and reflect upon other localities, until they in their turn seek to secure the same advantages.

Mr. WARWICK. I think there are some subjects which are justly and properly objects of legislation, and among them, one of the most worthy is that of education. But while we are legislating on that subject, do not let us forget that we are living in a Republic, that a man's house is his castle, and that in it he has a perfect right to exercise full authority and control over his children—to send them to school, or to keep them at home, just as he pleases. The very character of our free institutions forbids this proposed interference with the private rights of the citizen. No man desires to promote the general interests of education more than I do; no man is more anxious to have his own children educated than I am; but I really think we are forgetting the spirit of our institutions when we are seeking to compel our fellow-citizens to send their children to the public schools. The moment we invade the home of any man, telling him that he must do this, and must not do that, seeking to make men good according to our notions of goodness, we are traveling, in my opinion, out of the line of our duty, and departing from the fundemental principles of our Republican form of government. I repeat, that the very spirit of our American institutions is in opposition to this proposition. We are not living here under a Prussian monarchy.

Besides, it seems to me that such a measure is entirely unnecessary, because the spirit and temper of our people is quite sufficient for all that gentlemen are aiming at. Here and there a man may be found who would keep his children at home, and deny them the privileges of education, but these cases are the rare exceptions, so rare as scarcely ever to require being looked after by the law-maker. We are legislating here for general principles, not special or exceptional cases, and I sincerely trust that we shall not adopt any provision which will allow a little body of men, assembled here to legislate for the State, to undertake to compel men to do that which only one government in the world, and that a monarchy, ever has had the courage to compel.

Mr. COLLINS. Let me ask the gentleman a question. Suppose a boy brought up in ignorance, in consequence of such breeding, commits a felony. If he is convicted, his imprisonment of course involves a charge to the State. Now which is the better investment for the State, to instruct him or to imprison him?

Mr. WARWICK. To instruct him, by all means. But Fagans are scarce. Men who train their children to crime, thank God, are not numerous. It may be that here and there a father or a mother may err in regard to the advantages of education, but that evil is not commensurate with the evil we should do by a palpable violation of the spirit of American free institutions. Let us not do evil that good may come. If this may be done, we may advance step by step in our encroachments, until by and by every right and privilege, now the pride of the American citizen, will be lost and destroyed. It is not by such means that morality, virtue, and religion are advanced in the world. They are encouraged and promoted by a wholly different process. Compulsory laws, enacted for the purpose of their advancement, never have been found to work well in practice, in any community, and ultimately, in the advancement of all those principles, the great apostles of reformation in every age and nation, after the trial of all other means, have been compelled to fall back on the great lever of moral suasion. You cannot enact laws to compel the education of the people, because the very spirit and foundation of our institutions are against it in principle. I should be sorry to see any article or section incorporated into the fundamental law of our new State, whereby any of these matters might be rendered compulsory upon the people. I have always looked with disfavor upon every description of sumptuary laws. Laws to enforce temperance, or compel virtue in any respect, are bad in principle, and bad in practice. You cannot legislate people into virtue. Other means have to be resorted to in the end, and they are found to be potent enough in our time to carry on all those great works of reformation and advancement. I sincerely trust the proposition suggested by the gentleman from Humboldt will not be incorporated into our Constitution.

[The PRESIDENT in the chair.]

Mr. MCCLINTON. I do not believe there is any gentleman on this floor who has a higher appreciation of the benefits to be derived from a good system of common schools than I have. I had the honor to graduate in the chimney corner, by the fire-light in my father's little, old log cabin, and I feel the want of a polite and classical education. I am willing, therefore, to do all I can to encourage common schools; all I can for the encouragement of every species of educational improvement, and morality; but I am not willing to carry my own desires so far as to bring them in conflict with what I consider one of the fundamental principles of our government. I cannot resist the conviction in my own mind, that the proposition to compel parents to send their children to our public schools, or to any other schools, is inimical to the spirit of our Republican institutions.

And I am opposed on other grounds, also, to the proposed amendment of the gentleman from Humboldt. If we say that in incorporated cities and towns we will compel parents to send

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their children to school, we certainly make an invidious distinction in favor of people residing in the country, and that would be a palpable violation of the broad principles which we intend to lay down and establish, or which, unquestionably, we ought to implant in our fundamental law. I believe that education is a proper subject of legislation, but we should merely mark out here a sort of outline of the course which we intend the Legislature to pursue on that subject, and then leave the rest to the wisdom, intelligence, and patriotism of those legislators, who, we may be permitted to presume, will be not only as wise, but as earnest and zealous in the cause of education as we ourselves. For these reasons. I hope that the gentleman's proposition to refer the subject to a special committee, with instructions to add such a provision, will not be adopted.

Mr. DUNNE. With the consent of the committee I will withdraw the motion I made, inasmuch as it is not competent for the Committee of the Whole to appoint a special committee, and instead I will offer an amendment, which I have prepared and sent up to the desk.

The SECRETARY read the amendment, as follows:

"*Provided*, That the Legislature shall have the power to pass such laws as shall make it compulsory with parents and guardians that all white children under their charge, between the ages of six and fourteen years, residing in incorporated cities or towns, shall receive educational instruction for at least three months in each year, unless physically or mentally incapacitated."

The CHAIRMAN. I hope the gentleman will leave out the word "incorporated." There are but two or three incorporated cities or towns in the Territory, I believe. This city is not incorporated.

Mr. WARWICK. I wish to make one inquiry. Does the gentleman mean to give to negroes larger liberly than he does to whites? It seems that white people are to be compelled to send their children to school, while the negroes are not.

Mr. DUNNE. I will reply that my object is to make such provision in regard to education that those who are entitled to vote, may vote intelligently; but I do not mean by any action of mine to allow negroes to vote.

Mr. BANKS. If we leave this clause out entirely, will not the Legislature still have the power, as a reserved right, to pass such a law? It seems to me they would have that power without our saying anything more about it, and therefore this amendment simply enables, not requires, the Legislature to do what I think they already have the right to do.

Before I sit down, I wish to suggest a slight verbal amendment in the section as reported. It reads—"tend to secure *a* general attendance." etc. It seems to me it should read "*the* general attendance," instead of "*a*." That would be in accordance with the rules of grammar, which we certainly ought not to ignore in this article.

Mr. MCCLINTON. I believe the Legislature has already as much power, in relation to compelling the attendance of children in the schools, as this Convention ought to confer.

The CHAIRMAN. I understood the gentleman from Humboldt, last on the floor, to suggest an amendment to correct the grammar of the original section. It certainly would be a bad place to ignore the rules of grammar in the educational feature of our Constitution.

Mr. BANKS. I merely say I think the word "the" would be more appropriate there than "a."

Mr. DUNNE. In reply to my colleague's remarks, I have only to say that in my judgment, unless we delegate this power expressly to the Legislature, they will not have it, because all the rights and powers which are not granted are reserved to the people.

Mr. CHAPIN. I hope this amendment will not prevail, because without it the Legislature will undoubtedly have the right to enact such laws under the language already contained in the section. It says at the end of this section:

"And the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools."

That is ample to cover the whole ground. The Legislature has that right already, and I believe there is propriety in it; and I do not think it will be any trespass or infringement upon democratic rights, either, to exercise that power. I think we should leave the section just as it is, for the whole ground is amply covered.

Mr. LOCKWOOD. I wish to say a few words, merely to throw out a suggestion to the gentleman from Humboldt who proposes this amendment. I have had some little experience in schools in California, and I know there is a class of persons to whom such a provision would be extremely repugnant. I have seen persons so bigoted in their religious faith—as, for example, the Roman Catholics, although I do not mean to mention them invidiously—that they would claim that all the public schools were sectarian, and rather allow their children to grow up in ignorance than attend them. Now the question is, it seems to me, whether or not it is better for the State to violate the prejudices of this class of persons, even for what we believe to be their own good?

Mr. DUNNE. This amendment does not propose to compel attendance on the public schools at all; it proposes merely to require that all children shall receive educational instruction to a certain extent, each year, and the parents may send them to school wherever they please. The objection suggested by the gentleman from Ormsby, therefore, does not apply.

Mr. LOCKWOOD. I think we have cases in point right here in town. We have no sectarian schools, but there may be a Baptist, a Presbyterian, or a Catholic, perhaps, who conscientiously believes that it is better not to educate his children at all, than to place them in our

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public schools. Now the question is, shall we, on account of such religious prejudices, suffer children to grow up in ignorance in our midst? The operation of our form of government, and the principles upon which it is based, have been referred to in connection with this subject, but I will say that I do not see in those matters any particular bar to this amendment. Every gentleman knows, who is at all acquainted with the operation of religious or sectarian schools in Europe, that the principal part of the teaching is in regard to matters of religious belief. I think about two-thirds of the time of such a school is ordinarily occupied by the priests, or those whom they regard as their spiritual advisers. They do not teach their children any of the essentials of literature or the arts, but they confine their instructions rather to blinding them, as some of us might regard it, or indoctrinating them in their religious creeds, forms, and ceremonies. Now, sir, I do not wish to do violence to the conscience of the humblest individual in the land, by any provision which we may adopt in the educational feature of our Constitution, yet there is an opposite extreme. I will merely suggest this, however, that while I believe it is a very good thing for an individual to attend church, and that if everybody went to church on Sunday very few crimes would be committed on that day; yet I think the gentleman from Humboldt will very readily agree with me that if it were proposed to adopt a proposition in our Constitution compelling everybody to attend church on the Sabbath, it would not be sanctioned by a vote of this body.

Mr. DUNNE. One word only, in regard to the Prussian system which has been spoken of, and the time which the gentleman from Ormsby (Mr. Lockwood) thinks is taken up in religious instruction in schools of the class he has referred to. This amendment has nothing to do with the Prussian system, but there, as I understand, the usual school instruction is kept entirely separate from religious instruction, and not allowed to conflict with it in any way. Every parent who wishes religious instruction for his children, is required to register his name and creed, and at certain hours each day, set apart for that pupose, each child is instructed in the religious tenets of that creed. It does not interfere at all with the secular branches of education taught in those schools.

Mr. FRIZELL. No man can more fully appreciate the excellent motives of gentlemen who advocate the amendment, than I do. It appears that this same object which they are now endeavoring to reach, has in past years been the subject of discussion very frequently in other States. Now, sir, writers on the subject of crime tell us, and others who are not writers are willing to admit it, that ignorance is the parent of crime. Therefore it follows that if we can by law establish any system that will either induce or compel parents to educate their children, it will do very much towards preventing crime, and consequently will be a good thing for the State. But, not only various objections to the practicability of the measure proposed, but also the very spirit of our institutions, appear to stand in the way.

But what I wished to call the attention of the Convention to more especially, is the fact that there is another question which arises here, that has not been mentioned by any of the gentlemen who have occupied the floor on this subject. That question is the age at which children should be sent to school. You are perfectly well aware, Mr. President, and so is every gentleman here, that people differ widely in their views in regard to the physical education and mental training of their children. During the last fifteen years especial attention has been turned throughout the United States to the subject of the physical development of children. At the present time you will find no two parents out of three, perhaps, who would not be willing to send their children to school, even at the tender age of six years; and yet there are a great many who prefer at that age to let them play and exercise, and develop their physical systems, for a year or two longer, it may be, before going to school.

Now, sir, taking into consideration the many barriers that stand in the way of a proposition of this nature, I say that while I would be glad to go with these gentlemen, while I appreciate their motives and would approve of the object at which they are aiming, if we could only reach it, yet it seems to me entirely impracticable to make any provision compelling parents to send their children to school; and I object especially to that feature of the amendment which relates to the age of the children, because I know that many parents are not willing to allow their children to attend school at the age of six years.

Mr. COLLINS. I think the gentleman from Humboldt will find, upon a more careful examination, that the section already contains language which covers all the ground he desires. It says the Legislature "may pass such laws as will tend to secure a general attendance." There is something sufficiently elastic to cover everything which has been suggested during this discussion, to meet every changing condition of public feeling on the subject of education. If the Legislature shall hereafter deem it proper to enforce the attendance of all scholars of a certain age, it has the power to do so; or if the Legislature, coming up fresh from the people, shall be imbued with the idea that it is impracticable to make a general enactment of that kind, but the County of Storey, or Ormsby, or some other county, asks for the advantages of such a law, the Legislature has power to grant the request, and confer on such county the privileges solicited. The provision is elastic and comprehensive, and may be adapted to any want of any particular portion of the community, or any condition of progress of the public mind. On the other hand, this

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amendment proposed by my friend from Humboldt, is peremptory and inflexible; and while I agree with him in the general principle, and believe that his amendment only provides for carrying out a great truth, yet it appears to me that at the present time it would strike the public mind with a degree of alarm and disapprobation, and I am inclined to think it would be wiser to leave the Legislature, from year to year, to adapt its action to the progress of public sentiment.

Mr. DUNNE. But does not my amendment leave it also to the Legislature?

Mr. COLLINS. Yes; but at the same time it makes an exaction, requiring a certain course of action by the Legislature.

Mr. DUNNE. No, no! The language is, "that the Legislature *shall have the power* to pass such laws," etc.

Mr. COLLINS. Yes, sir; but it also mentions particular ages, and consequently forbids the enactment of any law specifying different ages, although the Legislature might desire to extend the limit from six to eight years. I remember that my first child went to school as soon as she could toddle—almost as soon as she could speak; and she learned her lessons—everything they undertook to teach her—things which she forgot about as readily as she learned them. My own observation and experience tend to the conclusion that education, such as is generally imparted in the common schools, is not adapted to the weak minds of young children, and I am strongly inclined to favor the plan of combining physical and mental training, something like the system of "object teaching." I think the time may come when the age of eight years will be generally regarded as sufficiently early to commence the severe system of our schools. I think the section as it now stands covers all the ground we want to cover, while my friend's amendment is altogether too definite and specific. That limits the Legislature to a certain course marked out in advance, whilst this is expansive in its nature, giving the Legislature all the power they may require, not only to-day, but perhaps a thousand years hence.

Mr. HAWLEY. I wish to suggest to the friends of this proposition, whether it does not occur to them that parents might, in some cases, appeal to the law, and create troublesome litigation on this subject. I believe that if a law were passed under such a constitutional provision, to compel parents to send their children to school, and if a child were taken from its parents under the provisions of such a law, the parents would have a right to apply for a writ of habeas corpus, and under that could secure the release of their child. That is one of the grounds upon which I base my opposition to this amendment. My experience is not perhaps very great, but judging from what I have observed, I honestly believe that more can be done to build up the public schools by one man who will devote a little time to the subject—giving lectures on education, for example, through the country, and in that manner arousing the attention of men to the importance of educating their children—than ever would be accomplished by all the sumptuary laws that can be incorporated into any Constitution, or enacted by any Legislature or any Congress in the world. I desire, sir, without further occupying the time of the Convention, to enter my protest against the adoption of any such provision as is contained in this amendment.

Mr. BANKS. There is one further objection to this amendment which I wish to mention, and that is, that the Legislature would be inhibited, by clear implication, from compelling the attendance of children anywhere else than in incorporated cities and towns. I would urge this in addition to the fact that no such provision is necessary to give the Legislature ample power to enact whatever laws may be required, and I conceive that the last objection is a very strong one.

The question was taken on the amendment proposed by Mr. Dunne, and it was not agreed to.

NEW SCHOOL DISTRICTS.

Mr. CROSMAN. I have an amendment which I wish to offer. It will probably come in best about the middle of the section. I will move to insert after the words "during such neglect or infraction," the following:

"*Provided*, That the Legislature may make provision for the distribution of the school fund to school districts during the first year of their organization, without reference to the time that a school has been held therein."

Mr. HAWLEY. I suggest to the gentleman that if this amendment is to come in at all, it would be more applicable in the following section, where provision is made for the apportionment of the interest from time to time among the several counties. I attempted yesterday to remove the doubts of certain members upon that subject, and at a proper time I will renew my efforts to do so.

The CHAIRMAN. I think the amendment is appropriate in Section 2, as proposed by the gentleman from Lyon.

Mr. CROSMAN. My impression is, that the amendment comes in properly here, in Section 2 of the article under consideration. If I understand the reading of this section, as it has been presented before us, it might occur that a new district having had a school in operation, even for a period of ten or eleven months, would get none of the school fund. In the first place, I understand that the first school year will embrace portions of 1864 and 1865, beginning and ending probably the same as at present. Then this section provides that a school shall be maintained in the district at least six months in every year, and under my interpretation, it might so happen that a new district would be

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obliged to have its school in operation for eleven months before it would receive any appropriation. I called up this same question in the committee, but other members thought differently, and no action was had upon it. Upon looking at the matter further, however, I am satisfied that it might occur in the manner I have indicated. Now I consider that it ought to be our policy to so frame our Constitution that the Legislature may encourage the organization of school districts; and if there ever is a time when they need assistance, when the State should foster the interests of education in a district, it is at the commencement. Let us leave the time to the Legislature, and allow it to provide in its discretion, so that the new district which shall have had two or three months of school may receive its portion of the school money, but let us not compel a school district to go along without aid, for nearly a year, in the outset. At least, do not leave it so that the Legislature cannot encourage school districts in their infancy.

Mr. HAWLEY. Allow me a few words of explanation, as to the manner in which the distribution of the school money is made under our present system: The Superintendent of Public Schools of each county is notified twice a year—I believe in May and November—by the General Superintendent, as to the amount appropriated to his county. At that time, when such notification is made to the County Superintendent, the latter refers to his list of the school districts in his county, and the census of the School Marshal, and thus ascertains how much, *pro rata*, of the whole amount drawn by the county is to be paid to each school. The amount to which each scholar is entitled, multiplied by the number of scholars in any district, of course, will give the amount which must be paid to such district. Now under that system, if a new district is organized, no matter if it is only ten days before drawing this fund from the State, it has been placed on the record of the County Superintendent, with the number of its scholars, and the district receives its proportion of the fund the same as the other districts. The only question is, as to the time when it is to be paid to the district. If it has been organized only ten days, under the Territorial law it cannot receive the money immediately, but is required to have school for three months before the amount appropriated can be paid over. Now it is proposed to require the districts to have school for six months. In the meantime, the money is not to be given to the old districts, but their *pro rata* proportion is retained for the new districts. I think it is not very material at present, however, what arrangement may be made in respect to newly organized districts, for I believe that in all probability every district has already been organized that will be for some time to come. But even supposing that a new district should be organized two months prior to the framing and passage of the school laws, to take effect under the Constitution, when we become a State, I insisted yesterday in the committee, and I insist here to-day, that those two months will be accredited upon the first payment due to the district. I also contended yesterday, and still insist, that if we pay an equal proportion to those districts which have had school only three months, we thereby work an injustice and hardship to those which have maintained their schools perhaps nine months in the year, and in which the sums required for the payment of the teachers are, perhaps, more than two-thirds made up by private subscriptions. I candidly think that the more equitable plan is to require that, before any money is paid to a district, school shall have been taught therein for at least six months, and I think, still, that the gentleman from Lyon (Mr. Crosman) labors under a misapprehension as to the character of the requirement in regard to the length of time that school shall have been taught in a new district before it can receive its proportion of the school money. I insist that if a school shall have been maintained in a district two, three, or four months prior to the adoption of the Constitution, the district will be given credit for that length of time, and will receive its *pro rata* of the public money accordingly, and at the same time I am entirely opposed to allowing the money to be paid to any district before it shall have supported a public school for at least six months. I do not believe in compulsory education, and I think there is not in the Territory, and will not be in the State for a long time, any district in which a school will be maintained for a longer period, certainly, than nine months in a year.

Mr. CROSMAN. Allow me a word in reply. I may not, perhaps, differ materially from the gentleman from Douglas in regard to the term of six months, but I wish to have the language of the section so constructed that we can understand clearly that when a school has been maintained for six months, the district shall be entitled to the money. But this section says "every year." It requires that a common school shall be maintained "at least six months *in every year*," and it proceeds to provide that any district neglecting to establish and maintain such a school, may be deprived of its proportion of the interest of the public school fund during such neglect. Now, with regard to the time, I do not propose by my amendment to fix it definitely; I prefer to leave that to the Legislature. The gentleman tells us how the present school system operates, but he must remember that we shall have to be governed in the future by such rules as we fix and establish in this instrument, not by the practice under our Territorial laws. I think it is nothing but right for us to provide that any district organized within a few months of the close of the school year, when it has had school for six months—or I would prefer to say for three months—shall be entitled to receive its proportion of the school money.

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Mr. COLLINS. My excellent friend, the gentleman from Lyon, thinks he perceives a difficulty, which, after a good deal of thought and turning the matter over carefully in my own mind, (for the gentleman suggested it to the Committee on Education while the article was under consideration in that committee,) I have been, I confess, unable to appreciate. I think the difficulties which occur to his mind have no real basis, for the reason that this constitutional provision is merely an outline by which the Legislature is to be governed. It contemplates that the Legislature shall establish a school system, and that one of the requirements of that system shall be that each district, in order to obtain its proportion of the public money, shall maintain a school for at least six months in each year. Now it is not to be presumed that the Legislature, in framing a school law under that provision, will so frame it as to deprive a school district just organized, or organized within the last three, or the last six months of the school year, of its proportion of the school money. The language of the section does not necessarily imply, in my opinion, that there must be absolutely six months of school teaching before the district can receive any money whatever. It does not require six months of school teaching within the school year, but it may be, as I understand, three months of school at the end of one year, and three months at the beginning of the next year. If in any district a school has been in operation three months in the school year, and had been organized three months in the previous year, it is not to be presumed that a legislative body, organizing a school system under great difficulties, is going to make such provisions as will cut that district off, and prevent its receiving any of the school money. The constitutional provision simply lays down the general principle that in every district there must be a school for six months in each year, and the penalty is, that if a district does not maintain a school during that proportion of the time, it cannot be allowed to receive any portion of the public money.

Mr. HAWLEY. May I be allowed one moment to repeat a statement which I made yesterday in the committee, and which I think may have some bearing upon this very point? It is, that the appropriation is made in all cases, but a school must have been taught in the district for the period of time required, before the district can draw the money. I wish the gentleman from Lyon (Mr. Crosman) to understand this perfectly.

The CHAIRMAN. The gentleman from Douglas will please to take his seat one moment. I believe there is not a quorum present. Let the Secretary count the Convention.

The SECRETARY counted, and reported that eighteen members were present.

Three or four other members having come in from adjoining rooms, a quorum was found to be in attendance.

The CHAIRMAN. We have had but little more than a quorum during a considerable portion of this afternoon, and the Chair will suggest that it will be necessary for members to remain in the Convention, in order that we may not find ourselves without a quorum for business. The gentleman from Douglas will proceed.

Mr. HAWLEY. As I was saying, the appropriation is made including any district which may have been formed, say ten days, or any other time within three months, before the notification to the County Superintendent of the amount due to the county. That appropriation then becomes a part of the property of that school district. It is held in trust for the district by the Treasurer, and cannot, in any event, be diverted from the use of such district, until the close of the year from the time the appropriation was made. It must lie there for the entire year, in order that the Superintendent may ascertain at the end of the year whether or not the district has been entitled to receive it according to law. I know it is so in my own county. I have now an appropriation of about two hundred dollars belonging to a district which has not complied with the law, and that amount must remain in the treasury for twelve months before I can throw it out of the district fund into the general fund of the county, for distribution among the other districts which have complied with the law. Therefore, I say that the seeming hardship, to which the gentleman from Lyon refers, does not exist. If newly organized districts continue their school for the time required, the money cannot be diverted from them, and will not be by any honest Superintendent; but if for the space of a whole year they refuse or neglect to comply with the law, then the money is divided among the other districts. I think it is an excellent check upon the several districts, and I trust it will be continued.

Mr. COLLINS. It is to be presumed that the Legislature, in framing or drafting a school law under our Constitution, will frame it, not, perhaps, in exact accordance with the present system, but in such a manner as to harmonize with the requirements of the Constitution. Now almost any man, if disposed to be critical, might point out difficulties likely to arise in the workings of any new system which we can devise. But all that this body can do, or ought to attempt to do, is to lay down the outlines of a general system, presuming that the Legislature will be as much interested, and have as deeply at heart the cause of common schools, as the members of this Convention. The members of the Legislature will have to exercise their best judgment in devising the means of carrying out in detail these general provisions, and they will undoubtedly frame their law with a view to meet any and all such difficulties as that which has been suggested by the gentleman from Lyon.

Mr. CROSMAN. But what right will the

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Legislature have to frame a law providing for this difficulty, if in the Constitution we prohibit the Legislature from doing so?

Mr. COLLINS. I think there is no such prohibition, and I imagine it would be no particular trouble to me, if I had the time, to draft a law, under this provision, which should meet that very case. But even supposing that difficulty could not be met, still I maintain that it would be better to let the new districts suffer a little temporary hardship of that kind, than to have our whole educational system deranged. The great object is to stimulate the support of the public schools, and I wish it were possible to keep them going for twelve months in the year instead of six. We provide that the State shall offer a premium for the longer term of six months. We know that there are very few districts in which schools would not be kept from one to three or four months in the year, by the voluntary contributions of the citizens, even without the aid of the public money; and by offering this premium a stimulus is presented, inducing them to contribute such amounts as shall suffice, together with the public money, to carry on the schools for six months, at least; whereby they secure the advantage of the State aid, and are enabled to educate their children. The experience of all other States has shown the great advantages of such a system. I hope the gentleman from Lyon will withdraw his amendment, because I am satisfied that the difficulty which he apprehends does not exist in the section as it now stands before the Convention.

