

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. _____

MONTANA QUALITY EDUCATION COALITION,

Petitioner,

v.

BEAVERHEAD COUNTY; BIG HORN COUNTY; BLAINE COUNTY; BROADWATER COUNTY; CARBON COUNTY; CARTER COUNTY; CASCADE COUNTY; CHOUTEAU COUNTY; CUSTER COUNTY; DANIELS COUNTY; DAWSON COUNTY; DEER LODGE COUNTY; FALLON COUNTY; FERGUS COUNTY; FLATHEAD COUNTY; GALLATIN COUNTY; GARFIELD COUNTY; GLACIER COUNTY; GOLDEN VALLEY COUNTY; GRANITE COUNTY; HILL COUNTY; JEFFERSON COUNTY; JUDITH BASIN COUNTY; LAKE COUNTY; LEWIS AND CLARK COUNTY; LIBERTY COUNTY; LINCOLN COUNTY; MADISON COUNTY; MCCONE COUNTY; MEAGHER COUNTY; MINERAL COUNTY; MISSOULA COUNTY; MUSSELSHELL COUNTY; PARK COUNTY; PETROLEUM COUNTY; PHILLIPS COUNTY; PONDERA COUNTY; POWDER RIVER COUNTY; POWELL COUNTY; PRAIRIE COUNTY; RAVALLI COUNTY; RICHLAND COUNTY; ROOSEVELT COUNTY; ROSEBUD COUNTY; SANDERS COUNTY; SHERIDAN COUNTY; SILVER BOW COUNTY; STILLWATER COUNTY; SWEET GRASS COUNTY; TETON COUNTY; TOOLE COUNTY; TREASURE COUNTY; VALLEY COUNTY; WHEATLAND COUNTY; WIBAUX COUNTY; AND YELLOWSTONE COUNTY,

Respondents.

PETITION FOR WRIT OF MANDATE
EXPEDITED CONSIDERATION REQUESTED

APPEARANCES:

Elizabeth A. Kaleva
Elizabeth A. O'Halloran
Kevin A. Twidwell
KALEVA LAW OFFICES
1911 S. Higgins Ave.
P.O. Box 9312
Missoula, MT 59807
Telephone: (406) 542-1300
eakaleva@kalevalaw.com
bohalloran@kalevalaw.com
ktwidwell@kalevalaw.com
Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INDEX OF EXHIBITS iv

I. PETITION1

II. PARTIES1

III. FACTS SUPPORTING ORIGINAL JURISDICTION3

IV. ARGUMENTS AND AUTHORITY SUPPORTING ISSUANCE OF WRIT
OF MANDATE6

V. LEGAL QUESTIONS AND ISSUES ANTICIPATED TO BE RAISED.....16

VI. CONCLUSION16

CERTIFICATE OF COMPLIANCE18

TABLE OF AUTHORITIES

Cases

<i>Columbia Falls Elem. Sch. Dist. No. 6 v. State</i> , 2005 MT 69, 326 Mont. 304, 109 P.3d 257	8
<i>Helena Elementary Sch. Dist. No. 1 v. State of Montana</i> (1989), 236 Mont. 44, 769 P.2d 684	7
<i>Madison County v. State Ex. Rel. Office of Public Instruction</i> , 1998 MT 285, 291 Mont. 446, 968 P.2d 732	7
<i>Smith v. County of Missoula</i> , 1999 MT 330, 297 Mont. 368, 992 P.2d 834	6
<i>State Ex. Rel. Woodahl v. Straub</i> (1974), 164 Mont. 141, 520 P.2d 776	7
<i>Tiegs v. Dept. of Revenue</i> , 2023 MT 168, 413 Mont. 233	12

