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9 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY  
10

11 **COLUMBIA FALLS** Elem. School Dist. )  
No. 6 and H.S. Dist. No. 6, )  
12 **EAST HELENA** Elem. Dist. No. 9, )  
**HELENA** Elem. Dist. No. 1 and H.S. )  
13 Dist. No. 1, )  
**BILLINGS** Elem. Dist. No. 2 and H.S. )  
14 Dist. No. 2, )  
**WHITE SULPHUR SPRINGS** Elem. Dist. No. 8 )  
15 and H.S. Dist. No. 8, )  
**TROY** Elem. Dist. No. 1 and H.S. )  
16 Dist. No. 1, )  
**MEA-MFT,** )  
17 **MONTANA SCHOOL BOARDS ASSOCIATION** )  
**MONTANA RURAL EDUCATION ASSOCIATION,** )  
18 **SCHOOL ADMINISTRATORS OF MONTANA,** )  
**ALAN & NANCY NICHOLSON,** )  
19 **PETER & CHERYL MARCHI,** )  
**MICHAEL & SUSAN NICOSIA,** for themselves )  
20 and as parents of their minor children, )

21 )  
22 Plaintiffs )

23 v. )

24 **THE STATE OF MONTANA,** )  
25 )

26 Defendant )

No. BDV-2002-528

**PLAINTIFFS' RENEWED  
MOTION FOR  
SUPPLEMENTAL RELIEF  
AND AN ORDER  
TO SHOW CAUSE**

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**MOTION**

Pursuant to MCA § 27-8-313 (2007), Plaintiffs hereby move the Court for supplemental relief. In particular, Plaintiffs seek an Order setting a Show Cause Hearing, at which the State of Montana shall be required to show cause why further relief should not be granted. Without supplemental relief, school districts throughout Montana face budget cuts in the 2008-09 school year. This demonstrates that the State of Montana has not yet sufficiently complied with its constitutional obligations as determined by this Court and the Montana Supreme Court.

In support of this Motion, Plaintiffs allege:

**INTRODUCTION**

1. This Court declared Montana’s system for funding public elementary and secondary schools unconstitutional by its *Findings of Fact, Conclusions of Law and Order* on April 15, 2004. The Montana Supreme Court affirmed this Court’s decision and rendered a full decision on March 22, 2005. *Columbia Falls Elementary School Dist. v. State*, 2005 MT 69, 326 Mont. 304, 109 P.3d 257.

2. This Court has jurisdiction over this matter pursuant to MCA § 27-8-313 (2007), and its *Finding of Fact No. 198* (It “would be appropriate for [this Court] to exercise continuing jurisdiction over this case so as to avoid unnecessary, costly delays and complications absent continuing jurisdiction.”). The State of Montana did not challenge this Court’s determination on continuing jurisdiction in the appeal before the Montana Supreme Court.

3. As is more specifically alleged below, the State of Montana responded to the court decisions in this case in regular and special legislative sessions in both 2005 and 2007.

4. Despite progress and increased funding for fiscal years 2006, 2007 and 2008, the State failed to provide adequate funding for fiscal year 2009 – the second year of the current biennium.

5. The State, through its Legislative Services Division, has recognized that a lack of

1 adequate funding increases for fiscal year 2009 will force many school districts to cut programs,  
2 staff, and/or services. Many of these districts are precluded from making up for budget shortfalls  
3 through voted levies due to the maximum general fund budget caps under the funding formula.  
4 Many other districts will be forced to seek increases in local property taxes through voted levies in  
5 order to maintain programs, staff and services; if voters do not approve the levies, cuts will be  
6 necessary in those districts where levies fail.

7         6.       The funding shortfalls facing school districts in FY 09 are symptoms of the same  
8 underlying, and ongoing problem that has existed since the current funding system was originally  
9 adopted in 1993: despite its constitutional and statutory obligations, the State has not yet “(a)  
10 determine[d] the costs of providing the basic system of free quality public elementary and  
11 secondary schools; [nor has it] (b) establish[ed] a funding formula that: (i) is based on the  
12 definition of a basic system of free quality public elementary and secondary schools and reflects  
13 the costs associated with providing that system. . . .” MCA § 20-9-309 (2007). *See also*  
14 *Columbia Falls Elementary School Dist. v. State, supra*.

15         7.       Plaintiffs put the State of Montana on notice of its failure to meet its constitutional  
16 and statutory obligations by filing their Motion for Supplemental Relief and An Order to Show  
17 Cause, dated June 13, 2006. This Court denied the Motion at that time, indicating that it would  
18 entertain a similar motion after the 2007 legislature had met and acted. *See Order*, dated August  
19 22, 2006.