Mr. WARWICK. As it is nearly five o'clock, will the Chairman allow me to make a privileged motion to extend the time for the adjournment?

The CHAIRMAN. The gentleman will wait until the committee rises.

TIME OF MAINTAINING SCHOOLS.

Mr. BANKS. I prefer that we should simply require the Legislature to provide for schools for six months in a year, leaving all matters of detail for the Legislature to arrange, from time to time, as occasion may arise. I therefore move to amend by substituting these words, in place of the language now contained in the section:

"The Legislature shall provide for a uniform system of common schools, by which a school shall be maintained in each school district at least six months in every year."

The CHAIRMAN. The effect of that amendment would be, as the Chair understands, to adopt a substitute for Section 2.

Mr. COLLINS. I trust that amendment will not prevail. I hope that the Convention will be disposed to offer a premium to every school district in this State, which shall maintain a public school for six months in the year; and I also hope, most sincerely, that we shall provide in our Constitution for keeping out of our schools sectarian instruction. It will require strong influences to exclude such instruction, and money is the great motor—one of the most powerful influences of civilization. Wherever its power is brought to bear, it always has potent sway. The gentleman from Humboldt who offers this amendment is almost always right, but it seems to me that he has been a little wrong in his investigations on this subject, and therefore I trust that the Convention will not sustain him. If we adopt his amendment there will be nothing left which will be adequate to keep out sectarianism, and no stimulus which can be relied upon to keep up the public schools for more than one, two, or three months in the year; and if the Legislature has only the public school money, and no power to support the schools by taxation, perhaps, in many districts, they will not be maintained more than one month in the year.

Mr. McCLINTON. I suggest that the clause in the section as reported, prohibiting sectarianism, be incorporated into the amendment of the gentleman from Humboldt.

Mr. BANKS. I will accept that.

Mr. COLLINS. The gentleman from Humboldt may accept it, but I shall not.

Mr. BROSNAN. I desire to offer an amend ment.

The CHAIRMAN. It is not now in order.

Mr. BROSNAN. I intend it as an amendment to the amendment proposed by the gentleman from Humboldt. It is to add to his amendment the following:

"But no sectarian instruction shall be allowed in any public school so established."

Mr. BANKS. I accept it.

Mr. HAWLEY. I do not wish to occupy the time of the Convention, but in my judgment the result of the removal of that section as reported, could not be anything but bad. Such action must necessarily have a pernicious influence. Sir, the object of the committee in framing Section 2, now under consideration, was to create a stimulus which would incite the different school districts to maintain their schools for longer periods than they otherwise would. But let the several districts have it in their power to put their hands upon the public funds, whenever a school has been taught in them for one, two, or three months, when they have taken up some strolling applicant for the position of teacher, and placed him in charge, to neglect his duties, as I know to have been sometimes the case in my own county, and it will bring forth no good results. What we want is a basis upon which to build the educational superstructure, by means of which we can afford every child a sufficient amount of instruction to enable it to go creditably through life. At the same time, we wish to make the people understand that with the limited resources of the State, and with the heavy expenses necessary to support the schools as they should be supported, they will be required to put their own shoulders to the wheel. Now, although I am a member of the committee which report-

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ed this article, I have no hesitation in saying that under its provisions, in my opinion, a law could be framed, and would require to be framed, which would accomplish these good results; and with all deference to the gentleman from Humboldt, I think that his amendment would result in the establishment of a system which would do but little good—which would contain no features calculated to sustain the interests of public education.

Mr. STURTEVANT. I move that the committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article XII, entitled Education, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. WARWICK. In order to enable the Convention to finish the consideration of this article to-day, I move that the time for adjournment be extended until half-past five o'clock, and then I will move, inasmuch as the Committee on Schedule desires to hold a meeting to-night, that at that time the Convention adjourn until to-morrow morning at nine o'clock.

The question was taken on the motion to extend the time for adjournment until half-past five o'clock, and it was agreed to.

The question was next taken on the motion that when the Convention adjourn, it adjourn to meet to-morrow morning at nine o'clock, and it was agreed to.

COMMITTEE OF THE WHOLE—EDUCATION.

On motion of Mr. STURTEVANT, the Convention again resolved itself into Committee of the Whole, (the President remaining in the chair,) and resumed consideration of Article XII, entitled Education.

NEW SCHOOL DISTRICTS.

The CHAIRMAN stated the amendments pending to Section 2.

Mr. DUNNE. It seems to me there are four or five amendments; I think they cannot all be in order.

The CHAIRMAN. The Chair will again state the question. In the first place, the committee has under consideration Section 2, of Article XII, as reported by the Committee on Education. The gentleman from Lyon, (Mr. Crosman,) moves to amend the section by incorporating a proviso, and to that amendment the gentleman from Humboldt, (Mr. Banks,) offers an amendment which is of the nature of a substitute, and is in order as an amendment to an amendment. A further amendment, suggested by the gentleman from Storey, (Mr. Brosnan,) was accepted by the gentleman from Humboldt, and therefore becomes a part of his amendment. Hence, the first question before the committee, is the amendment proposed by the gentleman from Humboldt, (Mr. Banks,) as subsequently modified by him.

Mr. FRIZELL. Mr. President—

Mr. BANKS. I ask the gentleman from Storey to give way one moment, that I may make a suggestion. It appears to me that the better course would be to put the vote first on the amendment offered by the gentleman from Lyon, (Mr. Crosman,) which I understand is to perfect the section. Then the question will properly come upon my amendment, to strike out the whole section, and insert instead the language which I have proposed.

The CHAIRMAN. If there is no objection that course will be adopted.

Mr. FRIZELL. In the outset of the remarks which I propose to make on the questions now pending before the Convention, I desire to say, Mr. President, that I am sorry to be impelled to utter anything adverse to amendments, coming as these do from able and good men; yet I feel it my duty to state why I shall be compelled to vote against them. I think that when anything like a system of education comes from the hands of such a committee as that to which this article has been referred, the men composing it being able men, who have devoted their entire attention to the subject for many days, it is entitled to most respectful and careful consideration at our hands. Certainly, sir, there are no more competent gentlemen in this Territory than those who compose that committee, and the important subject which they have had under their consideration is a theme suited to the men constituting the committee. Therefore, it seems to me that when a report comes from that committee to this Convention, it comes as a whole—in all its beauty, in all its force, in all its harmony. Sitting here, as one humble member, I might possibly find fault with a single section, as I hear it read by the Secretary, but unless I can hear the whole, take in and understand the harmony of all the parts, and appreciate the beauty and force of the entire report, I think I am scarcely competent to offer an amendment to any part of that report. And I apprehend that no member, no matter what his qualifications may be, can really make any valuable addition or amendment to the report, unless he can see through the beauty and strength and harmony of the whole of it; and hence I fear that any proposed amendment would be more likely to mar than to improve that harmony and strength. For these reasons, I am unwilling, unless gentlemen can offer something which will be extremely well marked and plain in the way of an improvement, to undertake to make any change whatever in the report which has been made by our committee.

The SECRETARY again read the amendment proposed by Mr. Crosman, as follows:

"*Provided*, That the Legislature may make provision

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for the distribution of the school fund to school districts, during the first year of their organization, without reference to the time that a school has been held therein."

The question was taken, and the amendment was not agreed to.

PENALTY FOR NEGLECT.

The question was next stated on the amendment offered by Mr. Banks, as subsequently modified, to strike out the whole of Section 2, and insert instead the following:

"SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be maintained in each school district, at least six months in every year; but no sectarian instruction shall be allowed in any public school so established."

Mr. BROSNAN. Now, sir, I move to amend that amendment, as just read, by adding thereto the following words, which I find here in the section as reported by the Committee on Education:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction."

Mr. BANKS. While I do not see any obvious necessity for that, I see no objection to it, and therefore I accept the amendment.

The question was taken on the amendment as thus modified, and it was not agreed to.

The question was taken on the adoption of Section 2 as reported, and it was adopted.

THE SCHOOL FUNDS.

Section 3 was read as follows:

SEC. 3. All lands, including the 500,000 acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841; the sixteenth and thirty-second sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; and all lands and parcels of lands that have been or may hereafter be granted or appropriated by the United States to this State; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land-warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds, or the bonds of this State: *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

STATE UNIVERSITY.

Mr. DUNNE. I wish to speak to the last proviso, which authorizes the appropriation of such portion of the interest on the public school fund as may be necessary for the support of a State University. I find that special provision is made in the next section for a State University, and in a subsequent section there is a provision for levying a special tax for its support. Now I am entirely in favor of taxing the State for a State University, whenever the State can afford it. I believe, however, in turning our undivided attention, in the first place, to the common school system of the State, and I do not think that the interest derived from the school fund should be taken from the common schools and applied to the purpose of building up a State University. Therefore, because there is special provision made elsewhere for a State University, and because we ought to endeavor, in the first place, to secure to our children the advantages of a good common school system, I move that this last proviso in Section 3 be stricken out.

Mr. HAWLEY. Allow me to call the gentleman's attention, and that of the Convention, to the language of that section. It only provides for the appropriation of "such portion of said interest as may be necessary."

Mr. DUNNE. I am aware of that.

The CHAIRMAN. The question is on the amendment to strike out the last proviso in the section.

Mr. HAWLEY. It does seem to me, Mr. Chairman, that this is a matter which should be left discretionary with the Legislature. I do not think there is any danger that a body of men, elected by the people, and convened here to legislate for the interests of the new State, are going so blindly to work as to appropriate at once, and exclusively, the entire sum received for interest on the public school fund to the support of a State University, leaving the common schools entirely unprovided for. The gentleman from Humboldt must be well aware that to create a State University, to build up its various departments, and fill it with professors, is a work of time. It will, of course, be the duty of the Legislature, first, to locate and rear the structure, and it does seem to me that the Legislature will, beyond any doubt or question, agree with the gentleman from Humboldt, and the rest of us, in realizing the paramount necessity of preparing the new State for a University before they build it—of placing both parents and children in such a position, in the first place, that they may be competent to avail themselves of the advantages of a University. Therefore, I trust that the amendment will not prevail.

I desire, further, to call the attention of the gentleman to another provision in Section 6—the section which authorizes the special tax, to which he has referred—a provision which he has evidently overlooked. The section prescribes that this special tax may be appropriated "for the support and maintenance of said University, *and common schools.*" Now I submit

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to the consideration of the Convention, whether it would not be better to leave some little discretionary power on these subjects to the Legislature, and trust to its good sense in regard to appropriating such small proportion of the school funds as may be proper, towards laying the foundation of the material superstructure of the University. I have no doubt that they will devote a sufficient portion for the benefit of the common schools.

The question was taken on the amendment proposed by Mr. Dunne, and it was not agreed to.

Mr. BANKS. I call for the reading of so much of the section as relates to the sixteenth and thirty-sixth sections, donated by Congress for school purposes. I think there is a mistake as to the number of the sections.

The SECRETARY read that portion of the section.

Mr. TAGLIABUE. That is where the error is; it should be the thirty-sixth, instead of the thirty-second sections, according to the Enabling Act.

Mr. HAWLEY. It is a mere verbal error; I move that the Secretary be directed to make the necessary alteration.

By unanimous consent, the Secretary was instructed to make the correction, by substituting the word "thirty-sixth" for "thirty-second."

PUBLIC LANDS—CONSENT OF CONGRESS.

Mr. FRIZELL. I rise for information. I see that this section includes, and devotes to educational purposes, the lands donated by Congress for internal improvements. I would like to hear some explanation of that.

Mr. COLLINS. Our chairman proposed to bring in an amendment relating to that subject, after the section was read, and at his suggestion I will offer it. Allow me to explain, in the first place, that this is the five hundred thousand acres appropriated by Congress to each of the States for internal improvements, but which has been by most of the States diverted to educational purposes instead. The chairman makes a suggestion, however, which strikes me as a very good one, namely: that probably, or at any rate possibly, we cannot divert the land donated in that manner, and enjoy the benefit of it, without the authority of an Act of Congress, inasmuch as we are still a Territory, and therefore he proposes to insert a clause appropriating the land to this purpose, provided the permission of Congress can be obtained for devoting it to such use and purpose. I will read the amendment he suggests for the information of the Convention.

Strike out all of the first four lines of the section as printed, and add after the word "State," in the seventh line, the following:

"And also the five hundred thousand acres of land granted to the new States under an Act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841, provided that Congress makes provision for, or authorizes such diversion to be made for the purpose herein contained."

Let the Secretary read the section as it will stand with the amendment proposed by the chairman.

The SECRETARY read, as follows:

SEC. 3. All lands, including the sixteenth and thirty-sixth sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this State; and also the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841;—*provided*, that Congress makes provision for, or authorizes such diversion to be made, for the purpose herein contained; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided further, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

The CHAIRMAN. I will state that the amendment presented, as I prepared it, makes no change in the section, except the transposition of the language and the addition of these words: "Provided, that Congress makes provision for, or authorizes such diversion to be made, for the purpose herein contained." I think that without the amendment a legal objection might exist to our making the provision absolutely, and incorporating it in our Constitution, without in any manner asking the consent of Congress.

The question was taken on the amendment offered by Mr. Collins, (in behalf of the chairman,) and it was agreed to.

The question was taken on the adoption of the section as amended, and it was adopted.

STATE UNIVERSITY—FREE ADMISSION.

Section 4 was read, as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanics arts, and mining, which shall be free to all white pupils possessing such qualications as may be prescribed by the Board of Regents.

The CHAIRMAN. Without leaving the chair, by leave of the Convention, I would ask the Chairman of the Committee on Education to explain this section. I see that one of the essential features of the corresponding section in the former Constitution is omitted, namely,

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that which required that the parents or guardians of the pupils shall be residents of this State. Is it contemplated that the institution shall be made free to all pupils, although their parents may not be residents of the State?

Mr. COLLINS. The committee had that subject under consideration, and was of opinion that there may arise cases where, if this school shall obtain the reputation which it is hoped it may acquire, by reason of our large mining interest, and the peculiarities of our agricultural lands, a restriction of that nature would be inadvisable. There may be individuals from other States who would like to avail themselves of the advantages of such a school, and who would be able and willing to pay liberally for their tuition, and that would be a source of revenue to the institution, and an advantage not only to those individuals, but to the public also. That consideration was what influenced the committee to make the change to which the gentleman refers.

[Mr. MCCLINTON in the chair.]

Mr. JOHNSON. I call the attention of the gentleman from Storey to the language of the section. I think it provides that instruction in the University shall be free to all pupils. If instruction is to be given free, I do not see how there can be any revenue.

Mr. COLLINS. If that is the construction to be placed upon the language of the section, the committee, I am sure, will be very anxious to change it. The University is to be placed under the care and direction of a Board of Regents, the members of which Board, it is presumed, will feel a strong interest in its prosperity; and as every such institution is languishing for want of money, it is hardly to be supposed that the Board will call in strangers to enjoy its facilities and advantages, unless the institution is to derive some benefit from them in return.

Mr. JOHNSON. This is the point I make: that when we declare that education shall be free in the institution, it is not within the province of the Board of Regents to prescribe regulations by which those pupils who come from abroad shall be compelled to make payment. I would prefer the language as we find it in the old Constitution. Whilst I would be in favor of making the University free for all pupils living within the State, I am unwilling to make it free also for those who come from abroad. The intention of the former Convention was, that free tuition should be given only to those whose parents or guardians might reside in the State, and as to those coming from abroad, the Regents would, of course, have the power to make such regulations as should be just and satisfactory.

Mr. COLLINS. I perceive the correctness of the criticism, and I think that some language should be added.

Mr. JOHNSON. I will move then to amend the section by adding the words as printed in the former Constitution: "And whose parents or guardians are citizens of this State."

Mr. NOURSE. Does not the section then exclude pupils residing outside the State, on any terms?

Mr. JOHNSON. I think not. The language of this latter portion of the section applies only to those whose parents or guardians are citizens. It gives the benefit of free admission to those living in the State, but there is nothing to prevent the Board of Regents from allowing others to enter upon such terms as they shall see fit to prescribe.

Mr. WARWICK. Would it not be better to incorporate in the section the idea that the Regents may prescribe the terms of admission of pupils from abroad?

Mr. JOHNSON. I do not think it is at all necessary. We only declare here the one proposition that the institution shall be free to those who reside in the State. That declaration is expressed in unmistakable language in the section, but nothing is said, directly or by implication, in regard to pupils who reside without the limits of the State. The Board of Regents may therefore prescribe such terms as they please for their admission, and I do not think that anything further is needed on that subject.

Mr. COLLINS. I do not think that the word "free," as there used, has reference to money. It strikes me that it means, rather, that all white citizens shall be at liberty to come in, under such rules and regulations as may be prescribed. I do not think the pupils are to be free in the sense that it is to cost them nothing, but that the privileges of the institution are to be free to be availed of by all the children in the State.

Mr. JOHNSON. I will only say this, that such was the sense in which the word was understood by the Convention which framed and adopted this section last year—namely, that children whose parents reside in this State shall be admitted free of charge. If, however, that word is not sufficient to convey our meaning, let us use language that will. I had something to do with the preparation of this article in the other Convention, and I know that the sense in which the word was understood then, was that education in the institution should be free. Now I repeat, if the word does not mean that, and we intend it, then let us substitute other words that will express our intention; and if, on the other hand, such is not our intention, let us adopt such language as will clearly express what we do intend. I am unqualifiedly in favor of providing that the instruction imparted in the University, to the children of the State, shall be without cost, and we can use that expression if gentlemen consider it more definite. But the word "free," as employed in the section, does not refer to white or black; I, for one, did not intend it to have any application or reference to the individual.

Mr. COLLINS. I am in favor, to a certain

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extent, of free schools, and yet I do not believe it is the duty of the public, unless it has ample means, even to open the common schools without exacting some small compensation. If the State is pressed for money, limited in its resources, or overburdened with debt, it must require parents, even though they may be poor, to contribute something towards the expense of educating their children, although I would like to have all the schools free, in the most liberal sense of the word. I think that the word employed in this section should be changed, and I suggest that we say "open," instead of "free"—"which shall be *open* to all white pupils," etc., under such regulations as may be prescribed. I really never dreamed that it was proposed to make the institution perfectly free to everybody in the State, so that men might attend, if they pleased, up to the age of twenty-five, or over, at the expense of the State. I know there are many colleges having departments in which men, up to the age of thirty, receive instructions adapted to the various walks of life, but they always exact compensation for such instructions. It seems to me that we ought only to provide that the University shall be open to all.

Mr. JOHNSON. That might be susceptible to the criticism that it would be very inconvenient to keep the door open, especially on a cold winter day. [Laughter.]

Mr. COLLINS. I use the word in the common acceptation of the term. As to the word "free," where it occurs in this section—I do not find it at this moment, the report has been so much disarranged and mixed up—

Mr. NOURSE. Allow me to make a remark while the gentleman is looking for that section. It seems to me that when we have gone so far as to provide for a Mining Department, we have said quite enough; all the rest, in regard to establishing rules and regulations, might better be left to the Legislature. As to making the institution free, I do not think it is practicable with the small amount of population in the country—

Mr. COLLINS. I have the floor, I believe. I find the word "free" in the fourth line of the section as reported. It says:

"The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils."

"Open to all white pupils," as I would prefer to say—

"Which shall be *open* to all white pupils possessing such qualifications as may be prescribed by the Board of Regents."

That, it seems to me, covers the whole ground, and we need go no farther. Under that section, you may let pupils in, if you please, from California, from Maine, from Georgia, or from Kamschatka.

Mr. WARWICK. The only objection I see, is that our State is rapidly increasing. It is well known that an institution of this kind, will be eagerly sought after by all classes; and if we admit the pupils free, I doubt whether we shall be able to build an institution large enough to contain all that will apply. There must be a limit established. It will be like the Girard College of Philadelphia, the Smithsonian Institute, founded by a benevolent foreigner, and other similar institutions, all of which have a limit. Therefore I think, as the gentleman from Washoe has said, that when we have provided that such an institution must be reared, all the rest may be left to the Legislature. I will move to strike out all that latter part of the section.

The CHAIRMAN. There is an amendment pending already, and consequently the gentleman's amendment is out of order.

Mr. JOHNSON. I will say but a single word further. I have referred to the action of the former Convention on this subject, and the sense in which that body used the word "free," in the original section, and I think the members of that Convention who are present in this will not disagree with me in respect to the meaning which was attached to the word when it was there employed. Although the Chairman of the Committee on Education seems to differ from me in regard to the sense in which the word now appears, in the section under consideration, yet I certainly conceive that what I have stated is the correct meaning and import of the expression, and hence I shall insist on my amendment to add the remaining portion of the original section—"and whose parents or guardians are citizens of this State." I insist upon this because I do not wish to throw open the institution without cost to everybody who may choose to apply for admission.

There seems to be some considerable difference of opinion on this subject in the Convention, and I would like an opportunity to make some estimates in regard to it, and to present some reasons why, in my judgment, this Convention should accord the special privilege which I propose to the children or wards of the citizens of the State, without cost in money. I think I can justify that policy, and show that there are ample compensating advantages to result to the State from making such a donation to the children of the State.

But, as there is not sufficient time before the hour of adjournment to give proper consideration to this important matter, I will now move that the committee rise, report progress, and ask leave to sit again, for the further consideration of this article.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair,

The CHAIRMAN reported that the Committee of the Whole had had under consideration Article XII, entitled Education, had made some progress therein, and had instructed him to ask leave to sit again.

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The report was accepted, and leave was granted accordingly.

On motion of Mr. CROSMAN, at twenty-five minutes past five o'clock, P. M., the Convention adjourned.

SEVENTEENTH DAY.

CARSON, July 22, 1864.

The Convention met at nine o'clock A. M.

Mr. HAWLEY moved, in the temporary absence of the President, that Mr. Mason take the chair as President *pro tem.*

The SECRETARY put the question, and the motion was agreed to.

Mr. MASON declined to take the chair.

Mr. CROSMAN moved that Mr. Hawley take the chair as President *pro tem.*

The SECRETARY put the question, and the motion was agreed to.

Mr. HAWLEY accordingly took the chair, as President *pro tem.*

The roll was called, and all the members responded, except the following: Messrs. Ball, Collins, Crawford, DeLong, Earl, Fitch, Folsom, Haines, Hudson, Jones, Kinkead, McClinton, Morse, Nourse, Parker, Tozer, Wellington, Williams, and Mr. President. Present, 20; absent, 19.

Subsequently, Messrs. Collins, Nourse, and the President came in, and were recorded as present, on the roll-call.

Prayer was offered by the Rev. Mr. NIMS.

The journal of yesterday was read and approved.

LEAVE OF ABSENCE.

Mr. HOVEY. I ask indefinite leave of absence for Mr. DeLong, on account of the ill health of his wife.

Mr. BROSNAN. We have but little over a quorum now, and if we go on granting indefinite leave of absence to members, we shall very soon find ourselves without a quorum.

Mr. HOVEY. I will ask, then, that he be granted leave of absence for one day.

The question was taken, and leave of absence was granted to Mr. DeLong for one day.

Mr. JOHNSON. I ask leave of absence for myself this forenoon, having business to attend to.

The question was taken, and leave of absence was granted to Mr. Johnson in accordance with his request.

Mr. WARWICK. Leave of absence was yesterday granted to Mr. Earl, for one day only, but with an understanding that the leave would be extended, if the necessities of the case should require it. I now ask that he have leave of absence for another day.

The question was taken, and leave of absence for to-day was granted to Mr. Earl.

Mr. BRADY asked leave of absence for Mr. Folsom for one day, which was granted.

Mr. MASON. My colleague, Mr. McClinton, obtained indefinte leave of absence the other day, but under a late ruling of the Chair, I fear that it may not avail him, and therefore I ask leave of absence for him for to-day.

The question was taken, and leave of absence was granted to Mr. McClinton for one day.

Mr. KENNEDY asked leave of absence for Mr. Hudson for one day, which was granted.

IMPEACHMENT AND REMOVAL.

Mr. CROSMAN, from the Committee on Engrossment, reported correctly engrossed Article VII, entitled Impeachment and Removal from Office.

The report was received, and the article ordered on file for its third reading.

PHRASEOLOGY.

Mr. BANKS, from the Committee on Phraseology and Arrangement, submitted the following report:

The Standing Committee on Phraseology and Arrangement beg leave to report, that they have carefully examined the following articles, as engrossed and passed by the Convention:

Article VIII, entitled Municipal and other Corporations;
Article IX, entitled Finance and State Debt;
Article X, entitled Taxation;
Article XIII, entitled Militia;
Article XIV, entitled Public Institutions;
Article XV, entitled Boundary;
Article XVII, entitled Amendments.

