

SUPPORTING DATA – SB 80 & SB 81

By Senator Dan McGee – January 12, 2008

for presentation to the Senate Education & Cultural Resources Committee

1. Declaration of Independence:
 - a. *“...Deriving their just powers from the Consent of the governed.”*
2. Article II, Section 1, Montana Constitution: “All political power is vested in and derived from the people.”
3. Article X, Section 9, Montana Constitution – definitions of Boards of Education & duties:
see handout
4. 1989 First Judicial District Court Opinion – see handout
 - a. rules that BOPE has constitutional status with powers to overturn state law.
 - b. establishes 4th branch of government solely responsible for legislating educational law.
 - c. Board members do not derive their political power from the people
 - > are appointed, not elected
 - > no checks and balances
 - > completely autonomous entity with legislative powers.
 - d. ruling violates various other articles of Montana Constitution:
 - > separation of powers
 - > Art. V, Section 1 – Legislative power
 - > Art. V, Section 11 – Laws
 - > Art. VI, Section 4, Duties of the Executive:
 - (1) “The executive power is vested in the governor who shall see that the laws are faithfully executed.” (*not Board of Public Ed rules*)
 - e. ruling renders Legislature as the check-writer only with no oversight over Board’s actions, rulings, or expenditures. Board members are not subject to elections, impeachment or disciplinary action by any other agency or entity of state government.
5. If the court is correct in its ruling, then the Board members must be elected to office in order to comply with the most basic principles of American Constitutional law – derive power from those governed.

SCHOOL CHOICE

IN THE STATE

MONTANA



Many agree with the concept. Some disagree. And some simply want more information. As the public debate continues to grow louder about how best to provide a quality education to all Montana children, it is critical to know the facts and to have a good understanding of public opinion.

This statistically representative poll of 1,200 likely Montana voters measures public opinion on a range of K-12 education issues including school choice.

SRVEY

Montana's Opinion on K-12 Education and School Choice

Prepared by:
Paul DiPerna

The Friedman Foundation for Educational Choice

October 2008

This poll released jointly by the Friedman Foundation for Educational Choice, Montana Family Foundation, American Legislative Exchange Council, Black Alliance for Educational Options, Central Montana Homeschool Association, Diocese of Great Falls-Billings Catholic Schools, Diocese of Helena Catholic Schools, Hispanic Council for Reform and Educational Options, Montana Federation of Independent Schools, and National Catholic Educational Association

COMMITMENT TO METHODS & TRANSPARENCY

The Friedman Foundation is committed to research that adheres to high scientific standards. Matters of methodology and transparency are taken seriously.

All individuals have opinions, and many organizations (like our own) have philosophical or mission orientations. Scientific methods, if designed well and followed closely, should neutralize these opinions and orientations. Research rules and methods minimize bias. We believe rigorous procedural rules of science prevent a researcher's motives, and an organization's particular orientation, from pre-determining results.

If research adheres to scientific standards, its findings can be relied upon no matter who has conducted it. If rules and methods are neither specified nor followed, then the biases of the researcher or an organization may become relevant, because a lack of rigor opens the door for those biases to affect the results.

We are committed to sound research and to provide quality information in a transparent and efficient manner. We welcome any and all questions related to our methodology and work.

Montana's Opinion on K-12 Education and School Choice

Prepared by:

Paul DiPerna

The Friedman Foundation for Educational Choice

Poll conducted by:

Strategic Vision

October 2008

About the Author



Paul DiPerna (paul@friedmanfoundation.org) is director of partner services for the Friedman Foundation for Educational Choice, an organization dedicated to educating the public on the issue of school choice. He joined the Friedman Foundation in September 2006. DiPerna directs the organization's state polling series and leads grantmaking and direct service activities in more than a dozen states. He previously served as assistant director for the Brown Center on Education Policy at the Brookings Institution, working there for more than six years. DiPerna was a research analyst for the first five issues of the Brown Center Report on American Education (2000-2004), and managed the activities of the National Working Commission on Choice in K-12 Education (2001-2005).

DiPerna takes a special interest in Internet activity, particularly in terms of discovering and coordinating information, mobilizing people, building social networks, improving organization and management, and amplifying fundraising activities. He has presented research at the American Sociological Association annual conference, and has published articles in *Education Next*, *First Monday*, the *Washington Examiner*, and the *Journal of Information Technology Impact*. DiPerna recently authored a chapter in the *Handbook of Research on Web Log Analysis*, published by Idea Group Publishing.

About Strategic Vision



STRATEGIC VISION, LLC
CORPORATE. LITERARY. POLITICAL.

Strategic Vision is an Atlanta-headquartered public relations and public affairs agency with a division that specializes in polling. The public affairs team is knowledgeable about politics, issues, and current events throughout the nation. Strategic Vision operates nationally, and its polls have been used by MSNBC, FOX News Channel, *Newsweek*, Bloomberg News, *Time Magazine*, BBC, ABC News, Scripps Howard, the *Washington Times*, and *USA Today*. The company's polls have been cited as some of the most accurate by National Journal's Hotline and Survey USA.

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Executive Summary

This scientifically representative poll of 1,200 likely Montana voters measures public opinion on a wide range of K-12 education issues. The purpose of the Friedman Foundation's *Survey in the State* series is to measure voter attitudes toward public institutions, leaders, innovative ideas, and the current K-12 power and priority structure. Engaged citizens have shared with us their views about "school choice" in the form of tax-credit scholarships, school vouchers, charter schools and virtual schools. Montana is the seventh state to be surveyed in the last twelve months.

Two findings stand out in this polling project. First, considerable popular support exists for school choice policies and particularly creating a tax-credit scholarship system. Generally speaking, more than three of out five respondents support tax-credit scholarships—this level sustains across such demographics as geographic location, race/ethnicity, political ideology, religion, household income level, among others. There is also majority support for policies creating school vouchers and charter schools.

Second, there is a glaring disconnect between schooling preferences and enrollments. Ninety percent of Montana parents told us they prefer sending their child to a private school, charter school, virtual school, or provide homeschooling. In reality, approximately 7 percent of Montana's K-12 students attend private schools. Charter schools do not exist. In our poll, 37 percent of K-12 parents said they prefer private schools. Ten percent of Montana parents said they prefer a regular public school. In reality, approximately 93 percent of Montana's students attend regular public schools.¹ This disconnect is consistent with what we have seen in other states. States do not have sufficient school choice systems in place to match parents' schooling preferences.

A total of 1,200 phone interviews were conducted by Strategic Vision on September 5 and 6, 2008. The margin of error for the full sample of likely voters is ± 3 percentage points; the margin of error is higher when considering the number of respondents for a given demographic subgroup.

Key findings include:

- **School choice is not a partisan issue among Montana's likely voters.** Responses to several questions highlight the potential for Democrats (D), Republicans (R), and Independents (I) to work together on systemic reforms. Voters who identify themselves differently in terms of political affiliation are likely to share common views on school choice policies. High levels of support exist for tax-credit scholarships (D: 64 percent | R: 65 percent | I: 64 percent), school vouchers (D: 55 percent | R: 53 percent | I: 53 percent), charter schools (D: 51 percent | R: 54 percent | I: 65 percent), and personal-use tax credits and deductions for education expenses (D: 56 percent | R: 53 percent | I: 50 percent).
- **About two out of five Montana voters (42 percent) rate Montana's public school system as "good" or "excellent."** This figure is indicative of a state-level trend that is becoming more clear as the Friedman state polling series moves forward. Satisfaction levels with state public school systems tend to be mediocre throughout the nation.
- **Montanans are content with current levels of public school funding.** More than two-thirds of voters (68 percent) say Montana's level of public school funding is either "about right" or "too high." A third of the respondents (32 percent) said funding is "too low." At least 72 percent of the poll's respondents underestimate the actual per-pupil funding in Montana public schools (\$9,464), which suggests that the previously stated 68 percent statistic is probably a conservative figure.

- **Three out of five voters support a merit pay system for teachers, one that is based on “measurable outcomes.”** Sixty-two percent of respondents said they would favor “financially rewarding teachers whose students make more academic progress... when compared to similar students taught by other teachers.” This feeling is shared across political ideologies (D: 64 percent | R: 62 percent | I: 60 percent).
- **Thirty-four percent of voters say poor student discipline and school safety represent major challenges for Montana’s public school system.** Nearly one-third of the respondents (32 percent) also say “lack of accountability” is a significant issue.
- **Nine out of ten Montanans (90 percent) would choose a school for their child among options that include private schools, charter schools, virtual schools, and homeschooling.** Alternatives to regular public schools appear very desirable. This high figure is consistent in previous state polls, most recently in Maryland (82 percent), Oklahoma (83 percent), Idaho (88 percent), Tennessee (85 percent), and Nevada (89 percent).
- **Montana voters recognize the value of private schools.** When asked “what type of school would you select in order to obtain the best education for your child,” 38 percent of respondents selected private schools. This finding is consistent with other recent state polls: Maryland (45 percent), Oklahoma (41 percent), Idaho (39 percent), Tennessee (37 percent), and Nevada (48 percent).
- **Voters show diverse preferences when it comes to schooling options.** Along with regular public schools and private schools, Montanans are open to different kinds of schooling models, such as charter schools (28 percent); homeschooling (18 percent); and virtual schools (5 percent). Despite low public visibility, many respondents are favorable to charter schools (55 percent) and virtual schools (28 percent).
- **Sixty-four percent of Montanans are favorable to a tax-credit scholarship system.** When asked if they would support a proposal to create a tax-credit scholarship system, more than three out of five voters said they favor a scholarship system funded by individual and business charitable donations. Comparable strong levels of support were observed across demographic groups spanning state regions, race/ethnicity, religious identity, age, and family income.
- **Voters show more support (63 percent) for universal eligibility of tax-credit scholarships.** This is true regardless of respondents’ income levels. For example, Montanans with household incomes under \$25,000 preferred universal eligibility over financial need-based eligibility, 65 percent to 40 percent.
- **Montana voters exhibited relatively higher levels of awareness for school choice reforms when compared to other states, however, all these levels are moderate.** We asked three “awareness” questions about charter schools, virtual schools, and school vouchers. A slight majority of Montanans are familiar with charter schools (52 percent), and so there is potential for growth. Montana registered the highest statewide awareness for school vouchers (65 percent) so far in our polling series. By comparison, lower levels of awareness exist in other states such as Maryland (57 percent), Oklahoma (55 percent), Idaho (59 percent), Tennessee (45 percent), Nevada (55 percent), and Illinois (51 percent). As in other states, the concept of virtual schooling is still largely unknown in Montana (25 percent).

¹ Montana public school and private school enrollments obtained using the Common Core of Data (CCD) and Private School Universe Survey (PSS) table-building tools found on the National Center for Education Statistics (NCES) web site: <http://nces.ed.gov>.

Methodology

This survey provides a valid representation of the views of likely voters in Montana. A total of 1,200 completed interviews were obtained. This provides statistical significance and probability that is sufficient for decision-making purposes. The statistical margin of error at the conventional 95 percent confidence level is ± 3 percentage points.

Strategic Vision conducted phone interviews using a random sample of registered Montana voters from its call center. Random Digit Dial samples were produced by Survey Sampling International (SSI) using a sampling frame that includes all active telephone area codes and exchanges in the United States.

SSI starts with a database of all listed telephone numbers, updated on a four- to six-week rolling basis, 25 percent of listings at a time. All active blocks—contiguous groups of 100 phone numbers for which more than one residential number is listed—are added to this database. Blocks and exchanges that include only listed business numbers are excluded.

