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Attorneys for the Department

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT,  
 FLATHEAD COUNTY**

|   |   |  |
|---|---|--|
| <b>KENDRA ESPINOZA, JERI ELLEN</b>          | ) | <b>Cause No.: DV-15-1152A</b>          |
| <b>ANDERSON, and JAIME SCHAEFER,</b>        | ) |  |
|   | ) | <b>MONTANA DEPARTMENT OF</b>           |
| <b>Plaintiffs,</b>                          | ) | <b>REVENUE'S ANSWER TO PLAINTIFFS'</b> |
|   | ) | <b>COMPLAINT FOR DECLARATORY</b>       |
| <b>vs.</b>                                  | ) | <b>AND INJUNCTIVE RELIEF</b>           |
|   | ) |  |
| <b>MONTANA DEPARTMENT OF</b>                | ) |  |
| <b>REVENUE, and MIKE KADAS, in his</b>      | ) |  |
| <b>official capacity as DIRECTOR of the</b> | ) |  |
| <b>MONTANA DEPARTMENT OF</b>                | ) |  |
| <b>REVENUE,</b>                             | ) |  |
|   | ) |  |
| <b>Defendants.</b>                          | ) |  |

COMES NOW the Defendants, the Montana Department of Revenue and Mike Kadas, Director, by and through the Montana Department of Revenue (Department), and hereby responds, answers, and avers to the allegations contained in Plaintiffs' Complaint for Declaratory and Injunctive Relief (Complaint) in the above-captioned matter as follows:

1. In response to Paragraph 1 of the Complaint, the Department denies the averments contained therein.

2. In response to Paragraph 2 of the Complaint, the Department admits that the Tax Credits for Contributions to Student Scholarship Organizations program (program) may be beneficial to families with students in private schools. If any additional averments are intended by Paragraph 2, the Department denies the same.

3. In response to the first sentence of Paragraph 3 of the Complaint, the Department denies the averments contained therein. In response to the second sentence of Paragraph 3 of the Complaint, the Department responds that the second sentence of Paragraph 3 appears to describe Montana law, which speaks for itself, and to which no response is necessary. In response to the third sentence of Paragraph 3, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same. If any additional averments are intended by Paragraph 3, the Department denies the same.

4. In response to Paragraph 4 of the Complaint, the Department denies the averments contained therein.

5. In response to the first sentence of Paragraph 5 of the Complaint, the Department denies the averments contained therein. In response to the second sentence of Paragraph 5, the Department responds that the quotes are from the November 17, 2015 letter from Dale Schowengerdt, Solicitor General, to Mike Kadas, and the document speaks for itself. If any additional averments are intended by Paragraph 5, the Department denies the same.

6. In response to Paragraph 6 of the Complaint, the Department responds that Paragraph 6 appears to state Plaintiffs' request for relief to which no response is necessary. If any additional averments are intended by Paragraph 6, the Department denies the same.

## RESPONSES TO JURISDICTION AND VENUE

7. In response to Paragraph 7 of the Complaint, the Department is without sufficient information to admit or deny the allegation that Plaintiffs are parents and, as such, denies the same. In further response to Paragraph 7 of the Complaint, the Department responds that Paragraph 7 appears to state Plaintiffs' request for relief to which no response is necessary. If any additional averments are intended by Paragraph 7, the Department denies the same.

8. In response to Paragraph 8 of the Complaint, the Department responds that Paragraph 8 appears to summarize and characterize Plaintiffs' challenges to the Department's rule. Such challenges speak for themselves and no response appears necessary. If any additional averments are intended by Paragraph 8, the Department denies the same.

9. In response to Paragraph 9 of the Complaint, the Department responds that Paragraph 9 appears to state Plaintiffs' request for relief to which no response is necessary. If any additional averments are intended by Paragraph 9, the Department denies the same.

10. In response to Paragraph 10 of the Complaint, the Department responds that Paragraph 10 appears to state Plaintiffs' request for relief to which no response is necessary. If any additional averments are intended by Paragraph 10, the Department denies the same.