Statutes

Mont. Code Ann. § 15-10-104.....	4
Mont. Code Ann. § 15-10-420.....	4, 9, 11, 12, 13, 14, 16
Mont. Code Ann. § 15-10-420(1)(a).....	9
Mont. Code Ann. § 15-10-420(1)(b)	9
Mont. Code Ann. § 15-10-420(8).....	1, 4, 15, 17
Mont. Code Ann. § 15-1-504.....	11
Mont. Code Ann. § 20-25-439.....	4
Mont. Code Ann. § 20-9-225(4).....	12
Mont. Code Ann. § 20-9-331.....	1, 4, 8, 9, 11, 13, 16, 17
Mont. Code Ann. § 20-9-333.....	1, 4, 8, 9, 11, 13, 16, 17
Mont. Code Ann. § 20-9-335.....	8, 11

Mont. Code Ann. § 20-9-360.....1, 4, 8, 11, 13, 16, 17
Mont. Code Ann. § 27-26-102.....3, 6

Rules

Mont. R. App. P. 11.....18
Mont. R. App. P. 1418
Mont. R. App. P. 14(2).....1
Mont. R. App. P. 14(4).....6

Constitutional Provisions

Mont. Const. art XI, § 2.....2
Mont. Const. art. VII, § 13
Mont. Const. art. VII, § 23
Mont. Const. art. X, § 1(1)7
Mont. Const. art. X, § 1(3)5, 7

INDEX OF EXHIBITS

- Exhibit 1:** Letter from J. Fitch to Attorney General Knudsen, dated August 18, 2023
- Exhibit 2:** Letter from Attorney General Knudsen to J. Fitch, dated September 25, 2023
- Exhibit 3:** Memorandum from R. Osmundson and B. Beatty to County Commissioners, dated September 11, 2023
- Exhibit 4:** DOR Workbook Calculations
- Exhibit 5:** “The Packet,” Montana Association of Counties’ 95 Mills Information
- Exhibit 6:**
- Exhibit 6A:** Resolution - Daniels County
 - Exhibit 6B:** Resolution - Fergus County
 - Exhibit 6C:** Resolution - Flathead County
 - Exhibit 6D:** Resolution - Gallatin County
 - Exhibit 6E:** Resolution - Lake County
 - Exhibit 6F:** Resolution - Missoula County
 - Exhibit 6G:** Resolution - Yellowstone County
 - Exhibit 6H:** Resolution - Ravalli County
 - Exhibit 6I:** Resolution - Carter County
 - Exhibit 6J:** Resolution - Liberty County
 - Exhibit 6K:** Resolution - Garfield County
 - Exhibit 6L:** Resolution - Beaverhead County
- Exhibit 7:** Annual Statement of Tax Levy Extension

- Exhibit 8:** *Columbia Falls Elementary School Dist. No. 6 v. State of Montana Findings and Conclusions, Lewis and Clark County District Court, Cause No. BDV-2002-528.*
- Exhibit 9:** HJ 35
- Exhibit 10:** Memorandum, Jaret Coles to HJ 35 Tax Study Committee, dated August 21, 2020.
- Exhibit 11:** Study of State and Local Tax Policy Final Report to the 67th Montana Legislature, dated September, 2020
- Exhibit 12:** Email from E. Dale to R. Osmundson, et al re: Analysis of Impact of 77.89 vs. 95 mills, dated October 10, 2023
- Exhibit 13:** Letter Template from Governor G. Gianforte to County Commissioners, dated September 8, 2023
- Exhibit 14:** Letter from MACo to Governor G. Gianforte, dated October 4, 2023

I. PETITION

COMES NOW, Petitioner the Montana Quality Education Coalition (hereinafter “MQEC”), by and through counsel of record, pursuant to Mont. R. App. P. 14(2), seeking a Writ of Mandate requiring Respondents to levy the 95 mills for Fiscal Year 2024 in accordance with the Montana Department of Revenue’s (“DOR”) calculation transmitted to Respondents’ governing boards on September 11, 2023.