Strategic Vision's live callers conducted all phone interviews on September 5 and 6, 2008. A total of 4,967 calls were made in Montana. Of these calls 755 were disconnected, non-residential, or inactive numbers; 2,389 were refusals; 623 did not qualify as likely voters; 288 did not complete the survey.

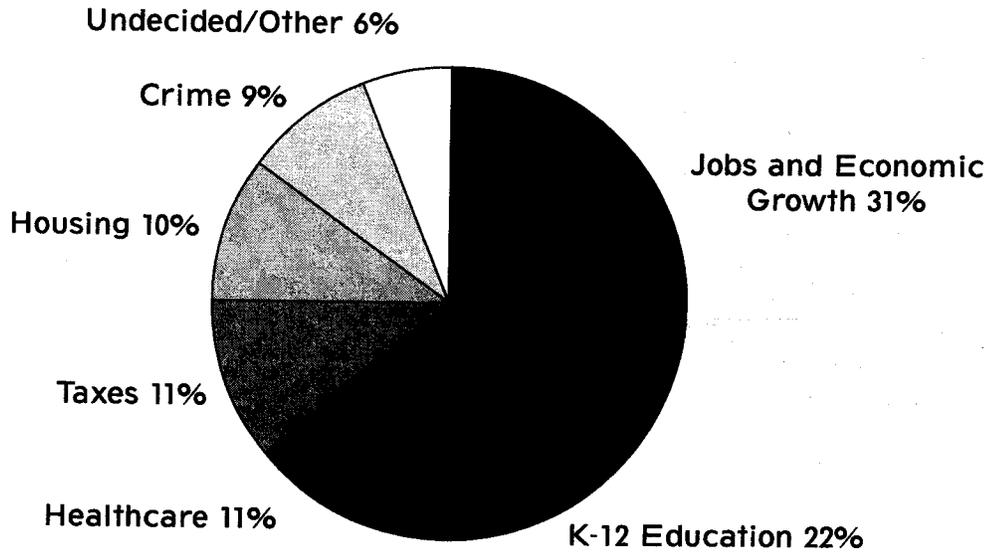
A set of screening questions were used to determine past voting behavior and likely voting in 2008. Respondents were asked whether they had voted in the 2006 election and were planning to vote in the next election in 2008. Respondents who satisfied both these criteria were classified as "likely voters" and were included in the survey. Respondents who either did not vote in 2006 or were not likely to vote in the next election were not included.

The author of this report takes sole responsibility for any errors or misrepresentations.

Findings

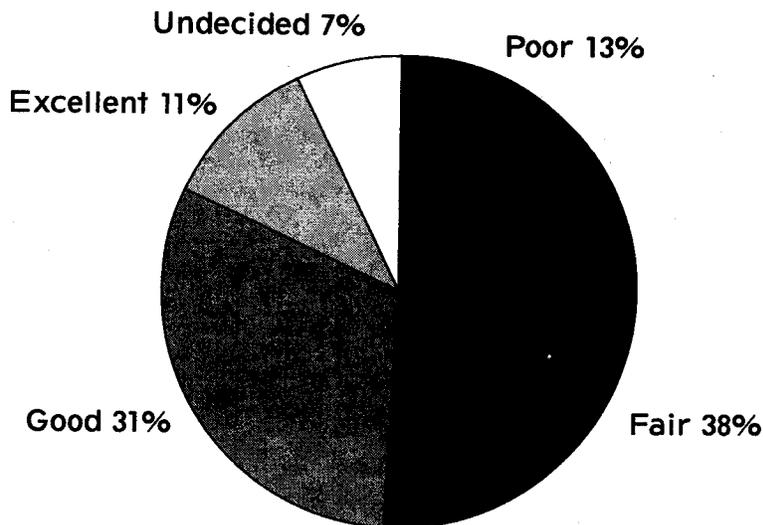
The following are the results of the survey.

1. I am going to name several issues facing the State of Montana, and I would like you to select the one that is most important to you? _____



The order of the possible responses was rotated to avoid bias.

2. How would you rate Montana's public school system? _____



Demographic Perspectives

K-12 PARENTS (n=1,032)

37% prefer private schools

10% prefer regular public schools

18% prefer homeschooling

52% are familiar with charter schools; 55% favor charter schools

25% are familiar with virtual schools; 28% favor virtual schools

54% favor tax credits and deductions for parents to offset their child's schooling expenses

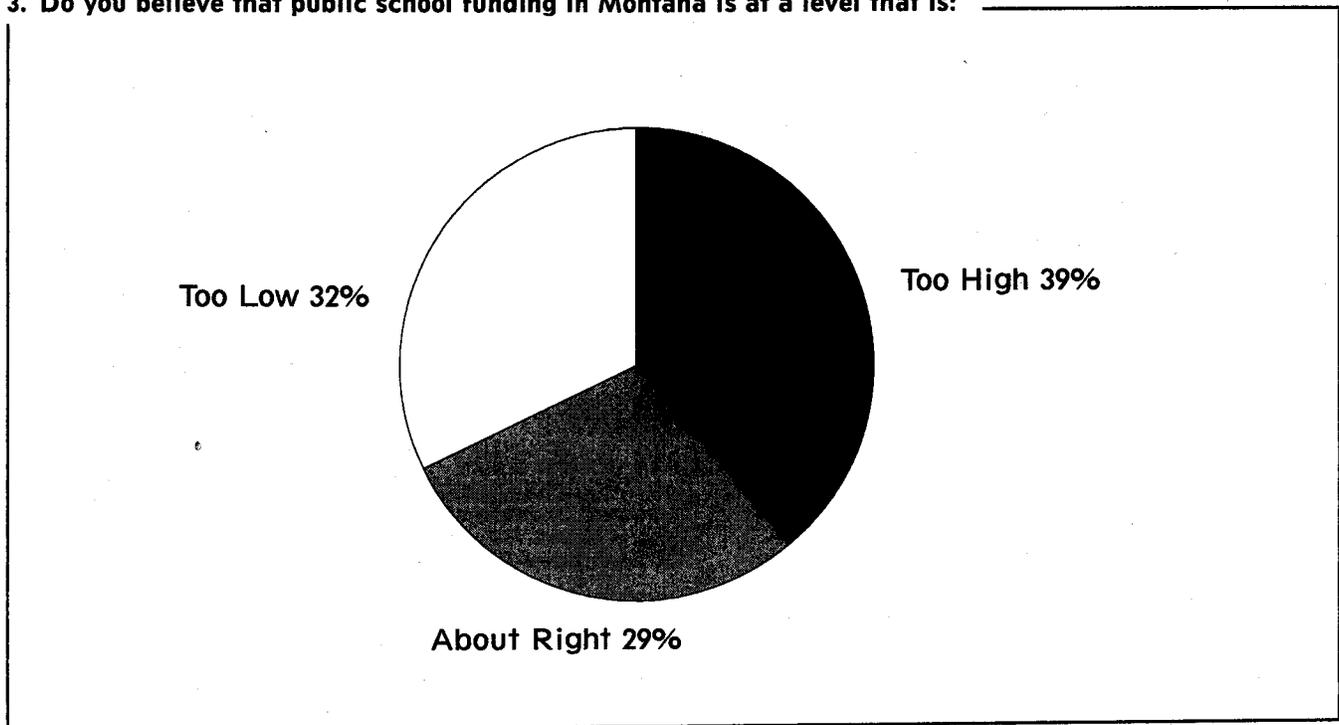
64% favor tax credits for individuals and businesses funding private school scholarships

63% agree in principle with universal eligibility of scholarships

45% agree in principle with financial need-based eligibility of scholarships

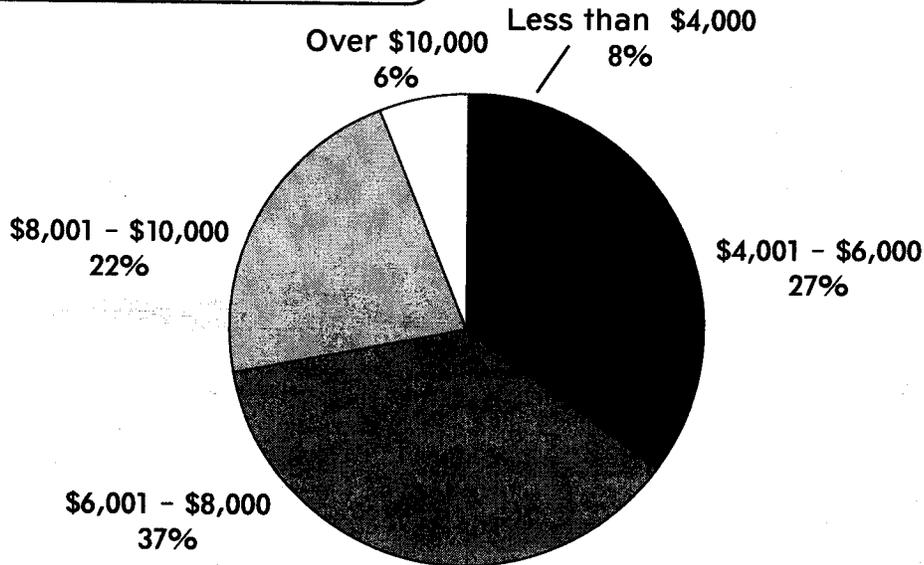
65% are familiar with school vouchers; 54% favor school vouchers

3. Do you believe that public school funding in Montana is at a level that is:



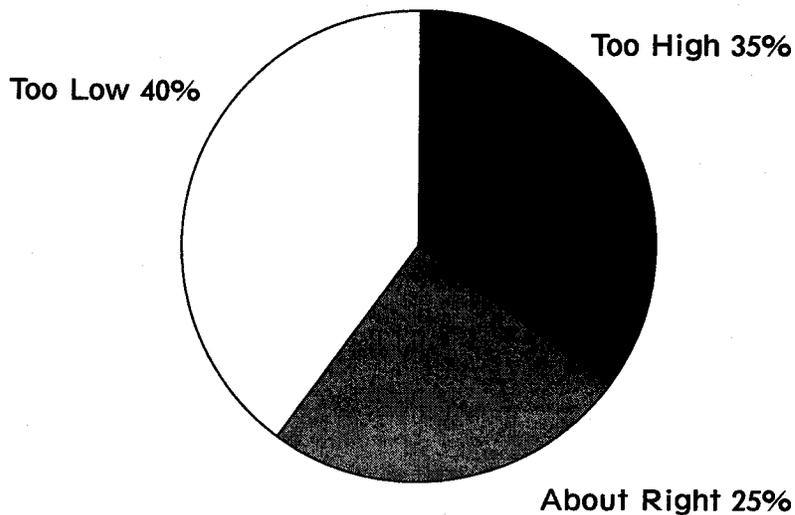
4. Approximately how much do you think is currently spent on each student in Montana's public schools? Your estimate will represent the combined expenditures of local, state, and federal governments.

Actual 2006 school year figure: \$9,464*



*National Center for Education Statistics, "Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2005-06," published April 2008. Calculated by dividing Montana's total expenditures (Table 8) by Montana's fall 2005 student membership (Table 3).