And your committee recommend the following amendments:

In Article XIII, Section 1, line 2, before the word "organizing," strike out the word "the," so as to read—"The Legislature shall provide by law for organizing and disciplining the militia," etc.

In Article XVII, Section 2, strike out the last words "at such election," and insert the same after the word "cast," in the 24th line, so as to read—"Reference shall be had to the highest number of votes cast at such election for the candidates for any office, or on any question."

All of which is respectfully submitted.

JAMES A. BANKS, Chairman.

The PRESIDENT *pro tem.* The Chair understands that these amendments are only of a verbal character, the latter being merely a transposition.

Mr. BANKS. That is all.

The report was adopted, and the amendments agreed to by unanimous consent.

STATE SEAL.

Mr. CHAPIN, from the Committee on State Seal, submitted the following report:

MR. PRESIDENT—Your Committee on State Seal recommend that the following prominent features be represented upon the State Seal, to wit:

In the foreground, two large mountains—at the base of which, on the right, there shall be located a quartz mill, and on the left a tunnel, penetrating the silver leads of the mountains, with a miner running out a car load of ore, and a team loaded with ore for the mill. Immediately in the foreground, there shall be emblems indicative of the agricultural resources of the State, as follows: a plough, a sheaf, and a sickle; in the middle ground, a train of railroad cars passing a mountain gorge—also a telegraph line extending along the line of the railroad; in the extreme background, a range of snow-clad mountains, with the rising sun in the east. Thirty-six stars to encircle the whole group. In an outer circle, the words "The Great Seal of the State of

Nevada" to be engraven, with these words for the motto of our State, "All for Our Country."

SAMUEL A. CHAPIN, Chairman.

The question was taken on the adoption of the report, and it was adopted.

Mr. JOHNSON. I suppose it is necessary that there should be a motion to discharge the committee.

The PRESIDENT *pro tem.* It may be desirable hereafter for the committee to take further action.

SCHEDULE.

Mr. DUNNE. In the absence of the Chairman of the Committee on Schedule, I wish to say that we are not yet prepared to report in full, but we expect to present a partial report this afternoon or evening. There has been a meeting of the committee called for a quarter before one o'clock to-day, and it is very desirable that each county should be represented, if not by the regularly appointed member, then by some other member from the county, who may be admitted to participate in the deliberations, by vote of the committee. I hope there will be a full attendance.

LIMITATION OF SPEECHES.

Mr. KENNEDY offered the following resolution:

Resolved, That no member be allowed to speak more than once, nor longer than five minutes upon any one subject, and if said time be consumed, he shall not be allowed to explain his vote.

Mr. BANKS. I move to strike out all of that resolution, except so much as limits the time. I am willing to confine gentlemen to a limited time of speaking in debate, but if a member wishes to explain his vote, he should have that privilege.

Mr. KENNEDY. I will state that it is not my desire to limit debate at all, but we have got into such a position that it is absolutely necessary, in my opinion, if we intend to make any Constitution at all, that we should finish it by Saturday night. I know that some gentlemen expect to go home to-morrow morning, and I am apprehensive that we shall find ourselves left without a quorum. I think it is time for us to vote more and talk less. I will suggest further, that if there should be some cases arise where it is necessary for a member to speak longer than five minutes, he can do so by unanimous consent.

Mr. DUNNE. That should be inserted, then, for as it reads now, it requires only a majority vote to extend the time.

Mr. KENNEDY. I will accept the suggestion, and insert the words, "except by unanimous consent."

Mr. CHAPIN. I will suggest an amendment, that the five minutes limitation be made to apply only to any question before the Convention. Then a member can make short speeches as often as he pleases, so long as he does not consume altogether more than five minutes of the time of the Convention.

Mr. JOHNSON. Perhaps we should go a little further and have a time-keeper appointed, if each member's time is to be divided into fractions. I will suggest, however, that the number of times of speaking is not limited by the rule heretofore adopted for the government of the Convention. And another thing, if we are to have such a rule, it is quite as important that it should apply in Committee of the Whole as in the Convention.

Mr. KENNEDY. I intended it to apply to both.

Mr. WARWICK. The difficulty is that there is frequently a delicacy on the part of the presiding officer, about calling a member to order who has exceeded his time.

Mr. JOHNSON. In regard to that, I will say that the rule which has governed the Convention hitherto regarding the length of speeches, in my opinion, left it discretionary with the Chair to call a member to order or not, unless objections were made. If, however, a different rule shall be adopted, which is imperative in its character, absolutely limiting the time of speaking, without reference to objections being made or not, I should, while in the Chair, feel it my duty to enforce such rule.

Mr. WARWICK. Very well; I hope the resolution will be adopted with that understanding.

Mr. CHAPIN. I hope it will be considered the bounden duty of the Chair to enforce the rule.

Mr. BANKS. I will withdraw my proposition to amend the resolution, because a member may make an explanation by consent of the Convention.

The PRESIDENT *pro tem.* Several other amendments have been accepted, I understand, by the mover of the resolution.

Mr. KENNEDY modified his resolution, so as to read as follows:

Resolved, That no member be allowed to speak longer than five minutes upon any one subject, either in Convention or in Committeee of the Whole, and if said time be consumed, he shall not be allowed to explain his vote.

The question was taken upon the adoption of the resolution as modified, and it was adopted.

THE FINAL ENROLLMENT.

Mr. BROSNAN. I would like to ask a question for information, and that is, at what time the Constitution will probably be enrolled and prepared for the signatures of members of the Convention. I make the inquiry, because I learn that some of the members desire to leave this week, and I do not see how, in that event, their signatures can be obtained.

The PRESIDENT *pro tem.* (Mr. Hawley.) I will state that the Enrolling Clerk assures us, that every portion which has been placed in his hands will be ready by to-morrow morning, and probably, if any more shall be handed in to-day, it will also be included. Nevertheless, I will state, from the best information I can ob-

tain, that it will be impossible to have the whole instrument enrolled by to-morrow night. The article on the Judicial Department, and the Schedule will be very long, and those are not yet in the hands of the Enrolling Committee.

Mr. BROSNAN. I made the inquiry mainly in order that members of the Convention may be apprized of the fact that their signatures to the document are necessary.

Mr. JOHNSON. How many signatures are necessary to give it validity?

Mr. BROSNAN. I do not know; but it is usual for each member of a Constitutional Convention to append his sign manual to the instrument which he has assisted in framing.

Mr. CHAPIN. I hope to see it enrolled by to-morrow evening, so that there may be no loss of time. I trust, therefore, that the committee will attend to the business, and have the work done without delay.

The PRESIDENT *pro tem.* It will be impossible, unless the articles on the Judiciary and the Schedule shall be finally acted upon.

Mr. CHAPIN. We are going to act upon them to-day, I hope.

Mr. DUNNE. I do not think it will be possible to have it enrolled before ten o'clock on Saturday night; but perhaps members can pursue the same plan which was adopted by the last Convention—that is, sign their names in blank.

COMMITTEE OF THE WHOLE—EDUCATION.

On motion of Mr. DUNNE, the Convention resolved itself into Committee of the Whole, (the President *pro tem.*—Mr. Hawley—remaining in the chair,) and resumed consideration of Article XII, entitled Education.

FREE ADMISSION TO STATE UNIVERSITY.

The question was stated on the amendment offered by Mr. Johnson to Section 4, to add thereto the words—"and whose parents or guardians are citizens of this State;" so that the section would read as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils possessing such qualifications as may be prescribed by the Board of Regents, and whose parents or guardians are citizens of this State.

Mr. JOHNSON. There was another amendment offered in the form of a substitute for the section, either by the gentleman from Washoe, (Mr. Nourse,) or the gentleman from Humboldt, (Mr. Banks.)

Mr. BANKS. I think that was lost.

Mr. JOHNSON. No, sir. I wish to call the attention of those gentlemen to the facts. I am confident there was an amendment to Section 4—in its character, a substitute for the section—offered by one or the other of those gentlemen.

Mr. BANKS. My recollection is, that I offered an amendment, which was voted upon, providing that the Legislature should pass such laws as would secure the keeping open of the schools for six months in the year.

Mr. JOHNSON. That was in Section 2; the one I allude to was proposed to Section 4, now under consideration; or, if not offered, it was at least read for information. The effect of it was, to omit all after the first three lines, stopping at the words "mining department," in the section as printed in the old Constitution. I think there was an amendment pending of that purport.

Mr. NOURSE. I believe I made that suggestion, but I made no motion.

Mr. CROSMAN. I will move to strike out that latter portion, after the word "Regents." That will leave the matter entirely open for legislative action.

The CHAIRMAN. The Chair recollects that objection was made to the latter clause on the ground of certain privileges to which children, whose parents or guardians reside in this State, are entitled, and in view of that objection the Chair was about to propose an amendment. I will suggest to the gentleman from Ormsby (Mr. Johnson) to present that amendment, which I think will do away with all the objections urged against the section.

Mr. CROSMAN. There does not seem to be any motion at present before the Convention, and I will ask the Chair to put my motion, as it has been seconded. That will leave the whole matter to the Legislature, to determine whether the institution shall be free for all children, or free for all white children, or what shall be the terms of admission in any and all cases.

The CHAIRMAN. There is a motion pending, the amendment offered by the gentleman from Ormsby. (Mr. Johnson.)

Mr. JOHNSON. I will withdraw that amendment. I do not consider it necessary, unless we retain the other portions of the section.

Mr. COLLINS. In order to harmonize this matter, I will say that I have no particular objection, for my own part, to striking out all, except that portion which requires the establishment of the University. And here is an amendment which has been handed to me that seems to cover the entire ground. It is to strike out the latter clause, and substitute the following:

"And the Board of Regents shall prescribe the terms upon which pupils shall be entitled to the privileges of said University."

Mr. CROSMAN. Now I submit to the Chair and to the Convention, whether it would not be more explicit, and better in every way, to let the section provide simply for the University, and then for a Board of Regents, and leave all the rest to the Legislature.

Mr. COLLINS. I am satisfied with that. Here is something, handed me by the gentleman from Lyon, (Mr. Crosman,) that would be short and concise:

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"The Legislature shall provide for the establishment of a State University, which shall be under the control of a Board of Regents."

Mr. NOURSE. I like the general idea of that very much, only I would suggest to add to it, "whose powers and duties shall be prescribed by the Legislature," and not leave it to be inferred, perhaps, that they have absolute control. I will vote for it with that addition.

Mr. CROSMAN. I will accept of that, although I think it would rather be inferred.

Mr. BROSNAN. I rise for information, and would like to get the attention of the gentleman from Ormsby (Mr. Johnson) for a moment. I suppose it is intended, in the establishment of this institution, to comply with the Act of Congress of 1862, granting lands to the several States for agricultural colleges, and that Act, I believe, provides that the institution shall possess various features. It is not to be devoted to agricultural purposes only, but the mechanic arts and military tactics are also to be taught.

The CHAIRMAN. Allow me a word of explanation on that subject. There is another section which provides for these matters, and the gentleman will observe that it is not left discretionary whether those branches shall be taught or not.

Mr. JOHNSON. I will further suggest that the section which has been reported by the committee, is more extended than the printed section, in the old Constitution. The chairman of the committee will be able to explain the objects intended to be gained by the section.

Mr. COLLINS. The law of 1862, which has been referred to by my learned colleague, (Mr. Brosnan,) makes it obligatory that the college established by aid of the fund provided for, shall be for the purpose of the benefit of agriculture and the mechanic arts; and in prescribing the details of such institution, in one portion of the Act, it designates military tactics as one of the branches in which pupils are to be instructed. It also provides that the fund arising from the sale of the thirty thousand acres of land donated to the State for each member of Congress, shall be set apart for these specific purposes. The subsequent section, as it will be seen, provides for the matter fully.

And here allow me to say to the gentleman from Lyon, (Mr. Crosman,) that if his amendment is to prevail, I hope he will modify it so as to include this language: "A State University, embracing departments for agriculture, mechanic arts, and mining." I desire that modification merely for the purpose of covering the entire ground.

Mr. CROSMAN. I will accept that.

Mr. COLLINS. I will say, further, that so far as I am concerned, I would rather have preferred to leave the whole matter to the Legislature, but in deference to the former Convention, the committee desired to retain as much of the language of the original section as possible.

Mr. NOURSE. I do not know that my amendment will be necessary, as the section is now proposed to be modified, but it will undoubtedly cover the whole ground if we add "under such regulations as shall be provided by law."

Mr. CHAPIN. Allow me to suggest that we shall save time by having this whole article read through carefully, section by section.

Mr. COLLINS. Let me suggest to the gentleman from Lyon. (Mr. Crosman,) that the presumption is the Legislature would provide for a Board of Regents, even if there were no further provision on that subject.

Mr. MASON. I rise to a question of order, that we have not a quorum present.

The SECRETARY counted the Convention, and reported that nineteen members were present, being one less than a quorum.

Mr. CHAPIN. I will move that the committee rise, in order that we may have a call of the House.

The CHAIRMAN. I see that one member has come in since the count, making a quorum. I hope that members will bear in mind our attenuated condition, and remain in attendance as much and as long as possible.

Mr. CHAPIN. I withdraw the motion.

The SECRETARY, by direction of the Chairman, read through the entire article.

Mr. NOURSE. I find that Section 7 covers the whole ground, so that my amendment is not necessary.

Mr. COLLINS. The proviso in Section 8, I will state, was made in conformity with the requirements of the Act of Congress.

PRESERVATION OF SCHOOL FUNDS.

Mr. NOURSE. I see it is provided that the interest on the funds coming under the control of the Board of Regents, must be used.

Mr. COLLINS. Yes, sir. The law of Congress provides that if any portion of the fund invested shall, by any accident or contingency be lost, it shall be replaced by the State.

Mr. NOURSE. But this section provides that both principal and interest shall remain undiminished.

Mr. COLLINS. That refers to interest which may accumulate.

Mr. NOURSE. I understand that the interest must be used from year to year in carrying on the institution, and I think that portion relating to the interest had better be stricken out. You cannot apply the interest to the purposes of education, and have it, too.

Mr. COLLINS. I think very likely that the gentleman's criticism is just, and an amendment may be necessary there.

Mr. NOURSE. Suppose you use there the exact words of the Act of Congress?

Mr. COLLINS. By unanimous permission of the committee, I will amend that part of the section by striking out the words "interest and."

No objection being made, Section 8 was so amended.

ADMISSION TO UNIVERSITY—AGAIN.

The CHAIRMAN. Section 4 is now under

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consideration, and the Chair understood the gentleman from Lyon to offer a substitute. Does he withdraw it, or insist upon it?

Mr. CROSMAN. I do not know that I understand the purport of the amendment proposed by the gentleman from Storey, (Mr. Collins.) Is it different from the report of the committee?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. The Chair will state that there appears to be only a little difference in the language, but no real difference in the meaning.

Mr. DUNNE. I wish to address a remark to the gentleman from Storey. The word "interest" having been stricken out by his amendment, leaves the word "principal" alone. Now would it not be better to use the word "capital?"

The CHAIRMAN. The gentleman is not in order. That amendment will not come up until the section is reached.

Mr. DUNNE. I understood the Chair to state the question on the amendment offered by the gentleman from Storey.

The CHAIRMAN. It is the amendment to Section 4. No other section is now under consideration.

Mr. COLLINS. I will state that my amendment is—although I am more than half inclined to leave the subject entirely to the Legislature—to provide that the Legislature shall appoint a Board of Regents, and said Board of Regents shall prescribe rules and regulations for the State University.

Mr. CROSMAN. Then I do not withdraw my motion. I think this amendment is much more concise and to the purpose, providing that the Legislature shall provide for the University and Mining Department. I want the Legislature simply to provide for the University, and then let it be under the control and management of the Board of Regents, as provided by law.

Mr. LOCKWOOD. I understand that the amendment of the gentleman from Storey (Mr. Collins) provides, in the first place, that the Board of Regents shall prescribe regulations for the University, and that then the section goes on to say, that pupils shall be admitted under the rules and regulations prescribed by that Board. If that is so, it looks to me like tautology.

Mr. DUNNE. It appears to me that this matter is getting very much mixed. I move that the committee rise, and recommend that the report be recommitted to the Committee on Education.

Mr. COLLINS. I think the amendment of the gentleman from Lyon (Mr. Crosman) is very complete, and all that is required. It is only a moment's work to agree upon it, so as to be satisfactory to all.

The CHAIRMAN. Does the gentleman from Humboldt insist on his motion?

Mr. DUNNE. Yes, sir.

Mr. FRIZELL. I hope it will not prevail. They can get the section perfected in a moment.

The question was taken on the motion that the committee rise, and it was not agreed to.

Mr. COLLINS. This seems now to embrace all that is needed. I will read it:

SEC. 4. The Legislature shall provide for a State University, embracing departments for agriculture, mechanic arts, and mining, to be under the control of a Board of Regents, as may be provided for by law.

Mr. CROSMAN. I accept that.

Mr. LOCKWOOD. I desire to suggest to the gentleman to put in the first line there, the words "for the establishment of." It seems to infer that, as it is, but it will make the language clearer.

Mr. COLLINS. Very well; I will insert that, if there is no objection, and will make another slight correction.

The SECRETARY read the amendment as finally modified, as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law."

The question was taken on the adoption of the amendment, as a substitute for the section originally reported by the Committee on Education, and it was adopted.

ESTABLISHMENT OF SCHOOLS.

Section 5 was read, as follows:

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said common schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

Mr. LOCKWOOD. I do not desire to delay action, but just to take the sense of the Convention, I move to strike out in the second line the words "normal schools." The Legislature is authorized to establish all grades of schools, and it is not necessary to mention normal schools specially.

The question was taken, and the amendment was not agreed to.

The question was taken on the adoption of the section as read, and it was adopted.

SPECIAL SCHOOL TAX.

Section 6 was read, as follows:

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools; *provided*, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

Mr. CHAPIN. Before this section is adopted I would like to suggest whether it is not desirable to make one alteration. There seems to be provision made in a previous part of the article

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for a school fund, which may be entirely ample, and I would like to alter this language, where it says the Legislature shall provide a special tax of one-half of one mill on the dollar. I move to strike out the word "shall," and insert, "may in its discretion."

The question was taken, and the amendment was agreed to.

Mr. DUNNE. What is the use, now, of the proviso at the end of the section?

Mr. CHAPIN. I move to strike out the proviso also.

Mr. DUNNE. I want that word "shall" put in again, and I hope it will be.

Mr. COLLINS. I regret that it has been stricken out, for I am confident the Board of Regents will have great difficulty in getting funds. It is always the case that institutions of this character are embarrassed for the want of funds, and I hope the committee will reconsider that amendment.

Mr. FRIZELL. There is no doubt that if any funds shall be needed for the State University, or for the support of normal or other schools, they will be provided. There will be American citizens in the Legislature, and if the money is needed, and they may in their discretion appropriate it, the Legislature will vote the required amount of money. There can be no doubt about that. On the contrary, it appears that there is ample provision made by this article, both for the schools and the University, and consequently it may be that no special tax will be needed. Now which horn of the dilemma is it best for us to take? I say we had better leave it to the discretion of the Legislature, because it is certain that the tax will be levied, if it is needed.

Mr. CHAPIN. I hope my amendment will be adopted striking out the proviso. Every gentleman knows that the hearts of our people are set on the common schools; and who can doubt that the Legislature, representing such a people, will levy a tax if there shall be any occasion for it? But I do not believe in compelling the Legislature to burden us with a tax, unless it shall be really needed; therefore I trust that the proviso will be stricken out.

Mr. COLLINS. The committee had in view the difficulties which every new State has encountered in the establishment of State Universities and the maintaining of the common school interest. Now this section contemplates that the Board of Regents will set aside the proceeds of this tax of one half mill upon a dollar for the special purpose of creating a fund, to be allowed to accumulate until there shall be money sufficient to lay the foundation of an institution such as the wants of the State may demand. Having the proceeds of the thirty thousand acres for each member of Congress, which will be ninety thousand acres for this State, they may set that apart as a permanent fund for the support and maintenance of professors in the University. If this matter of the special tax is left to the Legislature, what will be the result? That body will be under a pressure, a terrible pressure I have no doubt, which will impel them to postpone the tax from year to year; whereas, if the tax were levied at once, a small tax that nobody would really feel, it would go on gradually accumulating into a fund of some magnitude, until five, ten, or twenty years hence, as the case may be, it will become sufficient in the aggregate to lay the foundation of an institution that will be a benefit and an honor to the State. I hope we shall not neglect to provide for an important matter like this, while we are still in an embryo state. I do not believe that the Legislature is likely to be as earnest in this matter of education as gentlemen appear to anticipate. The Legislature of last winter demonstrated the fact that it did not possess that degree of earnestness on the subject that I had hoped existed. I trust, therefore, that we shall make such provisions in our Constitution that men coming into our State may come with a full conviction and assurance that a proper foundation has been laid for affording the means of instruction to their children as they grow up, without the necessity of sending them to other States to be educated.

The question was taken on Mr. Chapin's amendment to strike out the proviso, and it was agreed to.

The question was then taken on the adoption of the section as amended, and it was adopted.

THE BOARD OF REGENTS.

Section 7 was read, as follows:

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall for the first four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

Mr. CHAPIN. I move that the section be adopted as read.

Mr. NOURSE. I suggest that the words "at the expiration of that time," do not come in at the right place. It seems to me that they should be inserted after the words, "Board of Regents," where they last occur, so as to read: "but the Legislature shall provide for the election of a Board of Regents at the expiration of that time, and define their duties." As it is now, it would seem to imply that the period for any action of the Legislature will not arrive until the expiration of that time.

The CHAIRMAN. Does the gentleman make any motion?

Mr. NOURSE. I will move that the language be transposed so that the words "at the expiration of that time," shall come next after the word "Regents," where it last occurs in the section.

The Secretary read the section as proposed to be amended.

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ESA applications reveal wealth gap

By Steve Sebelius Las Vegas Review-Journal November 1, 2015 - 12:07am

Nevada's education savings accounts were sold to the 2015 Legislature, in part, as a way to level the playing field between students from rich and poor backgrounds.

The program — which puts between 90 percent and 100 percent of state school funding into an account to be spent on anything from tutoring to tuition — was supposed to be a great equalizer: Students from poor areas with poorly performing public schools could escape to better schools, aided by state money.

Turns out, not so much.

As the Review-Journal's Neal Morton and Adelaide Chen reported last week, the majority of ESA applications have come from upper-middle-class or upper-class ZIP codes. Fully 50 percent of applications were filed by families with household income of nearly $65,000 and up. Another 40 percent were from kids whose parents make between $42,000 and $65,000.

But just 10 percent come from poorer families with incomes up to $24,000.

Surprising? It shouldn't be. People in the upper-middle and upper classes are much more able to bridge the gap between expensive private-school tuition and the amount of an ESA grant (between $5,000 and $5,700 annually, depending on family income). People at the lower end of that scale are far more hard-pressed to come up with the difference. And relying on grants, scholarships and other forms of charity doesn't fix the problem on a wide scale.

ESAs have a lot of problems. They appear to violate the state constitution's ban on spending education money for sectarian purposes. They represent a surrender on public schools at a time that we dare not withhold our strict demand for accountability and results.

But if this is the approach the state really wanted to use, there was a way to structure the program to primarily help poorer kids: Increase the amount of the grant, but taper it off with a sliding family-income means test.

Nevada didn't do that, by design. It should surprise no one that the program appears to be benefitting plenty of people who don't need it, while leaving those who do behind.

’¼ï¸ Speaking of kids, Nevada got a rare bit of good news last week. The Review-Journal's Yesenia Amaro reported nearly 35,000 more children now have access to health care insurance in 2014 than did in 2013.

That represents a 5.3 percentage-point drop, the largest of any state in the country, according to a report from the Georgetown Center for Children and Families.

There's still a long way to go: More than 63,000 children in Nevada still didn't have access to health insurance last year. That's down from nearly 100,000 kids without insurance in 2013. And Nevada still ranks among the states with the highest number of uninsured kids in the country.

What's behind the change? It has to do with Gov. Brian Sandoval's decision to expand the state's Medicaid program, an option that many of his fellow Republican governors rejected, even though the federal government picks up most of the tab for at least the first several years.

Sandoval had many pragmatic reasons behind his decision, not least of which is that healthy kids are better for society all around, and all taxpayers and residents benefit from that. But at bottom, the decision also has an

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undeniable moral dimension: Sandoval had it within his power to spend money to eliminate human suffering, and he did so. The fact that he's received so much criticism for that decision is one of the things that make modern politics so disheartening, and Sandoval's decision so much more worthy of praise.

— Steve Sebelius is a Las Vegas Review-Journal political columnist and co-host of the show "PoliticsNOW," airing at 5:30 p.m. Sundays on 8NewsNow. Follow him on Twitter (@SteveSebelius) or reach him at 702-387-5276 or ssebelius@reviewjournal.com.

