

1 TERRY GODDARD
ARIZONA ATTORNEY GENERAL
2 Firm Bar No. 14000

3 William A. Richards – Az. Bar No. 013381
4 Chad B. Sampson – Az. Bar No. 022007
5 Assistant Attorneys General
1275 West Washington Street
6 Phoenix, Arizona 85007-2926
7 Telephone: (602) 542-8323
8 Fax: (602) 364-2214
Attorneys for Defendant State of Arizona

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 ROOSEVELT ELEMENTARY SCHOOL
13 DISTRICT NO. 66, et al.,

14 Plaintiffs,

15 vs.

16 STATE OF ARIZONA,

17 Defendant

Case No. CV 1999-019062
Case No. CV 2002-011568
(Consolidated)

**DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

(Hon. Ruth H. Hilliard)

18
19 **And Consolidated Case**

20 This action is on remand because the original plaintiff school districts did not
21 offer evidence of building needs at their schools that the Arizona Constitution requires
22 the State to fund and that could not be addressed with the funding that had been
23 provided by the State’s Students FIRST funding system (A.R.S. § 15-2001, *et seq.*). *See*
24 *Roosevelt Elem. Sch. Dist. No. 66 v. State*, 205 Ariz. 584, 74 P.3d 258 (App.
25 2003)(“*Roosevelt II*”). All but one of the original Plaintiffs have changed, but the
26 following issues still prevent the three current plaintiff school districts from proving
27 their claim that the Students FIRST system fails to fund the “general and uniform public
28 school system” the Arizona constitution requires:

- 1) The Plaintiffs can not prove that the system offers too little money when they have not attempted to obtain funds for their alleged facility needs from every potential source provided by Students FIRST, namely, the Emergency Deficiency Correction Fund under A.R.S. § 15-2022;
- 2) The Plaintiffs seek a declaration that the entire Students FIRST system is unconstitutional, yet cannot prove as required that, beyond a reasonable doubt, Students FIRST is inadequate as applied to every public school district;
- 3) The Plaintiffs can not prove that the amount of funding they have received has prevented their students from meeting the Legislature's educational goals;
- 4) The Plaintiffs can not prove that the Students FIRST system is the cause of any unmet facility needs related to academic performance when they have never run out of their Building Renewal Fund money;
- 5) The Plaintiffs can not prove that the Students FIRST system is the cause of any unmet facility needs related to academic performance when they have chosen not to fund certain claimed needs despite having State funds to do so; and
- 6) The Plaintiffs can not prove that the Students FIRST system is the cause of any current unmet facility needs related to academic performance when they have used their Building Renewal money for non-constitutionally required items.

Thus, the Defendant State of Arizona ("State") is entitled to judgment as a matter of law, and the Court should dismiss Plaintiffs' claims and enter judgment in favor of the State pursuant to Rule 56(b), Ariz.R.Civ.P. This motion is supported by the following Memorandum of Points and Authorities and the Separate Statement of Facts In Support of Defendant's Motion for Summary Judgment filed herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

I, The Plaintiffs Can Not Prove the System Offers Too Little Funding When They Have Not Even Attempted to Access All the Funding Available.

While the Plaintiffs seek a declaration that the entire Students FIRST funding system is unconstitutional, [see Complaint in Case No. CV2002-011568 (June 18, 2002), at 5; Amended Complaint in Case No. CV1999-019062 (Feb. 6, 2002) at 7 (Count Four)]¹, they rely on allegations that Students FIRST gives them insufficient

¹ On July 29, 2002 the claims in CV2002-011568 were transferred and consolidated with claims in CV1999-019062. Minute Entry filed July 29, 2002.

1 Building Renewal Fund monies, [see Complaint in Case No. CV2002-011568 at ¶ ¶ 9-
2 13; Defendants’ Separate Statement of Facts In Support of Motion for Summary
3 Judgment (“DSOF”) at Exhibit “1” (Plaintiffs’ Disclosure Statement) at 2.]; see also
4 *Roosevelt II*, 205 Ariz. at 590, 74 P.3d at 264 (explaining Plaintiffs’ claims). However,
5 the Building Renewal Fund is but one source of funding available through Students
6 FIRST, and Plaintiffs have failed to even apply for funding for their alleged unmet
7 needs from another important component of the Students FIRST system – the
8 Emergency Deficiency Correction Fund under A.R.S. § 15-2022.

