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MONTANA FOURTH JUDICIAL DISTRICT COURT  
MISSOULA COUNTY

<p>STATE OF MONTANA, acting by and through the DEPARTMENT OF ADMINISTRATION, and MISTY ANN GILES, in her official capacity as STATE TREASURER and DIRECTOR OF DEPARTMENT OF ADMINISTRATION,</p> <p>Plaintiff,</p> <p>v.</p> <p>MISSOULA COUNTY, MISSOULA COUNTY BOARD OF COUNTY COMMISSIONERS, and MISSOULA COUNTY TREASURER,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p><b>COMPLAINT FOR DECLARATORY RELIEF</b></p>
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**INTRODUCTION**

1. The Montana Constitution guarantees each person equality of educational opportunity. Mont. Const. art. X, § 1(1). Included within that right is the promise that the Legislature “shall provide a basic system of free quality public elementary and secondary schools” and that 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." Mont. Const. art. X, § 1(3).

2. In furtherance of these goals, the Legislature enacted Mont. Code Ann. § 15-10-420, which sets out the procedure for calculating property tax levies and directs the Montana Department of Revenue (Department) to calculate mills to fund elementary, high schools, and to provide equalization aid to Montana public schools. *See* Mont. Code Ann. §§ 20-9-331, -333, and -360.

3. The respective number of mills for elementary schools is 33 mills; for high schools, 22 mills; and for equalization aid, 40 mills. Mont. Code Ann. §§ 20-9-331, -333, and -360. These "School Mills" are often referred to as the 95 mills. Additionally, there are mills for vocational-technical education, which are capped at 1.5 mills. Mont. Code Ann. §§ 15-10-420; 20-25-439.

4. For years, acting pursuant to its constitutional and statutory duties, the Department has consistently interpreted Mont. Code Ann. § 15-10-420, as requiring the Department to calculate the maximum number of School Mills under the formula set forth in Mont. Code Ann. § 15-10-420(1)(a).

5. Under that statute, a governmental entity that is authorized to impose mills may levy the number of mills to meet the prior year's assessment plus an inflation factor. *Id.* In addition to the limits inherent in the statutory formula, the number of School Mills that the Department can calculate to be imposed is capped at 95 mills. This cap is a function of Mont. Code Ann. § 15-10-420(8), which provides

that the number of mills calculated by the Department cannot exceed the mill levy limits established in the School Mills statutes.

6. Acting under Mont. Code Ann. § 15-10-420, the Department calculated the number of School Mills for Fiscal Year 2024 and informed Montana county commissioners, treasurers, and clerk and recorders, that the School Mills remained at 95 mills.

7. Recently, however, the Missoula Board of County Commissioners and other county officials have advanced a reading of Mont. Code Ann. § 15-10-420 that is at odds with the Department's historical interpretation. And some county commissioners have reportedly stated that they intend to cut the School Mills from 95 mills to 77.89 mills. See Eric Dietrich, *Counties Say They'll Buck Governor on Collecting Full School Property Tax*, Montana Free Press, Sept. 28, 2023.<sup>1</sup>

8. Missoula County has reported to the Department that it will levy 77.89 mills, rather than 95 School Mills, to the Department of Revenue. Upon information and belief, the Missoula Board of County Commissioners is set to approve a resolution for reduced mills on October 5, 2023.

9. The County's interpretation interferes with the State's constitutional obligation to "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."

Mont. Const. art. X, § 1(3).

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<sup>1</sup> <https://montanafreepress.org/2023/09/28/montana-counties-say-they-will-back-governor-on-collecting-full-school-property-tax/> (last visited Oct. 2, 2023).

10. In light of the differing interpretations of Mont. Code Ann. § 15-10-420, and because the State Treasurer has a duty to “receive and account for all money belonging to the state” and to “collect and pay into the state treasury all fees received,” Mont. Code Ann. § 17-1-111, the State Treasurer seeks a declaratory judgment from this Court to settle the question of statutory interpretation regarding the number of mills that the State is statutorily required to levy for school equalization and base funding program support.

