EXHIBIT 2
DATE 1-11-05

THE MONTANA CONSTITUTION GUARANTEES QUALITY SCHOOLS – NOT "BASIC EDUCATION"

In responding to the Court's mandate in *Columbia Falls School Dist. v. State*, the Legislature will undertake an effort to define the constitutionally-mandated "basic system of free quality public elementary and secondary schools." Mont. Const., art. X, § 1(3). Discussions of this constitutional language sometimes include references to "basic education." As addressed in greater detail below, this term is not in the Constitution, and is inconsistent with the constitutional guarantee of "quality" schools.

1. The Constitutional Language

The language at issue is in art. X, § 1(3):

> (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.*

(Emphasis added.)

Without even getting into the history of this constitutional provision, the following points are apparent from the plain language:

- The word "basic" modifies and applies to the *system* of elementary and secondary schools.
- "Basic" does not modify or apply to the *schools* themselves.
- Instead, the key adjective applicable to the [free public elementary and secondary] *schools* is "quality."
- The term "basic education" does not appear anywhere in the Constitution.

These points are important to consider as the Legislature embarks on its efforts. They are substantive points, and not matters of mere semantics.

According to the dictionary, "basic" means "1: of, relating to, or forming the base or essence; FUNDAMENTAL 2: constituting or serving as the basis or starting point. . . . " WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY, p. 133. "Quality" means ". . . 2. a: a degree of excellence: GRADE . . . b: superiority in kind . . . ." *Id.*

In the context of the constitutional language, these definitions make sense. "Basic" properly applies to the *system* of public elementary and secondary schools. That is, the system serves as the "basis or starting point." The schools that exist within that system, however, must be "quality" schools. That is, they must demonstrate "a degree of excellence," or a "superiority in kind."

It would be both irrelevant and inappropriate for the Legislature to try to define a "basic education." As pointed out above, the term is not in the Constitution. Moreover, a "basic education" implies a minimal education – one that in traditional terms could be described as focusing on "the three Rs." Clearly, this is not consistent with the plain meaning of the constitutional language. It is also not consistent with the framers' intent.

2. The Constitutional History Supports the Plain Meaning Interpretation.

The original draft of what became art. X, § 1(3) included the word "quality," but not the word "basic." *See* II MONT. CONST. CONV. p. 718 ("The legislature shall provide for a system of high quality free public elementary and secondary schools."). The framers directly addressed the meaning of "quality," by explaining:

> The sentence, "the legislature shall provide for a system of high quality free public elementary and secondary schools," is a mandate to the legislature to insure the existence of a quality basic educational system. *The word "quality" is an instruction to the legislature to provide not simply a minimum educational system, but one which meets contemporary needs and produce[s] capable, well-informed citizens.*

Id., p. 724 (*Committee Comments on Majority Proposal*)(*emphasis added*).[1] One of the members of the Committee that drafted the provision, Delegate Harbaugh, further explained:

> . . . And this section states that the Legislature shall provide for a system of high-quality, free public elementary and secondary schools. What do we mean by the words "high quality?" They've been used as an instruction here to the Legislature to provide not just a minimum education system, a substandard system, but one that meets a contemporary need and is capable of producing well-informed citizens. . . .

VI MONT. CONST. CONV. p. 1960 (*Delegate Harbaugh*).

The word "high" was deleted as being redundant. Delegate Martin, who moved to delete the word, explained, "It seems obvious that we don't need "high" when we're

[1] The words "quality" and "free" were interchanged in the final version of the provision so that it would not read as if it meant "quality-free" public schools. VII CONST. CONV., p. 2573 (*Delegate Schiltz*).

talking about quality, because it contains the same language." *Id.*, p. 1975. His motion was passed by voice vote, without any debate.

The word "basic" was added to clarify and confirm that the intent of the constitutional language was to assure the "Legislature shall be required to fund a basic system of quality education." *Id.*, p. 1972 (*Delegate Hadebank*). The motion to add this word was made by Delegate Hadebank, one of the strong advocates for including language to mandate the legislature to adequately fund public education.

In speaking in support of his motion, Delegate Hadebank made comments that could be cited to argue for the "basic education" version of the constitutional language. He commented, for example:

> . . . . I think that the comments as made by the committee, which clarify the fact that they do, in fact, intend to require only a basic educational program system, is good. But the comments are not before the people of Montana. And as they vote on this, I think they should be told that it is the intention of those on the committee, in their very fine draft, to require the educational – to require the Legislature to do full funding of a basic educational program and that the frills and the things beyond the basic program, as the Legislature determines it, can still remain with the people.

Id. See also Id., p. 2152 (*Delegate Hadebank*)("By the insertion of the word "basic" into this program, we clarified, I think, satisfactorily the fears that many people had that the courts would come along and there would be a series of lawsuits to try to compel the Legislature to provide whatever type of elementary and secondary school education someone might conceive of.").

These comments, and a few others like them by other delegates, must be considered in the context in which they were made. They were part of the debate relating to whether or not the constitution should include language relating to a funding obligation on the part of the legislature.

Taken in context, it is clear that the addition of the word "basic" was not intended to dilute in any way the mandate and guarantee of "quality" public schools. Instead, it was added as part of the effort to convince the delegates to include what became the final sentence of the provision – the mandate to the Legislature to pay in an equitable manner its share of the cost of the basic system of elementary and secondary schools. *See Id.*, pp. 2152-2159. That is, the word "basic" was added by those delegates, like Delegate Hadebank, who advocated for a strong constitutional provision mandating the legislature to adequately fund quality public schools.[2] It would be paradoxical for the word "basic" inappropriately to be construed as a reason to avoid this constitutional mandate.

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[2] The funding mandate advocates prevailed, and the provision was adopted by a 75-19 vote. *Id.*, p. 2159.

3. The Supreme Court's Order Focuses on "Quality," Not "Basic."

Pending the Supreme Court's full opinion, the Legislature must consider the Court's November 9, 2004 Order for guidance. In paragraph 3 of that Order, the Supreme Court explained:

> We affirm the District Court's conclusion that the funding system is not based on educationally-relevant factors. Article X, Section 1(3), mandates that "[t]he legislature shall provide a basic system of free quality public elementary and secondary schools." To date, the legislature has not developed a *working definition of what constitutes a "quality" school as that term is used in the Montana Constitution*. Until such time as the legislature *assesses education needs and defines "quality,"* it is not in a position to construct a funding system rationally related to educationally-relevant factors.
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> For that reason, we also affirm the District Court's conclusion that the current Montana school funding system, which has evolved without the benefit of any definition of what constitutes *"quality,"* fails to adequately fund Montana's public schools. We do not, however, necessarily affirm everything that is said in the District Court's opinion in support of the above conclusion.

Columbia Falls School Dist. v. State, ORDER at pp. 2-3 (Montana Supreme Court, November 9, 2004)(*emphasis added*).

The Court's Order recognizes that the key concept upon which the Legislature must focus is "quality." It is *not* "basic education," nor is it the "basic system."

Thus, as the Legislature undertakes its efforts, it properly should focus on the concept of "quality." It would be inappropriate to incorporate the concept of a "basic education" into the definitional process. The concept is not in the constitution, and it is inconsistent with the constitutional guarantee of quality schools.