5. Do you believe that the average salary for Montana public school teachers is:



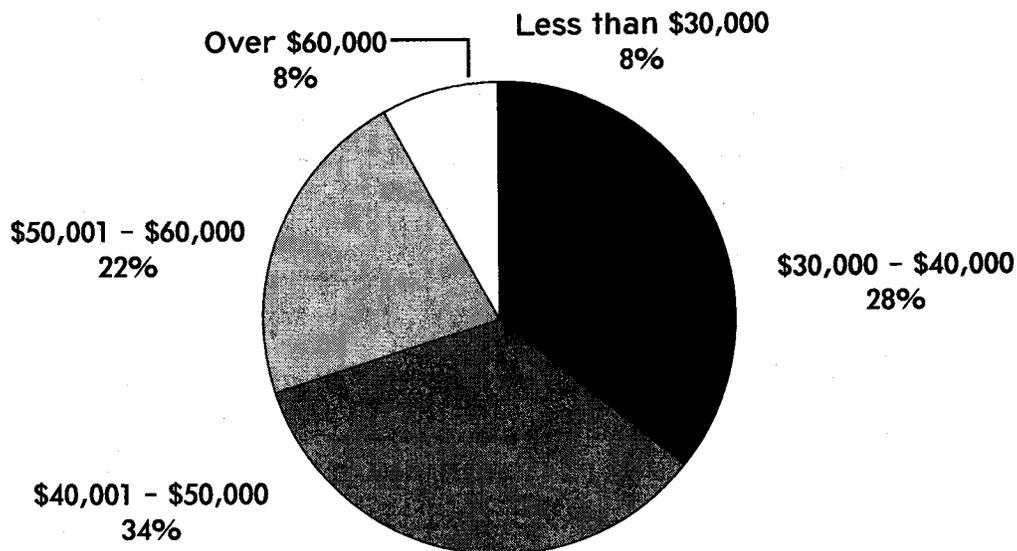
Demographic Perspectives

WESTERN MONTANA (n = 549)

- 37% prefer private schools
- 10% prefer regular public schools
- 20% prefer homeschooling
- 52% are familiar with charter schools; 53% favor charter schools
- 27% are familiar with virtual schools; 28% favor virtual schools
- 56% favor tax credits and deductions for parents to offset their child's schooling expenses
- 63% favor tax credits for individuals and businesses funding private school scholarships
- 63% agree in principle with universal eligibility of scholarships
- 50% agree in principle with financial need-based eligibility of scholarships
- 65% are familiar with school vouchers; 53% favor school vouchers

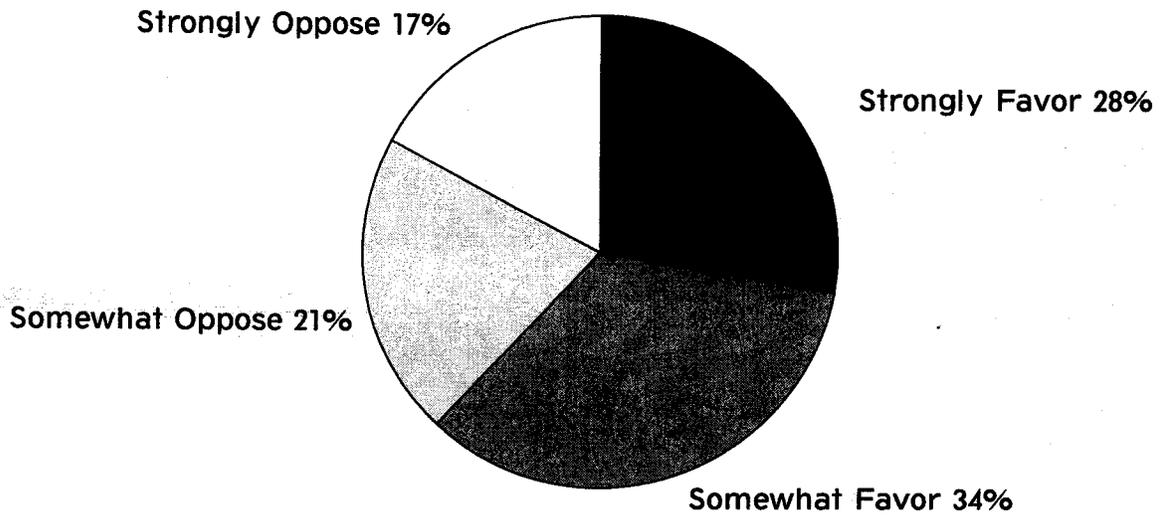
6. Approximately how much do you think is the average salary for Montana's public school teachers?

Actual 2006 school year figure: \$39,832*

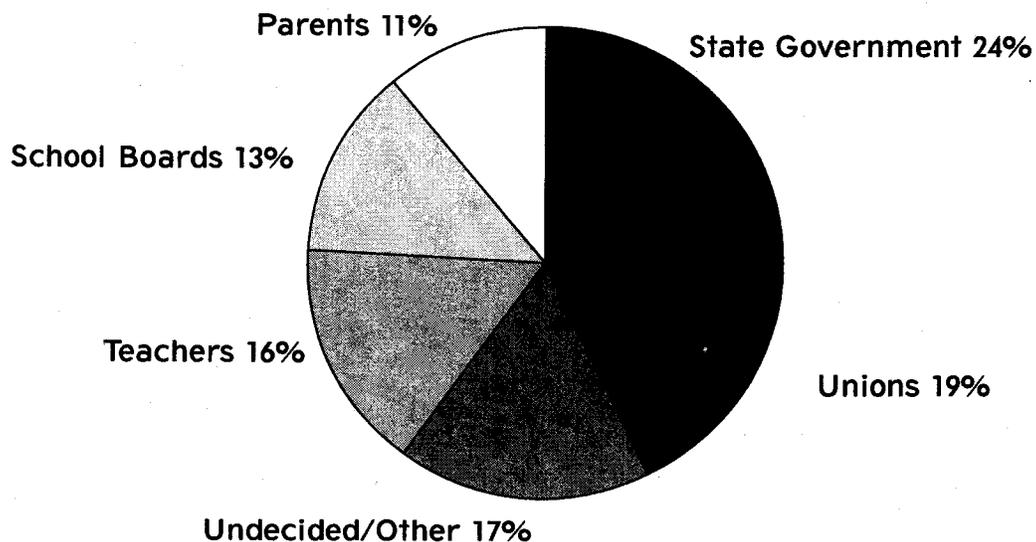


*National Center for Education Statistics, Digest of Education Statistics 2007, published March 2008.

7. How much would you favor or oppose financially rewarding teachers whose students make more academic progress—in terms of measurable outcomes—when compared to similar students taught by other teachers?



8. Who has the greatest influence on Montana's public school system?



The order of the possible responses was rotated to avoid bias.

Demographic Perspectives

CENTRAL MONTANA (n=380)

40% prefer private schools

9% prefer regular public schools

17% prefer homeschooling

53% are familiar with charter schools; 55% favor charter schools

22% are familiar with virtual schools; 30% favor virtual schools

53% favor tax credits and deductions for parents to offset their child's schooling expenses

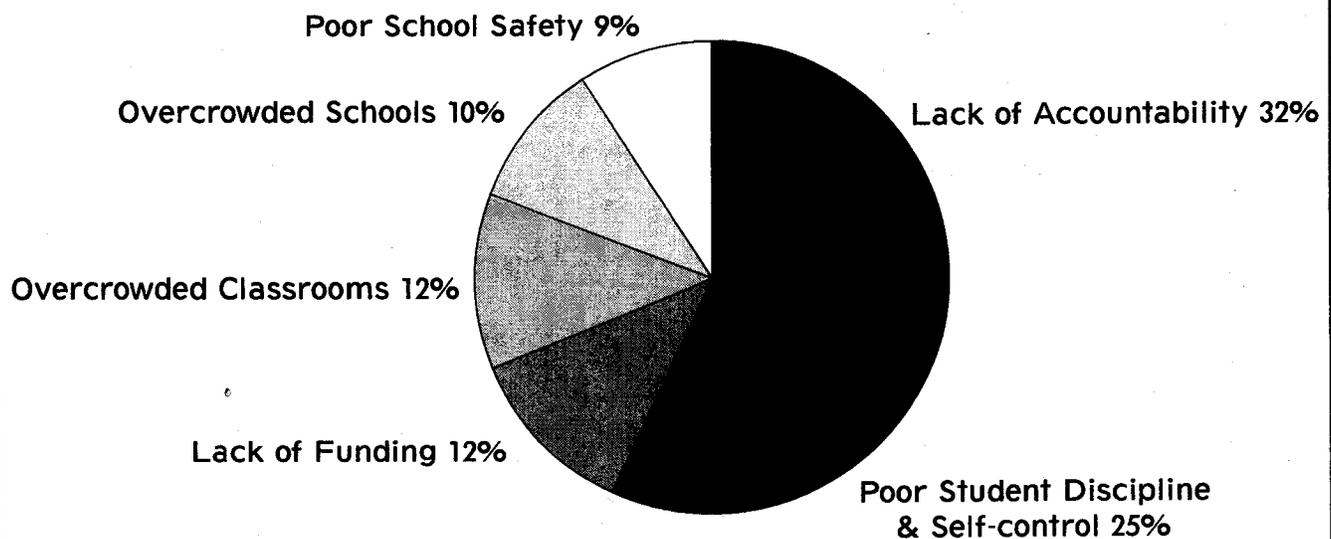
66% favor tax credits for individuals and businesses funding private school scholarships

62% agree in principle with universal eligibility of scholarships

42% agree in principle with financial need-based eligibility of scholarships

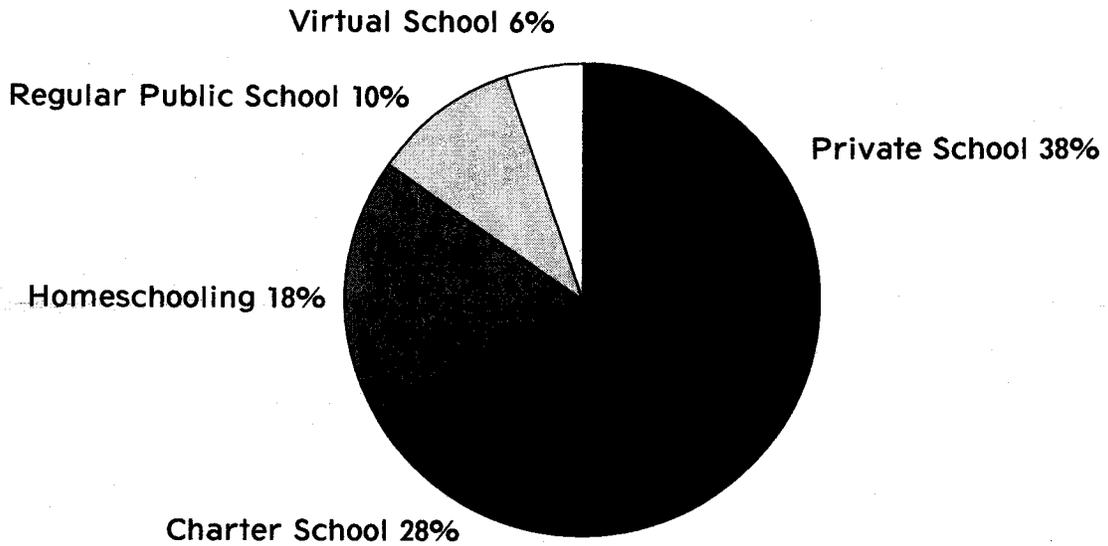
65% are familiar with school vouchers; 52% favor school vouchers

9. What do you see as the biggest challenge confronting Montana's public school system?



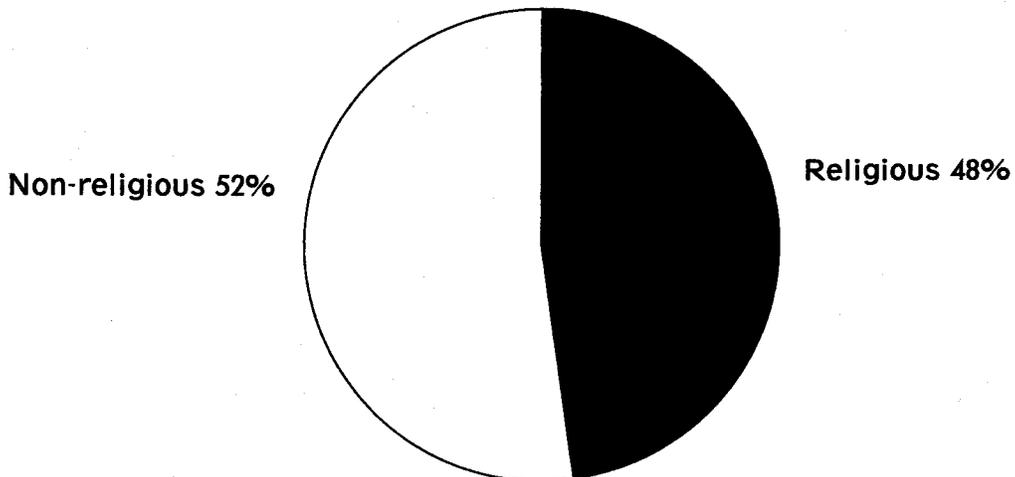
The order of the possible responses was rotated to avoid bias.