20         8.       Once the problems facing school districts for the coming school year (FY 09)  
21 became clear in recent weeks, representatives of public education as well as some legislators made  
22 efforts to convince policymakers that a Special Session of the Legislature should be called to  
23 address the funding shortfalls. Those efforts were unsuccessful.

24         9.       Plaintiffs seek limited relief from the Court at this time. As is more specifically  
25 described below, Plaintiffs seek relief designed specifically to avoid forced general fund budget  
26 cuts for school districts in the 2008-09 school year. In addition to this judicial relief,

1 representatives of public education will continue efforts to try to work with policymakers to  
2 identify and implement the long term solutions that are necessary for the State to fulfill its  
3 constitutional responsibilities concerning funding for public elementary and secondary schools.

#### 4 BUDGET SHORTFALLS FOR FY 09

5 10. The State of Montana Legislative Fiscal Services Division issued a public report,  
6 dated December 14, 2007, which was submitted to the Education and Local Government  
7 Committee of the Montana Legislature (hereinafter, "the LFD Report."). The report was prepared  
8 by Mr. Jim Standaert, Senior Fiscal Analyst for the State of Montana Legislative Fiscal Division.  
9 The LFD Report analyzes funding levels for schools in fiscal year 2009 compared to fiscal year  
10 2008.

11 11. The LFD Report is based on conservative assumptions concerning school districts'  
12 projected general fund budgets for FY 09. For example, the LFD Report assumes that general  
13 fund budget requirements will grow 3.5% for FY 09, which is actually less than the current rate of  
14 inflation of 4.1% (according to the United States Department of Labor Bureau of Labor Statistics -  
15 CPI-U).

16 12. Based on the LFD Report, 40% of school districts in Montana – 170 districts –  
17 would need increased voted levies for FY 09 just to maintain current budgets (assuming the 3.5%  
18 inflationary growth). More than 28,300 students, or approximately 19% of all students in  
19 Montana's public schools, are educated in those districts. Of those districts, more than half of  
20 them are at or above the allowable maximum general fund budgets under state law, so they will be  
21 prohibited from making up their shortfalls by voted levies. Those districts must, therefore, either  
22 cut their general fund budgets for FY 09 or otherwise find a short-term way to make up for the  
23 projected shortfalls.

24 13. According to the LFD Report, the projected budget shortfalls relate primarily to the  
25 fact that state aid for FY 09 will increase statewide by approximately 1.9%. This increase is less  
26 than projected inflation.

1           14.     School districts throughout Montana have recently begun the process of planning  
2 their budgets for FY 09. Many districts anticipate that their costs will increase more than those  
3 assumed in the LFD Report. These higher projections relate primarily to more realistic, and in  
4 some cases actual, projections concerning staff salaries.

5           15.     Plaintiff Columbia Falls Elementary District faces a projected general fund budget  
6 shortfall of approximately \$290,000 for FY 09, based on the District's own assumptions and  
7 projections. Without asking for increased local taxes through a voted levy, the District must  
8 therefore find ways to cut or otherwise fund approximately \$290,000. The district is allowed by  
9 law to request only approximately \$43,000 in a voted levy for FY 09 (due to budget caps). Thus,  
10 even if the voters were to pass that voted levy this Spring, the District will be left with a general  
11 fund budget shortfall of approximately \$247,000. Columbia Falls Elementary is projected to have  
12 1662 ANB in FY 09, a decline of only 11 ANB from the current ANB count of 1673.

13           16.     Plaintiff Billings Elementary District faces a projected general fund budget  
14 shortfall of approximately \$2,874,629 for FY 09, based on its assumptions and projections. The  
15 District will ask the voters to approve a levy of \$870,672, which is approximately the maximum  
16 amount allowed by law. Even if the voted levy passes, the District will still face a general fund  
17 budget shortfall of approximately \$2,003,957. Billings Elementary is projected to have 10,296  
18 ANB in FY 09, a decline of only 22 ANB from the current count of 10,318.

19           17.     Plaintiff Helena Elementary District faces a projected general fund budget shortfall  
20 of approximately \$655,000 for FY 09, based on its assumptions and projections. This shortfall  
21 assumes that voters in the District will approve an increase in local taxes of approximately  
22 \$176,000, which is the maximum amount the District can request due to the budget caps under the  
23 funding formula. Helena High School District faces a projected budget shortfall of  
24 approximately \$409,000. This shortfall assumes voters in the District will approve an increase in  
25 local taxes of approximately \$139,555.00. School District Administrators and Trustees in Helena  
26 are currently evaluating options for addressing the projected shortfalls of more than \$1,000,000.