EXHIBIT 8

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No. 150C002071B

Dept. No.: II

DECLARATION OF PROFESSOR MICHAEL GREEN IN SUPPORT OF PLAINTIFFS' REPLY ON MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO MOTION TO DISMISS

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DECLARATION OF PROFESSOR MICHAEL GREEN IN SUPPORT OF PLAINTIFFS' REPLY ON MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO MOTION TO DISMISS

I, Michael Green, declare as follows:

1. My name is Michael Green. My permanent residence is at 3058 Downing Place, Las Vegas, Nevada, 89121. I am over 21 years of age, and I am of sound mind, and qualified to give this report. I have never been convicted of a crime that would disqualify me from providing this report, and this report is made on my personal knowledge, based on a review of documents related to this case.

I. Background and Introduction

2. I am an associate professor of history at the University of Nevada, Las Vegas (UNLV), where I have been a full-time member of the faculty since 2014. Prior to that, I was a part-time instructor for the university's history department and Honors College since 2005. From 1995 until joining UNLV full-time in 2014, I also taught full-time at the College of Southern Nevada (CSN). At UNLV, I have taught several sections of honors seminars on the history of Las Vegas and/or Nevada, and on the history of the United States Supreme Court, as well as on the life and times of Abraham Lincoln. At CSN, I taught the U.S. and Nevada history survey courses.

3. I earned my bachelor's and master's degrees from UNLV and my doctorate in history from Columbia University, where my specialty was nineteenth-century America. I have published half a dozen books on the history of Nevada and Las Vegas, including *Nevada: A History of the Silver State*, published by the University of Nevada Press in 2015, which is the first new, full-length history of the state in a quarter of a century, and which explores Nevada's

constitutional history. In 2001, I published a primer on the Nevada Constitution for *Nevada in the New Millennium*, and in 2009, I published an article in the *Nevada Historical Society Quarterly*, the state's only historical journal for which I was also the lead editor, on the impact of Abraham Lincoln and the Civil War on Nevada, including on the founding of Nevada's Constitution. I have written a guide to the Nevada Constitution available for distribution and use in UNLV's history classes that satisfy the Nevada Constitution requirement. I have also published three books on the Civil War era.

4. I have written extensively about Nevada's politics and political institutions not only in these books, but also for popular and contemporary audiences. These have included a newsletter published in Washington, D.C., *Nevada's Washington Watch*; "Nevada Yesterdays," regular history features for Nevada Public Radio; and columns for a variety of publications, including, most recently, *Vegas Seven*, for which I have won several awards from the Nevada State Press Association.

5. In preparation for developing opinions in the matter of *Lopez v. Schwartz*, Case No. 150C0020171B, First District Court in and for Carson City, Nevada, I have reviewed the following documents and artifacts:

a. The court filings in this case.

b. The proposed Amicus Brief filed by the Becket Fund For Religious Liberty.

c. Senate Bill 302, enacted by the Nevada legislature, May 29, 2015.

d. The Nevada Constitution and scholarly works analyzing it.

e. Scholarly works on the history of Nevada and the historical era in which the Nevada Constitution was written.

f. Relevant scholarly works on the history of American education.

6. In forming the opinions presented in this report, I relied on my experience in researching the history of Nevada, the era in which the original Nevada Constitution was written, and the history of American law and jurisprudence.

II. Opinions Presented

7. This declaration specifically examines the claim of Defendant that Article XI, section 1, would give the Legislature "broad, discretionary power" to encourage education by funding alternative systems of education, like SB 302. The declaration also examines the claim of the Becket Fund that Nevada's Education Article is rooted in anti-Catholic animus. Given the information available to me at this time, I have formed three opinions, based on my knowledge, experience and training, that relate to these questions. These opinions are outlined in detail below and include:

a. Opinion 1: It is clear from the history the 1863 and 1864 constitutional conventions, the background of the delegates, the history of Nevada itself, and the history of other influential states, that the framers of Nevada's Constitution had a singular notion of how the Legislature should provide for the education of Nevada's children, and that was through a uniform system of common schools.

b. Opinion 2: The drafting history of Article XI, section 1, the debates at the constitutional conventions, and the overall history of Nevada's delegates demonstrate that the delegates did not intend to confer broad, discretionary power on the Legislature to encourage education through means other than the public schools.

c. Opinion 3: Nevada's Education Article, and specifically the requirement that the legislature maintain a uniform system of common schools, was not passed due to anti-Catholic animus.

A. Opinion 1: It is clear from the history the 1863 and 1864 constitutional conventions, the background of the delegates, the history of Nevada itself, and the history of other influential states, that the framers of Nevada's Constitution had a singular notion of how the Legislature should provide for the education of Nevada's children, and that was through a uniform system of common schools.

8. Nevada's constitutional history is clear that the founders intended Article XI to ensure a well-funded system of public schools. The history of Article XI begins with the debates concerning the 1863 constitution. There, the delegates exalted the value of public education and considered mostly whether public education ought to be made compulsory. (See William C. Miller and Eleanore Bushnell, eds., *Reports of the 1863 Constitutional Convention of the Territory of Nevada* [Carson City: State of Nevada Legislative Counsel Bureau, 1972], Statement of Mr. North at 234-235.) In debating the terms of what was then Article XII, delegate J. Neely Johnson stated the Article intended that "the Legislature was required to make the most liberal provision for public schools, and would have ample funds for that purpose." (Statement of Delegate Johnson at 235.) Thus, from the start it was clear the Education Article was aimed at securing the establishment of public schools.

9. Voters ultimately defeated the 1863 constitution due to reasons not related to the Education Article (disputes over mining taxes and elected officials being placed on the same ballot as the proposed constitution). However, when the delegates to the 1864 convention met, they voted to begin their discussions based on the 1863 draft of the constitution. (Andrew J. Marsh, *Official Report of the Debates and Proceedings of the Constitutional Convention of the State of Nevada, Assembled at Carson City, July 4th, 1864, to Form a Constitution and State Government* [San Francisco: Frank Eastman, 1866], 15.) Thus, the discussion of Article XI—Nevada's Education Article—began with the text of 1863's Article XII.

10. Similar to the 1863 delegates, the delegates to the 1864 convention firmly believed, without any vocalized dissent, in the necessity of mandating that the Legislature establish and amply fund public education. The delegates disagreed about issues related to public education, including how and whether to make public education compulsory, but did not

disagree on the necessity of amply funding public schools. The final version of Article XI, section 2, included a provision mandating that school districts would lose their proportion of the interest of the public school fund if they failed to maintain schools for at least six months out of every year or included sectarian instruction, and that the legislature could "pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools." (Eleanore Bushnell and Don W. Driggs, *The Nevada Constitution: Origins and Growth* [Fifth Edition, Reno: University of Nevada Press, 1980], 28-29; Marsh, 566-74.)

11. The statements from the delegates at the convention demonstrate that they were singularly concerned with establishing a system of common schools. John Collins, the convention delegate who chaired the education committee, summarized the purpose of the Education Article: "The great object is to stimulate the support of the public schools, and I wish it were possible to keep them going for twelve months in the year instead of six. We provide that the State shall offer a premium for the longer term of six months. We know that there are very few districts in which schools would not be kept from one to three or four months in the year, by the voluntary contributions of the citizens, even without the aid of the public money; and by offering this premium a stimulus is presented, inducing them to contribute such amounts as shall suffice, together with the public money, to carry on the schools for six months, at least; whereby they secure the advantage of the State aid, and are enabled to educate their children." (Marsh, July 21, 577.) Here, Delegate Collins noted that resource constraints would not allow the ideal length of public school time, but felt that the Constitution should require that districts keep the schools open for at least six months, and that the education of children would occur through those public schools.

12. Delegate Collins also understood that in order to reap the benefits of public schools, it would be necessary for the Legislature to fund those schools. "I hope that the Convention will be disposed to offer a premium to every school district in this State, which shall maintain a public school for six months in the year; and I also hope, most sincerely, that we shall provide in our Constitution for keeping out of our schools sectarian instruction. It will require strong influences to exclude such instruction, and money is the great motor—one of the most powerful influences of civilization. Wherever its power is brought to bear, it always has potent sway." Collins objected to proposed changes that would have eliminated the financial penalty

for districts that do not maintain public schools for at least six month out of the year, and his view prevailed. Thus, the intent of the delegates was to require that the state would make a considerable effort to fund public education, and it expected localities to do the same, and to do it according to the rules laid out by the Nevada Constitution. (Marsh, July 21, 577.)

13. While they debated exactly how to assure the existence and funding of public education, the other delegates were in agreement concerning the importance of establishing a system of public schools. Delegate E.F. Dunne of Humboldt County emphasized compulsory attendance for children living in cities and towns, but declared that "when the State has provided a system of public instruction, a means of obtaining education, it should also require that all who are to become its citizens, and take part in the formation of its laws, shall avail themselves of those means, or so far at least as to know how to read and write." (Marsh, July 21, 569.) Delegate McClinton stated, "I do not believe there is any gentleman on this floor who has a higher appreciation of the benefits to be derived from a good system of common schools . . . ." (Marsh, July 21, 571.) Delegate Albert T. Hawley said that "the most practicable method of securing attendance would be to pass a law providing that unless a certain proportion of the children in each district shall attend, the district shall be deprived of its proportion of the interest on the school-money …. By that means, I think the interests of education would be best subserved and promoted." (Marsh, July 21, 569.)

14. Delegate Collins, an advocate of compulsory education, contemplated that some children would attend non-public schools. He stated, "If a parent is disposed to send his children to other than a public school, or to bring a governess or tutor into his own house to instruct his children, I see no objection to it, and the [compulsory education] provision, of course, would not affect those cases." Despite recognizing the ability of parents to choose non-public forms of education, neither Delegate Collins nor any other delegate argued that limited public funds should be spent on non-public means of education. The clear intent of the Education Article was to apply state funding, and the rules governing it, to public education and public education only. (Marsh, July 21, 570.)

15. Thus, based on a review of the 1863 and 1864 conventions, it is clear that the delegates intended that the Legislature fund and provide for education only through the public

education system. Although the delegates were clearly aware that not all children would participate in that system, there was no discussion of permitting or requiring the Legislature to fund non-public education.

16. The fact that the delegates intended to ensure that Nevada provided for the education of its children through public education, and not through other means, is reinforced by the background of the Nevada delegates and Nevada itself. Even before Nevada's constitutional conventions, the leaders of Nevada understood the importance of public education. James Warren Nye, the territorial governor of Nevada, made clear that public education was crucial to the territory's economic and moral vitality, and to the future of republican government. Addressing the first meeting of the territorial legislature in 1861, Nye declared that "the public have an interest in the instruction of every child within our borders, and as a matter of economy, I entertain no doubt that it is much cheaper to furnish school-houses and teachers than prisons and keepers." (*Journal of the Council of the First Legislative Assembly of the Territory of Nevada* [San Francisco: Commercial Steam Printing, 1862], October 2, 1861, 23.) Both Nye and Collins promoted the principle that public education was worth funding, and both believed that public education provided the moral, intellectual, and physical tools to improve society. (Marsh, July 21, 571.)

17. The delegates' concern with public education is also consistent with their political affiliation. The overwhelming majority of the framers of the Nevada Constitution belonged to what was known during the Civil War as the "Union Party," which evolved its name from the Republican Party in an effort to gain support for the Lincoln administration's efforts to fight and win the war, and to force anti-war Democrats into a political corner. Although the name changed, the platform of and legislation passed by the Union Party remained linked to (and often indistinguishable from) what the Republican Party had advocated and believed. (David Alan Johnson, *Founding the Far West: California, Oregon and Nevada, 1840-1890* [Berkeley: University of California Press, 1992], 190).

18. The administration and political party that had encouraged statehood for Nevada believed strongly in public education, and the authors of the Nevada Constitution and the legislation that followed in the session immediately after statehood in 1865 reflected this

commitment. Nevada's initial legislative acts including creating the Department of Education and Commission on Standards in Education. The first state legislature set up the common school system. Lawmakers originally based funding on the number of school-aged children living in the school district, but rural areas suffered in comparison with more urbanized parts of the state. In 1877 and in 1885, the legislature reworked its funding system to provide more money to rural districts that had fewer children; the 1885 session acted amid a significant decline in revenue from mining, which had recently entered a two-decade-long depression. (Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies During the Civil War* [Cambridge: Harvard University Press, 1997]).

19. The delegates' emphasis on public education is also consistent with the views of other influential states at the time. The distinguished historian of American education Carl Kaestle, now the emeritus University Professor and Professor of Education, History, and Public Policy at Brown University, wrote, "During the three decades before the American Civil War, state governments in the North created common-school systems. They passed legislation for tax-supported elementary schools and appointed state school officers. Reform-minded legislators and educators urged higher local school expenditures, more schooling for children, and the beginnings of professional training for teachers. Their goal was an improved and unified school system." Kaestle explicitly distinguished common schools from private or other non-public schools: "By 'common school' I mean an elementary school intended to serve all the children in an area. An expensive independent school, obviously would not be a 'common school,' but neither would a charity school open only to the poor." (Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780-1860* [New York: Hill and Wang, 1983], xi.)

20. In explaining the evolution of common schools and support for them, Kaestle distinguished between regions: "[B]y 1860 all the midwestern states had established state-regulated, tax-based school systems while few southern states had. In the Midwest, northeastern influences and models prevailed; in the South, they were resisted and rejected." The overwhelming majority of Nevada's constitutional framers was from or, by the third year of the Civil War, influenced by the northeastern and midwestern state constitutional systems, which included the belief in the need for government support for common schooling. (Kaestle, *Pillars of the Republic*, 215-17). That the delegates were aware of and influenced by other states'

provision of public education is made clear by Delegate Collins' comment in favor of public education: that "[t]he experience of all other States has shown the great advantages of such a system." (Kaestle, ix; Marsh, July 21, 577.)

21. In sum, it is clear from the history of the two constitutional conventions, the background of the delegates, the history of Nevada itself, and the history of other influential states, that the framers of Nevada's Constitution had a singular notion of how the Legislature should provide for the education of Nevada's children, and that was through a uniform system of common schools.

B. Opinion 2: The drafting history of Article XI, section 1, the debates at the constitutional conventions, and the overall history of Nevada's delegates demonstrate that the delegates did not intend to confer broad, discretionary power on the Legislature to encourage education through means other than the public schools.

22. The drafting history of Article XI, Section 1, shows that section 1 was intended to be read in harmony with the other sections, and not to authorize a separate educational system distinct from public education. The original draft of Article XI, Section 1 stated:

> The State owes the children thereof tuitional facilities for a substantial education, and is entitled to extract attendance therefrom in return upon such education advantages as it may provide. The Legislature shall therefore encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction …. (Marsh, July 21, 566.)

23. At the convention, Delegate E.F. Dunne, a lawyer from Humboldt County who later served as the local district judge, asked about the meaning of Article XI, Section 1: "I do not know that I understand altogether this enunciation of a doctrine in the first section. If I understand correctly . . . the doctrine enunciated is substantially this: that the state has a right to establish educational institutions, including therein moral instruction as the State may establish or provide for in such institutions, on the part of all children of the State." (Marsh, July 21, 566.)

24. Delegate Collins explained that Delegate Dunne's reading was largely correct, and further explained the purpose of Article XI, Section 1: "It was the view of the chairman, and I think the committee generally agreed with him on that point, that the State may properly encourage the practice of morality, in contradistinction to sectarian doctrines. For instance if a

child insists on the practice of using profane language, I presume it should be made the duty of School Superintendent, the teacher, or the Board of Education, to insist that he shall either refrain from such practice or be expelled. There must be power somewhere to exact conformity to the general ideas of morality entertained by civilized communities." (Marsh, July 21, 566.) Thus, it is clear that the delegates did not understand Article XI, section 1 to permit a different means of educating children other than the public school system, but rather, if anything beyond being merely laudatory, to authorize the instruction of certain topics—most notably here "moral improvement"—within the public schools.

25. The debate concerning Article XI, section 1, focused on the first sentence of the section, which read, "The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon such educational advantages as it may provide, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction ….." (Marsh, July 21, 566.) Certain delegates were concerned that this compulsory education provision would prove too controversial and noted that it had met with opposition at the previous convention. (Marsh, July 21, 567.) As noted above, even though the debate regarding compulsory education recognized that children may be allowed to attend non-public schools, no delegate suggested that the state should also pay for those non-public schools. (Marsh, July 21, 570). The requirement of compulsory education, to which Collins was agreeable, was ultimately rejected in the final version of the Nevada Constitution that the convention passed. Delegate Hawley moved to amend Article XI, section 1 to delete the first clause requiring compulsory attendance. The word "therefore" was further struck from the second sentence, and the result was the Article XI, section 1 that was eventually passed. It reads: "The Legislature shall encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction …." There is no evidence from the debates that in passing this version of Article XI, section 1, the delegates intended to confer power on the legislature to fund non-public educational systems. (Marsh, July 21, 566-74; 845.)

26. Further, it is clear that Article XI, section 1 was meant to be read in harmony with the other sections of the Education Article, particularly section 2, which establishes the common

school system. Indeed, after Delegate Collins explained the meaning of Section 1, the Chairman moved for a vote; however, Delegate Cornelius Brosnan, a lawyer from Storey County, protested, stating, "For my own information, in order that I may be able to vote intelligibly, I will ask that Section 2 of this article be read." Thereafter, the Secretary read section 2 and debate commenced. (Marsh, July 21, 566.) A statement from attorney Lloyd Frizell, a delegate from Storey County, provides further evidence that the Education Article was to be read as a whole. In opposing certain suggested amendments to the Education Article, delegate Frizell stated, "… I apprehend that no member, no matter what his qualifications may be, can really make any valuable addition or amendment to the report, unless he can see through the beauty and strength and harmony of the whole of it; and hence I fear that any proposed amendment would be more likely to mar than to improve that harmony and strength." Frizell explained clearly that the Education Article was drafted in "harmony" and that the "whole of it" was to be interpreted (Marsh, July 21, 578.) As explained further in my first opinion, it is clear that the overriding goal of the delegates was to establish a system of public education. Reading Article XI, section 1, in "harmony" with the rest of the Education Article shows that the section was not meant to give the Legislature broad, discretionary powers to fund non-public means of education.

27. Further, the idea that the delegates meant to empower the Legislature to fund both the public schools and other means of educating Nevada's children is inconsistent with the delegates' pronounced concerns that there would not be enough funds to provide for both common schools and higher education. They debated Article XI, Section 6, which would levy a special tax to provide "for the support and maintenance of said university and common schools; *provided*, that at the end of ten years they may reduce said tax" by half. In debating this section, Delegate Collins advocated for the tax to be mandatory based on "the difficulties which every new State has encountered in the establishment of State Universities and the maintaining of the common school interest." (Marsh, July 22, 588.) Delegate Collins argued against making the public school tax optional, noting pressures on the Legislature to postpone the tax: "[t]hat body will be under pressure, a terrible pressure I have no doubt, which will impel them to postpone the tax from year to year . . . I do not believe that the Legislature is likely to be as earnest in this matter of education as gentlemen appear to anticipate." (Marsh, July 22, 588.) Delegate Collins' view won the day, and the delegates approved of a mandatory tax, which has since been amended multiple times. This debate makes clear that the delegates were concerned with

providing sufficient funding for the public schools and the University, and did not conceive that the Legislature would have funds for both the public schools and a non-public system of education. Further, rather than the "broad, discretionary power" that the Defendant has suggested, it is clear that the Delegates sought to constrain the Legislature's discretion with respect to funding public education by imposing this mandatory tax.

28. A reading of Article XI, section 1, as giving the legislature broad, discretionary power to fund systems of education that were "alternatives" to the public education system is also contrary to the overall concerns of the delegates at the convention. The delegates to the Nevada Constitutional Convention were greatly concerned with protecting individual rights from legislative overreach. As one scholar of the Nevada Constitution has written, "Whereas protection of individual rights was excluded from the U.S. Constitution and only added later, the distrust of government power by the rugged individualists of the Nevada frontier—doubts sowed by the chaotic events of 1848 to 1864—is evident in the fact that the first article to the state constitution is the Declaration of Rights." The delegates manifested this concern by listing a series of limitations on the powers of the legislature, distinguishing the Legislature's powers from those of other branches, and, in the Declaration of Rights preceding all other articles, enumerating the rights of the people with which the legislature could not interfere. Clearly, the delegates to the constitutional convention had no intention of empowering the legislature to do whatever it wished on any subject beyond its internal operations, including the funding of education. (Marsh, 845; Michael W. Bowers, *The Nevada State Constitution* [Second edition, New York: Oxford University Press, 2014], 19-20.)

29. The delegates' concerns with granting the legislature broad, discretionary power is further evidenced by other sections of the Nevada Constitution. Article IV, on legislative powers, includes a long list of sections delineating how the legislature functions and what it—and its members—may or may not do. The Nevada Constitution empowers the two houses of the legislature to judge the qualifications of their members and whether to punish them, up to and including expulsion. Section 19 stated, "No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the Legislature." Section 20 includes a list of laws that the legislature may not

pass—"local or special laws in any of the following enumerated cases," including regulating county and township business and the election of their officers. The framers of the Nevada Constitution also detailed spending regulations related to compensation for lawmakers. In Section 29, they wrote, "The first regular session of the Legislature, under this Constitution, may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session, convened by the Governor, exceed twenty days." (Marsh, 836-39.)

30. During the debates of the constitutional convention, the delegates made clear that they wanted to impose limits on legislative action. Presiding officer J. Neely Johnson, a former governor of California, defended Article IV, Section 18, which he had written, "to prevent a great deal of unnecessary special legislation, and not only that, but to defeat the usual course of proceeding of outside operators," by requiring a majority vote of the chamber's membership rather than of those present; the amendment that he had opposed to change it to those "present" was easily defeated. Further demonstrating the general distrust of government that prevailed in Nevada, and the desire to limit legislative power, Delegate Dunne endorsed Johnson's draft, saying, "It will prevent too much legislation. The fact is, that whenever the Legislature is in session, the people wait with fear and trembling for it to adjourn, and then they thank God that it is over." (Marsh, July 8, 144; July 13, 280.)

31. Reading the debates and proceedings to the Nevada Constitutional Convention as a whole, it is clear that the delegates were opposed to granting the legislature excessive discretionary authority. A reading of Article XI, section 1, as granting the Legislature broad, discretionary authority to provide for education in manners other than that required by the delegates in the very next section of Article XI is inconsistent with the historical documents and statements at the time of the constitutional convention.

D. Opinion 3: Nevada's Education Article, and specifically the requirement that the legislature maintain a uniform system of common schools, was not passed due to anti-Catholic animus.

32. First, it is clear from reading the debates and Nevada's history that the motivation for establishing a uniform system of common schools was to ensure the moral, intellectual, and physical tools to improve society. As I discuss in my first opinion, the delegates were of the opinion that public education was necessary to ensure the proper upbringing of Nevada's

children and future prosperity of Nevada. I am not aware of any evidence from the Nevada Constitutional Convention that indicates that the delegates sought to establish a uniform system of common schools in order to discriminate against Catholics.

33. Second, although the delegates sought to ensure that the State would not fund private and sectarian institutions, it is clear that that prohibition applied to all religious schools. An exchange between the delegates demonstrates the intent of Article XI, Section 2. Delegate J.H. Warwick, a lawyer from Lander County, asked, "Does that mean that they have no right to maintain Catholic schools, for example?" Collins replied, "This provision has reference only to public schools, organized under the general laws of the State. It is not to be supposed that the laws enacted under it will stand in the way of, or prevent any Catholic school from being organized or carried on; but the provision prevents the introduction of sectarianism into the public schools." Warwick replied, "That is entirely proper," but discussed whether Collins meant funding of a school or a school district. Collins explained, "You will find that it has reference only to public schools, and to the appropriation of the public funds. If they permit sectarian instruction, they are deprived of the use of the public funds, so that it has direct reference to public schools, and clearly cannot refer to anything else." When Delegate Albert Hawley asked Warwick "whether he believes that any school district could be held responsible for the actions of private parties, in organizing sectarian schools within such district?" Warwick replied, "No, sir; that would be manifestly unjust …. I do not want the school district to *lose on account of the establishment of a Catholic school, a Methodist, a Baptist, or any other school* …." [Emphasis added.] Thus, it is clear that the discussion of sectarian education was not limited to the Catholic Church. (Marsh, July 21, 568.)