9 **A. The State System Provides Funding for Facilities From Multiple Sources.**

10 The funding requirement for a “general and uniform public school system” under
11 Article XI, Section 1 of the Arizona Constitution is not tied to any particular source of
12 State funding, but only requires that the funding system meet a two-prong test: 1) “the
13 state must establish minimum adequate facility standards and provide funding to ensure
14 that no district falls below them;” and 2) “the funding mechanism chosen by the state
15 must not itself cause substantial disparities between districts.” *Hull v. Albrecht*, 192
16 Ariz. 34, 37, 960 P.2d 634, 637 (1998)(“*Albrecht II*”). The minimum facility standards
17 that must be established and funded are at most those “facilities and equipment
18 necessary and appropriate to enable students to master the educational goals set by the
19 legislature or by the State Board of Education pursuant to the power delegated by the
20 legislature.” *Hull v. Albrecht*, 190 Ariz. 520, 524, 950 P.2d 1141, 1145
21 (1997)(“*Albrecht I*”). After Students FIRST was amended in 1998, the Arizona School
22 Facilities Board (“Facilities Board”) set minimum facility adequacy guidelines (the
23 “Minimum Guidelines”) required by the act at A.R.S. § 15-2011. The Minimum
24 Guidelines are found at Arizona Administrative Code (“A.A.C.”) R7-6-201, *et seq.*, and
25 describe the minimum conditions and characteristics that covered public school
26 facilities should meet. The Legislature has declared “that the facilities and equipment
27 necessary and appropriate to enable students to achieve academic standards . . . are
28 exclusively the facilities and equipment addressed by the” Facilities Board in its

1 Minimum Guidelines. 2002 Ariz. Sess Laws (2d Reg.Sess.), ch. 330, § 61(C); see
2 *Roosevelt II*, 205 Ariz. at 588, 74 P.3d at 262. Because nothing outside of the
3 Minimum Guidelines is considered “necessary and appropriate to enable students to
4 achieve academic standards,” and because the Arizona constitution only requires that
5 the Legislature provide funding adequate to provide such “necessary and appropriate”
6 facilities, *Albrecht I*, 190 Ariz. at 524, 950 P.2d at 1145, the Plaintiffs can not base a
7 constitutional claim on failure to fund items that are not required by the Minimum
8 Guidelines. See *Roosevelt II*, 205 Ariz. at 591, 593, 74 P.3d at 265, 267 (prohibiting
9 Plaintiffs from relying on lack of funding for administrative facility needs excluded
10 from the Minimum Guidelines).

11 Arizona has provided money for Minimum Guidelines needs through a series of
12 funds under Students FIRST, and in previously passing on whether Students FIRST
13 meets the *Albrecht I* constitutionality test, the Arizona Supreme Court considered all of
14 the multiple “funding sources” under Students FIRST, not just the Building Renewal
15 source. *Albrecht II*, 192 Ariz. at 37, 960 P.2d at 637 (reviewing A.R.S. § 15-2021
16 (Deficiencies Correction Fund); -2031 (Building Renewal Fund); - 2041 (New School
17 Facilities Fund)). Because funding for school facilities needs under Students FIRST is
18 broader than the Building Renewal Fund monies, the Court can not assess here whether
19 constitutionally adequate funds have been provided without considering all funding
20 sources under the act for any Minimum Guidelines problems Plaintiffs might prove.

21 In approximately 2000, the Facilities Board commenced a state-wide assessment
22 of all school facilities in Arizona and created projects needed to bring all schools into
23 compliance with the Minimum Guidelines. [DSOF, at ¶ 8]. The Facilities Board then
24 funded over \$1.3 billion in projects under the Students FIRST Deficiencies Correction
25 Fund (the “DCF”), A.R.S. § 15-2021, to bring pre-existing facilities into compliance
26 with the Minimum Guidelines. [See DSOF, at ¶ 9]. Also, the Facilities Board has
27 funded since 1998 approximately \$1.2 billion in projects using the Students FIRST
28 New School Facilities Fund (“New Facilities”), A.R.S. § 15-2041 where new

1 construction was needed.² [See DSOF, at ¶ 10].