1 Helena Elementary is projected to have an increase of 22 ANB for FY 09, from 5,162 to 5,184;  
2 the High School District is projected to have 3,092 ANB, a very insignificant decline of only 12  
3 ANB from 3,104.

4 18. Plaintiff East Helena Elementary District faces a projected general fund budget  
5 shortfall of approximately \$126,538 for FY 09, based on its assumptions and projections. The  
6 District is allowed by law to ask the voters to make up this projected shortfall with a voted levy  
7 because it has not yet reached the maximum general fund budget allowed by law. If the voters  
8 approve the anticipated levy request of approximately \$93,000 in a technology levy, the District  
9 will be able to make other necessary cuts to textbook purchases and staff training to balance the  
10 budget by not replacing a retiring teacher. If the voted technology levy does not pass, the District  
11 will face a budget shortfall of approximately \$126,538 along with more than \$90,000 worth of  
12 computer purchases for a total of \$216,500. East Helena is projected to have 1118 ANB for FY  
13 09, a decline of only eight ANB from the current count of 1126.

14 19. Plaintiff White Sulphur Springs Elementary District faces a projected general fund  
15 budget shortfall of approximately \$29,775, or 2.6% for FY 09, based on its assumptions and  
16 projections. At this time, the District anticipates it will need to find ways to make up for this  
17 shortfall, or perhaps more, by cutting expenses in its general fund budget. White Sulphur Springs  
18 is projected to have 183 ANB for FY 09, a decline of 10 ANB from the 193 ANB for FY 08.

19 20. Plaintiff Troy Public Schools have not yet completed their general fund budgeting  
20 process for fiscal year 2009 in sufficient detail to allege specific amounts for anticipated budget  
21 shortfalls. However, the district just completed the first of a two year contract negotiation with  
22 the Troy teachers, which resulted in increases in both teacher pay and district contributions toward  
23 health insurance premiums for the next fiscal year. While the district is presently working on its  
24 general fund for next year, it is anticipated that programs may need to be reduced. Troy Public  
25 Schools do not anticipate going to the voters for approval of additional, general fund authority,  
26 because the voters just recently approved a \$1.8 million facilities bond.

1           21.     The budget situations facing the Plaintiff school districts are illustrative of budget  
2 difficulties facing other school districts throughout the State of Montana for FY 09. As alleged  
3 above, the State through the LFD Report has admitted and recognized that the Legislature failed to  
4 provide adequate funding to meet school districts' budgetary needs for FY 09.

5                   **PROGRESS AND ACCOMPLISHMENTS IN THE FIRST THREE FISCAL YEARS**  
6                   **FOLLOWING THE COURT DECISIONS**

7           22.     Plaintiffs and school districts throughout Montana recognize and appreciate the  
8 fact that the State of Montana responded positively to the decisions of this Court and the Supreme  
9 Court.

10           23.     The 2005 Montana Legislature enacted Senate Bill 152, now codified at MCA §  
11 20-9-309 (2007). This statute is consistent with the State's constitutional obligations concerning  
12 funding for public elementary and secondary schools, as construed and enforced by this Court and  
13 the Supreme Court in *Columbia Falls v. State*.

- 14           a.     The statute defines the "basic system of free quality public elementary and  
15 secondary schools, MCA § 20-9-309(2) (2007);
- 16           b.     The statute identifies the "educationally relevant factors" to be considered  
17 by the legislature in developing a funding mechanism for public schools,  
18 MCA § 20-9-309(3) (2007); and
- 19           c.     The statute mandates the legislature, by July 1, 2007, to "(a) determine the  
20 costs of providing the basic system of free quality public elementary and  
21 secondary schools; [and] (b) establish a funding formula that: (i) is based  
22 on the definition of a basic system of free quality public elementary and  
23 secondary schools and reflects the costs associated with providing that  
24 system; (ii) allows the legislature to adjust the funding formula based on the  
25 educationally relevant factors identified [in the statute]; (iii) is self-  
26 executing and includes a mechanism for annual inflationary adjustments;  
27 (iv) is based on state laws; (v) is based on federal education laws consistent

1 with Montana's constitution and laws; [and] (vi) distributes to school  
2 districts in an equitable manner the state's share of the costs of the basic  
3 system of free quality public elementary and secondary schools. . . ." MCA  
4 § 20-9-309(4) (2007).

5 24. The Legislature in 2005 and 2007 also provided funding increases that are  
6 significant compared to state funding for public education during the several years prior to the  
7 decisions of this Court and the Supreme Court in this case.

