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*Attorneys for Applicant Intervenors*

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

KENDRA ESPINOZA, JERI ELLEN  
ANDERSON, and JAMIE SCHAEFER,

Plaintiffs,

-v-

MONTANA DEPARTMENT OF  
REVENUE, and MIKE KADAS, in his  
official capacity as DIRECTOR of the  
MONTANA DEPARTMENT OF  
REVENUE,

Defendants.

Cause No: DV-15-1152A  
*Hon. David M. Ortley*

**MONTANA QUALITY EDUCATION  
COALITION'S MOTION TO  
INTERVENE**

The Montana Quality Education Coalition hereby moves this Court for leave to intervene in this action as a matter of right, pursuant to Montana Rule of Civil Procedure 24(a)(2) or, alternatively, in permissive intervention pursuant to Montana Rule of Civil Procedure 24(b). Counsel for the State of Montana has been contacted and advises Defendants have no objection.

Counsel for Plaintiffs was contacted on May 16, 2016 and have yet to advise applicant-intervenors of their position. Grounds for intervention are as follow:

1. MQEC's Motion to Intervene is timely because the litigation is in its early stages. A preliminary injunction has been granted to preserve the status quo while this matter is litigated on the merits. The Defendant filed its Answer in this matter on May 12, 2016, no scheduling order is in place and discovery has yet to begin. MQEC's intervention will not prejudice the existing parties or cause any delay.
2. The MQEC has a substantial legal interest in the subject matter of the action because it involves the validity of administrative rules promulgated by the Department of Revenue, and supported by MQEC, that ensure the legislature not indirectly appropriate funds to sectarian schools in violation of Art. X, Sec. 6 of the Montana State Constitution. MQEC is a public interest organization consisting of nearly 90 AA, A, B, C and independent school districts and six statewide education organizations who advocate for adequate funding for public education. MQEC is the largest education advocacy organization in Montana. It's essential purpose is to serve as the "constitutional guardian" of Article X of the Montana State Constitution, which it sees implicated in this action.
3. Disposition of this action without MQEC's participation will impair or impede its function. This case is the vehicle by which a judicial determination of the validity of SB410 will be decided and addresses whether the statute unconstitutionally diverts funds into private religious schools. Further, MQEC and its members actively supported the promulgation and adoption of the challenged rule, which further supports its intervention.

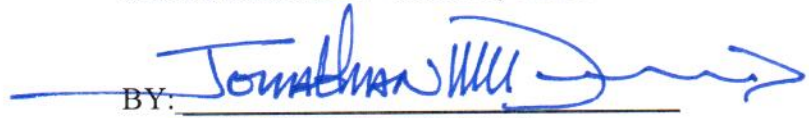
4. MQEC's interests are not adequately protected by the existing parties to the litigation. While the Department of Revenue is defending its adoption of an administrative rule, MQEC represents public school advocates across Montana on a regional scale. Briefing to date also contains no argument regarding the validity of the post-legislative polling permitted by § 2-4-403, MCA, that purports to determine "legislative intent" rather than the actual records of the public meetings of the Montana State Legislature. The results of this polling were persuasive upon this Court in deciding to grant the preliminary injunction and warrant further legal discussion before a final decision is made. Accordingly, MQEC seeks to intervene to protect its own interests.

5. MQEC also satisfied the requirements for permissive intervention because the defenses contained in the proposed Answer of Intervenor MQEC contain common questions of law or fact with those raised in the main action, and involves the interpretation of statutory and constitutional provisions important to MQEC.

6. As further support for this Motion, MQEC respectfully directs the Court to the attached affidavit of Diane Burke, MQEC's Executive Director and to the Brief in Support of MQEC's Motion to Intervene, filed contemporaneously with this Motion. A copy of a proposed *Intervenor's Answer* is attached in accordance with Local Rule 8(B) and M.R.Civ.P. 24(c).

DATED this 20th day of May, 2016.