34. Third, Nevada's history does not share the same degree of anti-Catholic sentiment as other states. Ronald James, the leading historian of the Comstock Lode, wrote that the area's "wealth attracted an international array of immigrants who enriched the district with their diversity." Of these, he wrote, "Irish immigrants were by far the most numerous ethnic group in the mining district. In particular, they dominated Virginia City, where fully a third of the population claimed nativity or at least one parent from the Emerald Isle. The Irish came to North America by the millions, fleeing the oppression and starvation of their homeland. These exiles typically found prejudice and ill treatment by the Protestant-dominated hierarchy of the East

Coast …. A few Irish immigrants traveled west, where they rarely came across established societies that were prepared to discriminate against immigrants or Catholics, as occurred in the East. In many cases the Irish arrived in numbers that made them, if not a majority, at least a significant minority. Hundreds also came as skilled miners …. The experience of the Irish who came to the West consequently contrasted with that of their brethren on the Atlantic Coast. The Comstock, as one of the first western hard-rock mining districts, set the stage for Irish successes throughout the region." (Ronald M. James, *The Roar and the Silence: A History of Virginia City and the Comstock Lode* [Reno: University of Nevada Press, 1998], 143-44). Those early successes included the Catholic Church sending a priest to the area not long after the Comstock Lode's discovery in 1859; Father (later Bishop) Patrick Manogue, for whom a Reno high school is named, serving as Virginia City's priest from 1862 to 1885 and earning a reputation that achieved "mythic proportions" (James, 201); and the arrival of John Mackay, who established an excellent reputation during the territorial period and, in the 1870s, became one of the owners of the largest mine in Virginia City, in addition to winning popularity for his fairness and charity. The delegates had several politically minded and ambitious men among their number who were conscious of the constituencies for whom they were designing this document, including their Catholic constituency. While some delegates to the constitutional convention expressed concern about how Catholicism might influence education, they worried about other religious influences in that area as well, and the text of the debates reveals a desire to separate sectarian instruction generally from the schools, not just Catholic instruction.

35. Fourth, it is not accurate that the movement for common schools was motivated primarily by the purpose of discriminating against Catholics, and many proponents of common schools were not motivated at all by anti-Catholic animus. Carl F. Kaestle published a history of common schools from the Revolutionary War to 1860. (Kaestle, 207.) I have read the quotations from the proposed amicus brief submitted by the Becket Foundation for Religious Liberty that quotes Kaestle as stating that common schools were designed to be anti-Catholic. This statement takes Kaestle's larger work out of context. Kaestle described, and Nevada's convention delegates realized, they lived in an evolving society. Kaestle noted, "Cultural conformity and educational uniformity went hand in hand," and referred to Noah Webster's dictionary, first published in 1828 after he had spent decades preparing it out of a desire to promote an "American" language and culture, and "textbooks to encourage standard American

pronunciation, hoping to mold the different sections into a unified nation. In the antebellum period, educators faced the much greater cultural diversity of new European immigrants, some of whom did not speak English at all. Immigration resulted in a national population whose diversity was unmatched in Western history." (Kaestle, 71).

36. Public education played a part in these changes, reflected them, and was affected by them; some of the changes long predated the influx of immigrants and debates about the degree to which they would assimilate into American society. As Kaestle wrote, "During the early nineteenth century, the distinction between private and public schooling was still fuzzy. Many independent schools, including some church-affiliated schools, received government funds. The Catholic charity schools of New York City got aid until 1825, along with schools run by Methodists, Episcopalians, and other groups. Public funds were also granted to support Catholic schools in Lowell, Massachusetts, in the 1830s and 1840s, in Milwaukee, Wisconsin, in the 1840s, and in Hartford and Middletown, Connecticut, in the 1860s. In New Jersey the apportionment of public funds to denominational schools was not abolished until 1866. The idea of separation of church and state with regard to education did not spring full-blown from the United States Constitution. It was a public policy developed gradually and unevenly at the local level during the nineteenth century. The relevance of the federal constitution to the matter was asserted only in the twentieth century. The first impulse of state or city officials interested in subsidizing schooling for the poor was to give aid to existing institutions. In some cases this included religiously sponsored schools. In the antebellum period the idea of a unified public school system gained ground. Still, people could only accept the common-school plan if they agreed that moral education could be separated from doctrinal religion. As we have seen some Protestants as well as Catholics resisted this view. Eventually, most Protestant leaders acquiesced in the common-school concept, while many Catholics, especially the clergy, looked upon the public common schools as either godless or Protestant. If the schools were Protestant, they were a threat to Catholic children's faith and culture, a slur on their parents, and an injustice to Catholic taxpayers. If the common schools were nonreligious, they could not carry on proper moral training, and it would be a sin to send a Catholic child to them." Thus, it is clear from Kaestle's history that the idea of public, non-sectarian education was not exclusively focused on one region or one religion or one immigrant group, but evolved through time and through waves of diverse people. (Kaestle, 167.)

III. Conclusion

37. The opinions presented in this expert's report are presented to a reasonable degree of professional certainty. The opinions offered above are based on the record available to me at this time, and are subject to revision based on review of additional information, data or testimony, as it may become available to me. These opinions are submitted with the knowledge of the penalty for perjury, and are true and correct.

Dated this _24th__ day of November, 2015.

By: Michael Green

Michael Green

DECLARATION OF DR. CHRISTOPHER LUBIENSKI

IN SUPPORT OF PLAINTIFFS' REPLY ON MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO MOTION TO DISMISS

I, Prof. Christopher Lubienski, declare as follows:

1. My name is Christopher Lubienski, Ph.D. My permanent residence is at 705 W. Michigan Avenue, Urbana, Illinois, 61801. I am over 21 years of age, and I am of sound mind, and qualified to give this report. I have never been convicted of a crime that would disqualify me from providing this report, and this report is made on my personal knowledge, based on a review of documents related to this case.

I. Background and Introduction

2. For a summary of my qualifications to make this declaration, I refer back to my earlier declaration of October 19, 2015. Additionally, with respect to the issues discussed in this declaration, I have additional specific experience. For the past four years my research has been funded by the independent and non-partisan William T. Grant Foundation to study the use and misuse of research evidence in advocacy for and against vouchers and similar policies. In that regard, I have developed expertise regarding the relative empirical strength of claims made about research evidence in education policy advocacy.

3. In preparation for developing these further opinions in the matter of *Lopez v. Schwartz*, Case No. 150C002071B, First District Court in and for Carson City Nevada, I have reviewed the following additional documents:

a. Motion to Dismiss Plaintiffs' Complaint and Opposition to Plaintiffs' Motion for a Preliminary Injunction by Defendant, Dan Schwartz, Treasurer of the State of Nevada (hereafter, the "Defendant's Motion").

b. The proposed amicus brief filed by The Friedman Foundation for Educational Choice, Inc.

I have also reviewed reports cited in Defendant's Motion, with which I was already familiar:

c. Butcher, J., & Bedrick, J. (2013). *Schooling Satisfaction: Arizona Parents' Opinions on Using Education Savings Accounts*. Indianapolis, IN: Friedman Foundation for Educational Choice.

d. Forster, G. (2009). *A Win-Win Solution: The Empirical Evidence on How Vouchers Affect Public Schools*. Indianapolis, IN: Friedman Foundation for Educational Choice.

e. Forster, G. (2013). *A Win-Win Solution: The Empirical Evidence on How Vouchers Affect Public Schools, Third Edition*. Indianapolis, IN: Friedman Foundation for Educational Choice.

f. Usher, A., & Kober, N. (2011). *Keeping Informed About School Vouchers: A Review of Major Developments and Research*. Washington, DC: Center on Education Policy.

II. Opinions Presented

4. Based on my extensive research on the use of research evidence in education policy advocacy, and my previous familiarity with and recent review of the above-mentioned reports, I offer the following four observations:

a. Opinion 1: The Defendant's Motion does not accurately capture the main findings of the Center on Education Policy (CEP) report on which it relies.

b. Opinion 2: The claim that "students offered school choice programs graduate from high school at a higher rate than their public school counterparts" does not reflect a consensus in the research literature.

c. Opinion 3: The claim that voucher "parents are more satisfied with their child's school" is not supported by credible research.

d. Opinion 4: The claim that "in some jurisdictions with school choice options, public schools demonstrated gains in student achievement because of competition" does not reflect a consensus, and is based on a selective reading of the research literature.

A. Opinion 1: *The Defendant's Motion does not accurately capture the main findings of the Center on Education Policy report on which it relies.*

5. The Defendant's Motion quotes Senator Hammond, the sponsor of SB 302, summarizing the conclusions of a study from the nonpartisan Center on Education Policy (Defendant's Motion at pages 2-3). Although neither Senator Hammond nor the Defendant's Motion specify the CEP study to which they are referring, it is clear from the direct quotations and findings from Senator Hammond's testimony that they have been taken from the 2011 CEP Study entitled *Keeping Informed About School Vouchers: A Review of Major Developments and Research*.[1]

6. Senator Hammond cites the 2011 CEP study to make three empirical claims:[2]

a) "students offered school choice programs graduate from high school at a higher rate than their public school counterparts"

b) "parents are more satisfied with their child's school"

c) "In some jurisdictions with school choice options, public schools demonstrated gains in student achievement because of competition"

7. Senator Hammond's statement does not accurately reflect the main findings of the CEP report, which is a review of the research literature concerning vouchers. That report does not purport to offer any original analysis of primary evidence regarding the effects of vouchers. The CEP

[1] The most recent CEP study on this topic is Usher, A., & Kober, N. (2011). *Keeping Informed About School Vouchers: A Review of Major Developments and Research*. Washington, DC: Center on Education Policy. (Hereafter, "CEP, 2011")

[2] In addition to these three claims, the Amicus Brief from the Friedman Foundation for Educational Choice includes others as well, regarding the "Academic outcomes for students who participate in school-choice programs;" and "The fiscal impact of school-choice on taxpayers" (Amicus Brief, p. 5). I briefly discuss each in later notes.

report distinguishes between "Tier 1" and "Tier 2" findings. A Tier 1 finding is one that "was supported by several studies done by various groups." The CEP only lists one Tier 1 finding, that "Achievement gains for voucher students are similar to those of their public school peers."[3] Despite what some voucher proponents — including the Friedman Foundation for Educational Choice, in their Amicus Brief of November 13, 2015 (hereafter, "Amicus Brief") — suggest, this overall finding of a lack of relative impact is consistent with the conclusions of other independent researchers who have examined this issue. For instance, Princeton economist Cecilia Rouse conducted perhaps the most rigorous and respected study of the voucher program in Milwaukee. Rouse found some impact in mathematics for students using vouchers, but noted that those gains were smaller than for public school students in all subjects studied when public school students had class sizes similar to those of the voucher students. In a peer-reviewed analysis of voucher research, Rouse concluded that "The best research to date finds relatively small achievement gains for students offered education vouchers, most of which are not statistically different from zero," and found that reduced class size was a more effective strategy for improving education quality.[4] Such findings from non-partisan, highly respected researchers are

[3] CEP, 2011, p. 9.

[4] P. 37 in Rouse, C. E., & Barrow, L. (2009). School Vouchers and Student Achievement: Recent Evidence, Remaining Questions. *Annual Review of Economics, 1*, 17-42. See also:

Rouse, C. E. (1997). Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program. Cambridge, MA: National Bureau of Economic Research.

in sharp contrast to the claims set out by the Friedman Foundation for Educational Choice, which are based largely on their own, non-peer-reviewed reports, and those of associated advocates.

8. In the non-partisan CEP report, "Tier 2" findings, on the other hand, are classified as such because they are, according to the CEP, "less conclusive than the tier 1 finding, either because they were supported by fewer studies, could not be clearly attributed to vouchers, or were based on self-reports. These Tier 2 findings are from studies sponsored by various organizations, including some with a clear pro-voucher position."[5] The three claims made by Senator Hammond in the Defendant's Motion are all "Tier 2" findings in the CEP report he references, meaning that the CEP has found substantial reason to doubt the validity of the findings in those reports.[6]

9. In drawing overall conclusions about the research on vouchers, the CEP report referenced by the Defendant's Motion is much more measured and cautionary than excerpts cited in the Motion would suggest. The CEP listed four overall themes in its review of the recent research and advocacy on vouchers:

- "Additional research has demonstrated that vouchers do not have a strong effect on students' academic achievement."

Rouse, C. E. (1998). Schools and Student Achievement: More Evidence from the Milwaukee Parental Choice Program: Princeton University and the National Bureau of Economic Research.

Rouse, C. E., & Barrow, L. (2006). U.S. Elementary and Secondary Schools: Equalizing Opportunity or Replicating the Status Quo? In S. McLanahan & I. Sawhill (Eds.), *The Future of Children: Fall 2006*. Washington, DC: Brookings Institution Press and the Woodrow Wilson School of Public and International Affairs at Princeton University.

[5] CEP, 2011, p. 10.

[6] CEP, 2011, pp. 10-12.

- "The rhetoric used to support voucher programs has shifted, with some proponents giving less emphasis to rationales based on achievement and more emphasis to arguments based on graduation rates, parent satisfaction, and the value of choice in itself."

- "Voucher programs and proposals are moving beyond just serving low-income families in particular cities to reaching middle-income families in a broader geographic area."

- "Many of the newer voucher studies have been conducted or sponsored by organizations that support vouchers."[7]

10. Such more cautionary, tenuous, and tepid findings from the CEP report are not mentioned in the quotation from Senator Hammond. Because the CEP's main findings and themes reflect their determination of reliable and valid findings in voucher research, and the "Tier 2" findings quoted by Senator Hammond actually reflect studies or conclusions the CEP did not find to be reliable, Senator Hammond's statement to the Legislature did not accurately capture the conclusions of the CEP report. I discuss each Tier 2 finding cited in the Defendant's Motion individually in the following sections.

B. Opinion 2: *The claim that "students offered school choice programs graduate from high school at a higher rate than their public school counterparts" does not reflect a consensus in the research literature.*

11. Senator Hammond refers to the CEP report for the assertion that "students offered school choice programs graduate from high school at a higher rate than their public school counterparts."[8] However, the CEP found

[7] CEP, 2011, pp. 3-6.
[8] Defendant's Motion, p. 3.

reasons to doubt the validity of the studies undergirding that claim: "These studies had limitations, however, that may make their findings less than conclusive. In general, researchers were not able to determine whether the higher graduation rates were caused by practices in the voucher schools, and whether families who use vouchers differed from other families in ways that would lead to higher graduation rates."[9]

12. The two main studies that have found a benefit to graduation rates supposedly caused by vouchers occurred in Washington, D.C. and Milwaukee are, as the CEP report notes, limited, and not reflective of any overall consensus in the voucher literature. The Milwaukee study, conducted by the pro-voucher School Choice Demonstration Project, has been questioned in independent review because substantial attrition from the voucher program, failure to account for other factors such as the role of charter schools, and lack of statistical significance rendered the conclusions questionable.[10] In fact, according to a peer-reviewed study of the program, fewer than half (44%) of the vouchers students enrolled in the program in 9th grade were still enrolled by 12th grade.[11]

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[9] CEP, 2011, p. 10.

[10] Belfield, C.R. (2011). Review of "The Comprehensive Longitudinal Evaluation of the Milwaukee Parental Choice Program: Summary of Fourth Year Reports" Boulder, CO: National Education Policy Center.

Cobb, C. D. (2012). Reviews of Reports 29. 30, & 32 of the "SCDP Milwaukee Evaluation." Boulder, CO: National Education Policy Center.

[11] Cowen, J. M., Fleming, D. J., Witte, J. F., Wolf, P. J., & Kisida, B. (2013). School Vouchers and Student Attainment: Evidence from a State-Mandated Study of Milwaukee's Parental Choice Program. *Policy Studies Journal, 41*(1), 147-168.

13. The Washington, DC study, conducted by some of the same researchers, was also flawed.[12] There, graduation rates were only self-reported (rather than from official sources), and differences in graduation requirements in public and private schools were not accounted for in the study—even though there were real concerns regarding "voucher mills…often fly-by-night schools in poor neighborhoods that sprang up only after" the program was created, according to the Washington, DC Congressional Representative's written testimony for the US Senate.[13] Thus, there is reason to suspect that some private schools had a lower graduation requirement than the public schools to which they were compared; this was not considered in the study. Even if we were to accept the claim that the voucher program helped boost high school graduation rates, over half the students given vouchers never even "made it to the 12th grade," according to the *Washington Post*.[14]

14. The Milwaukee and Washington, DC studies are also tenuous because, as they were conducted by voucher advocates, they ascribe any differences in graduation rate only to the *offer* of a voucher. Such approaches

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[12] Wolf, P., Gutmann, B., Puma, M., Kisida, B., Rizzo, L., Eissa, N., & Carr, M. (2010). Evaluation of the Dc Opportunity Scholarship Program: Final Report. Washington, DC: US Department of Education.

[13] Holmes Norton, E. (2015). Written Testimony for the U.S. Senate Committee on Homeland Security and Governmental Affairs, on "The Value of Education Choices for Low-Income Families: Reauthorizing the D.C. Opportunity Scholarship Program," Washington, DC, November 4. Available: http://www.hsgac.senate.gov/download/?id=072B43B4-D685-48FC-AF6D-38F920535E2D

[14] Strauss, V. (2013, November 16). Report Slams D.C.'S Federally Funded School Voucher Program. *Washington Post - Answer Sheet*. Retrieved from https://www.washingtonpost.com/news/answer-sheet/wp/2013/11/16/report-slams-d-c-s-federally-funded-school-voucher-program/

ignore other factors that could account for any difference, such as the "peer-effect" of gathering more motivated students in some schools through choice programs, while depleting that effect for students left behind.[15] Furthermore, while not cited by the Friedman Foundation, subsequent peer-reviewed research on other measures of academic attainment,[16] looking at college enrollment, has found no overall advantage for students receiving vouchers.[17]

15. Thus, there is very little actual research on this question of graduation rates, and none that is particularly credible or compelling. If there is a consensus on the effect of voucher programs on graduation rates and other measures of attainment for public schools, the consensus is that the evidence is inconclusive, unlike the more established research on

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[15] Chingos, M. M., & Peterson, P. E. (2015). Experimentally Estimated Impacts of School Vouchers on College Enrollment and Degree Attainment. *Journal of Public Economics, 122*, 1-12.

[16] "Attainment" involves measures of academic advancement, such as a high school diploma, or college enrollment, and is often used in contrast to measures of academic "achievement" as typically determined in standardized tests.

[17] Chingos, M. M., & Peterson, P. E. (2015). Experimentally Estimated Impacts of School Vouchers on College Enrollment and Degree Attainment. *Journal of Public Economics, 122*, 1-12.

The Amicus Brief from the Friedman Foundation cites an earlier, non-peer-reviewed version of this study, conducted by one of the nation's leading voucher proponents, as proof of a beneficial impact of vouchers on subsequent student college enrollment: Chingos, M. M., & Peterson, P. E. (2012). *The Effects of School Vouchers on College Enrollment: Experimental Evidence from New York City.* Washington, DC: Brookings Institution and Program on Education Policy and Governance. A more recent, peer-reviewed version of that report is available, having been published in a prestigious academic journal, although it is much more measured than the earlier version, finding no overall impact of vouchers on college enrollment. The contrast between the findings of these two studies — conducted by the same authors — highlights the importance of academic (double-blind) peer-review in vetting and confirming empirical analyses and claims. Many of the claims made by voucher advocates come from reports that are not peer-reviewed (such as the 2012 Chingos & Peterson study, or the many reports published by the Friedman Foundation for Educational Choice). Conclusions that stand up to the scholarly peer-review process tend to be much less positive regarding the impact of vouchers. It is poor scholarly practice on the part of the Friedman Foundation to cite the earlier, non-peer-reviewed version when a more recent, vetted version is available.

academic achievement in voucher programs, which finds little if any benefits from vouchers, according to the CEP report cited in the Defendant's Motion.[18] However, this research — even if it were valid — only offers insights onto the question of how vouchers may impact the narrow, non-representative segment of students that have applied for these small-scale, local voucher programs,[19] and offers virtually no insights into how state-wide use of vouchers would impact graduation rates.

C. Opinion 3: *The claim that voucher "parents are more satisfied with their child's school" is not supported by credible research.*

16. Senator Hammond makes the claim that voucher parents "are more satisfied with their child's school." However, the CEP did not find this statement to be backed by credible research.[20] The CEP also found that parents in "the public school group also generally gave their schools high marks" — a finding consistent with years of survey data showing that public school parents typically grade their schools quite highly — and that vouchers had no impact on students' levels of satisfaction.[21]

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[18] CEP, 2011, p. 10.

[19] For instance, in Washington, DC, less than 3% of the 47,548 students enrolled in DC Public Schools in 2014 (1,371 students) applied for the DC voucher program in 2014. (Sources: DC Public Schools, and Senate Homeland Security and Governmental Affairs Committee, Majority Staff Memo on Hearing on the D.C. Opportunity Scholarship Program (November 2, 2015).) Previous research indicates that the types of students who apply for such programs are not representative of the larger population, but may have advantages — in terms of educated parents, home education resources, and intrinsic motivation, for instance — already associated with a higher likelihood of school success. See Witte, J. F. (2000). *The Market Approach to Education: An Analysis of America's First Voucher Program*. Princeton, NJ: Princeton University Press.

[20] CEP, 2011, pp. 11-12.

[21] CEP, 2011, p. 11. See also:

17. The CEP also notes that "parents who have been given the opportunity to choose their child's school may be more satisfied than other parents precisely because they chose it, regardless of whether the school offers better instruction or contributes to higher achievement."[22] Such an insight is in keeping with the research literature on consumer behavior that notes that people report higher levels of satisfaction when they simply have a choice, regardless of whether the quality of a good/service itself leads to greater satisfaction.[23]

18. However, the main problem with this type of claim made by Senator Hammond regarding program satisfaction is that, in general, it is based on very weak research. Polls of parental satisfaction typically survey only families with students in the program *at that time*, thus under-representing dissatisfied families, since they will have likely already left the program (and thus the study sample).

19. In this particular case, the problems with parental satisfaction surveys are exemplified by the 2013 "Cato Institute" study — which is actually a Friedman Foundation study — that Assemblyman David Gardner cited to the Nevada Legislature and that the Defendant's Motion references.[24]

Bushaw, W. J., & Calderon, V. (2014, September). The 46th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Towards the Public Schools. *Phi Delta Kappan, 96* (1), 8-20.

[22] CEP, 2011, pp. 11-12.

[23] Gladwell, M. (2004, September 6). The Ketchup Conundrum. *The New Yorker*.
Reutskaja, E., & Hogarth, R. M. (2009). Satisfaction in Choice as a Function of the Number of Alternatives: When "Goods Satiate". *Psychology and Marketing, 26*(3), 197-203.

[24] Defendant's Motion, p. 3. This was actually a study published by the Friedman Foundation for Educational Choice, but conducted by a researcher from the Cato Institute; see Butcher,

According to the Assemblyman Gardner, the Cato study found "[one] hundred percent of parents participating in [an ESA program in Arizona] are satisfied."[25] However, nowhere near 100% of the parents who participated in the ESA program were actually surveyed. As indicated in the referenced study, the reported satisfaction rate is based on an email survey sent to a Yahoo! message board created by ESA families, which saw only a 37% response rate from this already self-selected and non-representative group. Even the authors of the report stated that the "results [of the report] cannot accurately be applied to all ESA families."[26] Thus, it is not accurate to apply these findings as a reflection of overall parental satisfaction with ESA programs.

D. Opinion 4: *The claim that "in some jurisdictions with school choice options, public schools demonstrated gains in student achievement because of competition" does not reflect a consensus, and is based on a selective reading of the research literature.*

20. Notably, the Defendant's Motion does not cite any research for the proposition that voucher programs lead to higher achievement gains for students using a voucher.[27] Indeed, most independent reviews of that

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J., & Bedrick, J. (2013). Schooling Satisfaction: Arizona Parents' Opinions on Using Education Savings Accounts. Indianapolis, IN: Friedman Foundation for Educational Choice.

[25] Defendant's Motion, p. 3 (parentheses in cited source).

[26] "Survey results should be interpreted with caution because families in the sample chose to join the message board and answer the survey; they were not randomly selected. This self-selection means the results cannot accurately be applied to all ESA families." P. 1 in Butcher, J., & Bedrick, J. (2013). Schooling Satisfaction: Arizona Parents' Opinions on Using Education Savings Accounts. Indianapolis, IN: Friedman Foundation for Educational Choice.

[27] The Amicus Brief from the Friedman Foundation for Educational Choice does make claims about the impact of vouchers for students using them, based largely — as indicated by the CEP (2011) — on a partisan reading of the research. As I have noted above, (see note 4), the

question — including the CEP review referenced in the Defendant's Motion — find any direct benefit from vouchers to be inconsistent, insignificant, and/or marginal, at best.[28] Instead of direct benefits, then, the Defendant's Motion focuses on indirect benefits for non-choosers through the competitive effects assumed to be generated by vouchers. Yet this assertion is based on a highly selective reading of the literature, and does not actually address the issue of whether or not children were harmed.

21. The claim that competition with voucher schools increases education quality at public schools is contested and not settled in the research literature. Although Senator Hammond cites the CEP report for this conclusion, the CEP report actually concludes that:

> [I]t is difficult, if not impossible to decisively attribute the causes of achievement gains [in public schools]… In many of the cities or states with voucher programs, a variety of reforms are underway to boost

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Friedman Foundation's assertions do not reflect a scholarly consensus on the issue so much a (self-described) advocate's review of the evidence.

[28] CEP, 2011;see also Rouse, C. E., & Barrow, L. (2009). School Vouchers and Student Achievement: Recent Evidence, Remaining Questions. *Annual Review of Economics, 1*, 17-42.