8 25. As a result of increases in funding for fiscal years 2006, 2007, and 2008, most  
9 school districts throughout the State have been able to begin to address in part problems that have  
10 developed through the many years of inadequate funding preceding FY 2006. Many districts have  
11 been able to provide modest increases in salaries, avoid cuts in programs, and address some  
12 facilities maintenance and technology needs. In addition, districts have received funding to  
13 implement Indian Education for All curricula, as well as some funding targeted at meeting needs  
14 of at-risk students. Many, but not all districts have also added all-day kindergarten, based on  
15 legislation and funding enacted in the 2007 special legislative session.

16 26. Plaintiffs and school districts throughout Montana have used the funding increases  
17 in 2006, 2007 and 2008 prudently and in ways consistent with their obligations under Montana  
18 law. Despite their best efforts, however, Plaintiffs and school districts throughout Montana are  
19 not able, with existing resources, to provide educational programs and services that meet all of the  
20 standards and obligations set forth in Montana law.

21 **THE FAILURE TO ADOPT AND IMPLEMENT A LONG TERM,**  
22 **SELF-EXECUTING AND STABLE FUNDING SYSTEM**

23 27. Despite progress and increased funding during fiscal years 2006, 2007, and 2008,  
24 many school districts throughout the State now face the same kinds of budgetary constraints and  
25 decisions as those that initially precipitated this constitutional challenge to Montana's school  
26 funding system, and which resulted in the decisions of this Court and the Supreme Court declaring



1 the system unconstitutional.

2 28. The State met its constitutional obligation to define the basic system of free quality  
3 public elementary and secondary schools. The State has not, however, yet met its constitutional  
4 obligations, as embodied in MCA § 20-9-309, to establish a funding system that reflects the costs  
5 of providing the system of public schools. The budgetary problems facing school districts  
6 throughout the State for FY 09 clearly and undisputably demonstrate that the fundamental  
7 problems with Montana's school funding system have not been sufficiently addressed.

8 29. Significant portions of the funding increases for fiscal years 2006, 2007 and 2008  
9 were provided through earmarked, "one time only" funding. These one time only, earmarked  
10 funds cannot be used, by definition and law, to meet ongoing needs of school districts. Such  
11 funds do not allow districts to implement long term plans or programs. The extensive use of one  
12 time only appropriations is further evidence that the State has failed to meet its constitutional  
13 obligations to implement a long term, self-executing and stable funding system.

14 30. Following the trial in this case, this Court identified several factors and problems  
15 that demonstrated the State has failed to adequately fund its share of the cost of the elementary  
16 and secondary school system, in Finding of Fact No. 160. In large part, those factors and  
17 problems remain today:

18 a. According to the most recent data available from the Montana Office of  
19 Public Instruction, there has been an increase since the trial in the number of school districts,  
20 which together educate most of the students in the State, that must budget at, near or above their  
21 maximum general fund budget authority. According to the OPI data, 65% of the students in the  
22 State are educated in districts that are near, at or over maximum general fund budgets (i.e., those  
23 at 97% of maximum or higher).

24 b. In 2006-07, 16% of the schools in Montana failed to meet the State's  
25 minimum accreditation standards (i.e., those which received "advice" or "deficiency" status).  
26 This is only a slight improvement from the 19% of schools that had failed to meet minimum

1 accreditation standards for the most recent data available at trial. *See Plaintiffs' Exh. 85.*

2 c. As previously alleged, districts throughout Montana have used recent on-  
3 going funding increases to improve salaries for teachers, administrators and other school  
4 employees. Despite this, based on the most current data available, Montana still ranks 46<sup>th</sup> among  
5 the 50 states in average teacher salaries. This continues to cause problems with recruitment and  
6 retention, particularly among smaller school districts throughout the State.

7 d. As previously alleged, most districts have not been forced to cut programs  
8 in the past three years, due to increased funding. For FY 09, however, districts throughout the  
9 State must again consider where to achieve budget savings, so program cuts will likely be  
10 implemented in many districts unless this Court provides supplemental relief.

11 e. The State has not meaningfully addressed funding problems concerning  
12 facilities construction and maintenance. As previously alleged, some one time only  
13 appropriations have been provided for deferred maintenance and capital investments, which have  
14 been welcome and helpful. The State has also allocated funds to be appropriated in the future,  
15 and is currently undertaking a "facilities inventory" process. To date, however, the State has not  
16 enacted any long term changes in funding for facilities, nor have one time only funds been any  
17 where near adequate to address the deferred maintenance needs of districts. Districts throughout  
18 the State continue to face problems with respect to funding for adequate and safe school facilities.