### **JURISDICTION AND VENUE**

11. Plaintiff brings this action under the Uniform Declaratory Judgments Act (UDJA), Mont. Code Ann. § 27-8-201, 202. The purpose of the UDJA is “to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” Mont. Code Ann. § 27-8-102.

12. Venue is proper in the Fourth Judicial District because Defendants are Missoula County officials, and this claim arose in Missoula County. Mont. Code Ann. §§ 25-2-117, -126.

### **PARTIES**

13. Plaintiff State of Montana acts through its departments, agencies, and officers. Misty Ann Giles is the director of the Department of Administration and serves as the State Treasurer. Mont. Code Ann. § 2-15-1002. The State Treasurer is the custodian of the State’s money and securities and has duties and obligations set forth in Montana law, including the duty to “receive and account for all money belonging to the state” and to “collect and pay into the state treasury all fees

received.” Mont. Code Ann. § 17-1-111, The State Treasurer is required to deposit all money received from taxes and fees into the appropriate fund. Mont. Code Ann. § 17-2-124. The state treasury includes several funds, including the general fund and the state special revenue fund. Mont. Code Ann. § 17-2-102(1). The State Treasurer is the designated treasurer for all state agencies, including the Department of Revenue. Mont. Code Ann. § 17-6-105.

14. Defendant Missoula County is a political subdivision of the State of Montana and has the duties and obligations as set forth in Montana law, which include the “obligation to levy the basic education taxes on taxable property in the county and to remit the tax revenues to the State of Montana as set forth in the statutes.” *Madison County v. State*, 1998 MT 285, ¶ 19, 291 Mont. 446, 968 P.2d 732. Montana law provides that a county’s authority to levy and collect taxes is subject to Mont. Code Ann. § 15-10-420. Mont. Code Ann. § 7-1-2103.

15. Defendant Missoula Board of County Commissioners has the duties and obligations as set forth in Montana law, including the general authority to represent the County and manage its business and concerns, and to direct and control lawsuits involving the County. Mont. Code Ann. §§ 7-5-2101, -2104.

16. Defendant Missoula County Treasurer is the county official responsible for the collection of taxes within Missoula County. Mont. Code Ann. § 7-6-2503.

### **FACTUAL ALLEGATIONS**

17. While the right to equal educational opportunity was enshrined in Montana’s 1972 Constitution, it wasn’t until 1989 that it started to become reality.

In 1989, the Montana Supreme Court held that the State's failure to provide adequate funding forced "an excessive reliance on permissive and voted levies" and that the State had thus "failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed" by the Montana Constitution. *Helena Elementary School Dist. No. 1 v. State*, 236 Mont. 44, 55, 769 P.2d 684, 690 (1989), *amended and supplemented by* 236 Mont. 44, 784 P.2d 412 (1990).

18. The Legislature responded to the Court's *Helena Elementary* decision by passing the School Mills statutes, creating new mandatory levies that county commissioners were required to levy to support base funding and equalization for elementary schools, high schools, and to provide equalization aid to Montana public schools. *See* Mont. Code Ann. §§ 20-9-331, -333, and -360.

19. In 1999, the Legislature enacted Mont. Code Ann. § 15-10-420, which sets forth the procedure for calculating levies. The statute provided that a "governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year." The statute further sets forth the formula for calculating the number of mills. Mont. Code Ann. § 15-10-420(1) (1999).

20. Regarding the School Mills, specifically, the statute provided that the Department of Revenue "shall calculate the number of mills to be imposed." Mont. Code Ann. § 15-10-420(7) (1999) (currently codified at subsection (8)). The statute did not set forth a different formula for the Department to use in calculating the

School Mills, but that subsection did cap the number of mills that the Department could calculate to be imposed at 95 mills. *Id.*

21. In 2001, the Legislature amended the statute to change the formula for calculating mills. Mont. Code Ann. § 15-10-420(1)(a). The amended statute further authorized a “governmental entity that does not impose the maximum number of mills under subsection (1)(a)” to carry forward or bank the authority to impose those mills in a later year. Mont. Code Ann. § 15-10-420(1)(b).