Voucher proponents like the Friedman Foundation for Educational Choice often cite randomized trials to support the contention that vouchers have direct benefits for choosers. However, randomized trials are limited in what they tell us. They differ substantially from medical trials on which they are based because of the lack of a placebo, do not serve representative samples of students, and are not generalizable; that is, such methods in school voucher research do not tell us if school vouchers "work," but instead only offer some insights on their effectiveness with the types of students who are both eligible and apply for these small-scale programs. Thus, as even more nuanced voucher advocates have acknowledged, their results cannot be generalized to the broader population as when a program is extended to a whole state, as with SB 302. See Chingos, M. M., & Peterson, P. E. (2015). Experimentally Estimated Impacts of School Vouchers on College Enrollment and Degree Attainment. *Journal of Public Economics, 122*, 1-12: "the results from any experiment cannot be easily generalized to other settings. For example, scaling up voucher programs can be expected to change the social composition of private schools. To the extent that student learning is dependent on peer quality, the impacts reported here could easily change" (p. 10).

> public school achievement, ranging from the strict accountability requirements of the No Child Left Behind Act to the expansion of charter schools. Often the public schools most affected by vouchers are the same ones targeted for intensive interventions due to consistently low performance.[29]

22. The Defendant's Motion also notes that the Legislature received a report from the Friedman Foundation for Educational Choice that found that 22 out of 23 studies reviewed concluded that competition from voucher schools improves outcomes in public schools.[30]

23. This finding in the Friedman Foundation review (hereafter, "review") is flawed for several reasons, including the limitations cited by the CEP regarding these types of studies — that there are often other factors involved that may be responsible for changes in public schools' performance levels that cannot be captured by the types of studies cited by the Friedman

[29] CEP, 2011, p. 11.

[30] In my professional experience, non-partisan scholars do not typically accept at face value research claims from advocacy organizations such as the Friedman Foundation for Educational Choice because (1) by their own admission, such organizations promote a particular agenda on vouchers, and thus have reason to be selective in the research that they cite; (2) they generally do not submit their work to be independently vetted through scholarly peer-review processes, as do university-based researchers; and (3) are not seen as credible sources within the research community, as evidenced by the extremely low number of citations to their reports in the research literature. For instance, despite the fact that there have been multiple editions of the "Win-Win" reports from the Friedman Foundation for Educational Choice mentioned in the Defendant's Motion, as far back as 2009, none of them has been cited more than 17 times, according to the bibliometric tool Google Scholar; even then, there is an inordinate amount of self-citations to these reviews by other Friedman Foundation reports. Google Scholar shows only 44 total citations to all three versions of review, only six of which appear in the peer-reviewed literature. Of those six, two of the citing articles are by choice advocates, and another two are citing the Friedman Foundation reviews critically. Just as a point of comparison, Cecilia Rouse's papers referenced in this document have been cited many more times: her 2009 paper was cited 144 times; her 2006 paper, 120 times; her 2007 paper, 149 times; her 1997 paper, 692 times. Simply stated, the work of the Friedman Foundation for Educational Choice remains on the periphery of the research community, which does not see that work as relevant.

Foundation.[31] In addition to that concern, the Friedman Foundation is employing an approach considered to be a relatively poor and potentially misleading research method for drawing conclusions in social science; and is presenting a selective and incomplete picture of the research literature that includes unsuitable studies and excludes other empirical studies that contradict the Friedman Foundation's claims on this issue.

24. First, the review's "vote-counting" of studies is typically considered by scholars to be an inappropriate approach to empirical analysis, compared to a meta-analysis that considers issues of research design, sample size, and effect size.[32] In particular, a concern is that any such "vote counting" might suffer from selection bias, as studies are chosen for

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[31] The studies referenced do not meet the Friedman Foundations' own criteria for high quality research design, since they cannot account for other factors that may be causing any discernable changes in student achievement identified in the study. As the CEP report has noted regarding these studies, "it is difficult, if not impossible to decisively attribute the causes of achievement gains." CEP, 2011, p. 11.

[32] The Friedman Foundation for Educational Choice erroneously or misleadingly refers to its reviews of voucher studies as "meta-studies" (Amicus Brief, p. 9), apparently to imply that these are what are known in the research community as "meta-analyses." Yet the reviews published by the Freidman Foundation are in no way meta-analyses, which are statistical methods for combining data from a set of previously published studies. The Friedman Foundation review is a simplistic vote-counting exercise, and any implication that it is a meta-study or analysis is incorrect. See:

Cooper, H. M., & Lindsay, J. J. (1998). Research Synthesis and Meta-Analysis. In L. Bickman & D. J. Rog (Eds.), *Handbook of Applied Social Research Methods* (pp. 325). Thousand Oaks, CA: Sage Publications.

Hedges, L. V., & Olkin, I. (1980). Vote-Counting Methods in Research Synthesis. *Psychological Bulletin, 88*(2), 359-369.

Hedges, L. V., & Olkin, I. (1985). *Statistical Methods for Meta-Analysis*. Orlando: Academic Press.

Higgins, J. P. T., & Green, S. (2008). *Cochrane Handbook for Systematic Reviews of Interventions*. Chichester, England ; Hoboken, NJ: Wiley-Blackwell.

Koricheva, J., & Gurevitch, J. (2013). Place of Meta-Analysis among Other Methods of Research Synthesis. In J. Koricheva, J. Gurevitch & K. Mengersen (Eds.), *Handbook of Meta-Analysis in Ecology and Evolution* (pp. 3-13). Princeton: Princeton University Press.

review based on their usefulness in supporting the reviewer's perspective. This is a valid concern in this case.

25. Second, in that regard, the set of studies surveyed by the Friedman Foundation review for the claim that voucher competition improves public schools (as well as for its other claims) includes studies that are inappropriate for the question at hand, or misrepresents the researchers' conclusions. For example, the Friedman Foundation references one of its own non-peer reviewed reports, from 2002, regarding "town tuitioning" programs in Vermont and Maine, which allow some students to attend another public or secular-private school in or out of state.[33] However, these programs are not relevant for discussions of competitive effects in modern day voucher programs. They were created in the 1800s as a way for rural communities to take advantage of existing schools in areas where there were not enough students to justify the construction of a public school, and are thus meant to supplement, and not compete with, local public schools.

26. The Friedman Foundation review also cites a study from Carnoy *et al.* to support its claim that voucher competition improved Milwaukee public schools. In fact, the study from Stanford economic Martin Carnoy and associates found "essentially no evidence that students in those traditional public schools in Milwaukee facing more competition achieve

[33] Additionally, the report makes the classic error of conflating correlation with causation, looking for associations between density of schools that can be chosen and academic performance, while then concluding that one factor has a casual influence on the other, without doing any testing of that assumption.

higher test score gains."[34] Contrary to what the Friedman Foundation review that cites their study claims, the research from the Carnoy team found that any initial improvement in public schools exposed to competition dissipated as the program expanded: "This raises questions about whether traditional notions of competition among schools explain these increased scores in the two years immediately after the voucher plan was expanded."[35]

27. In yet another example, the Freidman Foundation review referenced in the Defendant's Motion includes multiple studies of the same programs, such as the 11 studies of Florida (almost half of the Friedman Foundation review's set of 23 studies), in an attempt to demonstrate that vouchers have a beneficial competitive impact on public schools. The main voucher policy in Florida was part of a broader program that included

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[34] P. 2 in Carnoy, M., Adamson, F., Chudgar, A., Luschei, T. F., & Witte, J. F. (2007). Vouchers and Public School Performance: A Case Study of the Milwaukee Parental Choice Program. Washington, DC: Economic Policy Institute.

As the home of the nation's oldest voucher program, after a quarter century, Milwaukee schools — including public, private and charter — are still among the worst in the state, if not the country, causing early proponents of that voucher program, such as David Dodenhoff of the pro-voucher Wisconsin Policy Research Institute, to conclude that: "Relying on public school choice and parental involvement to reclaim MPS [Milwaukee Public Schools] may be a distraction from the hard work of fixing the district's schools. . . . The question is whether the district, its schools and its supporters in Madison are prepared to embrace reforms more radical than public school choice and parental involvement." (See: Dodenhoff, D. (2007). Fixing the Milwaukee Public Schools: The Limits of Parent-Driven Reform. Thiensville, WI: Wisconsin Policy Research Institute.) In view of the general failure of vouchers to have an impact on voucher students or on the schools with which they are supposed to compete, other prominent pro-voucher advocates on the national level, such as Sol Stern of the Manhattan Institute, and Diane Ravitch of the Hoover Institute and the Brookings Institution, have changed their minds on these reforms as well. See:

Stern, S. (2008, Winter). School Choice Isn't Enough. *City Journal, 18,* http://www.city-journal.org/2008/2018_2001_instructional_reform.html.

Ravitch, D. (2009). *The Death and Life of the Great American School System: How Testing and Choice Are Undermining Education*. New York: Basic Books.

Ravitch, D. (2013). *Reign of Error: The Hoax of the Privatization Movement and the Danger to America's Public Schools*. New York: Random House.

[35] Page 2 in Carnoy, M., Adamson, F., Chudgar, A., Luschei, T. F., & Witte, J. F. (2007). Vouchers and Public School Performance: A Case Study of the Milwaukee Parental Choice Program. Washington, DC: Economic Policy Institute.

stigmatizing and increasing state oversight of underperforming schools, in addition to increasing competitive pressures on those schools by allowing students to use a voucher to leave the public schools — an element ruled unconstitutional in 2006.[36] Although the Friedman Foundation review includes some independent studies[37] of this case, it cites such research to indicate that competition from vouchers improves public schools, even though independent researchers clearly do not distinguish voucher competition from the other two other factors that may be responsible for any changes in public school performance: "stigmatizing" (shaming through publicly released letter grades) and increasing oversight of underperforming public schools. As the CEP review cited in the Defendant's Motion made clear: "The study did not determine the extent to which competition from vouchers, in particular, contributed to this improvement."[38]

28. Third, the review from the Friedman Foundation for Educational Choice cited in the Defendant's Motion asserts that "[no] empirical study has ever found that choice had a negative impact on public schools," yet fails to reference any of the many empirical studies that demonstrate that choice can have detrimental impacts for students remaining in public schools. For instance, in a peer-reviewed analysis of voucher research, economist Patrick McEwan found that vouchers

[36] Rouse, C. E., Hannaway, J., Goldhaber, D., & Figlio, D. N. (2007). Feeling the Florida Heat? How Low-Performing Schools Respond to Voucher and Accountability Pressure: National Center for Analysis of Longitudinal Data in Education Research.

[37] "Independent studies" means those not performed by voucher advocates. As the 2011 CEP report cited in the Defendant's Motion noted, "Many of the newer voucher studies have been conducted or sponsored by organizations that support vouchers" (p. 6).

[38] CEP, 2011, p. 36.

"encourage sorting that could lower the achievement of public school students. There is no compelling evidence that such losses are outweighed by competitive gains in public schools."[39]

29. Indeed, the Friedman Foundation for Educational Choice review makes this claim about "school choice," and not just voucher programs, which is understandable since the competitive dynamics would be similar regardless of the type of school that is competing with a public school for students. Yet the Friedman Foundation review ignores the voluminous research on the most prominent, popular, and widespread form of school choice, charter schools, even though charter schools are likely a better reference point because they are state-wide programs, like SB 302 but unlike some of the voucher programs referenced in the Friedman Foundation review.

30. In that regard, a peer-reviewed study of charter schools in North Carolina found an increase in racial isolation as well as in the Black-White achievement gap due to that school choice program.[40] Another peer-reviewed study, from Stanford economist Eric Bettinger, found competition in Michigan having no significant effect on students in public schools, although he found that it may harm the achievement of students in charter schools.[41] Other peer-reviewed research has found that competition impairs

[39] McEwan, P. J. (2004). The Potential Impact of Vouchers. *Peabody Journal of Education, 79*(3), 57-80.

[40] Bifulco, R., & Ladd, H. F. (2006). School Choice, Racial Segregation, and Test-Score Gaps: Evidence from North Carolina's Charter School Program. *Journal of Policy Analysis and Management, 26*(1), 31-56.

[41] Bettinger, E. P. (2005). The Effect of Charter Schools on Charter Students and Public

academic performance in public schools.[42] Even a study by choice advocates (who have published work for the Friedman Foundation) has found a significant negative effect from competition on neighboring public schools.[43] Thus, it is simply factually incorrect for the Friedman Foundation for Educational Choice to state that "[no] empirical study has ever found that choice had a negative impact on public schools."[44]

31. The reasons for these negligible or negative effects in school choice systems have to do with the Freidman Foundation for Educational Choice's unsupported assumption, quoted on page 3 in the Defendant's Motion, that "introducing healthy competition … keeps schools mission-focused."[45] This assumption is based on an interdependent series of speculations, each of which is difficult to demonstrate in the empirical data, including (a) that parents choose schools based on school quality, and (b) that schools will respond to these competitive pressures by improving academic quality. In fact, research clearly indicates that each of these is problematic:

Schools. *Economics of Education Review, 24*(2), 133-147.

[42] Imberman, S. A. (2011). The Effect of Charter Schools on Achievement and Behavior of Public School Students. *Journal of Public Economics, 95*(7–8), 850-863.

Linick, M. A. (2014). Measuring Competition: Inconsistent Definitions, Inconsistent Results. *Education Policy Analysis Archives, 22*(16).

Ni, Y. (2009). The Impact of Charter Schools on the Efficiency of Traditional Public Schools: Evidence from Michigan. *Economics of Education Review, 28*(5), 571-584.

[43] Carr, M., & Ritter, G. W. (2007). Measuring the Competitive Effect of Charter Schools on Student Achievement in Ohio's Traditional Public Schools. New York: National Center for the Study of Privatization in Education.

[44] Page 1 in Forster, G. (2013). A Win-Win Solution: The Empirical Evidence on How Vouchers Affect Public Schools, Third Edition. Indianapolis, IN: Friedman Foundation for Educational Choice.

[45] Page 1 in Forster, G. (2013). A Win-Win Solution: The Empirical Evidence on How Vouchers Affect Public Schools, Third Edition. Indianapolis, IN: Friedman Foundation for Educational Choice.

(a) Parents often choose schools for other reasons besides academic quality, including, for instance, convenience, marketing, or the social composition of the school.[46] As a case in point, voucher proponents studying the long-running voucher program in Milwaukee found that only 10% of all Milwaukee Public School parents make choices that consider more than a single school and take into account school academic performance in making a choice.[47] This is in keeping with a long-standing finding in the school choice literature: that parents often choose schools based on the demographic composition of a school, rather than on academic quality, even when that may mean sending their child to a less effective school.[48]

(b) While the Defendant's Motion and the Friedman Foundation review assume that public schools will respond to competitive pressures by investing recourses in academics, research indicates that they often recognize other more immediate ways of competing that may actually undercut efforts to improve

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[46] Schneider, M., & Buckley, J. (2002). What Do Parents Want from Schools? Evidence from the Internet. *Educational Evaluation And Policy Analysis, 24*(2), 133-144.
See also:
Henig, J. R., & MacDonald, J. A. (2002). Locational Decisions of Charter Schools: Probing the Market Metaphor. *Social Studies Quarterly, 83*(4), 962-980.
Kleitz, B., Weiher, G. R., Tedin, K., & Matland, R. (2000). Choice, Charter Schools, and Household Preferences. *Social Science Quarterly, 81*(3), 846-854.

[47] Dodenhoff, D. (2007). Fixing the Milwaukee Public Schools: The Limits of Parent-Driven Reform. Thiensville, WI: Wisconsin Policy Research Institute.

[48] Schneider, M., & Buckley, J. (2002). What Do Parents Want from Schools? Evidence from the Internet. *Educational Evaluation And Policy Analysis, 24*(2), 133-144.
Bifulco, R., & Ladd, H. F. (2006). School Choice, Racial Segregation, and Test-Score Gaps: Evidence from North Carolina's Charter School Program. *Journal of Policy Analysis and Management, 26*(1), 31-56.

academics. For instance, research — including my own peer-reviewed work — has shown that, schools often compete by improving the physical appearance and appeal of the school, or by putting resources into marketing, at the expense of instruction.[49] A peer-reviewed study of choice in Michigan found no evidence to support the theory that competition results in public schools focusing more on improving instruction, although the researchers did find that more competition translated into fiscal distress for districts — a finding echoed in the CEP report's review of the impact of vouchers in Milwaukee, which found that "the program has adverse financial effects for Milwaukee taxpayers."[50]

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[49] Fiske, E. B., & Ladd, H. F. (2000). *When Schools Compete: A Cautionary Tale*. Washington, DC: Brookings Institution Press.

Lauder, H., Hughes, D., Watson, S., Waslander, S., Thrupp, M., Strathdee, R., . . . Hamlin, J. (1999). *Trading in Futures: Why Markets in Education Don't Work*. Buckingham, UK: Open University Press.

Lubienski, C. (2005). Public Schools in Marketized Environments: Shifting Incentives and Unintended Consequences of Competition-Based Educational Reforms. *American Journal of Education, 111*(4), 464-486.

[50] CEP, 2011, p. 42.

Arsen, D., & Ni, Y. (2011). The Effects of Charter School Competition on School District Resource Allocation. *Educational Administration Quarterly, 48*(1), 3-38.

In addition to the three empirical claims in the Defendant's Motion, the Friedman Foundation review makes two additional assertions, one of which is that "Six empirical studies have examined school choice's fiscal impact on taxpayers. All six find that school choice saves money for taxpayers" (p. 1). What the Friedman Foundation does not mention is that only two of those studies were conducted by authors not known to be advocates of school vouchers. Of those two, one report examines a program that is classified by the Friedman Foundation as a "Corporate Income Tax Credit Scholarship Program," not a voucher or education savings account (ESA) program (http://www.edchoice.org/school-choice/school-choice-in-america/). The other report — which, by the Friedman Foundation's own admission has "only a sparse supporting narrative explaining the method, which limits the reader's ability to assess its methodological quality" (p. 17) — is not a report at all, but a line in a "Revenue Estimating Conference," the complete citation from the Friedman Foundation being: "Revenue Estimating Conference," Florida Legislative Office of Economic and Demographic Research, March 16, 2012, p. 456, line 55." (the single line cited

32. Thus, by including inapplicable studies and excluding relevant studies on school choice, Friedman Foundation inaccurately states that there is a consensus in the research regarding the effect of school choice on public schools, and advances a simplistic set of assumptions.

33. Further, the Defendant's Motion and the Friedman Foundation review do not take into account other potentially negative effects of vouchers on academic achievement. As noted in my Declaration of October 19, research also indicates the potential for detrimental competitive impacts, particularly on quality, equity and access. In the US, research has demonstrated that parents, especially in less-regulated programs such as that proposed in SB 302, often make school choice decisions based not on academic quality (which is assumed to be the driver of school improvements), but on the demographic composition of schools, leading to higher levels of segregation.[51] At the same time, schools in such systems

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by the Friedman Foundation does not exist in the document it lists: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/impact0316.pdf). Two of the studies were conducted by the Friedman Foundation for Educational Choice. Only one of the six was published in a peer-reviewed journal. In general, researchers who submit their work to peer-reviewed journals have been much more cautious than the Friedman Foundation for Educational Choice has been in drawing conclusions on this topic because of the many factors involved that may influence comparisons of spending patterns, but not be accounted for in the studies. For instance, public schools on average serve a higher proportion of students with special needs that are more costly. (See: Lubienski, C., & Lubienski, S. T. (2014). *The Public School Advantage: Why Public Schools Outperform Private Schools*. Chicago: University of Chicago Press.) Claims that expanding choice to all students would have to take into consideration that higher-cost students must then be served by private schools, when current estimates do not take those costs into account.

[51] See:

Schneider, M., & Buckley, J. (2002). What Do Parents Want from Schools? Evidence from the Internet. *Educational Evaluation And Policy Analysis, 24*(2), 133-144.

respond to competitive incentives by excluding more costly or difficult-to-educate students.[52] In fact, Milton Friedman, the founder of the Friedman Foundation and intellectual author of the modern voucher movement is cited in the Amicus Brief for his 1962 book, *Capitalism and Freedom*.[53] Yet his chapter on school vouchers in that book is based on his 1955 article that introduced the topic,[54] where he explicitly acknowledged that his voucher proposal would provide an avenue for further school segregation even as states were seeking to desegregate schools.[55]

Rotberg, I. C. (2014, February). Charter Schools and the Risk of Increased Segregation. *Phi Delta Kappan, 95,* 26-30.

In addition to the three empirical claims made in the Defendant's Motion, the Friedman Foundation for Educational Choice review adds some additional claims, one of them that "school choice moves students from more segregated schools into less segregated schools... No empirical study has found that choice increases racial segregation." (p. 1) As with other claims from the Friedman Foundation review, this is simply incorrect. To support this claim, the Friedman Foundation cites 8 reports, all of which were authored by choice advocates, and none of which were peer-reviewed. Two were conducted by the Friedman Foundation, and five others were unpublished or self-published manuscripts written by choice advocacy organizations, while another was an unpublished conference paper (p. 30 of the Friedman Foundation review). Notably, the Friedman Foundation review rejects standard measures and approaches to analyzing the question in the peer-reviewed research (p. 19) in favor of citing the set of eight non-peer-reviewed papers by voucher advocates. Yet the scholarly literature on this topic represents a relatively strong consensus that school choice is linked to higher levels of segregation by race, social class, and academic ability. See, for example,

Bifulco, R., Ladd, H. F., & Ross, S. (2009). The Effects of Public School Choice on Those Left Behind: Evidence from Durham, North Carolina. *Peabody Journal of Education, 84*(2).

Hsieh, C.-T., & Urquiola, M. (2002). When Schools Compete, How Do They Compete? An Assessment of Chile's Nationwide School Voucher Program. New York: National Center for the Study of Privatization in Education.

Rotberg, I. C. (2014, February). Charter Schools and the Risk of Increased Segregation. *Phi Delta Kappan, 95,* 26-30.

[52] Lubienski, C., Gordon, L., & Lee, J. (2013). Self-Managing Schools and Access for Disadvantaged Students: Organisational Behavior and School Admissions. *New Zealand Journal of Educational Studies, 48*(1), 82-98.

Lubienski, C., Gulosino, C., & Weitzel, P. (2009). School Choice and Competitive Incentives: Mapping the Distribution of Educational Opportunities across Local Education Markets. *American Journal of Education, 115*(4), 601-647.

[53] Amicus Brief, p. 16.

[54] Friedman, M. (1955). The Role of Government in Education. In R. A. Solo (Ed.), *Economics and the Public Interest* (pp. 127-134). New Brunswick, NJ: Rutgers University Press.

[55] Friedman, M. (1955). The Role of Government in Education. In R. A. Solo (Ed.), *Economics and the Public Interest* (pp. 127-134). New Brunswick, NJ: Rutgers University Press.

34. While it may be tempting to reference only research from other voucher programs in the US, these are actually not particularly comparable to the SB 302 program in Nevada, which is anomalous in the US, since other US programs tend to be limited based on family income, school performance, or urban boundaries. Instead, more accurate comparisons are to be seen in other countries that adopted near-universal voucher or choice systems, such as in Sweden, Chile, or New Zealand. These cases all have longer track records than the smaller and more targeted US programs, allowing researchers to understand the long-term impacts of choice. In general, in these cases, the research evidence indicates that, since the introduction of choice: (1) academic achievement has not improved, and has substantially declined in at least one of these three cases; (2) school segregation has increased substantially in all cases; (3) the public school system, where it still exists, has seen significant declines, and has become the sector that serves largely students of poor families.

35. In the first instance, Swedish policymakers took a sudden turn away from a long tradition of public investment in public schools and adopted a system of vouchers in 1991. Yet, based on the standard international measure for comparing student performance, PISA

See especially Note 2 ("Essentially this proposal — public financing but private operation of education — has recently been suggested in several southern states as a means of evading the Supreme Court ruling against segregation…. Yet, so long as the schools are publicly operated, the only choice is between forced nonsegregation and forced segregation; and if I must choose between these evils, I would choose the former as the lesser…. Under such a [voucher] system, there can develop exclusively white schools, exclusively colored schools, and mixed schools.")

(Programme for International Student Assessment), "between 2000 and 2012 Sweden's Pisa scores dropped more sharply than those of any other participating country, from close to average to significantly below average…. In the most recent Pisa assessment, in 2012, Sweden's 15-year-olds ranked 28th out of 34 OECD (Organisation for Economic Co-operation and Development) countries in maths, and 27th in both reading and science"[56] At the same time, school segregation has emerged as a significant problem in the Swedish education system.[57]

36. New Zealand also moved rather abruptly to a system of universal choice with a voucher-like system in 1989. School segregation has been a chronic problem, as autonomous schools often use that autonomy in ways to avoid serving disadvantaged and minority students — for instance, by creating priority zones for admission that exclude more disadvantaged areas.[58]

37. Chile is probably the best case from which to observe the long-term impact of vouchers. Students of Milton Friedman took policymaking positions in Chile and embraced his proposal for universal vouchers in the

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[56] The US ranked higher in these subjects. See:
Weale, S. (2015, June 10). 'It's a Political Failure': How Sweden's Celebrated Schools System Fell into Crisis. *The Guardian*. Retrieved from http://www.theguardian.com/world/2015/jun/10/sweden-schools-crisis-political-failure-education?CMP=share_btn_tw

[57] Lindbom, A. (2010). School Choice in Sweden: Effects on Student Performance, School Costs, and Segregation. *Scandinavian Journal of Educational Research, 54*(6), 615-630.