KARL J. ENGLUND, P.C.  
McDONALD LAW OFFICE, PLLC

BY:   
JONATHAN McDONALD  
*Attorneys for Applicant-Intervenors*



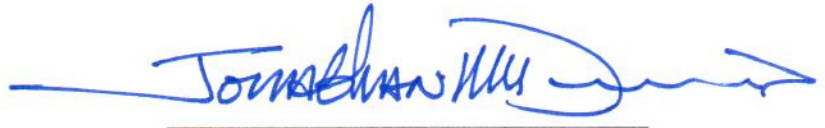
**CERTIFICATE OF SERVICE:**

This is to certify that on this 20th day of May, 2016, a copy of the foregoing was served upon the following by U.S. Mail, postage prepaid and addressed as following:

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MONTANA QUALITY EDUCATION  
COALITION,

Intervenor-Defendant.

Cause No: DV-15-1152A  
*Hon. David M. Ortley*

**INTERVENOR MONTANA QUALITY  
EDUCATION COALITION'S ANSWER  
TO PLAINTIFFS' COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

The Intervenor-Defendant, the Montana Quality Education Coalition ("MQEC") through its counsel, responds to *Plaintiffs' Complaint for Declaratory and Injunctive Relief*

("Complaint") as follows:

1. MQEC denies the allegations in Paragraph 1 of the Complaint.
2. In response to Paragraph 2 of the Complaint, MQEC admits that the Tax Credits for Contributions to Student Scholarship Organizations program (“program”) may have some benefit to families with students in private schools, but denies the remaining allegations in Paragraph 2.
3. MQEC denies the allegations in the first and third sentence of Paragraph 3 of the Complaint. The allegations in the second sentence of Paragraph 3 describe the contents of the Department of Revenue’s Rule 1, which speaks for itself and to the extent that the allegations in the second of Paragraph 3 misinterpret, misconstrue or misapply the contents of Rule 1, they are denied.
4. MQEC denies the allegations in Paragraph 4 of the Complaint.
5. MQEC denies the allegations contained in the first sentence of Paragraph 5 of the Complaint. In response to the second sentence of Paragraph 5, MQEC states that the quotations are from a November 17, 2015 letter from Dale Schowengerdt, Solicitor General, to Defendant Kadas, which letter speaks for itself and to the extent that the allegations in the second sentence of Paragraph 5 misinterpret, misconstrue or misapply the contents of that letter, they are denied.
6. Paragraph 6 of the Complaint contains a request for relief and not a factual allegation. To the extent a response is necessary, MQEC denies the allegations of Paragraph 6.
7. MQEC does not have sufficient information to admit or deny the allegations in Paragraph 7 of the Complaint, and therefore denies the same.
8. Paragraphs 8, 9 and 10 of the Complaint summarize and characterize Plaintiffs’ claims and requested remedies, which speak for themselves. To the extent that Paragraphs 8, 9 and 10 assert that Plaintiff’s claims are meritorious, they are denied.



9. MQEC admits the allegations in Paragraphs 11, 12 and 13 of the Complaint.

10. MQEC does not have sufficient information to admit or deny the allegations in Paragraphs 14, 15, and 16 of the Complaint, and therefore denies the same.

11. MQEC admits the allegations in Paragraphs 17, 18, and 19 of the Complaint.

12. MQEC denies the allegations in Paragraph 20 of the Complaint in that they do not state the entire purpose of “the program.” Section 7 of SB 410 also states, “The tax credit for taxpayer donations under [sections 7 through 17] must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana Constitution.” Except as specifically admitted, MQEC denies the remainder of the allegations of Paragraph 20

13. Paragraphs 21, 22, 23, 24, 25, and 26 of the Complaint summarize some of the provisions of SB 410, which speaks for itself. To the extent that the allegations in Paragraph 21, 22, 23, 24, 25, and 26 misinterpret, misconstrue or misapply the provisions of SB 410, they are denied.

14. MQEC admits the allegations in Paragraph 27 of the Complaint.

15. Paragraphs 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 of the Complaint summarize some of the provisions of SB 410, which speaks for itself. To the extent that the allegations in these paragraphs misinterpret, misconstrue or misapply the provisions of SB 410, they are denied.