2 In addition to bringing the State's schools into Minimum Guideline compliance
3 with DCF and New Facilities funding, Students FIRST established a Building Renewal
4 Fund to help districts keep existing buildings in compliance with the Minimum
5 Guidelines, and the State continues to make money available through the New Facilities
6 fund where new facilities are needed to comply with the Minimum Guidelines. See
7 A.R.S. § 15-2031; -2041. In 2001, the Legislature created a new funding source, the
8 Emergency Deficiencies Correction Fund, A.R.S. § 15-2022 (the "Emergency Fund").
9 The Facilities Board has authorized over \$8 million in projects under the Emergency
10 Fund since its inception, [DSOF, at ¶ 23], and had authorized transfer of over \$12
11 million in state funds to the Emergency Fund, [DOSF, at ¶ 23]. Thus, the four primary
12 sources of state funds under Students FIRST have been the DCF, the Building Renewal
13 Fund, the Emergency Fund, and the New Facilities Fund. In addition, school districts
14 are able to and do utilize portions of their Maintenance and Operation funds provided by
15 the State to address facility matters. [DOSF, at ¶ 26.]

16 The Plaintiffs' intent to test the constitutionality of Students FIRST exclusively
17 on the amount of Building Renewal Fund monies distributed by the State is too narrow.
18 Among other things, to succeed the Plaintiffs must establish that they have insufficient
19 monies available to address constitutionally required facility needs. See *Roosevelt II*,
20 205 Ariz. at 591-94, 74 P.3d at 265-68.³ Considering the breadth of funding offered by
21 the State, the Plaintiffs' can not focus solely on how much Building Renewal Fund
22 money they have received, but must instead show how much money they have received

23 ² The Facilities Board funded over \$11 million in DCF projects at Plaintiff Globe Unified
24 School District ("Globe"), over \$15 million in DCF projects at Plaintiff Sierra Vista
25 Unified School District ("Sierra Vista"), and over \$4 million in DCF projects at Plaintiff
26 Williams Unified School District ("Williams"). [DSOF at ¶ 9].

27 ³ The Plaintiffs acknowledge their burden to "introduce evidence that they have
28 buildings and facilities that fail to meet the state's minimum adequacy guidelines and for
which the school districts lack sufficient resources . . ." Plaintiffs' Motion to Substitute
Plaintiffs (August 27, 2004) at 2.

1 or will have available from all State sources that could be used to address facility needs
2 the State is constitutionally required to fund, and prove that the needs they have in that
3 category have exceeded all such available funds.

4 **B. The Plaintiffs Have Not Attempted to Obtain Emergency Funds, Which**
5 **Prevents Them From Showing Exactly How Much State Funding Was**
6 **Available to Them Under Students First.**

7 Ignoring for the moment whether the building needs Plaintiffs allege are even the
8 type of Minimum Guidelines issues the constitution might require the State to fund,
9 Plaintiffs' focus on Building Renewal as the only source of State funds available to
10 address their needs is wrong. Rather, the Emergency Fund provides a potential
11 alternative source for at least some of the types of needs Plaintiffs allege.

12 For example, all three Plaintiff districts contend they need more money to repair
13 or replace roofing, and Plaintiff Sierra Vista claims a need to address multiple fire alarm
14 systems. [See DSOF, at ¶ 24]. The Facilities Board has provided funding under the
15 Emergency Fund for a roof project and for HVAC work. [See DSOF, at ¶ 24].
16 Moreover, other needs claimed by Plaintiffs might under proper conditions qualify for
17 Emergency Fund monies as the Emergency Fund statute vests the Facilities Board with
18 discretion to fund emergency deficiencies at schools based on an application from a
19 district, A.R.S. § 15-2022(A)(C), and defines "emergency" as "a serious need for
20 materials, services or construction or expenses in excess of the district's adopted budget
21 for the current fiscal year and that seriously threaten the functioning of the school
22 district, the preservation or protection of property or public health, welfare or safety,"
23 A.R.S. § 15-2022(E). In essence, the Emergency Fund provides a "safety valve"
24 source of State funding that the Plaintiffs have not explored.

25 The three Plaintiff districts have not applied for Emergency Fund funding for
26 their alleged existing building needs. [DSOF at ¶ 25]. Where such funding is even
27 potentially available, and the Plaintiffs have not invoked the request process
28 contemplated under the statute, they can not prove as required by *Roosevelt II*, 205 Ariz.
at 594, 74 P.3d at 268 "that they have current unmet needs related to academic

1 achievement . . .” At best, their claims are improperly premature or speculative. *See*
2 *Diaz v. United Agricultural Employee Welfare Benefit Plan and Trust*, 50 F.3d 1478,
3 1485-86 (9th Cir. 1995)(rejecting claim for recovery of ERISA plan benefits where
4 plaintiff’s failure to complete administrative application process prevented him from
5 speculating as to results.) Moreover, allowing Plaintiffs’ claims without requiring they
6 first seek Emergency Fund monies where appropriate undermines the Arizona judicial
7 policy that parties should exhaust such potential remedies where the administrative
8 agency has potential authority to provide relief and has provided relief for others
9 similarly situated, even where the Plaintiff is making a constitutional challenge. *See*
10 *Moulton v. Napolitano*, 205 Ariz. 506, 512-14, 73 P.3d 637, 643-45 (App. 2004).