[58] Lauder, H., Hughes, D., Watson, S., Waslander, S., Thrupp, M., Strathdee, R., . . . Hamlin, J. (1999). *Trading in Futures: Why Markets in Education Don't Work*. Buckingham, UK: Open University Press.
Lubienski, C., Gordon, L., & Lee, J. (2013). Self-Managing Schools and Access for Disadvantaged Students: Organisational Behavior and School Admissions. *New Zealand Journal of Educational Studies, 48*(1), 82-98.

1980s. However, academic performance has remained flat, while Chile has now become the most segregated system in the region, and in the OECD. Again, research indicates that schools compete based on other strategies besides academic quality, often using marketing and other techniques to attract "better" students; the public school sector has seen substantial declines in particular, since more advantaged families have been successful in using the program to remove their children into private schools.[59]

38. In conclusion, the claim that "[s]chool choice programs provide greater educational opportunities by enhancing competition in the public education system" has simply not been demonstrated in the research literature. The evidence also suggests that schools forced to compete may do so in different ways, and not always as school choice proponents predict, including by excluding more costly students[60]; redirecting resources into marketing instead of instruction[61]; or adopting instructional programs that,

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[59] Adamson, F., Astrand, B., & Darling-Hammond, L. (Eds.). (2016). *Global Educational Reform: How Privatization and Public Investment Influence Education Outcomes*. New York: Routledge.

Carnoy, M. (1998). National Voucher Plans in Chile and Sweden: Did Privatization Reforms Make for Better Education? *Comparative Education Review, 42*(3), 309-338.

Gauri, V. (1998). *School Choice in Chile: Two Decades of Educational Reform*. Pittsburgh: University of Pittsburgh Press.

Hsieh, C.-T., & Urquiola, M. (2002). When Schools Compete, How Do They Compete? An Assessment of Chile's Nationwide School Voucher Program. New York: National Center for the Study of Privatization in Education.

Parry, T. R. (1997). How Will Schools Respond to the Incentives of Privatization? Evidence from Chile and Implications for the United States. *American Review of Public Administration, 27*(3), 248-269.

[60] Lacireno-Paquet, N., Holyoke, T. T., Moser, M., & Henig, J. R. (2002). Creaming Versus Cropping: Charter School Enrollment Practices in Response to Market Incentives. *Educational Evaluation And Policy Analysis, 24*(2), 145-158.

[61] Lubienski, C. (2005). Public Schools in Marketized Environments: Shifting Incentives and Unintended Consequences of Competition-Based Educational Reforms. *American Journal of Education, 111*(4), 464-486.

while they may be popular, are actually ineffective.[62] Moreover, there can also be detrimental impacts on non-choosing students, as their more affluent peers are more likely to embrace choice options, leaving behind a school that can accelerate in decline.[63]

III. Conclusion

39. The opinions presented in this expert's report are presented to a reasonable degree of professional certainty. The opinions offered above are based on the record available to me at this time, and are subject to revision based on review of additional information, data or testimony, as it may become available to me. These opinions are submitted with the knowledge of the penalty for perjury, and are true and correct.

Dated this 23rd day of November, 2015.

By: _____
DR. CHRISTOPHER LUBIENSKI

[62] Lubienski, C., & Lubienski, S. T. (2014). *The Public School Advantage: Why Public Schools Outperform Private Schools*. Chicago: University of Chicago Press.
[63] Organisation for Economic Co-Operation and Development. (2014). *Pisa 2012 Results: What Makes Schools Successful (Volume IV)* (Vol. Paris): OECD Publishing.

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No.: 150C002071B

Dept. No: II

REPLY DECLARATION OF PAUL JOHNSON

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I, PAUL JOHNSON, declare as follows:

1. I am the Chief Financial Officer ("CFO") of White Pine County School District ("White Pine"). I have been the CFO of White Pine for over 18 years and have served on a number of panels and task forces to evaluate the funding formula for the Nevada public school system. I make this declaration based on personal knowledge and experience. If called as a witness, I could and would competently testify to the facts set forth herein.

2. As CFO of White Pine, I have personal knowledge of the management of White Pine's yearly budget. I have also read SB 302 and the proposed regulations and analyzed the potential impact of SB 302 on White Pine.

3. I have also read Defendant's Opposition to Motion for Preliminary Injunction and Countermotion to Dismiss and the declaration of Steve Canavero attached thereto.

4. While SB 302 was under consideration by the Legislature, I submitted a fiscal note on behalf of White Pine. In that fiscal note, I stated that there would be no impact on White Pine because, at present, there are no private schools in White Pine County. However, at the time I wrote the fiscal note, I considered only whether ESAs would be used at a traditional, brick-and-mortar private school. Because there are no existing brick-and-mortar private schools presently operating in White Pine, I did not envision a fiscal impact. What I did not realize and take into consideration is the fact that SB 302 allows for ESA funds to be used not only at brick-and-mortar private schools, but also in a variety of other ways, including at virtual private schools, and for distance education, private tutoring, and curricular materials used in home schooling. White Pine does have a homeschool community whose members could easily apply for and obtain ESAs. Further, SB 302 creates an incentive to open a private school in White Pine and has spawned local discussions about reopening a local parochial school which, at present, provides only religious education. For these reasons, SB 302 will have a detrimental impact on students who remain in public school in White Pine.

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I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct. Dated this 24th day of November, 2015 in White Pine County, Nevada.

By: _____
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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY

HELLEN QUAN LOPEZ, et al.,

Plaintiffs,

v.

DAN SCHWARTZ, in his official capacity as Treasurer of the State of Nevada,

Defendant.

Case No. 15-OC-00207-1B

Dept. No. II

DEFENDANTS' REPLY BRIEF

IN SUPPORT OF COUNTERMOTION TO DISMISS

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INTRODUCTION

The Nevada Constitution expressly empowers the Legislature to encourage education in the Silver State by "all suitable means." Nev. Const. art. 11, § 1. Faced with serious and chronic problems in the educational system, including the worst high school graduation rate in the country, the Nevada Legislature exercised its Section 1 authority by enacting a sweeping reform package this year. Many of the reforms were aimed at turning Nevada's public schools into world-class institutions. One of the reforms was the ESA program, which seeks to harness the power of the private sector and empower parents with the ability to chart the best educational course for their children.

Plaintiffs believe, and would have this Court hold, that the same Constitution that directs the Legislature to encourage education by "all suitable means" actually puts a straitjacket on the Legislature such that it has no power to enact programs that operate within the private sector. In Plaintiffs' world, the Legislature can appropriate billions of dollars for public schools, but cannot spend a dime to support parents and children who believe private education best serves their particular needs.

Fortunately, Plaintiffs' world is not the law of Nevada. Article 11, Section 1 of the Constitution authorizes the Legislature to enact the ESA program, and none of the provisions that Plaintiffs attempt to press into service—Sections 2, 3 and 6—comes close to forbidding the program.

ARGUMENT

Plaintiffs' response to Nevada's motion to dismiss reads like an extended exercise in trying to stick square pegs into round holes. Sections 2, 3 and 6 of Article 11 do indeed impose certain requirements on the Nevada Legislature with respect to the public schools and the funding thereof. But those requirements in no way forbid the Legislature from enacting an ESA program that supports parents and students who choose private education. Meanwhile, Section 1—a round peg that fits easily into the constitutional puzzle—expressly authorizes the Legislature to encourage education by any means the Legislature deems to be suitable.

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I. Article 11, Section 1 Delegates to the Legislature Broad Discretionary Authority over Education in Nevada.

This case must begin, as Article 11 itself begins, with Section 1, which is captioned "Legislature to encourage education ...." Nev. Const. art. 11, § 1. The operative language of Section 1 states that "[t]he legislature shall encourage [education] by *all suitable means* ...." *Id.* (emphasis added). This clause, as the Supreme Court of Indiana said of that State's very similarly worded "all suitable means" clause, "is a broad delegation of legislative discretion." *Meredith v. Pence*, 984 N.E.2d 1213, 1224 n.17 (Ind. 2013). "[T]he Education Clause directs the legislature generally to encourage improvement in education in [the State], and this imperative is broader than and in addition to the duty to provide for a system of common schools." *Id.* at 1224.

Plaintiffs assert that Section 1 is merely a "hortatory introductory provision." Plfs.' Reply on Mot. for a Prelim. Inj. & Opp. to Def.'s Mot. to Dismiss ("Opp.") 14. But the plain text of Section 1 disproves that assertion. Section 1 states that the Legislature "shall" encourage education, and the use of the word "shall" confirms that Section 1 confers both a duty and corresponding authority on the Legislature. *See Markowitz v. Saxon Special Servicing*, 129 Nev. Adv. Op. 69, 310 P.3d 569, 572 (2013) ("The word 'shall' is generally regarded as mandatory."); NRS 0.025(1)(d) (The word "'Shall' imposes a duty to act" unless the statute expressly provides otherwise.); *see also Halverson v. Miller*, 124 Nev. 484, 488, 186 P.3d 893, 896 (2008) ("The rules of statutory construction apply with equal force to the interpretation of a constitutional provision.").

The notion that Section 1 is merely precatory is also dispelled by that portion of the text providing that "[t]he legislature shall ... also provide for a superintendent of public instruction and by law prescribe the manner of appointment, term of office and the duties thereof." § 1. This text clearly confers power to provide for a superintendent, and the Legislature has exercised that power. *See* NRS 385.150 *et seq.* Notably, the word "shall" is used in Section 1 only once: "The legislature shall encourage [education] by all suitable means ..., and also provide for a superintendent ...." § 1. It would make no sense to read the word "shall" as

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power-conferring in the case of the superintendent but merely aspirational and hortatory in the case of education-encouragement.

Plaintiffs' view that Section 1 confers no power on the Legislature cannot be taken for a serious argument. The Indiana Supreme Court relied in part on the "all suitable means" clause in the Indiana Constitution (art. 8, § 1) in rejecting an attack on that State's educational-choice program. *See Meredith*, 984 N.E.2d at 1224-25 & nn.17-18. And the Rhode Island Supreme Court relied on a similar provision in upholding a statute enacting a program for busing students to nonpublic schools. *See Members of Jamestown Sch. Comm. v. Schmidt*, 405 A.2d 16, 21 (R.I. 1979).[1]

A. Professor Green's historical narrative is incomplete and flawed.

Plaintiffs offer the declaration of an associate professor of history, Michael Green, in support of an argument that Section 1 was "never intended to allow the Legislature to fund non-public educational expenditures." Opp. 15. Professor Green's history is, however, incomplete at best and seriously flawed at worst.

Quoting Professor Green, Plaintiffs state that "[t]here is no evidence from the debates that in passing this version of Article XI, Section 1, the delegates intended to confer power on the legislature to fund non-public educational systems." Opp. 15 (quoting Green Decl. ¶ 25). But the delegates clearly intended that Section 1 would confer power on the Legislature to "encourage [education] by all suitable means." Section 1 itself expressly says so, which is the best if not controlling evidence of the delegates' intent. And tellingly, Professor Green cannot point to a single piece of evidence in the debates that contradicts the plain text of Section 1's broad grant of authority or demonstrates that the delegates did *not* intend to give the Legislature power to fund an educational program operating outside of the public school system. *All of the evidence* that Professor Green relies on merely indicates that the delegates

[1] The Rhode Island Constitution directs the legislature "to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education." R.I. Const. art. XII, § 1; *see Schmidt*, 405 A.2d at 19. In *Schmidt*, the Rhode Island Supreme Court found that its Article XII, Section 1 is "substantially similar" to the "all suitable means" clause in the California Constitution (art. IX, § 1). *See Schmidt*, 405 A.2d at 22.

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wanted to create and fund a system of common schools. Of course—that much is obvious from the text of Article 11, Section 2. But that does not support, much less prove, that the delegates somehow meant to forbid what they textually required: that the Legislature "shall encourage [education] by all suitable means." If the delegates did not intend for the Legislature to have such power, they (1) would have said so in the debates and (2) would have omitted the "all suitable means" clause—but they said and did no such thing.

The debates confirm that the "all suitable means" clause in Section 1 is not, as Plaintiffs contend, merely a "hortatory introductory provision." Opp. 14. In fact, the delegates deleted what had been drafted as the first sentence of Section 1 on the ground that it—not the sentence containing the "all suitable means" clause—was merely a "preamble." Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada 567 (1866) (statements of Delegates Hawley, Dunne, and Collins). The deleted sentence had read: "The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon such educational advantages as it may provide." *Id.* As Delegate Hawley explained, that sentence "seems to be merely in the nature of a preamble." *Id.* The delegates decided that "the section will commence—'The Legislature shall encourage by all suitable means,' etc." *Id.*

The debates reveal two additional things that support Defendant's reading of Section 1 as conferring authority on the Legislature to enact the ESA program. First, delegates were in favor of the Legislature having broad discretionary authority with respect to education. Second, delegates spoke in support of parents having the ability to direct the education of their children and to choose whether to send them to public school.

The debate over the Education Article revolved around the question whether the Constitution should make attendance at public schools compulsory. *See* Debates 565-74. The debate was resolved *against* compulsory attendance and *in favor of* giving the Legislature broad discretionary authority over education and allowing parents to choose how their children will be educated.

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The delegates decided that they would not make public school attendance mandatory but would instead give the Legislature discretionary authority. Thus, the Education Article of the Constitution as enacted provides not only that "[t]he legislature shall encourage [education] by all suitable means," but also that "the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools." Nev. Const. art. 11, §§ 1, 2. In the course of the debate over compulsory attendance, delegates spoke in favor of vesting the Legislature with discretionary authority over education. As Delegate McClinton put it:

> I believe that education is a proper subject of legislation, but we should merely mark out here a sort of outline of the course which we intend the Legislature to pursue on that subject, and then leave the rest to the wisdom, intelligence, and patriotism of those legislators, who, we may be permitted to presume, will be not only as wise, but as earnest and zealous in the cause of education as we ourselves.

Debates 572. Delegate Collins similarly stated in opposition to compulsory attendance that "I am inclined to think that it would be wiser to leave the Legislature, from year to year, to adapt its action to the progress of public sentiment." *Id.* at 574. Thus, Plaintiffs' assertion that the "general aims of the delegates at the convention, ... was [sic] to greatly limit the power of the Legislature," Opp. 16, is belied by historical evidence—evidence ignored by Professor Green in his declaration.

Delegates also spoke in favor of parents having the ability to direct the education of their children. To quote Delegate Collins again: "If a parent is disposed to send his children to other than a public school, or to bring a governess or tutor into his own house to instruct his children, I see no objection to it ...." Debates 570. Delegate Warwick spoke forcefully in favor of education legislation and educational choice:

> I think there are some subjects which are justly and properly objects of legislation, and among them, one of the most worthy is that of education. But while we are legislating on that subject, do not let us forget that we are living in a Republic, that a man's house is his castle, and that in it he has a perfect right to exercise full authority and control over his children—to send them to school, or to keep them at home, just as he pleases.

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Id. at 571. The delegates decided against compulsory public school attendance and in favor of educational choice. And there is no evidence in the debates that the delegates intended to limit the Legislature's Section 1 power of encouraging education "by all suitable means" to encouraging only *public* education.

Finally, Plaintiffs' and Professor Green's view that the Legislature lacks the power to spend funds to support any schools other than the public schools is contradicted by *State ex rel. Keith v. Westerfield*, 23 Nev. 468, 49 P. 119 (1897), in which the Supreme Court held that the Legislature could use money from the General Fund to pay the salary of a teacher at the state orphans' home (which was considered outside the "common schools"). *See* Part IV-C, *infra*.

B. It is improper to consider Professor Green's views on the legislative history of Section 1 or his proffered legal opinions.

Not only is Professor Green's history incomplete and flawed, but Plaintiffs' reliance on his declaration is improper for two reasons. First, because the language of Section 1 is plain and unambiguous, consideration of legislative history is unnecessary and inappropriate. Consideration of an expert's views on legislative history is even more improper. Second, experts may not offer legal opinions, and Professor Green is not even a lawyer.

First, it is wholly improper to consider Professor Green's views on Section 1's legislative history because the language of Section 1 is clear and controlling. *See ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 646, 173 P.3d 734, 739 (2007) ("when a constitutional provision's language is clear on its face, we may not go beyond that language in determining the framers' intent"); *Pohlabel v. State*, 128 Nev. Adv. Op. 1, 268 P.3d 1264, 1269 (2012) ("When the language of a constitutional provision is unambiguous, its text controls."). There is nothing ambiguous about Section 1. It grants the Legislature the power to encourage education by any means the Legislature finds suitable.

Second, Professor Green purports to opine on how Section 1 should be interpreted and how it applies in this case. Even if he had a law degree, which he does not, he would not be allowed to offer such legal opinions. An expert witness may not offer a legal opinion because

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it is the role of the Court to decide all legal questions. *See Bibbins v. State*, No. 53137, 2010 WL 3341923, at *2 (Nev. May 7, 2010) (holding that district court erred by allowing witness to offer legal opinions) (citing *Mukhtar v. Cal. State Univ.*, 299 F.3d 1053, 1066 n.10 (9th Cir. 2002)); *Mukhtar*, 299 F.3d at 1066 n.10 ("an expert witness cannot give an opinion as to her *legal conclusion*"), *overruled on other grounds by Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 467 (9th Cir. 2014); *United States v. Scholl*, 166 F.3d 964, 973 (9th Cir. 1999) ("inappropriate" for expert to offer "legal conclusion"); *United States v. Whittemore*, 944 F. Supp. 2d 1003, 1010 (D. Nev. 2013) (expert's legal conclusion "inadmissible"), *aff'd*, 776 F.3d 1074 (9th Cir. 2015). Professor Green's Opinion 1 and Opinion 2 are legal opinions and hence inadmissible. *See* Green Decl. ¶ 7.[2]

C. Plaintiffs' reliance on Louisiana authority is misplaced.

Plaintiffs rely on a Louisiana court case, but it does not support their argument. *See* Opp. 16 (citing *La. Fed'n of Teachers v. State*, 118 So.3d 1033 (La. 2013)). The Louisiana Constitution "dictates specific and unique procedures for educational expenditures made through the MFP," *i.e.*, the Minimum Foundation Program. 118 So.3d at 1044. "Uniquely, MFP expenditures do not originate with the legislature." *Id.* Under the Louisiana Constitution, the Board of Education develops "a formula which shall be used to determine the cost of a minimum foundation program of education in all public elementary and secondary schools." La. Const. art. VIII, § 13(B). The Board transmits its MFP formula to the legislature "which then has limitations placed on the actions it is allowed to take." 118 So.3d at 1044. The Louisiana Constitution states that legislature "shall appropriate funds sufficient to fully fund" the program, and "[t]he funds appropriated shall be equitably allocated to parish and city school systems." § 13(B).

In *Louisiana Federation of Teachers*, the court held that a school-choice program violated § 13(B) because it would have used MFP funds to pay for private school programs—contrary to the express directive that MFP funds "shall be equitably allocated to parish and city school systems." § 13(B). *See* 118 So.3d at 1050-51. Nevada's ESA program commits no

[2] His third opinion is directed to an issue that Defendant has not raised.

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such foul because the ESA program will be fully funded from the State General Fund, an unrestricted fund. *See* SB 302, § 16.1.

Although the Louisiana Constitution provides that "[t]he legislature shall provide for the education of the people of the state," La. Const. art. VIII, § 1, that provision did not save the program at issue in *Louisiana Federation of Teachers* because § 13(B) allocates MFP funds exclusively to the public schools. *See* 118 So.3d at 1051 ("§ 13(B) ... contains a restriction on the use of MFP funds such that those funds cannot be diverted to nonpublic entities"). Here, in contrast, the Nevada Legislature's use of its Section 1 "all suitable means" power to enact an ESA program does not violate any provision of the Nevada Constitution. It also appears that the Louisiana Supreme Court was not inclined to view the "education of the people" clause in its Constitution as a power-conferring provision because "the Louisiana Constitution is fundamentally structured such that it contains limitations, not grants, of power." 118 So.3d at 1050.

In sum, *Louisiana Federation of Teachers* turned on a "unique" Louisiana constitutional provision and the fact that the choice program at issue would have been funded by money expressly allocated to public schools only.

II. Plaintiffs Mistakenly Assume that Any Funds Appropriated to the Distributive School Account Are Earmarked Exclusively for the Public Schools.

All three of Plaintiffs' claims are built on one implicit, unstated assumption: that any and all funds the Legislature appropriates from the General Fund into the Distributive School Account are so-called "Section 6" funds, set aside for the public schools and unavailable for any other purpose.[3] But nothing in Nevada law—anywhere—says that. Nevada's Constitution certainly does not say so. Plaintiffs read Section 6 like it is the same Section 6

[3] *See, e.g.*, Opp. 1 ("SB 302 on its face funds ... from the Distributive School Account—the Section 3 and 6 funds"); Opp. 4 ("the funds appropriated by ... [SB 515] pursuant to Section 6 comprise the vast majority of the funds allocated to the DSA"); Opp. 7 ("SB 515—the appropriation for public education"); Opp. 13 ("SB 302 allows funds appropriated for Nevada's uniform system of public schools to be used by private schools"). Plaintiffs also inexplicably repeat that "Defendant concedes" their assumption. *See*, *e.g.*, Opp. 1, 4, 13. Defendant does not. *See* Def.'s Opp. to Mot. for Prelim. Inj. & Countermotion to Dismiss ("Nevada Br.") 21-22.

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that existed in Nevada's original Constitution, which the Nevada Supreme Court considered in *Keith*. Opp. 6. But it is not. The current Section 6 is nothing like the original provision, which read:

> Sec. 6. The Legislature shall provide a special tax of one half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said university and common schools; *provided*, that at the end of ten years they may reduce said tax to one-quarter of one mill on each dollar of taxable property.

Originally, Section 6 set up a "special tax" that raised earmarked funds that could only be used "for the support and maintenance of said university and common schools." Funds raised by the special tax were put in a special account, together with the similarly earmarked Section 3 funds, which was called the "general school fund." *Keith*, 23 Nev. at 468, 49 P. at 120. Since all of the money in the "general school fund" consisted of either Section 3 monies or funds raised by Section 6's special, earmarked tax, it was a foregone conclusion that money in the general school fund could only be used for the public schools (and the state university).

Today's Constitution contains a very different Section 6. Nevada no longer has a "special" Section 6 tax that raises earmarked funds for the "common schools." Instead, the vast majority of the funds the State spends on public education are simply General Fund dollars that the Legislature sets aside for the common schools. Nevada's current Section 6 gives a few requirements for that set-aside:

> 1. In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance *by direct legislative appropriation from the general fund*, upon the presentation of budgets in the manner required by law.
>
> 2. During a regular session of the Legislature, *before any other appropriation is enacted* to fund a portion of the state budget for the next ensuing biennium, *the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available* for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.

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Nevada Const. art. 11, § 6.1 & 6.2 (emphases added).

Since Section 6 was changed to its modern form, Nevada's Legislature has consistently complied with its Section 6 obligation in the same way: by appropriating money from the State's General Fund into the "Distributive School Account." Plaintiffs imagine the DSA is no different than the old "general school fund" considered in *Keith*. But that ignores one glaring difference: The money put into the old general school fund was already earmarked and set aside from its inception for the common schools (whether from Section 3's "permanent school fund" or Section 6's "special tax ... for ... common schools"); the money that the Legislature today puts into the DSA is merely General Fund dollars. No Nevada law says that *everything* the Legislature puts into the DSA automatically becomes earmarked for, and only for, public schools. Nevada's current Section 6 merely says the Legislature "shall enact one or more appropriations to provide the money the Legislature deems to be sufficient." It sets no restrictions on whether the Legislature, when setting aside that money, may also put additional money beyond what it "deems to be sufficient" for the public schools in the same account (the DSA) for other purposes.

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And that is precisely what the Legislature has done here. It enacted SB 302. Then it enacted SB 515. Plaintiffs pretend that because SB 515 set aside funds into the DSA that *all* of those funds *must* be Section 6 funds earmarked exclusively for the public schools. But given that SB 302 pre-existed SB 515, the most reasonable interpretation of SB 515 is that it appropriated *both* the money the Legislature deemed "sufficient" for the public schools under Section 6, *and* the money the Legislature intended to fund SB 302. Any other reading not only creates a conflict where none is necessary, but also effectively reads SB 302 and SB 515 with a "strong presumption that a statute duly enacted by the Legislature is [un]constitutional," instead of applying the proper, opposite "strong presumption" of constitutionality. *Sheriff, Washoe Cty. v. Smith*, 91 Nev. 729, 731, 542 P.2d 440, 442 (1975).