16. MQEC denies the allegations in Paragraph 41 of the Complaint.

17. MQEC admits the allegations in Paragraph 42 and 43 of the Complaint.

18. In response to Paragraph 44 of the Complaint, MQEC states that the quotation is from Montana Administrative Register Notice No. 42-2-939, which speaks for itself. To the

extent the allegations in Paragraph 44 misinterpret, misconstrue or misapply that Notice, they are denied.

19. Paragraphs 45 and 46 of the Complaint quote from certain provisions of the Montana Constitution, which speaks for itself, and to the extent the allegations in Paragraphs 45 and 46 misinterpret, misconstrue or misapply the Constitution, they are denied.

20. In response to Paragraph 47 of the Complaint, MQEC states that the quote is from Montana Administrative Register Notice No. 42-2-939, which speaks for itself, and to the extent the allegations in Paragraph 47 misinterpret, misconstrue or misapply that Notice, they are denied.

21. Paragraph 48 of the Complaint states accurately that SB 410 included provisions specifically directing the Department to comply with the provisions of Article V, Section 11(5) and Article X, Section 6(1) of the Montana Constitution.

22. MQEC admits the allegations in Paragraph 49 of the Complaint and asserts further that MQEC and some of its members testified or submitted written comments in favor of Rule 1.

23. In response to the allegations in Paragraph 50 of the Complaint, MQEC does not have a transcript of Sen. Llew Jones' testimony, but admits he testified at the hearing. MQEC does not have sufficient information to admit or deny the remainder of the allegations in Paragraph 50, and therefore denies the same.

24. In response to Paragraphs 51, 52, 53, and 54 of the Complaint, MQEC admits that the Institute of Justice testified against Rule 1, but asserts that its testimony speaks for itself. To the extent that the allegations in Paragraph 51, 52, 53, and 54 misinterpret, misconstrue or misapply that testimony or overstate its importance, they are denied.



25. In response to the first sentence of Paragraph 55 of the Complaint, MQEC admits that the Attorney General's Office submitted written testimony, but asserts that the testimony speaks for itself. To the extent the allegations in Paragraph 55 misinterpret, misconstrue or misapply that testimony or overstate its importance, they are denied.

26. MQEC admits the allegations in Paragraph 56 and 57 of the Complaint.

27. In response to Paragraph 58 of the Complaint, MQEC admits that the Department adopted the rule and sent the adoption notice to the Montana Secretary of State on or about December 14, 2015, but denies the remainder of the allegations in Paragraph 58.

28. In response to Paragraph 59 of the Complaint, MQEC states that the rule was published on December 25, 2015.

29. MQEC denies the allegations in Paragraph 60 of the Complaint.

30. MQEC is without information sufficient to admit or deny the allegations in Paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and 76 of the Complaint and therefore denies the same.

31. MQEC admits the allegation in Paragraph 77 of the Complaint that Stillwater Christian School would not qualify as a "qualified education provider" under Rule 1, but denies the remainder of the allegations in Paragraph 77.

32. MQEC is without information sufficient to admit or deny the allegations in Paragraphs 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, and 95 of the Complaint, and therefore denies the same.

33. MQEC denies the allegations of paragraph 96 of the Complaint because Stillwater Christian School does not qualify as a "qualified education provider" under Rule 1.

34. MQEC admits the allegation in Paragraph 97 of the Complaint that Stillwater Christian School would not qualify as a “qualified education provider” under Rule 1, but denies the remainder of the allegations in Paragraph 97.

35. MQEC is without information sufficient to admit or deny the allegations in Paragraphs 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, and 108 of the Complaint and therefore denies the same.

36. MQEC denies the allegations of paragraph 109 of the Complaint because Stillwater Christian School does not qualify as a “qualified education provider” under Rule 1.

37. MQEC admits the allegation in Paragraph 110 of the Complaint that Stillwater Christian School would not qualify as a “qualified education provider” under Rule 1, but denies the remainder of the allegations in Paragraph 110.

38. MQEC is without information sufficient to admit or deny the allegations in Paragraphs 111 and 112 of the Complaint, and therefore denies the same.

39. In response to Paragraph 113 of the Complaint, MQEC re-alleges and incorporates by reference its answers contained in the previous paragraphs.