10. If it were your decision and you could select any type of school, what type of school would you select in order to obtain the best education for your child? _____



The order of the possible responses was rotated to avoid bias.

11. [If "Private School" to Question 10] Please specify the type of Private School. _____



Demographic Perspectives

EASTERN MONTANA (n=271)

38% prefer private schools

11% prefer regular public schools

15% prefer homeschooling

51% are familiar with charter schools; 59% favor charter schools

24% are familiar with virtual schools; 26% favor virtual schools

52% favor tax credits and deductions for parents to offset their child's schooling expenses

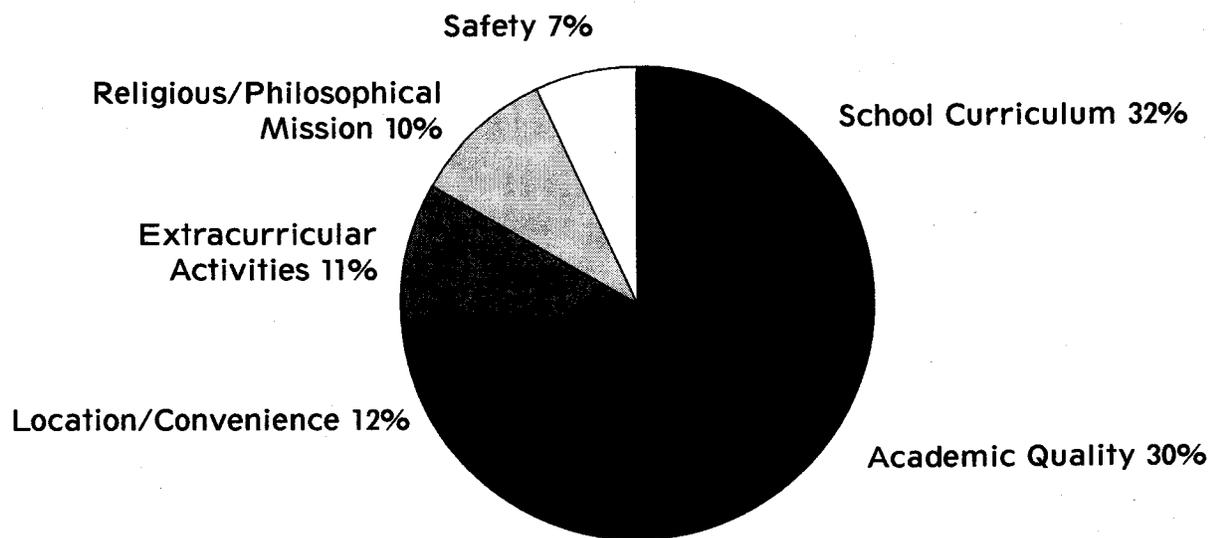
64% favor tax credits for individuals and businesses funding private school scholarships

65% agree in principle with universal eligibility of scholarships

40% agree in principle with financial need-based eligibility of scholarships

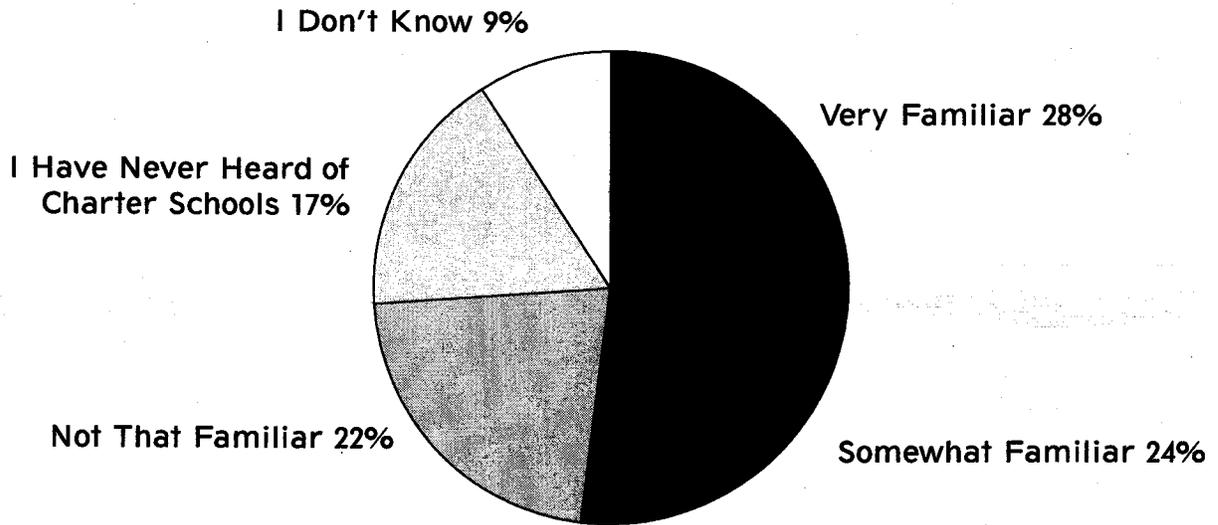
66% are familiar with school vouchers; 58% favor school vouchers

12. Why would you select [answer from question 10] for your child?

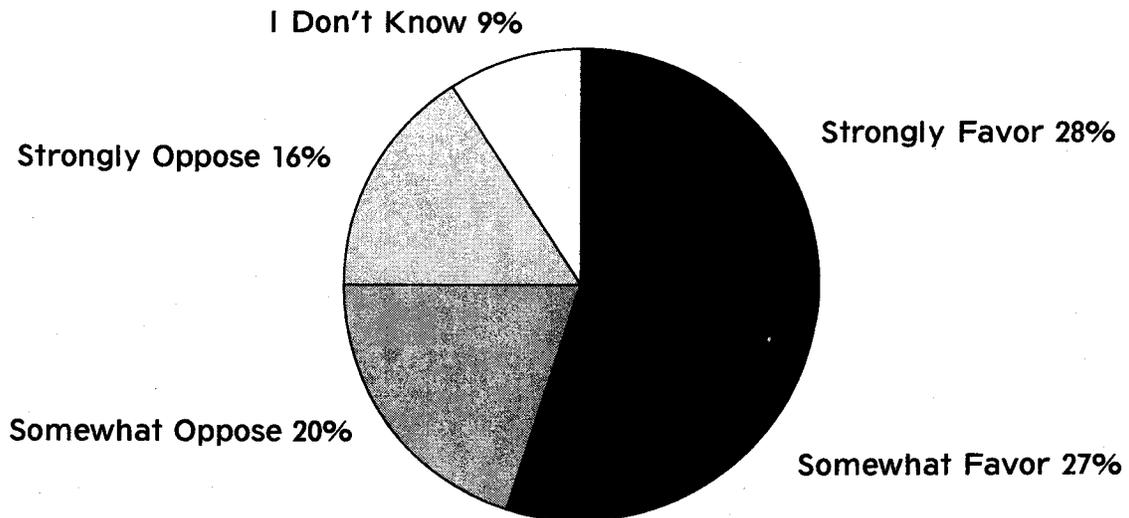


*The order of the possible responses was rotated to avoid bias.
Percentages may not add up exactly to 100% due to rounding.*

13. How familiar are you with charter schools in K-12 education?



14. Charter schools are public schools that have more control over their own budget, staff, and curriculum, and are free from many existing public school regulations. In general, do you favor or oppose this idea?



Demographic Perspectives

DEMOCRATS (n = 420)

40% prefer private schools

12% prefer regular public schools

18% prefer homeschooling

50% are familiar with charter schools; 51% favor charter schools

25% are familiar with virtual schools; 27% favor virtual schools

56% favor tax credits and deductions for parents to offset their child's schooling expenses

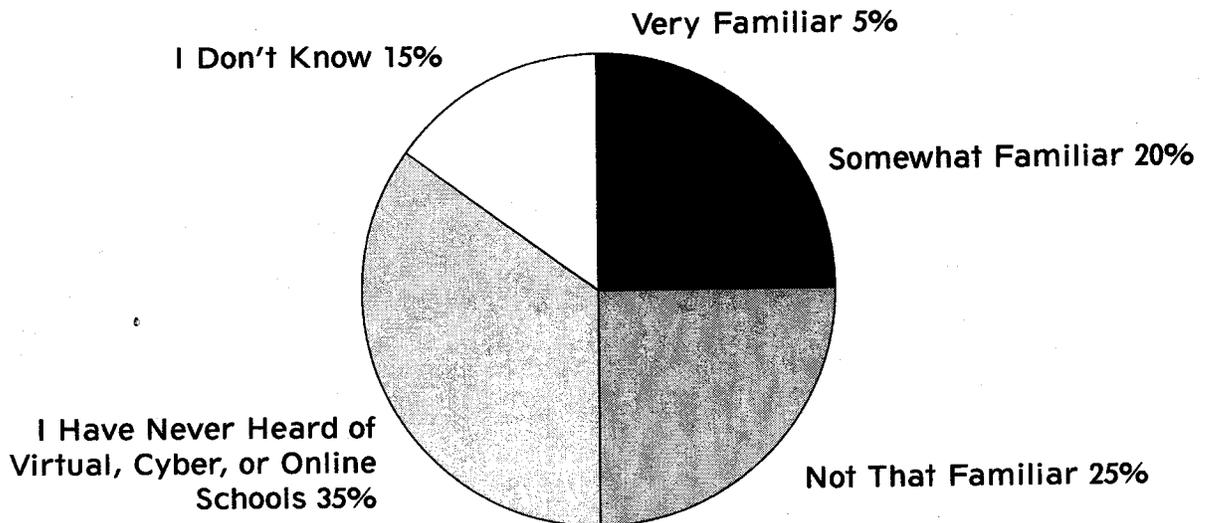
64% favor tax credits for individuals and businesses funding private school scholarships

