



# MTSBA

"...fostering excellence in public education through school board leadership."

TO: Senator Brent Cromley, Chair  
Senate Public Health, Welfare and Safety Committee

FROM:   
Lance L. Melton, Executive Director  
Montana School Boards Association

RE: SB 101

DATE: Wednesday, January 12, 2005

SENATE PUBLIC HEALTH, WELFARE & SAFETY	
EXHIBIT NO.	# 5
DATE:	1-12-05
BILL NO.	<sup>SB</sup> 101

The Montana School Boards Association stands as a reluctant opponent to Senate Bill 101, introduced by Senator Trudi Schmidt. Although we have no position on most of the bill, the inclusion of section 2 of the bill, restricting the right and obligation of local school districts to serve children residing within their boundaries because of the residency of their parents, requires our opposition.

The denial of access to public education in the state of Montana is not only bad public policy, but is almost certainly unconstitutional under Article X, Section 1 of the Montana Constitution. Article X, Section 1 of the Montana Constitution provides as follows:

Section 1. Educational goals and duties. (1) . . . Equality of educational opportunity is guaranteed to each person "*of the state.*"

Depending on how the court would define what it means to be "of the state", section 2 could be construed as a violation of the right of equal educational opportunity to the many children that would be affected by this bill. It is doubtful that the constitutional framers intended to limit the guarantee of equal educational opportunity to only those children who are residents of the state.

Although there is not a wealth of case law or constitutional history on what is meant by being "of this state," the language in Article X of the Montana Constitution is quite similar to the language under the Fourteenth Amendment to the U.S. Constitution. The Fourteenth Amendment to the U.S. Constitution provides that state governments may not "deny to *any person within its jurisdiction* the equal protection of the law". Under that provision of our constitution, the United States Supreme Court has held that it is unconstitutional to deny state funding for the education of children of illegal aliens. See, *Plyler v. Doe*, 457 U.S. 202 (1982). The rationale was that the children were residing within the state of Texas, and that the state of Texas did not have the right to deny them state education funding simply because their parents were illegal aliens.

For the reasons above, MTSBA respectfully urges that the Committee remove section 2 from the bill. If section 2 is to remain in the bill, MTSBA opposes passage of SB 101.

Thanks