40. MQEC denies the allegations in Paragraph 114 of the Complaint.

41. Paragraph 115 of the Complaint quotes from the Montana Administrative Procedures Act, which speaks for itself, and to the extent that the allegations in Paragraph 115 misinterpret, misconstrue or misapply that Act, they are denied.

42. The allegations in Paragraph 116 of the Complaint set forth certain principles of Montana law, which require no answer but are denied in that they are incomplete.

43. MQEC denies the allegations in Paragraph 117 of the Complaint.



44. MQEC denies the allegations in Paragraph 118 of the Complaint in that they imply that the statutory definition of a “qualified education provider” can or should be applied without regard to other provisions of SB 410 and without regard to the provisions of Montana’s Constitution.

45. MQEC admits that Paragraph 119 of the Complaint contains an accurate quotation from Rule 1 but denies the remainder of the allegations contain in Paragraph 119.

46. MQEC denies the allegations in Paragraphs 120, 121, 122, 123, 124, 125, 126, 127, 128 129, 130, and 131 of the Complaint.

47. In response to Paragraph 132 of the Complaint, MQEC re-alleges and incorporates by reference all of the answers contained in the previous paragraphs.

48. MQEC denies the allegations contained in Paragraphs 133, 134, 135, 136, and 137 of the Complaint.

49. In response to Paragraph 138 of the Complaint, MQEC re-alleges and incorporates by reference all of the answers contained in the previous paragraphs.

50. MQEC denies the allegations in Paragraphs 139, 140, 141, 142, 143, and 144 of the Complaint.

51. In response to Paragraph 145 of the Complaint, MQEC re-alleges and incorporates by reference all of the answers contained in the previous paragraphs.

52. MQEC denies the allegations in Paragraphs 146, 147, 148, 149 and 150 of the Complaint.

53. In response to Paragraph 151 of the Complaint, MQEC re-alleges and incorporates by reference all of the answers contained in the previous paragraphs.



54. MQEC denies the allegations in Paragraphs 152, 153, 154, 155, 156 and 157 of the Complaint.

55. In response to Paragraph 158 of the Complaint, MQEC re-alleges and incorporates by reference all of the answers contained in the previous paragraphs.

56. MQEC denies the allegations in Paragraphs 159, 160, 161, 162, 163, 164 and 165 of the Complaint.

57. In response to Paragraph 166 of the Complaint, MQEC re-alleges and incorporates by reference all of the answers contained in the previous paragraphs.

58. MQEC denies the allegations contained in Paragraphs 167, 168, 169, 170, 171, 172, 173, and 174 of the Complaint.

59. Unless specifically admitted in the previous paragraphs, MQEC denies the allegations contained in the Complaint.

#### **FIRST AFFIRMATIVE DEFENSE**

Without Rule 1 in place, the scholarship program created by SB410 is invalid and violates Art. X, §6 of the Montana Constitution, which prohibits direct or indirect appropriations to sectarian schools.

#### **SECOND AFFIRMATIVE DEFENSE**

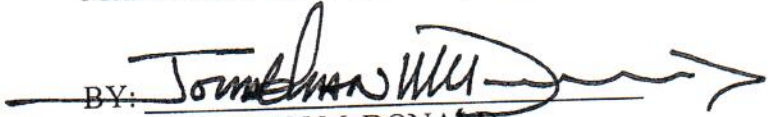
To the extent the “legislative poll” taken pursuant to § 2-4-404, MCA, purports to carry any legal weight whatsoever, such poll is invalid as violating, among others, Art. V, §§10 & 11, Art. VI § 10, Art. VII ¶ 1, and Art. II, § 8 of the Montana Constitution.

WHEREFORE, MQEC prays for judgment as follows:

1. Plaintiffs' claims for relief be denied in their entirety;
2. Plaintiffs take nothing by way of their Complaint; and
3. For such relief as the Court may deem just and proper.

Dated this 20<sup>th</sup> day of May, 2016.

KARL J. ENGLUND, P.C.  
McDONALD LAW OFFICE, PLLC

BY:   
JONATHAN McDONALD  
Attorneys for: MONTANA QUALITY  
EDUCATION COALITION

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