61% agree in principle with universal eligibility of scholarships

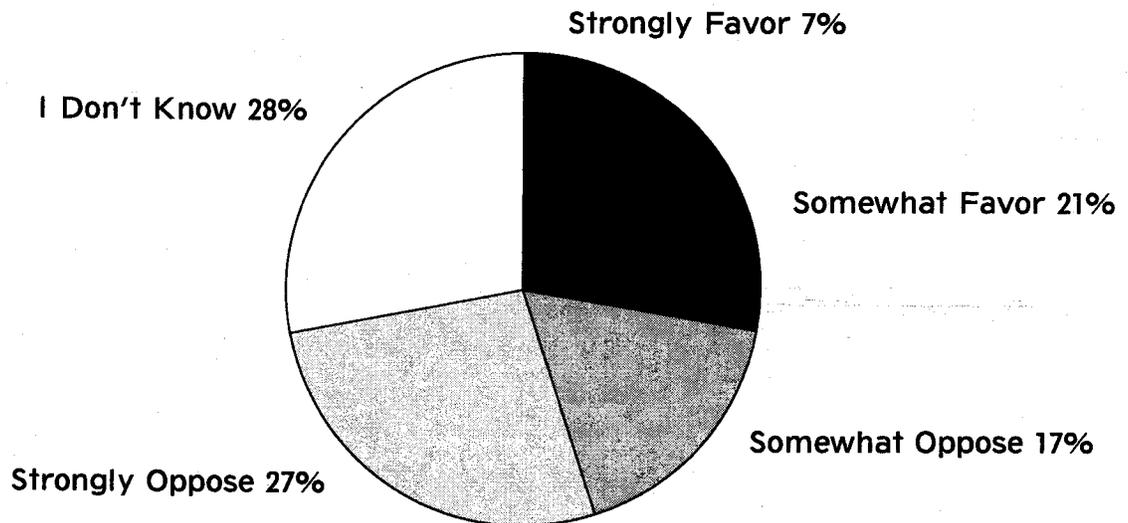
45% agree in principle with financial need-based eligibility of scholarships

63% are familiar with school vouchers; 55% favor school vouchers

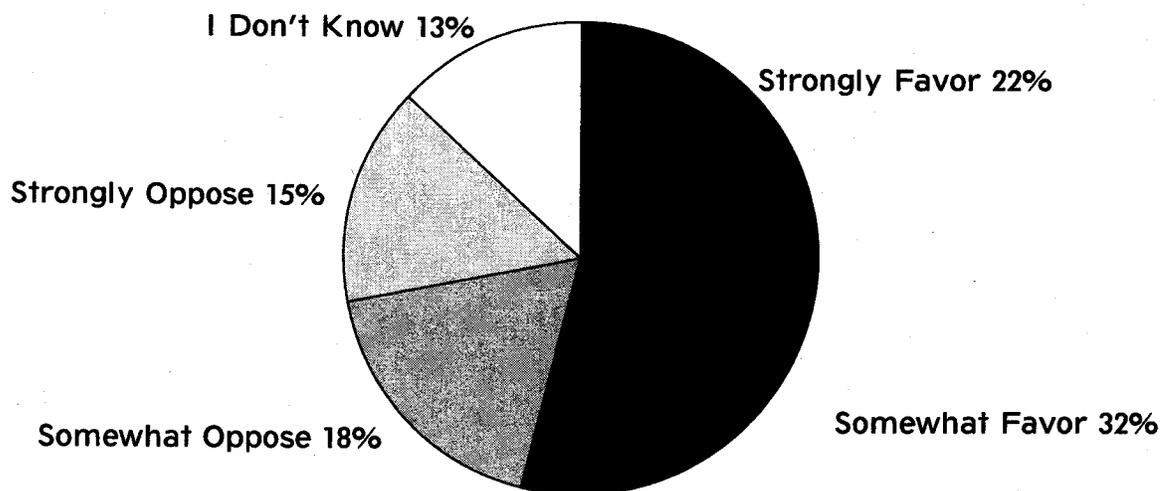
15. How familiar are you with "virtual schools" in K-12 education? These schools are sometimes called "cyber schools" and "online schools"?



16. Virtual schools can be public or private schools that allow elementary, middle, and high school students to work with their curriculum and teachers over the Internet, rather than a traditional classroom. In general, do you favor or oppose this kind of idea?



17. In some states, parents receive a tax credit or tax deduction from state income taxes for approved educational expenses. This may include private school tuition as well as books, supplies, computers, tutors and transportation. Would you favor or oppose this plan to be a part of the Montana tax code?



Demographic Perspectives

INDEPENDENTS (n= 204)

29% prefer private schools

9% prefer regular public schools

20% prefer homeschooling

60% are familiar with charter schools; 65% favor charter schools

26% are familiar with virtual schools; 25% favor virtual schools

50% favor tax credits and deductions for parents to offset their child's schooling expenses

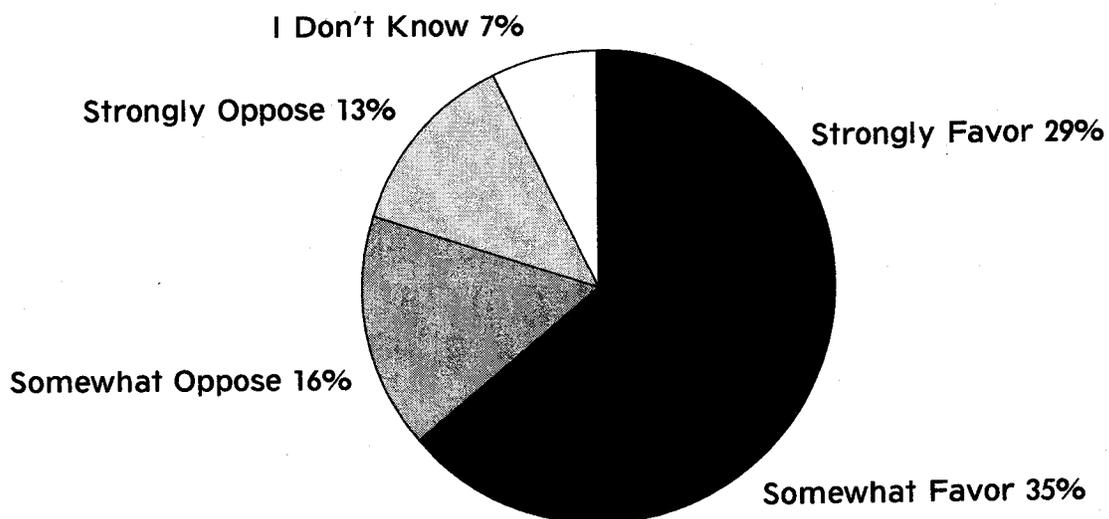
64% favor tax credits for individuals and businesses funding private school scholarships

65% agree in principle with universal eligibility of scholarships

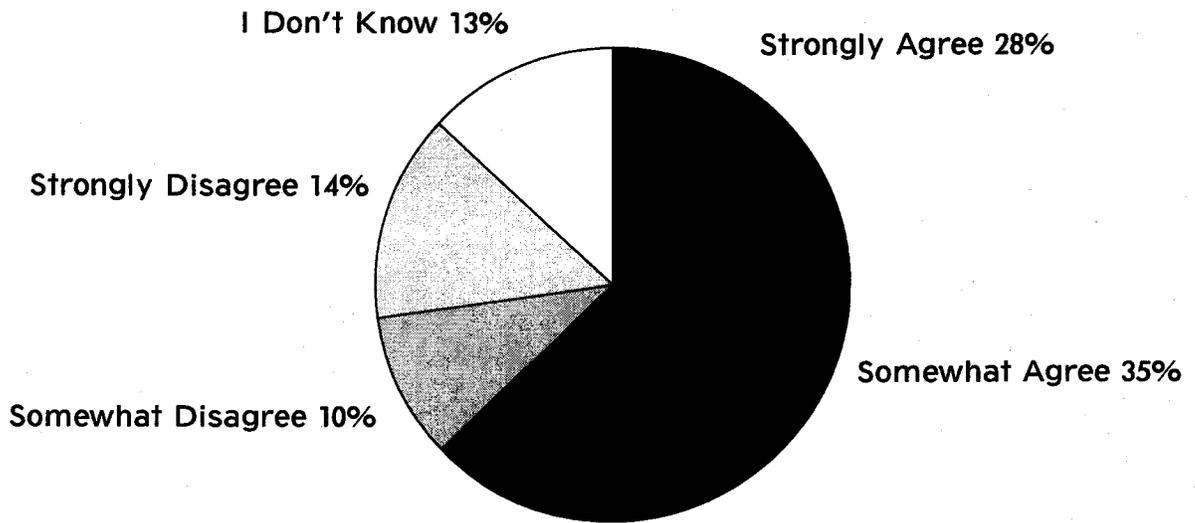
49% agree in principle with financial need-based eligibility of scholarships

65% are familiar with school vouchers; 53% favor school vouchers

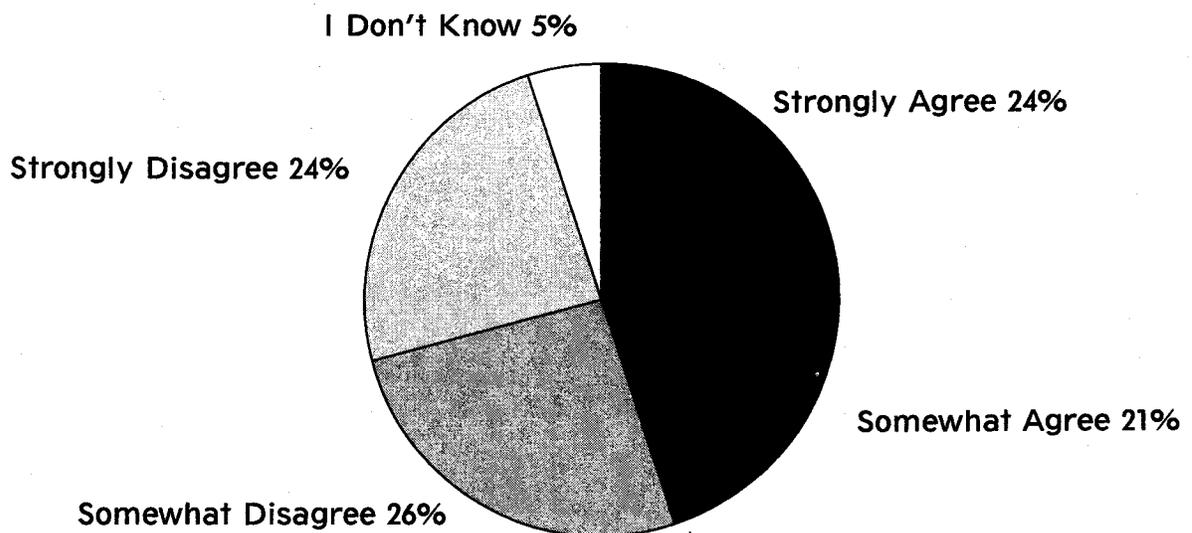
18. Some states give tax credits to individuals and businesses if they contribute money to nonprofit organizations that distribute private school scholarships. This policy supports a "tax-credit scholarship system." If a proposal were made in Montana to create such a system, would you favor or oppose such a plan?



19. Some people believe that tax-credit scholarships should be available to all families, regardless of incomes and special needs. Do you agree or disagree with that statement?



20. Some people believe that tax-credit scholarships should only be available to students based on financial need. Do you agree or disagree with that statement?