11 Only after the Plaintiff districts have formally requested Emergency Fund monies
12 for projects required to be funded under the Arizona Constitution and have been turned
13 down could they even affirmatively identify for the Court what the total available state
14 funding is for their alleged needs, let alone that such funding is inadequate. Thus,
15 Plaintiffs will fail to carry their burden, and their premature claims should be dismissed.

16 **II. Plaintiffs Can Not Prove that Students FIRST is an Unconstitutional System.**

17 Rather than complaining that the Students FIRST system fails the three Plaintiff
18 districts individually, the Plaintiffs insist on a declaration that the entire Students FIRST
19 funding system is unconstitutional. *See* Complaint in Case No. CV2002-011568 at 5.
20 This claim fails in light of the prior holdings of the Arizona Supreme Court and Arizona
21 Court of Appeals. It also requires proof of funding failures throughout all the State’s
22 public districts that Plaintiffs can not supply.

23 **A. Existing Precedent Confirms Students FIRST is Constitutional.**

24 The Plaintiffs can not prove that Students FIRST, as a system of funding,
25 violates Article XI, Section 1 of the Constitution because the decisions of the Arizona
26 Supreme Court and Arizona Court of Appeals confirm that Students FIRST, as a
27 system, is constitutional. In *Albrecht II*, 192 Ariz. at 37, 960 P.2d at 637, the Arizona
28 Supreme Court held that Students FIRST, as originally enacted, met the two-

1 component first prong of constitutionality under *Albrecht I*. Specifically, Students
2 FIRST created the required minimum facility adequacy standards and properly ensured
3 through state funding that all districts comply with the standards. *Id.* The Court found
4 fault only in an opt-out provision, allowing districts to opt to use local bonding revenue
5 rather than state funds, that violated the second prong of the *Albrecht I* test. *Id.* at 39,
6 960 P.2d at 639. The Legislature then deleted the offending opt-out provision and
7 amended Students FIRST. *Compare* A.R.S. § 15-2001, *et seq.* Thus, as the Court of
8 Appeals and the Plaintiffs have acknowledged in this case, “Students FIRST facially is a
9 constitutional system.” *Roosevelt II*, 205 Ariz. at 589, 74 P.3d at 263.

10 Given that Students FIRST facially meets the general and uniform requirement
11 of the Arizona Constitution, it can not fail as a system. All that could remain would be
12 individual claims by individual districts that despite the facial constitutionality of the
13 system, the districts’ unique characteristics prevent the Students FIRST funding from
14 being adequate to fund needs that must be met under the constitution. This is akin to
15 many other cases in which facially constitutional statutory systems are nevertheless
16 challenged as being unconstitutional “as applied” to a particular unique individual or
17 entity. *See, e.g., 3613 Limited v. Dept. of Liquor Licenses and Control*, 194 Ariz. 178,
18 186, 978 P.2d 1282, 1290 (App. 1999).⁴ The Court of Appeals confirmed this
19 individual focus on the constitutionality claims by requiring each Plaintiff district
20 individually “to demonstrate that *their* students are unable to meet the educational goals
21 of the Legislature due to” the Legislature’s funding decisions, and to “link their
22 [unfunded capital] needs to *their* pupils’ scholastic performance,” *Roosevelt II*, 205
23 Ariz. at 593-94, 74 P.3d at 266-68 (emphasis added). As Plaintiffs seek only a
24 declaration against the entire system, their claims should be dismissed.

25 **B. The Plaintiffs Also Cannot Prove as Required that Students FIRST is**
26 **Inadequate as Applied to Every Public School District.**

27 ⁴ *See Phelps Dodge Corp. v. Arizona Electric Power Cooperative, Inc.*, 207 Ariz. 95,
28 109, 83 P.3d 373, 587 (App. 2004); *see also Tucson Newspapers Inc. v. City of Tucson*,
172 Ariz. 378, 837 P.2d 180 (App. 1992)(challenging city ordinance “as applied”).