Once this fundamental misreading by Plaintiffs of SB 302, SB 515, and Section 6 is exposed, their entire house of cards falls. Most of the funds in the Distributive School Account are merely general funds the Legislature transferred into the DSA. Some of those funds

(indeed, *most* of those funds) are the Section 6 funds the Legislature set aside for Nevada's public schools. The exact amount that the public schools will ultimately receive will be calculated the same way it has always been calculated under the Nevada Plan—based on the number of pupils actually attending the public schools (*i.e.*, the per-pupil funding guarantee) with a minimum lump-sum guarantee (*i.e.*, the hold-harmless amount). But in addition to those funds put into the DSA, the Legislature this past term also put money in the DSA to fund ESAs. Those funds are obviously *not* Section 6 funds.

In short, the Legislature put both Section 6 and ESA funds in the DSA, which was clearly within the discretion of the Legislature. Plaintiffs are trying to manufacture a conflict where none is required.

III. The Nevada Constitution Authorizes the Legislature to Support a Uniform Public School System and an ESA Program.

Article 11, Section 2 of the Nevada Constitution states that "[t]he legislature shall provide for a uniform system of common schools …." Section 2 does not stand in the way of the ESA program. Nevada has a public school system that is uniform, free of charge, and open to all. SB 302 does not change any of that. Section 2 does not say the Legislature is forbidden from supporting those parents and children who choose to receive an education outside of the public school system. Section 1, on the other hand, expressly empowers the Legislature to encourage education by "all" suitable means.

Plaintiffs point to the interpretive principle that the specific controls the general, *see* Opp. 16, but that principle does not apply here. It comes into play only when two provisions *conflict*. *See Lader v. Warden*, 121 Nev. 682, 687, 120 P.3d 1164, 1167 (2005) ("[W]hen a specific statute is in conflict with a general one, the specific statute will take precedence."). Here, there is no conflict between any of the constitutional provisions at issue. The provisions of Article 11 complement, not contradict, each other. The Legislature's broad Section 1 power, used here to establish an ESA program, does not conflict with its power under other sections of Article 11 to establish public schools. The Legislature may do both. *See Meredith*,

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984 N.E.2d at 1224 (legislature's power under all-suitable-means clause "is broader than and in addition to the duty to provide for a system of common schools").

Plaintiffs trot out once again the maxim *expressio unius est exclusio alterius*—"the expression of one thing is the exclusion of the other," Opp. 17—without responding to Nevada's explanation that the maxim "'does not mean that anything not required is forbidden.'" Nevada Br. 11 (quoting N. Singer & S. Singer, 2A Sutherland Statutory Construction § 47:25 (7th ed.)). Furthermore, Plaintiffs fail to appreciate that not one but *two things* are expressed in Sections 1 and 2. Section 1 authorizes and directs the Legislature to encourage education by "all suitable means" while Section 2 requires the Legislature to provide for *one* of those suitable means—a uniform public school system. Read in tandem, Section 2 does not limit the Legislature's Section 1 power. Section 2 merely requires the Legislature to exercise its Section 1 power to provide for public schools. Even if Section 2 when read in isolation might impose some implicit limitation on the Legislature's power, the addition of Section 1's broad power-conferring language to the interpretive mix compels the rejection of any such reading of Section 2. *See Meredith*, 984 N.E.2d at 1224 n.17 (rejecting plaintiffs' *expressio unius* argument based on "all suitable means" clause in state constitution).

Plaintiffs are at pains to deny that their reading of Section 2 would make private schools and homeschooling illegal in Nevada. *See* Opp. 17. But consider their argument. In their motion for preliminary injunction, Plaintiffs argue that Section 2 "prohibits the Legislature from enacting SB 302, a law that allows for the education of Nevada children through a non-uniform means wholly separate and distinct from the uniform system of public schools." Plfs.' Mot. for Prelim. Inj. 18-19. NRS 392.070, which excuses children in private schools and homeschools from Nevada's public school attendance requirements, is "a law that allows for the education of Nevada children" outside of the public school system. Does NRS 392.070 then violate Section 2? The fact that Plaintiffs' argument raises a question about the constitutionality of private education and homeschooling in Nevada is reason enough to reject it.

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A. The Supreme Courts of Indiana, North Carolina, and Wisconsin have rejected the uniformity clause argument that Plaintiffs make here.

Plaintiffs fail to distinguish the decisions of the Supreme Courts of Indiana, North Carolina, and Wisconsin, all of which have rejected claims that school-choice programs violated the uniformity clause in their state constitution.[4] Plaintiffs argue that those cases involved "different textual provisions," Opp. 17, but each of them involved a provision requiring the legislature to establish a "uniform" public school system. *See* Ind. Const. art. 8, § 1 ("general and uniform system of Common Schools"); N.C. Const. art. IX, § 2(1) ("general and uniform system of free public schools"); Wis. Const. art. X, § 3 ("district schools, which shall be as nearly uniform as practicable"). Indiana's Constitution in particular is very similar to Nevada's because it gives the legislature the duty to encourage education "by all suitable means." Ind. Const. art. 8, § 1.

Plaintiffs also argue that the choice programs in those States are smaller in scope than the Nevada ESA program. *See* Opp. 17-18. But that is not a legal argument that distinguishes the Indiana, North Carolina, and Wisconsin cases. Furthermore, there is no principled constitutional basis for judging whether an educational choice program is too big. Plaintiffs' small-violations-are-okay argument especially misses the mark in the context of an alleged violation of a "uniformity mandate." *Id.* at 17. If an educational-choice program violates a uniformity mandate, it would make no sense to excuse the violation on the ground that the program creates only a little disuniformity. Not surprisingly, the Indiana, North Carolina, and Wisconsin Supreme Courts did not base their decisions on the size or scope of the programs in their States. Indeed, the Wisconsin Supreme Court upheld the Milwaukee program as originally enacted and then upheld the program again after it was amended to increase tenfold the percentage of public school students who could participate in the program. *See Jackson v. Benson*, 578 N.W.2d 602, 607-08 (Wis. 1998) (original program

[4] *See Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013); *Hart v. State*, 774 S.E.2d 281 (N.C. 2015); *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998); *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992).

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permitted participation of 1.5% of public schools students while amended program was increased to 15%).

All of the reasons offered by the Indiana, North Carolina, and Wisconsin Supreme Courts for rejecting the uniformity clause attacks leveled against the educational choice programs apply here as well. The Legislature's constitutional power to encourage education by "all suitable means" permits the Legislature to enact a choice program. *Meredith*, 984 N.E.2d at 1224. The duty to provide for a uniform public school system is "not a ceiling but a floor upon which the legislature can build additional opportunities for school children." *Jackson*, 578 N.W.2d at 628. A choice program "in no way deprives any student the opportunity to attend a public school with a uniform character of education." *Davis v. Grover*, 480 N.W.2d 460, 474 (Wis. 1992). The uniformity mandate applies only to the public school system "and does not prohibit the General Assembly from funding educational initiatives outside of that system." *Hart v. State*, 774 S.E.2d 281, 290 (N.C. 2015). Plaintiffs have no response to these reasons and rulings.

B. The Florida Supreme Court's decision distinguishes itself.

Defendant's opening brief thoroughly explains why Plaintiffs' reliance on *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006), is misplaced. *See* Nevada Br. 14-15. Significantly, the *Bush* court *itself* distinguished the Wisconsin case (*Davis*) on the ground that the Wisconsin Constitution did not contain the particular language in the Florida Constitution on which the *Bush* court based its decision. *See Bush*, 919 So.2d at 407 n.10. That particular language is also missing from the Nevada Constitution. In a case decided after *Bush*, the Indiana Supreme Court distinguished *Bush* based on *Bush*'s own distinction of *Davis*. *See Meredith*, 984 N.E.2d at 1223-24. The Indiana Supreme Court also distinguished *Bush* based on the "all suitable means" clause in the Indiana Constitution. *See id.* at 1224-25. The Florida Constitution does not have such a clause. The Nevada Constitution does.

Plaintiffs argue that the Nevada Constitution includes language comparable to the language in the Florida Constitution relied upon in *Bush*. *See* Opp. 19. But the Nevada language they point to is very different from the Florida language. *Compare* Fla. Const. art.

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IX, § 1(a) ("It is, therefore, *a paramount duty* of the state to make adequate provision for the education of all children residing within its borders. *Adequate provision* shall be made *by* law for a uniform, efficient, safe, secure, and high quality system of free public schools ....") (emphases added) *with* Nev. Const. art. 11, § 6(2) ("[B]efore any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State ...."). Not only are the two provisions very different, but Plaintiffs argument also fails because, in the Florida Constitution, the sentence stating that it is the Legislature's "paramount duty" to make "adequate provision" for education is immediately followed by a sentence requiring that that "[a]dequate provision shall be made by" a "uniform" public school system. *Bush* held that the two "sentences must be read *in pari materia*, rather than as distinct and unrelated obligations." *Bush*, 919 So.2d at 406. In the case of the Nevada Constitution, the uniformity clause is found in Article 11, Section 2 while the appropriations language that Plaintiffs cite appears four sections later in Section 6(2). They were also enacted more than a century apart. Unlike in *Bush*, these are "distinct and unrelated obligations."

The *Bush* case is an outlier. No court has ever used *Bush* to strike down an educational-choice statute. It would be wrong to do so here in the context of the Nevada Constitution, the language of which is very different from the Florida Constitution. Nevada's Constitution lacks the language that was necessary to the decision in *Bush*, and it contains an "all suitable means" clause that Florida's Constitution lacks. *Bush* is inapposite.

In short, the ESA program does not violate or even implicate the "uniform system of common schools" provision of Article 11, Section 2. The Legislature may support a uniform public school system *and* an ESA program.

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IV. SB 302 Does Not Violate Article 11, Section 3.

Plaintiffs' attack on the ESA program based on Section 3 fares no better than its Section 2 attack. Section 3 is quoted in full in Defendant's opening brief. *See* Nevada Br. 15-16. In pertinent part, Section 3 provides that the "money" from the specific kinds of property listed in Section 3 (*e.g.*, "lands granted by Congress to this state for educational purposes") must be used "for educational purposes." Nev. Const. art. 11, § 3.

A. The ESA program spends funds for "educational purposes."

Plaintiffs argue that the ESA program spends Section 3 money in violation of Section 3. The first reason why Plaintiffs' argument fails is that, *even if* Section 3 money were used to fund the ESA program,[5] such spending would be for "educational purposes." *See* Nevada Br. 2-5, 17-18. Indeed, Plaintiffs do not dispute that the ESA program spends money for educational purposes. They contend that Section 3 funds may be spent only on *public* educational purposes. *See* Opp. 6 ("the term 'educational purposes' in Section 3 refers only to the public K-12 schools and the State University"). But Plaintiffs have read into Section 3 something which is not there—the word "public." Section 3 does not say "public" educational purposes. On the contrary, Section 3 uses the term "educational purposes" *six* times, and each time Section 3 uses that term without confining it to *public* educational purposes.

Plaintiffs argue that "Defendant fails to cite *any* statement by the framers of the Nevada Constitution indicating an intent to authorize the use of Section 3 funds for anything other than to support Nevada's K-12 public schools and the State University." Opp. 5. But Defendant has cited something even better than a statement by the framers—the plain text of Section 3 itself. Because Section 3 uses the phrase "educational purpose" six times without ever limiting the kinds of educational purposes to which Section 3 money may be dedicated, the meaning of Section 3 is clear: Section 3 money may be used for public or private educational purposes. As noted above, "when a constitutional provision's language is clear on its face, [a

[5] SB 302 does not in fact require the use of Section 3 money for the ESA program. *See* Part IV-B, *infra*.

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court] may not go beyond that language in determining the framers' intent." *ASAP Storage*, 123 Nev. at 646, 173 P.3d at 739.

Furthermore, one of the reasons the Legislature enacted the ESA program was to improve public schools. *See* Nevada Br. 3-4, 17. The Legislature received evidence that educational-choice programs improve outcomes in public schools. *Id.* at 3. Educational-choice program introduce "healthy competition" between public and private schools. *Id.* And public schools in Nevada are overcrowded, *id.* at 4, which the ESA program may help to alleviate. Significantly, Plaintiffs do not dispute that the ESA program was enacted in part for the purpose of improving the public education system. Thus, even under Plaintiffs' crabbed view of Section 3, the ESA program spends money for "educational purposes."

B. SB 302 does not require the use of Section 3 money for ESAs.

Plaintiffs' Section 3 attack also fails for a separate reason even if one accepts their stingy view of "educational purposes": SB 302 does require the use Section 3 money for the ESA program. On the contrary, SB 302 indicates that ESAs will be funded from "the State Distributive School Account in the State General Fund." SB 302, § 16(1). As Nevada explained in its opening brief, Section 3 money constitutes only a tiny fraction of the funds in the DSA. *See* Nevada Br. 16. In 2014, of the $1.4 billion in the DSA, only $1.6 million, *i.e.*, 0.14%, came from the Permanent School Fund, the fund into which Section 3 money is deposited. $1.1 billion of that $1.4 billion, *i.e.*, 78%, came from the General Fund.

Because Plaintiffs have brought a pre-enforcement, facial challenge to SB 302, it is their burden to show that "there is no set of circumstances under which the statute would be valid." *Déjà Vu Showgirls v. Nev. Dep't of Taxation*, 130 Nev. Adv. Op. 73, 334 P.3d 392, 398 (2014). It is not enough for Plaintiffs to argue that SB 302 "might operate unconstitutionally under some conceivable set of circumstances." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Plaintiffs cannot meet the facial-challenge standard because SB 302 calls for the use of funds from the DSA in the General Fund, *see* § 16(1), and SB 302 does not as a legal matter require the use of any Section 3 money. Nor can Plaintiffs show that SB 302 would

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necessarily use Section 3 money—since such money constitutes but a tiny fraction of the DSA.

Against this argument, Plaintiffs offer only a very short response: that even if SB 302 does not require the use of Section 3 money, the ESA program cannot be funded from "Section 6 appropriations" either. *See* Opp. 6-7. Plaintiffs' Section 6 argument is wrong, however, for the reasons given in Parts II and V of this brief.

C. The *Keith* decision supports the ESA program's funding structure.

Plaintiffs continue to rely on *State ex rel. Keith v. Westerfield*, 23 Nev. 468, 49 P. 119 (1897) (Opp. 6). But *Keith* actually supports the funding structure of the ESA program. *Keith* held that the Legislature, without any legal infirmity, could fund the salary of a teacher at the orphans' home out of the General Fund. *See Keith*, 49 P. at 121 ("We hold that the legislature has made a valid appropriation for the payment of the salary in question, and that the same is payable out of the general fund in the state treasury"). SB 302 provides that the ESA program will be funded with money from the State General Fund. § 16(1). Not a single word of the *Keith* opinion precludes the Legislature from doing so. To be sure, *Keith* also held that the teachers' salary could not properly be made out of a fund then in existence known as the "general school fund." *Id.* But SB 302 does not call for the use of any such money for the ESA program. *See* Parts II and IV-B, *supra*.

Keith held that the school fund could not be used to pay the teacher's salary for a somewhat peculiar and very case-specific reason: "the children in the orphans' home were not entitled to attend the public schools." *Id.* The Supreme Court said that educating children in the orphans' home is an "educational purpose" but the orphans were not eligible for this purpose:

> It is true that, if a portion or all of these moneys were appropriated to the education of the children in said home, it would be applying them to educational purposes; but the constitution does not include the education of these children in the term "educational purposes."

Id. In contrast to *Keith*, children participating in the ESA program are by definition entitled and eligible to attend public school. For this reason, and the reasons stated above in Part II, *Keith*'s holding concerning the "general school fund" does not apply to the ESA program.

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V. SB 302 Does Not Violate Article 11, Section 6.

Plaintiffs' final argument concerns the "deems to be sufficient" clause of Article 11, Section 6 of the Constitution. That clause provides:

> [T]he Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium ....

Nev. Const. art. 11, § 6(2). SB 302 does not violate this provision.

A. Plaintiffs' argument that the Legislature did not appropriate funds that the Legislature deemed sufficient for the public schools is neither justiciable nor meritorious.

On June 1, 2015, the Legislature passed SB 515, which is titled "An Act relating to education; ensuring sufficient funding for K-12 public education for the 2015-2017 biennium ...." SB 515, Title. The Legislature ensured what it deemed to be sufficient funding for the public schools by establishing a "basic support guarantee" for each school district. *Id.* §§ 1-2. The basic support guarantee for each district is calculated on a per-pupil basis. *Id.* For example, the basic support guarantee for Carson City for FY 2015-16 is $6,908. *Id.* § 1.

Importantly, Plaintiffs go out of their way to make clear that they "do not in this case challenge the amount or sufficiency of the Legislature's appropriations under SB 515 for the public schools." Opp. 12. Thus, Plaintiffs' argument is that, although the Legislature appropriated funds that are in fact sufficient for the public schools, it also, in the very same Act, "reduce[d] the funds *the Legislature deemed sufficient for the public schools*." *Id.* (emphasis in original).[6] This must surely rank as one of the strangest constitutional objections ever raised to an Act of the Nevada Legislature.

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[6] Plaintiffs understandably try to split the Legislature's actions into two separate actions—the "good" SB 515 and the "bad" SB 302. But that does not work. SB 302 was passed *before* SB 515, and so could not after-the-fact "reduce[ ]" the amount deemed sufficient when the Legislature passed SB 515. Opp. 1, 12. And SB 302 appropriates nothing; SB 515 appropriated both for Section 6 purposes and the ESAs established by SB 302. So Plaintiffs' argument has to be that the Legislature made *both* a "sufficient" appropriation under Section 6 and at the same time impermissibly reduced that appropriation in the very same Act.

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Plaintiffs' Section 6 attack fails for multiple reasons. For starters, whether the Legislature appropriated funds that it "deems to be sufficient" for the public schools is a non-justiciable question. *See* Nevada Br. 23. That question involves "policy choices and value determinations constitutionally committed for resolution" to the Legislature. *N. Lake Tahoe Fire Prot. Dist. v. Washoe Cty. Bd of Cty. Comm'rs*, 129 Nev. Adv. Op. 72, 310 P.3d 583, 587 (2013). Plaintiffs are asking this Court to declare that, in the same enactment, the Legislature both appropriated the funds it "deemed sufficient" and also "reduc[ed] the amounts [it] deemed sufficient." Opp. 1. That is not a judgment a court can make.

If this Court were to entertain the question whether the Legislature appropriated funds the Legislature deemed sufficient for the public schools, the only possible answer is yes. The Legislature passed SB 302 on May 29, 2015—three days before it passed SB 515. Thus, Plaintiffs' argument that SB 302 "reduces the amounts deemed sufficient by the Legislature to fund public education in violation of Section 6," Opp. 1, is nonsensical. When the Legislature passed SB 515, it had already passed the ESA legislation establishing the ESA program. Like Congress, the Nevada Legislature "legislates against the backdrop of existing law." *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1934 n.3 (2013). The Legislature is presumed to be aware of existing statutes when it enacts a new statute. *See State v. Weddell*, 118 Nev. 206, 213 n.23, 43 P.3d 987, 991 n.23 (2002) (en banc). Here, the Legislature passed SB 302 just three days before it passed SB 515, and it must be presumed that the Legislature took the new ESA program into account when it appropriated what it expressly regarded as "sufficient fund[s]" for the public schools. SB 515, Title.

Plaintiffs also fail to appreciate that the Legislature funds the public schools on a *per-pupil* basis. Under the Nevada Plan, the Legislature does not appropriate a lump sum for the public schools and deem that sum to be sufficient. Rather, the Legislature establishes for each school district a "basic support guarantee," which is a per-pupil amount. Thus, contrary to Plaintiffs' contention, SB 302 in no way "reduces the amounts deemed sufficient by the Legislature to fund public education." Opp. 1. SB 302 does not change the per-pupil basic support guarantee set in SB 515. The ESA program may decrease the number of students

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who would otherwise enroll in a given school district, but the district's per-pupil basic support guarantee remains the same. And it is the per-pupil amount that the Legislature "deems to be sufficient" funding, not the total amount.

Of course, student enrollment in a particular district will fluctuate for many reasons unrelated to the ESA program. For example, a pupil's family may decide to move to a different district or leave Nevada altogether. These events do not cause funding to dip below that which the Legislature deemed sufficient, however, because the Legislature ensures sufficient funding through a per-pupil guarantee. With or without the ESA program, the per-pupil guarantee is the same.

The Nevada Legislature also protects school districts from large enrollment fluctuations through the "hold harmless" provision. *See* NRS 387.1233(3), *as amended*, SB 508, § 9; Nevada Br. 20. Under this statute, if a district experiences a reduction of 5% or more in enrollment, it is funded based on the prior year's enrollment figure. With the "hold harmless" provision, the Legislature ensures that districts will receive what it deems to be sufficient funding despite any sharp declines in enrollment.

Plaintiffs argue that "there is nothing in SB 302 that applies this provision to the reduction in a district's funding resulting from the diversion of funds to ESAs." Opp. 10. But there is no need for SB 302 to address this issue. The "hold harmless" provision is triggered whenever enrollment declines 5% or more for whatever reason. *See* NRS 387.1233(3) (provision triggered if enrollment "is less than or equal to 95 percent of the enrollment of pupils in the same school district" in the "immediately preceding school year"). The Executive Branch has applied and will apply the "hold harmless" provision in accordance with its language.

Plaintiffs also argue that funding "reductions resulting from a drop of five percent or less of the student population are still significant." Opp. 10. That was just as true before ESAs. The issue before the Court is whether the Legislature has appropriated the funds that it *deems to be sufficient*, and just as it did before enacting SB 302, the Legislature deems a funding

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reduction based on a drop in student enrollment of less than 5% from the prior year's funding to still be sufficient.

B. Plaintiffs' alternative Section 6 argument also fails.

In addition to their argument based on the "deems to be sufficient" clause, Plaintiffs also argue that SB 302 violates Section 6 by "divert[ing] funds appropriated by the Legislature for the operation of the public schools." Opp. 4. Plaintiffs are wrong.

The first subsection of Section 6 provides: "In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund ...." Nev. Const. art. 11, § 6(1). And the second subsection provides that "the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient" for the public schools. *Id.* § 6(2). SB 302 does not violate these provisions.

The Legislature discharged its duty under Section 6 by passing SB 515. Just as it has done in past years, the Legislature established a per-pupil basic support guarantee for each school district. SB 515, §§ 1-2. To ensure that more than enough money would be available to cover the basic support guarantee, the Legislature appropriated some $2 billion from the State General Fund to the State Distributive School Account. *Id.* § 7. Importantly, school districts are entitled only to their per-pupil basic support guarantee; they are not entitled to the full $2 billion appropriated to the DSA. The $2 billion in general funds deposited in the DSA will pay for the basic support guarantee and the ESA program. *See* SB 302, § 16(1) (ESA funds to come from the general funds in the DSA). No Section 6 violation arises from that funding structure. The ESA program does not use funds that would otherwise be provided to the school districts. The school districts will still get the full measure of their per-pupil basic support guarantee. The Legislature in SB 515 appropriated funds from the State General Fund to the DSA to support both the basic support guarantees and the ESA program. Nothing in Section 6 prohibits the Legislature from doing so.

Plaintiffs' gross speculation that somehow the ESA program might "cause a shortfall in the DSA" is just that—gross speculation. Opp. 12. DSA appropriations have always been

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made against the backdrop of estimates—most relevantly, estimates as to the number of public school students expected to be enrolled over the next biennium. There is always some hypothetical risk that, if those estimates turn out to be wrong, the total, lump-sum amount appropriated by the Legislature might need to be adjusted. So Plaintiffs' hand-wringing presents nothing unique to this past Legislature's appropriation. What is unique is that they expect this Court to strike down a duly-enacted statute based on their mere conjecture about what *could* happen. That is not how facial challenges work. *See* Nevada Br. 6-7. Plaintiffs have failed to carry their "burden of making a clear showing that the statute is unconstitutional." *List v. Whisler*, 99 Nev. 133, 138, 660 P.2d 104, 106 (1983). Accordingly, their facial challenge to SB 302 should be dismissed and the statute should be upheld in full.

CONCLUSION

For the foregoing reasons, as well as those stated in Defendant's opening brief, Defendant's motion to dismiss should be granted and Plaintiffs' motion for preliminary injunction should be denied.

DATED this 17th day of December, 2015.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing DEFENDANT'S REPLY BRIEF IN SUPPORT OF COUNTERMOTION TO DISMISS, addressed to:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN SCHWARTZ, in his official capacity as Treasurer of the State of Nevada,

Appellant,

v.

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J,; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Respondents.

Supreme Court No. 69611

District Court No. 15-0C-0020701-B

RESPONDENTS' APPENDIX
VOLUME II
BATES RA 000243 through RA 000395

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2016, a true and correct copy of the **RESPONDENTS' APPENDIX VOLUME II** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

By /s/ *Dannielle Fresquez*
Dannielle Fresquez, an Employee of
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