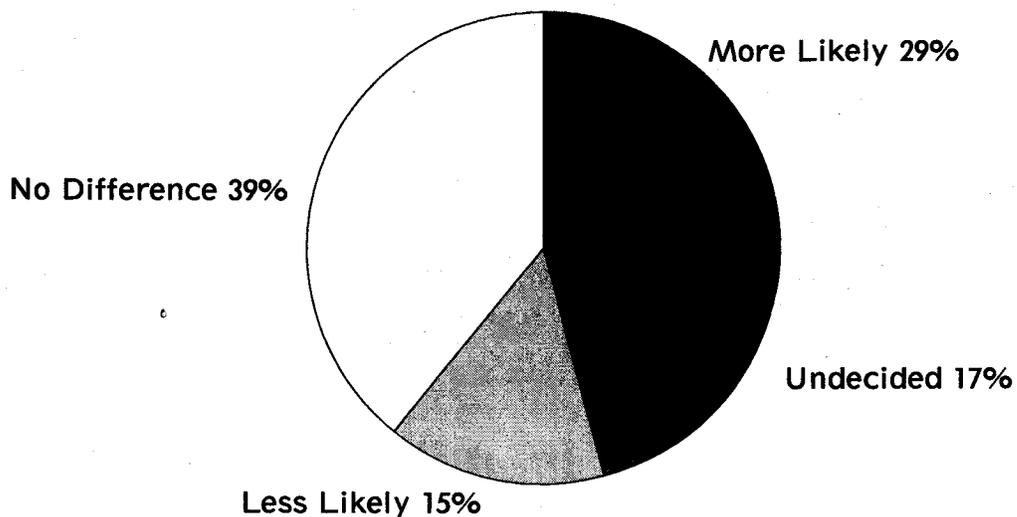


Demographic Perspectives

REPUBLICANS (n = 504)

- 40% prefer private schools
- 9% prefer regular public schools
- 18% prefer homeschooling
- 51% are familiar with charter schools; 54% favor charter schools
- 26% are familiar with virtual schools; 30% favor virtual schools
- 53% favor tax credits and deductions for parents to offset their child's schooling expenses
- 65% favor tax credits for individuals and businesses funding private school scholarships
- 63% agree in principle with universal eligibility of scholarships
- 46% agree in principle with financial need-based eligibility of scholarships
- 66% are familiar with school vouchers; 53% favor school vouchers

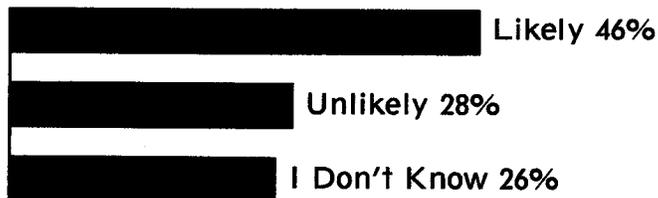
21. Thinking ahead to the next election, when a candidate for Governor, State Senator or Representative supports tax-credit scholarships, would that make you more likely to vote for them, less likely to vote for them, or make no difference whatsoever in your selection of candidates?



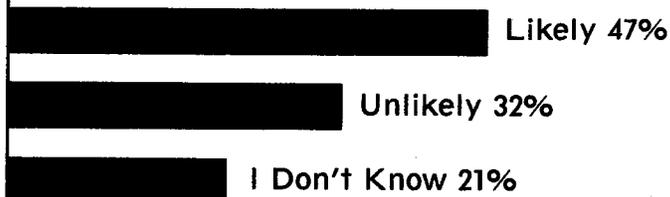
Forecasting Questions

In this section, I would like to know if you think the following statements are "likely" or "unlikely" to happen if a tax-credit scholarship system is implemented in Montana. If you are unsure, feel free to say "I don't know." (The order of questions 22-30 were rotated to avoid bias.)

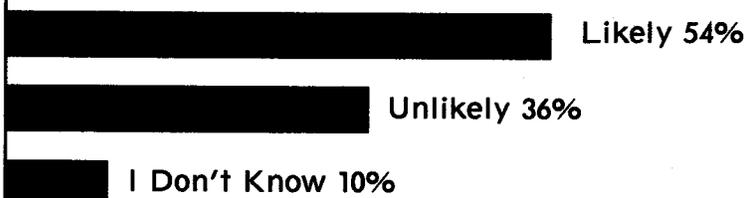
22. Parents will have more options.



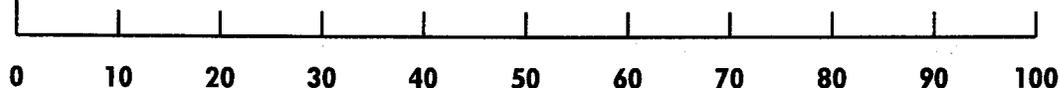
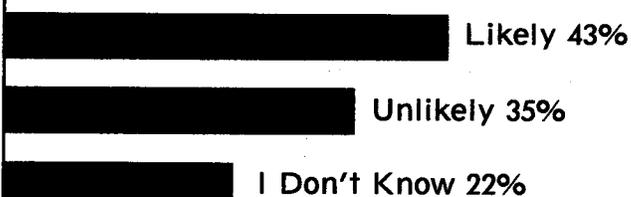
23. Parents will need better information for decisions.



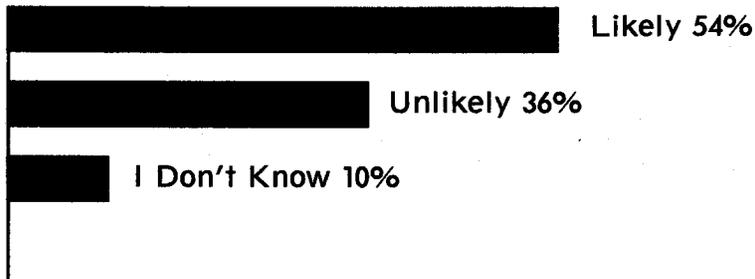
24. Public schools and private schools will compete for students.



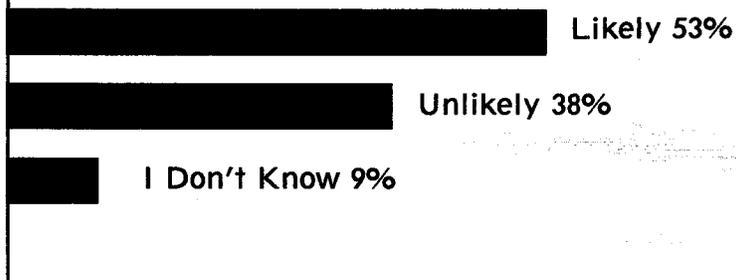
25. Private schools will not be accountable.



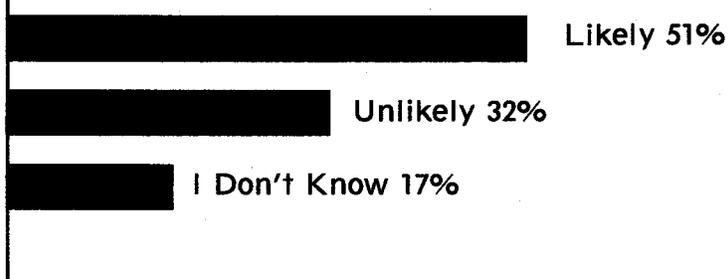
26. Students will leave failing schools.



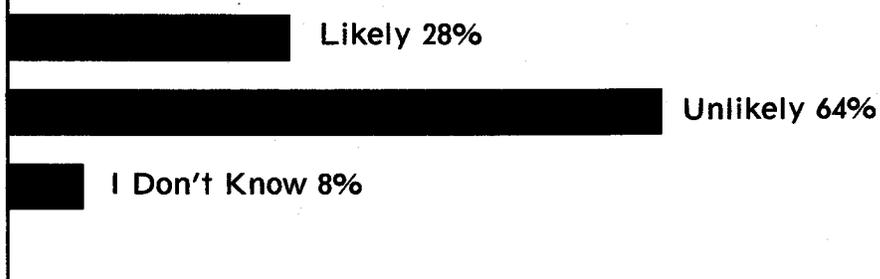
27. Parents will have more power.



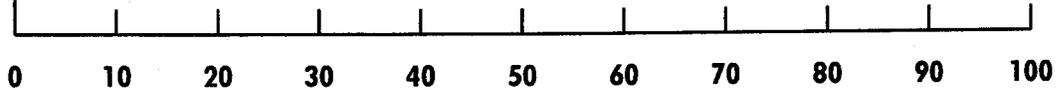
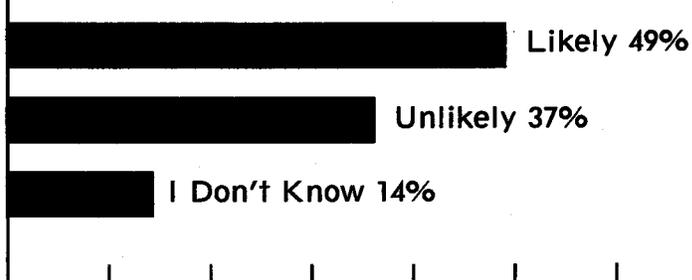
28. There will be less overcrowding in public schools.



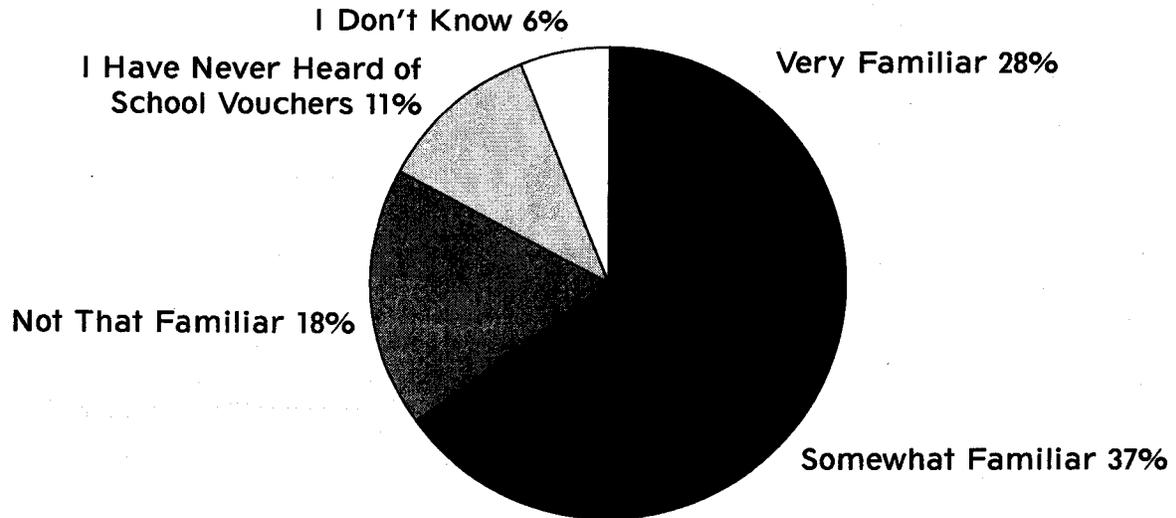
29. Public schools will close.