22. The 2001 statute provided additional guidance related to school district levies. The legislation provided that “Subject to subsection (8), subsection (1)(a) does not apply to . . . school district levies established in Title 20.” Mont. Code Ann. § 15-10-420(5). Title 20 authorizes school district levies for a number of things unrelated to statewide educational equalization. *E.g.*, Mont. Code Ann. §§ 20-9-116 (describing intent to increase nonvoted levy); -141 (process for computing levy requirement for each district’s general fund); -152 (fixing and levying taxes for joint districts); -168 (emergency budget amendment tax levy).

23. While school district levies were carved out of Mont. Code Ann. § 15-10-420(1)(a), the statewide School Mills were not. Subsection (8) retained the mandate that the Department of Revenue “shall calculate, on a statewide basis, the number of mills to be imposed” for the School Mills. And, as in the 1999 version, the statute capped the number of School Mills that the Department could calculate at 95 mills.

24. There have been amendments to Mont. Code Ann. § 15-10-420 since 2001, but the subsections at issue in this case—(1), (5), and (8)—have remained substantively unchanged.

25. In fulfilling its duties under Mont. Code Ann. § 15-10-420, the Department has consistently interpreted subsection (1)(b) as authorizing the State to carry forward or “bank” the mills that it could have implemented under the formula in subsection (1)(a). In other words, based on the Department’s longstanding interpretation and practice, if the maximum number of mills authorized under the formula exceeds the statutory cap of 95 mills, then the Department carries forward or “banks” the mills that it could have implemented under 15-10-420(1)(a).

26. By using the banked mills when needed, the State has levied the 95 School Mills since the Legislature authorized the Department to do so, and the State has been able to distribute them to school districts statewide to help equalize school funding for all Montanans.

27. For more than 20 years, based on its interpretation of Mont. Code Ann. § 15-10-420, the Department has been transparent in its calculation of the School Mills and in its practice of banking mills as described above.

28. In that time, the Legislature has not amended Mont. Code Ann. § 15-10-420, in a way that would contradict the Department’s interpretation.



29. Based on its longstanding interpretation and practice, the Department calculated the School Mills for Fiscal Year 2024 and determined that they remain at 95 mills.

30. On September 11, 2023, the Department informed Montana's county commissioners and other government entities of its calculation and that the maximum levy remained at 95 mills.

31. Missoula County and the Missoula County Board of County Commissioners disagree with the Department's statutory interpretation and its calculation.

Upon information and belief, Missoula County has reported less than 95 School Mills to the Department, and the Missoula Board of County Commissioners is set to approve a resolution for reduced mills on October 5, 2023.

### **CLAIM FOR RELIEF**

32. Plaintiff incorporates all preceding paragraphs as though set forth in full.

33. The purpose of the UDJA is to "settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Mont. Code Ann. § 27-8-102.

34. Based on the Department of Revenue and Missoula County's competing interpretations of Mont. Code Ann. § 15-10-420, there exists uncertainty in the meaning of the statute, and thus, there is uncertainty in the amount of

money that the State Treasurer must receive, account for, and pay into the appropriate account.

35. Plaintiff seeks a declaration from this Court pursuant to the UDJA, holding that the Department's interpretation of Mont. Code Ann. § 15-10-420 is correct.

36. This declaration will remove uncertainty and allow the State Treasurer to "receive and account for all money belonging to the state" and to "collect and pay into the state treasury all fees received." Mont. Code Ann. § 17-1-111.

### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court:

1. Declare that the Montana Department of Revenue's interpretation of Mont. Code Ann. § 15-10-420 is correct and that the statute requires the Department to calculate the number of mills under Mont. Code Ann. § 15-10-420(1)(a) and authorizes the Department to use in its calculations carry forward or bank mills as provided in Mont. Code Ann. § 15-10-420(1)(b).

2. Declare that Montana counties are obligated to impose the number of mills that the Department calculates pursuant to Mont. Code Ann. § 15-10-420.

3. Grant additional relief as the Court may deem necessary or proper.

Dated this 2nd of October, 2023.

  
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