1 In challenging Students FIRST as an unconstitutional system, the Plaintiffs also
2 seek relief far beyond the proof they could possibly supply. Because the Plaintiffs
3 contend that the entire Students FIRST system is unconstitutional, they must prove that
4 the Students FIRST system is unconstitutional under every conceivable application. *See*
5 *Phelps Dodge Corp.*, 207 Ariz. at 109, 83 P.3d at 587 (“The Rules are unconstitutional
6 on their face if they cannot be applied under any circumstances without violating [the
7 constitution] [citation omitted]. Otherwise, their constitutionality can only be attacked
8 as applied in particular circumstances.”).⁵ Moreover, as the Court of Appeals noted in
9 this case, “[g]enerally every legislative act is presumed to be constitutional and every
10 intendment must be indulged in by the courts in favor of validity of such an act.”
11 *Roosevelt II*, 205 Ariz. at 591, 74 P.3d at 265 (*quoting Giss v. Jordan*, 82 Ariz. 152,
12 159, 309 P.2d 779, 783 (1957)). Therefore, Plaintiffs must prove “beyond a reasonable
13 doubt” that the Legislature’s funding of school building needs violates the state
14 constitution. *See 3613 Limited*, 194 Ariz. at 182, 978 P.2d at 1286 (“We presume
15 statutes to be constitutional and will not declare one unconstitutional unless we are
16 convinced beyond a reasonable doubt that it is in conflict with federal or state
17 constitutions.”)(*citing Stirewalt v. P.P.G. Industries, inc.*, 138 Ariz. 257, 259, 674 P.2d
18 320, 322 (App. 1983)). In sum, to justify the system-wide relief they seek, the Plaintiffs
19 must show beyond a reasonable doubt that Students FIRST provides inadequate funds
20 for every one of the State’s 226 public school districts.

21 **1. The Plaintiffs Have No Evidence of Any Funding Inadequacies At**
22 **Most of the State’s Public Districts.**

23 Only three of the 226 public districts Arizona are currently before the Court
24 complaining about inadequate funding. In fact, the Plaintiffs dropped seven original

25 _____
26 ⁵ *State v. Seyrafi*, 201 Ariz. 147, 149, 32 P.3d 430, 432 (App. 2001)(“When determining
27 the facial validity . . . [i]f we find that there is no set of circumstances under which the
28 statute can be found constitutional, then it must be found unconstitutional . . .”); *see also*
Turf Paradise, Inc. v. Arizona Dept. of Revenue, 178 Ariz. 246, 248, 872 P.2d 201, 203
(Tax Court 1994).

1 plaintiff districts when they recognized that each plaintiff must show unmet facilities
2 needs at their own schools, thereby acknowledging that the funding has not proven
3 inadequate at some districts. *See* Plaintiffs' Motion to Substitute Plaintiffs (August 27,
4 2004) at 2-4. Though the Plaintiffs intend to also introduce evidence from non-party
5 Mesa Unified School District, there are still well over 220 public school districts for
6 which the Plaintiffs have disclosed no evidence that the funding was constitutionally
7 inadequate.⁶ Therefore, the Plaintiffs are unable as a matter of law to show that the
8 funding was inadequate in all conceivable applications.

9 Moreover, the data on use of Building Renewal Funds over the past eight years
10 contradicts any claim that the system has been inadequate to meet the facility needs of
11 districts across the State. Since Fiscal Year 1998-1999, the State's school districts have
12 reported a collective balance of well over \$40 million in unspent Building Renewal
13 Fund monies at the end of each fiscal year, with a balance of unspent Building Renewal
14 Fund monies over \$100 million in 3 years and over of \$89 million in even Fiscal Year
15 2004-2005. [*See* DSOF, at ¶ 17.] The three Plaintiff districts have also reported
16 substantial unspent balances in their individual Building Renewal accounts every year.⁷

17 The positive balances of Building Renewal Fund monies unspent by the State's
18 districts contradict Plaintiffs' claims that the State has not given any district enough
19 money to stay in compliance with the Minimum Guidelines. Given Plaintiffs' inability
20 to prove that every district in Arizona has been given insufficient money to meet the

21 ⁶ The State has objected to including evidence from any non-party in a case like this
22 which is not a class action. *See* Defendant State of Arizona's Rule 16 Conference
23 Memorandum Regarding Scope of the Case. The State maintains that objection.