30. Public schools and private schools will have incentives to improve.

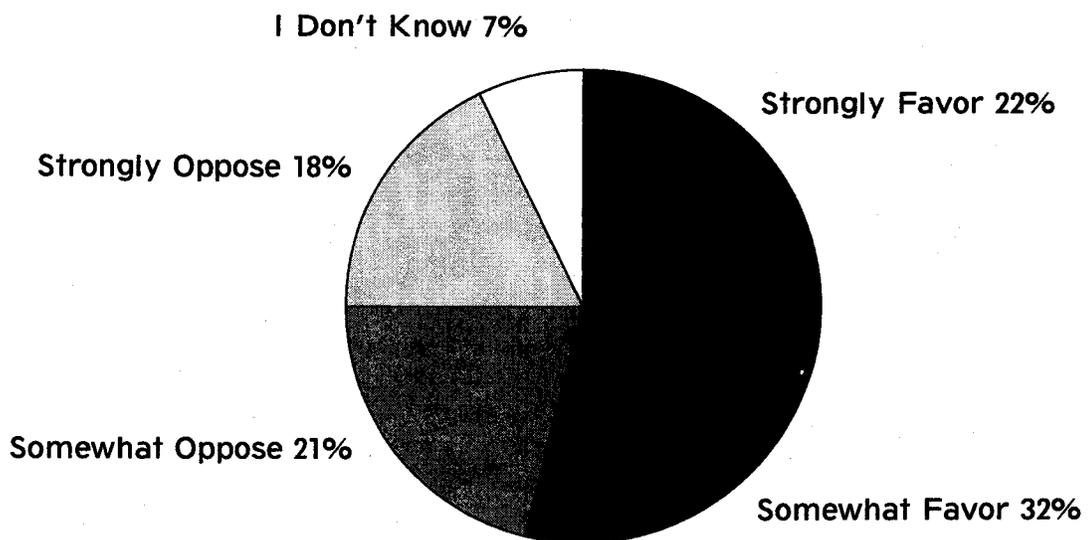


31. How familiar are you with "school vouchers" in K-12 education?



32. School vouchers allow parents the option of sending their children to the school of their choice, whether that school is public or private, including both religious and non-religious schools.

If this approach were adopted, tax dollars currently allocated to a school district would be allocated to parents in the form of a "school voucher" to help pay tuition for the school where they choose to send their children. In general, do favor or oppose this idea?



Race/Ethnicity Identification

(expressed by percentage of respondents)

	African American (n=12)	Asian (n=12)	Hispanic (n=36)	Native American (n=24)	White (n=1,092)
Prefer private schools	42	50	61	33	37
Prefer regular public schools	8	25	17	4	10
Prefer homeschooling	17	0	8	29	18
Familiar with charter schools	50	75	44	46	52
Favor charter schools	50	50	44	50	56
Familiar with virtual schools	33	25	28	38	25
Favor virtual schools	33	25	28	38	28
Favor tax credits and deductions for parents to offset their child's schooling expenses	50	67	50	58	54
Favor tax credits for individuals and businesses funding private school scholarships	67	50	61	63	64
Agree in principle with universal eligibility of scholarships	58	67	61	54	63
Agree in principle with financial need-based eligibility of scholarships	50	33	36	50	45
Familiar with school vouchers	84	75	61	67	65
Favor school vouchers	58	42	44	62	54

Religious Identification

(expressed by percentage of respondents)

	Protestant (n = 552)	Catholic (n = 288)	Jewish (n = 48)	None (n = 180)
Prefer private schools	38	35	38	45
Prefer regular public schools	9	9	21	11
Prefer homeschooling	17	21	10	17
Familiar with charter schools	53	50	54	52
Favor charter schools	55	58	42	55
Familiar with virtual schools	24	27	25	24
Favor virtual schools	29	23	27	30
Favor tax credits and deductions for parents to offset their child's schooling expenses	53	53	46	56
Favor tax credits for individuals and businesses funding private school scholarships	64	64	65	64
Agree in principle with universal eligibility of scholarships	64	62	67	64
Agree in principle with financial need-based eligibility of scholarships	46	44	50	41
Familiar with school vouchers	67	60	60	68
Favor school vouchers	53	55	60	54

Age Groups

(expressed by percentage of respondents)

	18-25 (n = 120)	26-35 (n = 168)	36-45 (n = 348)	46-55 (n = 384)	56-65 (n = 108)	Over 65 (n = 72)
Prefer private schools	41	36	43	35	32	39
Prefer regular public schools	11	11	14	8	6	6
Prefer homeschooling	16	20	17	19	21	10
Familiar with charter schools	50	54	47	52	56	65
Favor charter schools	49	51	47	60	69	68
Familiar with virtual schools	24	27	24	25	25	26
Favor virtual schools	28	30	27	27	28	25
Favor tax credits and deductions for parents to offset their child's schooling expenses	53	58	55	51	58	55
Favor tax credits for individuals and businesses funding private school scholarships	68	65	64	61	66	65
Agree in principle with universal eligibility of scholarships	61	58	62	65	69	65
Agree in principle with financial need-based eligibility of scholarships	44	45	45	47	44	40
Familiar with school vouchers	68	64	66	63	68	68
Favor school vouchers	54	55	55	53	47	63

Family Income Groups

(expressed by percentage of respondents)

	Under \$25,000 (n=96)	\$25,000- \$49,999 (n=336)	\$50,000- \$74,999 (n=480)	\$75,000- \$150,000 (n=240)	Over \$150,000 (n=48)
Prefer private schools	43	41	35	39	33
Prefer regular public schools	17	9	11	7	15
Prefer homeschooling	10	15	21	18	23
Familiar with charter schools	50	51	53	50	54
Favor charter schools	57	53	55	55	58
Familiar with virtual schools	25	27	23	27	21
Favor virtual schools	31	29	25	29	35
Favor tax credits and deductions for parents to offset their child's schooling expenses	59	53	55	52	56
Favor tax credits for individuals and businesses funding private school scholarships	61	65	62	68	62
Agree in principle with universal eligibility of scholarships	65	61	62	68	50
Agree in principle with financial need-based eligibility of scholarships	40	49	44	44	40
Familiar with school vouchers	69	65	64	66	62
Favor school vouchers	48	55	54	55	60

Demographics

ARE YOU CURRENTLY THE PARENT OR GUARDIAN OF ANY SCHOOL-AGE CHILDREN IN GRADES K-12?

Yes	86%
No	14%

WHAT IS YOUR RELIGION, IF ANY?

Catholic	24%
Jewish	4%
Baptist	6%
Lutheran	15%
Methodist	8%
Other Protestant	17%
Other Religion	11%
None	15%

DO YOUR POLITICAL VIEWS MOST CLOSELY REFLECT THOSE OF A:

Democrat	35%
Libertarian	3%
Republican	42%
Other Party Affiliation	3%
Independent/No Party Affiliation	17%

IN WHICH OF THE FOLLOWING AGE CATEGORIES DO YOU FALL?

18 - 25	10%
26 - 35	14%
36 - 45	29%
46 - 55	32%
56 - 65	9%
Over 65	6%

IN WHICH OF THE FOLLOWING CATEGORIES DOES YOUR TOTAL FAMILY INCOME FALL?

Under \$25,000	8%
\$25,000-\$49,999	28%
\$50,000 - \$74,999	40%
\$75,000 - \$150,000	20%
Over \$150,000	4%

ARE YOU:

African American	1%
Asian	1%
Hispanic	3%
Native American	2%
White	91%
Other	2%

ARE YOU:

Male	51%
Female	49%

THE FRIEDMAN FOUNDATION Educational

Choice

Milton and Rose D. Friedman established the Friedman Foundation for Educational Choice in 1996. The origins of the nonprofit organization lie in the Friedmans' long-standing concern about the urgent challenges facing America's elementary and secondary education systems. The foundation's philosophy asserts that the best way to improve the quality of education is to enable all parents to have unfettered free choice of the schools that their children attend. The Friedman Foundation conducts research and outreach projects to educate the general public and to amplify the call for systemic reform through school choice.

Dr. Milton Friedman, Founder

1913-1982, President and Founder of The Friedman Foundation

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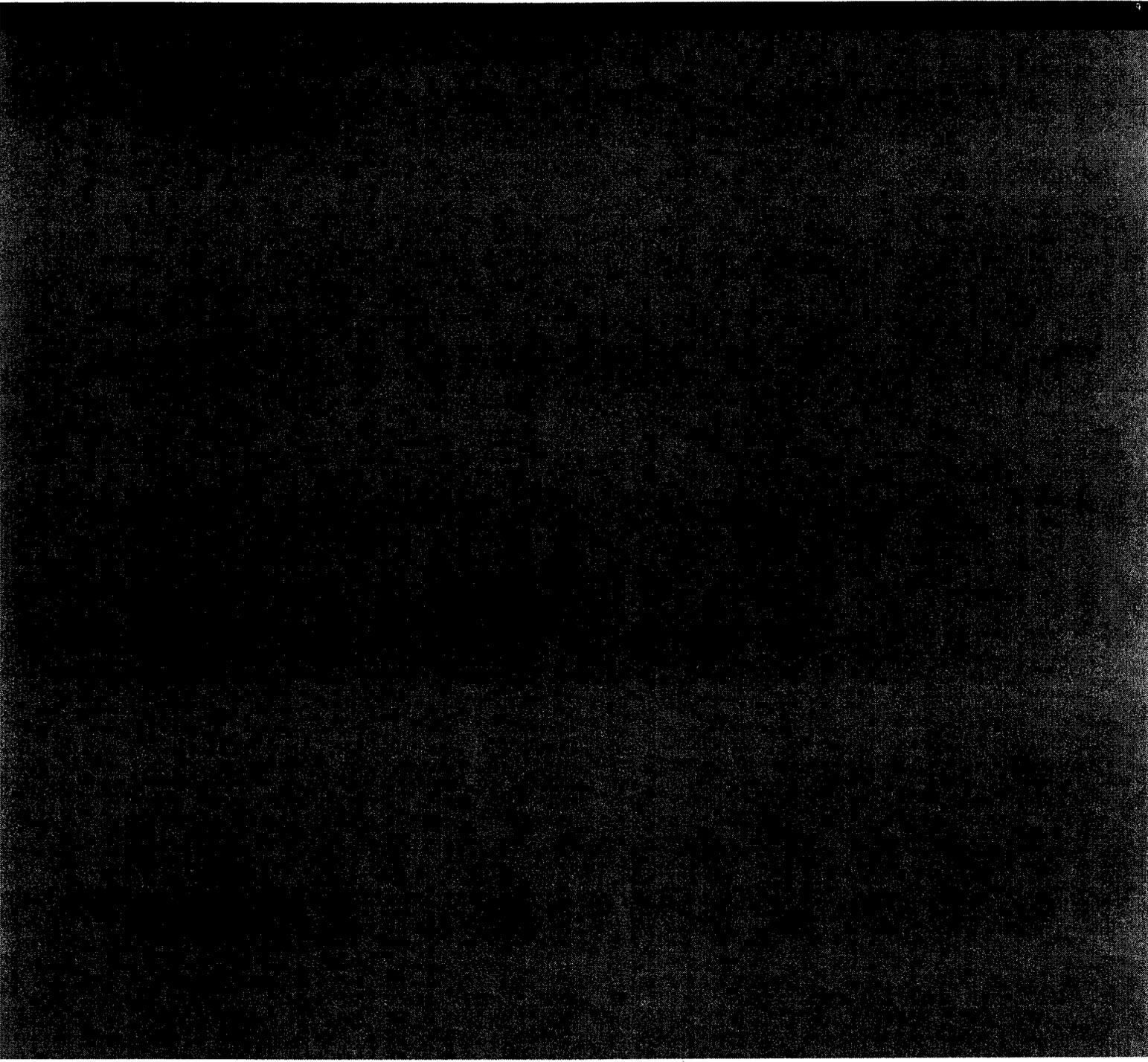
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As a nonprofit 501(c)(3) organization, we rely solely on the generous support of our donors to continue promoting the Friedman's vision for school choice throughout the country. Please send your tax-deductible gift today and help inject liberty and choice into our education system. Giving parents the freedom to choose the school that works best for their children is our goal, and with your help we can make it happen.