11. In response to Paragraph 11 of the Complaint, the Department responds that Paragraph 11 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 11, the Department denies the same.

12. In response to Paragraph 12 of the Complaint, the Department responds that Paragraph 12 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 12, the Department denies the same.

## RESPONSES TO THE PARTIES

13. In response to Paragraph 13 of the Complaint, the Department admits the averments contained therein.

14. In response to Paragraph 14 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

15. In response to Paragraph 15 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

16. In response to Paragraph 16 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

17. In response to the first sentence of Paragraph 17, the Department admits the averments contained therein. In response to the second sentence of Paragraph 17, the Department responds that the second sentence of Paragraph 17 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 17, the Department denies the same.

18. In response to the first and third sentences of Paragraph 18, the Department admits the averments contained therein. In response to the second sentence of Paragraph 18, the Department responds that the second sentence of Paragraph 18 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 18, the Department denies the same.

## **RESPONSES TO STATEMENT OF FACTS**

### **Response to Montana's Scholarship Tax-Credit Program**

19. In response to Paragraph 19 of the Complaint, the Department admits the averments contained therein.

20. In response to Paragraph 20 of the Complaint, the Department responds that Paragraph 20 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 20, the Department denies the same.

### **Responses to Private Scholarship Organizations**

21. In response to Paragraph 21 of the Complaint, the Department responds that Paragraph 21 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 21, the Department denies the same.

22. In response to Paragraph 22 of the Complaint, the Department responds that Paragraph 22 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 22, the Department denies the same.

23. In response to Paragraph 23 of the Complaint, the Department responds that Paragraph 23 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 23, the Department denies the same.

24. In response to Paragraph 24 of the Complaint, the Department responds that Paragraph 24 appears to describe Montana law which speaks for itself, and to which no response

is necessary. If any additional averments are intended by Paragraph 24, the Department denies the same.

25. In response to Paragraph 25 of the Complaint, the Department responds that Paragraph 25 appears to draw a legal conclusion, for which no response is necessary. If any additional averments are intended by Paragraph 25, the Department denies the same.

26. In response to Paragraph 26 of the Complaint, the Department responds that Paragraph 26 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 26, the Department denies the same.

27. In response to Paragraph 27 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

28. In response to Paragraph 28 of the Complaint, the Department responds that Paragraph 28 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 28, the Department denies the same.

29. In response to Paragraph 29 of the Complaint, the Department responds that Paragraph 29 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 29, the Department denies the same.

30. In response to Paragraph 30 of the Complaint, the Department responds that Paragraph 30 appears to describe Montana law which speaks for itself, and to which no response

is necessary. If any additional averments are intended by Paragraph 30, the Department denies the same.

### **Responses to Program Tax Credits**

31. In response to Paragraph 31 of the Complaint, the Department responds that Paragraph 31 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 31, the Department denies the same.

32. In response to Paragraph 32 of the Complaint, the Department responds that Paragraph 32 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 32, the Department denies the same.

33. In response to Paragraph 33 of the Complaint, the Department responds that Paragraph 33 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 33, the Department denies the same.

34. In response to Paragraph 34 of the Complaint, the Department responds that Paragraph 34 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 34, the Department denies the same.

35. In response to Paragraph 35 of the Complaint, the Department responds that Paragraph 35 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 35, the Department denies the same.

36. In response to Paragraph 36 of the Complaint, the Department responds that Paragraph 36 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 36, the Department denies the same.

37. In response to Paragraph 37 of the Complaint, the Department responds that Paragraph 37 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 37, the Department denies the same.

#### **Responses to Qualified Education Providers**

38. In response to Paragraph 38 of the Complaint, the Department responds that Paragraph 38 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 38, the Department denies the same.

39. In response to Paragraph 39 of the Complaint, the Department responds that Paragraph 39 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 39, the Department denies the same.