24 ⁷ Plaintiffs reported the following unspent balances: 1) 1998-1999 – Globe: \$443,252.00;
25 Sierra Vista: \$599,247.00; Williams: \$97,008.00; 2) 1999-2000 - Globe: \$951,118.00;
26 Sierra Vista: \$590,121.00; Williams: \$135,692.00; 3) 2000-2001 -Sierra Vista:
27 \$1,401,046.00; Williams: \$146,482.00; 4) 2001-2002 - Globe: \$1,222,304; Sierra Vista:
28 \$1,916,218.00; Williams: \$219,083.00; 5) 2002-2003 - Globe: \$1,338,475.00; Sierra
Vista: \$1,496,240.00; Williams: \$263,596.00; 6) 2003-2004 – Globe: \$1,144,642.00;
Sierra Vista: \$470,294.00; Williams: \$195,135.00; 7) 2004-2005 - Globe:
\$1,047,936.00; Sierra Vista: \$804,231.00; Williams: \$228,270.00. [DSOF, at ¶ 18-21].

1 Minimum Guidelines, Plaintiffs cannot show beyond a reasonable doubt that Students
2 FIRST is unconstitutional as a system.

3 **III. Plaintiffs Also Cannot Prove That the Funding System Is Unconstitutional**
4 **As Applied to Them Individually.**

5 Even if the Plaintiffs now shift direction and claim only that the amount of
6 money given them individually is insufficient, their claims fail as a matter of law
7 because: 1) the Plaintiffs have not attempted to access all of the money potentially
8 available from the State for their alleged facility needs; 2) the Plaintiffs cannot show
9 that their funding levels have prevented their students from meeting the Legislature's
10 academic goals; 3) the Plaintiffs have never run out of Building Renewal Fund monies
11 while fixing Minimum Guidelines problems; and 4) the Plaintiffs can not show that the
12 amount of Building Renewal Fund monies they were given was inadequate or the cause
13 of a current inability to fund Minimum Guidelines needs because they previously chose
14 to not fund projects they had money for and they used Building Renewal Fund money
15 on non-Minimum Guidelines projects.

16 **A. The Plaintiffs Have Failed to Seek All Money Available.**

17 Just as the Plaintiffs' failure to seek Emergency Fund monies prevents them from
18 claiming Students FIRST is unconstitutional as a system, it prevents them from
19 claiming it is unconstitutional as applied to them. Absent proof that such funding had
20 not been made available despite their request, the Plaintiffs can not affirmatively show
21 how much money was even available from the State, or that it was inadequate.

22 **B. The Plaintiffs Can Not Show The Building Renewal Funding Has**
23 **Prevented Their Students from Meeting Academic Goals.**

24 The Court of Appeals' decision requires Plaintiffs "to demonstrate that their
25 students are unable to meet the educational goals of the Legislature due to" the
26 Legislature's funding decisions. *Roosevelt II*, 205 Ariz. at 592-93, 74 P.3d at 266-67.⁸

27 ⁸ The court also explained that "it is incumbent upon the school districts to prove
28 that the reduction had an impact on their students' academic education, i.e., that the
Legislature's redirection [of funds] left the districts with insufficient financial resources

1 The Plaintiffs have not disclosed and will not offer any evidence linking any particular
2 lack of facility funding with actual evidence of sub-par academic performance. [See
3 DSOF, at ¶ 36]. Instead, the Plaintiffs intend to rely only on purported evidence that
4 they can not now meet the Minimum Guidelines, assuming failure to meet the
5 Guidelines equals sufficient proof that their students' academic performance has been
6 sufficiently adversely impacted. While the School Facilities Board attempted to address
7 in the Minimum Guidelines those building characteristics needed to meet academic
8 goals, allowing Plaintiffs to rely exclusively on an alleged inability to meet the
9 Minimum Guidelines would undermine the benefits of the requiring Plaintiffs to prove
10 actual academic impacts under *Roosevelt II*, *Albrecht I* and *Albrecht II*.

11 For example, Plaintiffs' position would allow districts to use irresponsible
12 spending to prove a constitutional violation. A district could routinely overspend on
13 Minimum Guidelines issues, claim the financial inability to meet other remaining
14 Minimum Guidelines requirements, and thereby establish a constitutional violation
15 without ever showing any impact on student performance. Or, a district could avoid
16 spending their Building Renewal monies entirely on routine preventative steps, allowing
17 problems to unreasonably escalate into expensive Minimum Guidelines issues, and
18 thereby create a constitutional funding crisis. One important safeguard against such
19 potential abuses is the Arizona courts' expectation that Plaintiffs prove the alleged lack
20 of funding prevents academic achievement, in addition to proving that they can not fund
21 their Minimum Guidelines needs. As Plaintiffs can not show Students FIRST funding is
22 preventing their students from meeting academic goals, their claims must be dismissed.