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**ARTICLE X
EDUCATION AND PUBLIC LANDS**

Section

1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Nondiscrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. Public school fund. The public school fund of the state shall consist of:

- (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,
- (2) Lands granted in lieu thereof,
- (3) Lands given or granted by any person or corporation under any law or grant of the United States,
- (4) All other grants of land or money made from the United States for general educational purposes or without special purpose,
- (5) All interests in estates that escheat to the state,
- (6) All unclaimed shares and dividends of any corporation incorporated in the state,
- (7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination. (2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. Nondiscrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised. (2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state. (3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the

manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

1 rule was in contravention of Section 20-7-902(1), MCA, which
2 provides:

3 A school district may identify gifted and
4 talented children and devise programs to
5 serve them." (emphasis added).

6 The Board would not change its rule. Thereafter, at
7 the request of the Administrative Code Committee, the 1991
8 legislature passed House Bill 116 which states as follows:

9 Whereas, the Legislature, not the
10 Executive Branch, is the lawmaking branch of
11 the state government under the Montana
12 Constitution; and

13 Whereas, the Legislature may delegate
14 its power to pass laws to the Executive
15 Branch, which may then, within certain
16 limits, adopt administrative rules that have
17 the force and effect of law; and

18 Whereas, a rule may not conflict with a
19 statute and is invalid if it does; and

20 Whereas, Section 20-7-902(1), MCA,
21 provides that "a school district may
22 identify gifted and talented children and
23 devise programs to serve them" and Rule
24 10.55.804 ARM mandates a gifted and talented
25 children program in each school, thereby
directly and clearly conflicting with the
statute; and Whereas, the Legislature has
made a gifted and talented children program
discretionary, at the choice of each local
school board, the Legislature nonetheless
affirms its support of gifted and talented
education and encourages local school
districts to identify gifted and talented
students and design and implement programs
that meet the needs of those students.

Be it enacted by the legislature of the
State of Montana:

1 Section 1. Repealer. Rule 10.55.804,
2 ARM, is repealed.
3 Section 2 Effective Date. This Act is
4 effective July 1, 1991.

5 The Board felt that it had the authority to promulgate
6 the aforementioned rule pursuant to the Article X, Section
7 9(3)(a), of the Montana Constitution of 1972, which provides:

8 There is a board of public education to
9 exercise general supervision over the public
10 school system and such other public educa-
11 tional institutions as may be assigned by
12 law. Other duties of the board shall be
13 provided by law.

14 The Board brought the instant declaratory judgment
15 action seeking a ruling as follows:

16 1. The legislative branch is not the
17 sole law-making, or rule-making body under
18 the Montana Constitution. Rather, the Board
19 of Public Education, in exercising its Art.
20 X Sec. 9(3) powers of "general supervision"
21 has constitutional rule-making authority.
22 This provision is self-executing and the
23 authority granted is independent of any
24 power that is "delegated" to the Board by
25 the legislature.

2. The Board's accreditation stan-
dards, including the rule mandating gifted
and talented programs, are within the
purview of its Art. X Sec. 9(3), constitu-
tional powers of "general supervision".

3. That House Bill 116 and/or 20-7-902
MCA, to the extent they interfere or con-
flict with the Board's constitutional rule-
making are in violation of the separation of
powers doctrine of Art. III Sec. 1 of the
Montana Constitution and are therefore
invalid and of no legal effect.

1 substantial evidence that raises a genuine issue of material
2 fact in order to defeat the motion. Denny Driscoll Boys Home v.
3 State, 227 Mont. 177, 179, 737 P.2d 1150, 1151 (1987). Such
4 motions, however, are clearly not favored. "[T]he procedure is
5 never to be a substitute for trial if a factual controversy
6 exists." Reaves v. Reinbold, 189 Mont. 284, 288, 615 P.2d 896,
7 898 (1980). If there is any doubt as to the propriety of a
8 motion for summary judgment, it should be denied. Rogers v.
9 Swingley, 206 Mont. 306, 670 P.2d 1386 (1983); Cheyenne Western
10 Bank v. Young, 179 Mont. 492, 587 P.2d 401 (1978); Kober at
11 122, 417 P.2d at 479.

12 Clearly, summary judgment is appropriate since there
13 is no disputed question of fact, as has been acknowledged by
14 both parties.

15 This Court is of the view that the Board's motion
16 should be granted.

17 IMMUNITY

18 The parties have done an heroic effort of briefing the
19 Court on the question of whether or not the Administrative Code
20 Committee has immunity from the present action. This Court
21 feels, however, that the immunity issue need not be addressed or
22 decided in order to resolve this matter. The Court has before
23 it the State of Montana as a defendant. Clearly, the Board is
24 entitled to have House Bill 116 tested before a Court. Perhaps
25

1 the Administrative Code Committee is not the appropriate defen-
2 dant. Clearly, however, the State of Montana is an appropriate
3 defendant in such an action. Thus, in order to avoid the
4 question of whether or not the Administrative Code Committee is
5 immune, the Court will dismiss the Administrative Code Committee
6 from this suit. This, however, still leaves the question of
7 whether or not House Bill 116 improperly interfered with the
8 Board's constitutional authority.

9
10 CONSTITUTIONALITY OF H.B. 116

11 The Court has been directed to a West Virginia case
12 that is very persuasive. See West Virginia Board of Education
13 vs. Hechler, 376 S.E.2d 839 (West Virginia 1988). In that case,
14 the Supreme Court of West Virginia noted that Article XII,
15 Section 2, of the West Virginia State Constitution provided:

16 The general supervision of the free schools
17 of the state shall be vested in the West
18 Virginia Board of Education which shall
19 perform such duties as may be prescribed by
20 law.

21 Id. at 842.

22 Pursuant to that Constitutional enactment, the West
23 Virginia Board of Education adopted rules concerning design and
24 equipment of school buses. The board filed their rule with the
25 West Virginia secretary of state for publication. However, the
secretary of state of West Virginia refused to file the rule
because the Board had failed to first submit the rule to a

1 legislative oversight committee. The West Virginia Supreme
2 Court held that any attempt to impede rules proposed by the West
3 Virginia Board of Education was not consistent with the general
4 supervisory powers conferred upon the board by the West Virginia
5 constitution.

6 The West Virginia court noted that state legislators,
7 since they infrequently meet, cannot assume supervisory respons-
8 ibility for public schools. In such cases, the supervision and
9 administrative control over the state school system is placed in
10 a State Board of Education. Decisions that pertain to education
11 should be faced by those who possess expertise in the educa-
12 tional area. Id. at 842.

13 The West Virginia court noted that the Board of
14 Education enjoyed a special standing due to its placement in the
15 West Virginia Contitution. The Supreme Court of West Virginia
16 held that the particular rule-making by the State Board of
17 Education was within the meaning of general supervision of state
18 schools as announced by the West Virginia Constitution, and that
19 any statutory provision that interfered with such rule-making
20 was unconstitutional. Id. at 843.

21 This is precisely the situation presented before this
22 Court. In the first instance, the West Virginia constitutional
23 provision in question in Hechler is very similar to Article X,
24 Section 9(3), of the Montana Constitution. As in Hechler, we
25

1 here have a situation where the Montana legislature is
2 interferring with the rule-making authority of a constitu-
3 tionally created Board of Education. This being the case, that
4 statutory interference is unconstitutional.

5 The Montana Constitution provides:

6 The power of the government of this state is
7 divided into three distinct branches--
8 legislative, executive, and judicial. No
9 person or persons charged with the exercise
10 of power properly belonging to one branch
11 shall exercise any power properly belonging
12 to either of the others, except as in this
13 constitution expressly directed or
14 permitted.

15 See Montana Constitution, Art. III, sec. 1.

16 This Court is cognizant of the fact that there must be
17 balancing between the powers of the legislature and those of
18 special boards created by Montana's Constitution. This bal-
19 ancing was discussed in detail in the case of Board of Regents
20 vs. Judge, 168 Mont. 433, 543 P.2d 1323 (1975). However, in
21 this case, this Court is convinced that the rule here in
22 question, as adopted by the Board, is well within its constitu-
23 tional prerogative to exercise general supervision over the
24 public school system.

25 In its brief, the State of Montana has delved
extensively into comments made by delegates to the 1972
constitutional convention. However, if the language of the
Constitution is clear, it may not be ignored. Further, if the

1 language is clear, its meaning is to be ascertained from the
2 Constitution itself construing the language as written. This
3 being the case, there is no occasion for construction since the
4 language is plain and unambiguous. See General Agriculture
5 Corporation v. Moore, 166 Mont. 510, 516, 534 P.2d 859 (1975).
6

7 Further, the State notes that the rule, as originally
8 suggested by the Board, was allegedly drafted pursuant to
9 statutory authority and not pursuant to the Constitution. Thus,
10 argues the State, the Board cannot now seek to use the
11 Constitution to support the passage of the rule. With this
12 contention this Court cannot agree. The Board is a constitu-
13 tionally recognized and created agency. As such, it is not
14 subject to the usual administrative and legislative constraints
15 to which the State refers. For example, it matters not that the
16 Board may or may not have precisely complied with the Montana
17 Administrative Procedure Act in adopting the rule in question.
18 That Act is enacted by the legislature. As noted earlier, the
19 legislature cannot interfere with other constitutionally created
20 bodies that are properly conducting their business.

21 Further, the State points to the Attorney General's
22 opinion contained at 44 Op. Att'y Gen. No. 4. However, that
23 opinion expressly indicated that it was not dealing with any
24 constitutional power of the Board.

25 The State exalts form over substance and would require

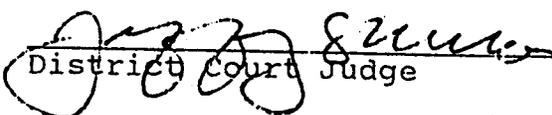
1 the Board to perform a meaningless act. The State seems to be
2 contending that one of the reasons this rule is invalid is that
3 the Board did not follow precise administrative procedures.
4 Thus, argues the Board, if the Board did follow these precise
5 administrative procedures, and indicated that the rule was not
6 being adopted pursuant to a statute but pursuant to the Consti-
7 tution, then perhaps the rule would be valid. This Court
8 considers such a procedure to be a futile act. This Court will
9 not require the Board to go through such a futile procedure.
10 Perhaps that argument would be well taken if we were here
11 dealing with a board or agency created by another branch of
12 government. However, we are dealing with a constitutionally-
13 empowered board.

14 Based on the above, the Court hereby enters its
15 declaratory ruling as follows:

16 The Board of Public Education, pursuant to Article X,
17 Section 9(3), of the Montana Constitution, is vested with
18 constitutional rule-making authority. This provision is self-
19 executing and independent of any power that is delegated to the
20 Board by the legislature. The Board's rule mandating gifted and
21 talented programs is within the purview of the Board's constitu-
22 tional power of general supervision pursuant to Article X,
23 Section 9(3), of the Montana Constitution. House Bill 116, to
24 the extent that it interferes or conflicts with the Board's
25

1 constitutional rule-making power, is in violation of the
2 separation of powers doctrine of Article III, Section 1, of the
3 Montana Constitution, and is therefore invalid and of no further
4 force or effect.

5 DATED this 12 day of March, 1992.

6
7
8 
District Court Judge

9 pc: W. William Leaphart
10 Eddy McClure
Judy Browning

11 PublicEd.o&d

12 k