40. In response to Paragraph 40 of the Complaint, the Department responds that Paragraph 40 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 40, the Department denies the same.



41. In response to Paragraph 41 of the Complaint, the Department responds that Paragraph 41 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 41, the Department denies the same.

**Responses to The Department of Revenue's Rule 1**

42. In response to Paragraph 42 of the Complaint, the Department admits the averments contained therein that it held a public hearing to adopt rules. The Department denies all other allegations in Paragraph 42.

43. In response to Paragraph 43 of the Complaint, the Department responds that Paragraph 43 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 43, the Department denies the same.

44. In response to Paragraph 44 of the Complaint, the Department responds that the quotes are from Montana Administrative Register Notice No. 42-2-939, and the document speaks for itself. If any additional averments are intended by Paragraph 44, the Department denies the same.

45. In response to Paragraph 45 of the Complaint, the Department responds that Paragraph 45 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 45, the Department denies the same.

46. In response to Paragraph 46 of the Complaint, the Department responds that Paragraph 46 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 46, the Department denies the same.

47. In response to Paragraph 47 of the Complaint, the Department responds that the quote is from Montana Administrative Register Notice No. 42-2-939, and the document speaks for itself. If any additional averments are intended by Paragraph 47, the Department denies the same.

48. In response to Paragraph 48 of the Complaint, the Department responds that Paragraph 48 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 48, the Department denies the same.

**Responses to The Hearing on Proposed Rule 1 and the Rule's Adoption**

49. In response to Paragraph 49 of the Complaint, the Department admits the averments contained therein. The Department affirmatively avers that several individuals testified or submitted written comments in support of Rule 1.

50. In response to Paragraph 50 of the Complaint, the Department admits that Senator Llew Jones testified at the November 5, 2015 rule hearing. In further response to Paragraph 50, the Department responds that Paragraph 50 appears to describe Senator Llew Jones' testimony at the November 5, 2015 hearing and that the testimony speaks for itself. If any additional averments are intended by Paragraph 50, the Department denies the same.

51. In response to the first sentence of Paragraph 51 of the Complaint, the Department admits the averments contained therein. In response to the second sentence of Paragraph 51 of the Complaint, the Department responds that the second sentence of Paragraph 51 appears to describe the Institute for Justice's testimony at the November 5, 2015 hearing and that the testimony speaks for itself. If any additional averments are intended by Paragraph 51, the Department denies the same.

52. In response to Paragraph 52 of the Complaint, the Department responds that Paragraph 52 appears to describe the Institute for Justice’s testimony at the November 5, 2015 hearing and that the testimony speaks for itself. If any additional averments are intended by Paragraph 52, the Department denies the same.

53. In response to Paragraph 53 of the Complaint, the Department responds that Paragraph 53 appears to describe the Institute for Justice’s testimony at the November 5, 2015 hearing and that the testimony speaks for itself. If any additional averments are intended by Paragraph 53, the Department denies the same.

54. In response to Paragraph 54 of the Complaint, the Department responds that Paragraph 54 appears to describe the Institute for Justice’s testimony at the November 5, 2015 hearing and that the testimony speaks for itself. If any additional averments are intended by Paragraph 54, the Department denies the same.

55. In response to the first sentence of Paragraph 55 of the Complaint, the Department admits the averments contained therein that an attorney representative of the Attorney General’s Office submitted written testimony. The Department denies each and every other allegation in the first sentence of Paragraph 55. In response to the second and third sentences of Paragraph 55 of the Complaint, the Department responds that the quotes are from the November 17, 2015 letter from Dale Schowengerdt, Solicitor General, to Mike Kadas and the document speaks for itself. If any additional averments are intended by Paragraph 55, the Department denies the same.

56. In response to Paragraph 56 of the Complaint, the Department admits the averments contained therein.

57. In response to Paragraph 57 of the Complaint, the Department responds that Paragraph 57 appears to describe the December 1, 2015 letter from the Revenue and Transportation Interim Committee and the document speaks for itself. If any additional averments are intended by Paragraph 57, the Department denies the same.