23 **C. The Plaintiffs Have Never Run Out of Building Renewal Fund Money**
24 **Fixing Minimum Guidelines Issues.**

25 Even if no further evidence of impact on academic performance were required,

26 to provide facilities 'necessary and appropriate to enable students to master the
27 educational goals set by the legislature'", *id.* at 592, 74 P.3d at 266, and explained the
28 Plaintiffs' obligations to show "that they have current unmet needs related to academic
achievement" *Id.* at 594, 74 P.3d at 268.

1 the Plaintiffs must still prove an inability to meet the Minimum Guidelines with their
2 available State funding. Simple logic says that the Plaintiffs can do so only by showing
3 that they used all their Building Renewal Fund monies only for reasonable cost
4 Minimum Guidelines corrections, but nevertheless ran out of State money with other
5 Minimum Guidelines deficiencies still uncorrected. The Plaintiffs can not show this
6 because every year since the Legislature first distributed Building Renewal Funds,
7 Plaintiffs have not spent their full Building Renewal distributions. [DSOF, at ¶¶ 18-21].
8 If the districts had Minimum Guidelines needs in those years exceeding their available
9 funds, they surely would not be showing substantial Building Renewal balances.⁹

10 **D. The Plaintiffs Can Not Show the Funding System Has Caused An**
11 **Inability to Meet the Minimum Guidelines Because They Chose to**
12 **Forego Using Available Money for Repairs, and They Spent Their**
13 **Money On Non-Minimum Guidelines Issues.**

14 The rulings in *Roosevelt I*, *Albrecht I* and *Albrecht II* confirm that the facility
15 funding system need not eliminate all disparities among various districts, and it is only
16 unconstitutional when the financing system “itself cause[s] substantial disparities
17 between districts.” *Albrecht II*, 192 Ariz. at 37, 960 P.2d at 637; *see Roosevelt I*, 179
18 Ariz. at 242, 877 P.2d at 815; *Albrecht I*, 190 Ariz. at 525, 950 P.2d at 1146. The
19 Plaintiffs must prove both that the amount of money available to them was inadequate
20 and that the amount of funding caused their inability to fund constitutionally required
21 items. Plaintiffs can not do so because the evidence shows that other factors, including
the Plaintiffs’ individual decisions to forego using their Building Renewal Fund monies

22 ⁹ Plaintiffs may not base their claims exclusively on the current state of alleged needs
23 and available funds, and the Court must consider if Plaintiffs can prove insufficient
24 funding on a year-by-year basis. The Plaintiffs’ pleadings attack the funding year-by-
25 year. *See Roosevelt II*, 205 Ariz. at 590-93, 74 P.3d at 264-67. Also, focusing only on
26 the current status of alleged needs and funds could allow district neglect to create
27 constitutional claims. For instance, an irresponsible district could unreasonably hold its
28 funds, and through neglect allow its facilities to fail early, expediting the need for
expensive replacement costs. Allowing districts to accumulate problems for which they
previously had sufficient funding also ignores that inflation of repair expenses can make
a previously affordable repair unaffordable. It is thus inappropriate to judge the
sufficiency of funding over many years by only the current state of facilities and funds.

1 and to use such monies on non-Minimum Guidelines projects have either created their
2 alleged unmet facility needs or reduced the amount of funds available to meet all their
3 purported Minimum Guidelines needs. These decisions also prevent Plaintiffs from
4 relying on the balance of Building Renewal monies they have today to measure what
5 funding was made available, or relying on today's repair costs to define their needs.

6 **1. Plaintiffs Chose to Not Use Available State Funds on Some of
7 Their Alleged Unmet Needs.**

8 Much of what the Plaintiffs claim are current unmet needs could have been
9 funded with available, unspent Building Renewal monies. For instance, even using
10 Globe's most current cost estimates and full slate of alleged facility needs (many of
11 which, like landscaping and artificial turf installation, are clearly not Minimum
12 Guidelines issues), Globe could have corrected every alleged deficiency at any one of
13 its schools and even funded all alleged needs at multiple schools using just its unspent
14 Building Renewal balances. [See DSOF at ¶¶ 29-30]. Sierra Vista also could have
15 funded many of its most expensive alleged needs with unspent funds, and Williams
16 could also have addressed some of its alleged needs. [See DSOF at ¶¶ 31,32]. Thus, the
17 Plaintiffs' decision to not use available funds, rather than a lack of funds, is what has
18 caused many of the alleged current unmet needs to exist. It is also improper to allow
19 Plaintiffs to claim as their needs the current costs of addressing these items when they
20 could have been handled earlier without added inflation.