19 f. The State has not meaningfully addressed the lack of state funding for  
20 special education. In fact, according to data from the Office of Public Instruction, the State's  
21 share of special education costs has declined since the time of trial; local support for special  
22 education costs is now essentially equal to state support. In 2002-03, the State's share of these  
23 costs was 39.99% and local districts' share was 35.1%. In 2005-06, the most recent year for  
24 which data is available, the State's share fell to 36.54%, and the districts' share increased to  
25 36.24%. As the local burden for special education increases, districts must continue to make the  
26 types of "rob Peter to pay Paul" tradeoffs that several witnesses testified about at trial.

1 g. The A&M study was updated in light of the statutory definition of the basic  
2 system of free quality public elementary and secondary schools. The updated study demonstrates  
3 that funding available to school districts remains inadequate to meet the standards and  
4 requirements embodied in the statutory definition. Additionally, a cost study commissioned by  
5 the State in 2005, although flawed in several respects, also demonstrates that funding remains  
6 inadequate.

7 h. Funding at the BASE general fund levels remains inadequate and, if forced  
8 to operate at that funding level, most school districts could not meet minimum accreditation  
9 standards nor could they offer a quality educational program.

10 i. The state's share of general fund budgets increased for fiscal years 06, 07,  
11 and 08. Based on currently available data, however, all three years remain below 65% of  
12 statewide general fund budgets. Due to inadequate state funding for FY 09, the state's share of  
13 general fund budgets will decrease. Additionally, although there were welcome increases in state  
14 support per pupil since the court decisions in this case, there will be a decline in FY 09 unless this  
15 Court grants supplemental relief. State support per pupil remains below the level of support in  
16 1991, when adjusted for inflation. In 1991, the State provided \$2,665 per pupil, and in FY 09  
17 state support is projected to be \$2,487 per pupil in 1991 inflation-adjusted dollars (\$4,190 per  
18 pupil actual dollars).

19 j. This Court found that "Montana's funding formula is not reasonably related  
20 to the costs of providing a basic system of quality public elementary and secondary schools.  
21 Further, it is clear that the current funding system was not based on a study of the funding  
22 necessary to meet what the state and federal governments expect of Montana's schools." These  
23 facts remain true today.

24 **SUPPLEMENTAL RELIEF IS NECESSARY AND PROPER**

25 31. As alleged above, the issues that form the basis for the decisions of this Court and  
26 the Supreme Court remain unresolved. Unless supplemental relief is granted, school districts

1 throughout Montana will be forced to again make the kinds of budget decisions that result in  
2 harm, and which demonstrate that the State has failed to meet its constitutional obligations with  
3 respect to funding the basic system of free quality public elementary and secondary schools.  
4 Thus, supplemental relief is “necessary and proper.” MCA § 27-8-313, MCA (2007).

5 32. Contrary to previous assertions by the State, this case is not moot. The important  
6 constitutional issues continue to exist. This Court can and should provide effective declaratory  
7 and injunctive relief. Moreover, it would be a waste of judicial and public resources to force  
8 plaintiffs to file a new lawsuit to re-litigate the continuing constitutional issues. This Court has  
9 heard and received a considerable amount of evidence that remains relevant, and which would  
10 necessarily need to be re-introduced if plaintiffs were forced to file a new lawsuit.

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1  
2 33. The relief plaintiffs seek at this time is:

- 3 a. A declaration that the State has not yet complied with its constitutional  
4 obligations;
- 5 b. Injunctive relief that allows school districts to adopt general fund budgets  
6 for FY 09 that do not include forced cuts due to inadequate state funding.  
7 The precise parameters of this injunctive relief will be the subject of  
8 testimony and briefing, but will be designed to afford appropriate deference  
9 to the coordinate branches of government, while protecting students in  
10 Montana's public schools from unconstitutional cuts in programs, staff  
11 and/or services in FY 09.
- 12 c. An award of attorneys fees and costs incurred in obtaining supplemental  
13 relief; and
- 14 d. Such further relief as this Court deems just and proper.

15 DATED this 5<sup>th</sup> day of February, 2008.

16 GOETZ, GALLIK & BALDWIN, P.C.

17 MOLLOY LAW FIRM

18  
19 BY: 

20 JAMES P. MOLLOY  
21 Attorneys for Plaintiffs  
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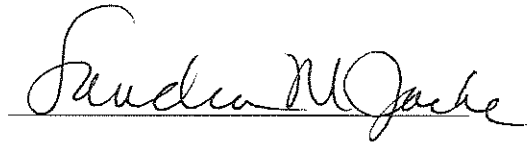
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5<sup>th</sup> day of February, 2008, a true and correct copy of the foregoing was served by U.S. mail and by electronic mail to the following:

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