58. In response to Paragraph 58 of the Complaint, the Department admits that it adopted the rule and sent the adoption notice to the Montana Secretary of State on December 14, 2015. The Department denies any and all additional allegations in Paragraph 58.

59. In response to Paragraph 59 of the Complaint, the Department admits the averments contained therein that the rule was published. The Department affirmatively avers that the rule was published on December 25, 2015.

#### **RESPONSE TO THE PLAINTIFF PARENTS**

60. In response to Paragraph 60 of the Complaint, the Department responds that Paragraph 60 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 60, the Department denies the same.

#### **Responses to Plaintiff Kendra Espinoza**

61. In response to Paragraph 61 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

62. In response to Paragraph 62 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

63. In response to Paragraph 63 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

64. In response to Paragraph 64 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

65. In response to Paragraph 65 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

66. In response to Paragraph 66 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

67. In response to Paragraph 67 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

68. In response to Paragraph 68 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

69. In response to Paragraph 69 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

70. In response to Paragraph 70 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

71. In response to Paragraph 71 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

72. In response to Paragraph 72 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

73. In response to Paragraph 73 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

74. In response to Paragraph 74 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

75. In response to Paragraph 75 of the Complaint, the Department responds that Paragraph 75 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 75, the Department denies the same.

76. In response to Paragraph 76 of the Complaint, the Department responds that Paragraph 76 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 76, the Department denies the same.

77. In response to Paragraph 77 of the Complaint, the Department responds that Paragraph 77 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 77, the Department denies the same.

78. In response to Paragraph 78 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

79. In response to Paragraph 79 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

**Responses to Plaintiff Jeri Ellen Anderson**

80. In response to Paragraph 80 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

81. In response to Paragraph 81 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

82. In response to Paragraph 82 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

83. In response to Paragraph 83 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

84. In response to Paragraph 84 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

85. In response to Paragraph 85 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

86. In response to Paragraph 86 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

87. In response to Paragraph 87 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

88. In response to Paragraph 88 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

89. In response to Paragraph 89 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

90. In response to Paragraph 90 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.



91. In response to Paragraph 91 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

92. In response to Paragraph 92 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

93. In response to Paragraph 93 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

94. In response to Paragraph 94 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

95. In response to Paragraph 95 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

96. In response to Paragraph 96 of the Complaint, the Department responds that Paragraph 96 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 96, the Department denies the same.

97. In response to Paragraph 97 of the Complaint, the Department responds that Paragraph 97 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 97, the Department denies the same.

98. In response to Paragraph 98 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

99. In response to Paragraph 99 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

**Responses to Plaintiff Jaime Schaefer**

100. In response to Paragraph 100 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

101. In response to Paragraph 101 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

102. In response to Paragraph 102 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

103. In response to Paragraph 103 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

104. In response to Paragraph 104 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

105. In response to Paragraph 105 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

106. In response to Paragraph 106 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

107. In response to Paragraph 107 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

108. In response to Paragraph 108 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

109. In response to Paragraph 109 of the Complaint, the Department responds that Paragraph 109 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 109, the Department denies the same.

110. In response to Paragraph 110 of the Complaint, the Department responds that Paragraph 110 appears to state a legal conclusion to which no response is necessary. If any additional averments are intended by Paragraph 110, the Department denies the same.

111. In response to Paragraph 111 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

112. In response to Paragraph 112 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same.

## **RESPONSE TO LEGAL CLAIMS**

### **Responses to Claim I: Rule 1 is Ultra Vires**

113. In response to Paragraph 113 of the Complaint, the Department re-alleges and incorporates by reference all of the answers contained in the preceding paragraphs.

114. In response to Paragraph 114 of the Complaint, the Department denies the averments contained therein.

115. In response to Paragraph 115 of the Complaint, the Department responds that Paragraph 115 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 115, the Department denies the same.