21 **2. The Plaintiffs Used Substantial Funds On Non-Minimum
22 Guidelines Issues.**

23 *Roosevelt II* and A.R.S. § 15-2031(B) set use restrictions for Building Renewal
24 monies, and a prioritization under which Building Renewal fund monies are to first be
25 used to address building adequacy issues in "buildings . . . that are required to meet
26 academic standards, "and only after those needs are met for any other district
27 buildings." *Roosevelt II*, 205 Ariz. at 586, 591, 74 P.3d at 261, 265. The referenced
28 adequacy standards are those set by the Minimum Guidelines, meaning that A.R.S. §
15-2031(B) expects districts to use their Building Renewal monies first to remedy

1 inadequacies under the Minimum Guidelines, and that they use the monies for other
2 Building Renewal-eligible purposes only after all Minimum Guidelines issues are
3 addressed. Witnesses from two Plaintiffs have acknowledged Minimum Guidelines
4 issues as Building Renewal priorities. [See DSOF at ¶ 37].

5 Despite such acknowledgement, the Plaintiff districts have used Building
6 Renewal monies for non-Minimum Guidelines projects at the same time Plaintiffs
7 contend they have had other unmet needs, which they presumably label as Minimum
8 Guidelines issues.¹⁰ [See DOSF, at ¶¶ 34-36]. Because Plaintiffs have used their
9 Building Renewal Fund monies on non-Minimum Guidelines issues, it is not
10 appropriate for them to claim other Minimum Guidelines needs that could have been
11 funded instead are truly current needs, or for them to rely only on current available
12 funding numbers that have been reduced by such non-Minimum Guidelines
13 expenditures. The Plaintiffs simply can not prove now that a lack of sufficient Building
14 Renewal Fund distributions, rather than use of such funds on non-Guidelines issues, has
15 caused their alleged funding shortfalls.¹¹

16 For all the foregoing reasons, the State is entitled to judgment as a matter of law.

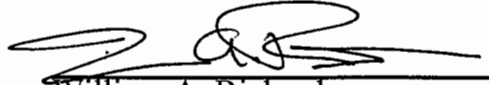
17 ¹⁰ Plaintiff Globe recently used over \$89,000.00 in Building Renewal monies on
18 bleachers, sidewalks and concrete under the bleachers at its stand-alone Harbison Field
19 football stadium complex. [DSOF, at ¶ 33]. Globe had previously used over \$170,000.00
20 in Building Renewal monies for an all-weather running track, and over \$11,000.00 to
21 replace a public address system at the same complex. [DSOF, at ¶ 33]. Sierra Vista has
22 used over \$44,000.00 in Building Renewal money to refinish gymnasium floors, over
23 \$11,000.00 in such funds for bleachers, and over \$12,000.00 in such funds to resurface
24 tennis courts. [DSOF, at ¶ 35]. Williams used over \$9,000.00 of its Building Renewal
25 Funds to install a sports floor. [DSOF, at ¶ 34]. None of these items are required by the
26 Minimum Guidelines.

27 ¹¹ Plaintiffs' position would allow (or even encourage) a district to spend all of
28 its Building Renewal Fund money on non-Minimum Guidelines projects so it could
claim it had been unconstitutionally deprived of enough money to also fund its
Minimum Guidelines needs. To give any force to the prioritization under A.R.S. § 15-
2031(B), the Court must find that use of Building Renewal monies for non-Minimum
Guidelines issues precludes the districts from claiming they had any unmet Minimum
Guidelines issues at the same time or from claiming as a current need any project
anticipated at the time a non-Guidelines project was funded.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 26th day of May, 2006.

TERRY GODDARD
Arizona Attorney General



William A. Richards
Chad B. Sampson
Assistant Attorneys General
1275 W. Washington
Phoenix, Arizona 85007
Attorneys for Defendant State of Arizona

ORIGINAL of the foregoing filed this
26th day of May, 2006, with:

Clerk of the Court
Maricopa County Superior Court
201 W. Jefferson
Phoenix, AZ. 85003-2243

COPY of the foregoing hand-delivered this
26th day of May, 2006, with:

Honorable Ruth H. Hilliard
Maricopa County Superior Court
CCB 4C
201 W. Jefferson
Phoenix, AZ. 85003-2243

COPY of the foregoing served by
regular mail this 26th day of May, 2006, on:

Timothy M. Hogan
Arizona Center for Law in the Public Interest
202 East McDowell, Suite 153
Phoenix, Arizona 85004
Attorneys for Plaintiffs