116. In response to Paragraph 116 of the Complaint, the Department responds that Paragraph 116 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 116, the Department denies the same.

117. In response to Paragraph 117 of the Complaint, the Department denies the averments contained therein.

118. In response to the first sentence of Paragraph 118 of the Complaint, the Department denies the averments contained therein. The Department affirmatively avers that section 8(7) of SB 410 must be read in conjunction with § 15-30-3101, MCA. In response to the second sentence of Paragraph 118 of the Complaint, the Department responds that the second

sentence of Paragraph 118 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 118, the Department denies the same.

119. In response to Paragraph 119 of the Complaint, the Department responds that Paragraph 119 appears to describe Montana law which speaks for itself, and to which no response is necessary. If any additional averments are intended by Paragraph 119, the Department denies the same.

120. In response to Paragraph 120 of the Complaint, the Department denies the averments contained therein. The Department affirmatively avers that the definition of “qualified education provider” in SB 410 must be read in conjunction with § 15-30-3101, MCA. If any additional averments are intended by Paragraph 120, the Department denies the same.

121. In response to Paragraph 121 of the Complaint, the Department denies the averments contained therein.

122. In response to Paragraph 122 of the Complaint, the Department denies the averments contained therein.

123. In response to Paragraph 123 of the Complaint, the Department denies the averments contained therein.

124. In response to Paragraph 124 of the Complaint, the Department denies the averments contained therein.

125. In response to Paragraph 125 of the Complaint, the Department denies the averments contained therein.

126. In response to Paragraph 126 of the Complaint, the Department denies the averments contained therein.

127. In response to Paragraph 127 of the Complaint, the Department denies the averments contained therein.

128. In response to Paragraph 128 of the Complaint, the Department denies the averments contained therein.

129. In response to Paragraph 129 of the Complaint, the Department denies the averments contained therein.

130. In response to Paragraph 130 of the Complaint, the Department denies the averments contained therein.

131. In response to Paragraph 131 of the Complaint, the Department denies the averments contained therein.

**Responses to Claim II: Rule 1 Violates the Montana Free Exercise Clause**

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

133. In response to Paragraph 133 of the Complaint, the Department denies the averments contained therein.

134. In response to Paragraph 134 of the Complaint, the Department denies the averments contained therein.

135. In response to Paragraph 135 of the Complaint, the Department denies the averments contained therein.

136. In response to Paragraph 136 of the Complaint, the Department denies the averments contained therein.

137. In response to Paragraph 137 of the Complaint, the Department denies the averments contained therein.

**Responses to Claim III: Rule 1 Violates the Federal Free Exercise Clause**

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

139. In response to Paragraph 139 of the Complaint, the Department denies the averments contained therein.

140. In response to Paragraph 140 of the Complaint, the Department denies the averments contained therein.

141. In response to Paragraph 141 of the Complaint, the Department denies the averments contained therein.

142. In response to the first sentence of Paragraph 142 of the Complaint, the Department admits the averments contained therein. In response to the second sentence of Paragraph 142 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same. In response to the third sentence of Paragraph 142 of the Complaint, the Department denies the averments contained therein. If any additional averments are intended by Paragraph 142, the Department denies the same.

143. In response to Paragraph 143 of the Complaint, the Department denies the averments contained therein.

144. In response to Paragraph 144 of the Complaint, the Department denies the averments contained therein.

**Responses to Claim IV: Rule 1 Violates the Montana Establishment Clause**

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

146. In response to Paragraph 146 of the Complaint, the Department denies the averments contained therein.

147. In response to Paragraph 147 of the Complaint, the Department denies the averments contained therein.

148. In response to Paragraph 148 of the Complaint, the Department denies the averments contained therein.

149. In response to Paragraph 149 of the Complaint, the Department denies the averments contained therein.

150. In response to Paragraph 150 of the Complaint, the Department denies the averments contained therein.

**Responses to Claim V: Rule 1 Violates the Federal Establishment Clause**

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

152. In response to Paragraph 152 of the Complaint, the Department denies the averments contained therein.

153. In response to Paragraph 153 of the Complaint, the Department denies the averments contained therein.

154. In response to Paragraph 154 of the Complaint, the Department denies the averments contained therein.



155. In response to the first sentence of Paragraph 155 of the Complaint, the Department admits the averments contained therein. In response to the second sentence of Paragraph 155 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the same. In response to the third sentence of Paragraph 155 of the Complaint, the Department denies the averments contained therein. If any additional averments are intended by Paragraph 155, the Department denies the same.

156. In response to Paragraph 156 of the Complaint, the Department denies the averments contained therein.

157. In response to Paragraph 157 of the Complaint, the Department denies the averments contained therein.

**Responses to Claim VI: Rule 1 Violates Equal Protection**  
**Under the Montana Constitution**

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

159. In response to Paragraph 159 of the Complaint, the Department denies the averments contained therein.

160. In response to Paragraph 160 of the Complaint, the Department denies the averments contained therein.

161. In response to Paragraph 161 of the Complaint, the Department denies the averments contained therein.

162. In response to Paragraph 162 of the Complaint, the Department denies the averments contained therein.

163. In response to Paragraph 163 of the Complaint, the Department denies the averments contained therein.

164. In response to Paragraph 164 of the Complaint, the Department denies the averments contained therein.

165. In response to Paragraph 165 of the Complaint, the Department denies the averments contained therein.

**Responses to Claim VII: Rule 1 Violates Equal Protection  
Under the Federal Constitution**

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

167. In response to Paragraph 167 of the Complaint, the Department denies the averments contained therein.

168. In response to Paragraph 168 of the Complaint, the Department denies the averments contained therein.

169. In response to Paragraph 169 of the Complaint, the Department denies the averments contained therein.

170. In response to Paragraph 170 of the Complaint, the Department denies the averments contained therein.

171. In response to Paragraph 171 of the Complaint, the Department denies the averments contained therein.

172. In response to the first sentence of Paragraph 172 of the Complaint, the Department admits the averments that it considered Article X, Section 6(1) in enacting the rule. In response to the second sentence of Paragraph 172 of the Complaint, the Department is without sufficient information to admit or deny the allegations contained therein and, as such, denies the

same. In response to the third sentence of Paragraph 172 of the Complaint, the Department denies the averments contained therein. If any additional averments are intended by Paragraph 172, the Department denies the same.

173. In response to Paragraph 173 of the Complaint, the Department denies the averments contained therein.

174. In response to Paragraph 174 of the Complaint, the Department denies the averments contained therein.

### **GENERAL DENIAL**

175. To the extent any factual averments in the Complaint have not been admitted or specifically responded to, the Department denies such averments.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Pursuant to Rule 12(b)(6), M.R.Civ.P., the Complaint fails to state a claim against the Department upon which relief can be granted and should be dismissed.

### **APPLICABILITY OF AFFIRMATIVE DEFENSES**

At this time, the Department is not certain as to what additional affirmative defenses may apply if this case proceeds to trial. The Department therefore expressly reserves the right to plead other affirmative defenses as discovery in this matter progresses. Further, the Department will dismiss any affirmative defenses at the pretrial conference which do not appear to be reasonably supported by the facts and/or law.

WHEREFORE, the Department prays for judgment as follows:

1. Plaintiffs' claims for relief be denied in their entirety;
2. Plaintiffs' take nothing for their Complaint; and

3. For such relief as the Court may deem just and proper.

Dated this 11th day of May, 2016.

MONTANA DEPARTMENT OF REVENUE

A handwritten signature in blue ink, appearing to read 'NJA', is written over a horizontal line.

DANIEL WHYTE  
BRENDAN BEATTY  
NICHOLAS J. GOCHIS  
Special Assistant Attorneys General

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of May, 2016, I served true and accurate copies of the foregoing *MDOR's Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief* by the method(s) indicated below, addressed as follows:

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