Petitioner seeks emergency and immediate relief from this Court by way of a writ of mandate because tax bills based on the mill calculations are set to be distributed on October 15, 2023, and without Court intervention, school districts across the state will suffer immediate harm. If the Respondents are allowed to levy fewer than the 95 mills mandated by the DOR, Petitioner’s member districts and other school districts stand to lose millions of dollars in revenue earmarked for education and therefore request that this Court preserve the status quo under current law and issue a writ of mandate requiring Respondents to defer to the calculation of mills performed by DOR as provided in Mont. Code Ann. §§ 15-10-420(8), 20-9-331, 20-9-333, and 20-9-360.

II. PARTIES

The Montana Quality Education Coalition (“MQEC”) is a nonprofit organization headquartered in Helena, Montana, formed in 2001 for the purposes

of advocacy for adequate and equitable public school funding and to defend the Montana Constitution's guarantee of free quality public education. The MQEC membership includes the Montana Federation of Public Employees, the Montana School Boards Association, the School Administrators of Montana, the Montana Association of School Business Officials, the Montana Rural Education Association, and more than 100 school districts in the state of Montana, ranging from large to small school districts and urban to rural school districts. MQEC's member districts are located throughout Montana.

Respondents are each of the 56 counties of Montana, authorized under Article XI, § 2 of the Montana Constitution and organized in accordance with Title 7, Chapter 1, Part 21 of the Montana Code Annotated. The Counties that would be subject to the Writ of Mandate Petitioner seeks are Beaverhead County, Big Horn County, Blaine County, Broadwater County, Carbon County, Carter County, Cascade County, Chouteau County, Custer County, Daniels County, Dawson County, Deer Lodge County, Fallon County, Fergus County, Flathead County, Gallatin County, Garfield County, Glacier County, Golden Valley County, Granite County, Hill County, Jefferson County, Judith Basin County, Lake County, Lewis and Clark County, Liberty County, Lincoln County, Madison County, McCone County, Meagher County, Mineral County, Missoula County, Musselshell County, Park County, Petroleum County, Phillips County, Pondera County, Powder River County,

Powell County, Prairie County, Ravalli County, Richland County, Roosevelt County, Rosebud County, Sanders County, Sheridan County, Silver Bow County, Stillwater County, Sweet Grass County, Teton County, Toole County, Treasure County, Valley County, Wheatland County, Wibaux County, and Yellowstone County.

III. FACTS SUPPORTING ORIGINAL JURISDICTION

This Court has jurisdiction over original proceedings relating to writs as may be necessary and proper to exercise its jurisdiction. Mont. Const. art. VII, §§ 1 and 2.

When there is no “plain, speedy, and adequate remedy in the ordinary course of law,” a writ of mandate may be issued “to compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station...” Mont. Code Ann. § 27-26-102.

On August 18, 2023, the Beaverhead County Attorney requested an attorney general’s opinion regarding whether the Department of Revenue correctly calculated the school equalization levies by including carry-forward mills in its calculation. Ex. 1. Attorney General Knudsen declined to issue an opinion regarding the request in a letter to Beaverhead County on September 25, 2023, based on a determination that the matter could be more appropriately determined through an adversarial judicial proceeding. Ex.2.

Pursuant to its statutory duty to calculate the school equalization mills in accordance with Mont. Code Ann. § 15-10-420, the Montana Department of Revenue issued a directive to each of the Respondents on September 11, 2023, Ex. 3, calculating the levies referenced in Mont. Code Ann. § 15-10-420(8) as follows:

State Equalization Aid Levy, 40.00 Mills
County Elementary Equalization Levy, 33.00 Mills
High School Equalization Levy, 22.00 Mills
University System Levy, 6.00 Mills

DOR specifically communicated in its directive to the counties that the calculations above were provided in accordance with Mont. Code Ann. §§ 15-10-104, 15-10-420, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. DOR's directive was based on calculations prepared by DOR under the statutes. Ex. 4.

Acting on the Beaverhead County Attorney's legal theory and guidance from the Montana Association of Counties ("MACo"), Ex. 5, several county boards of commissioners have adopted resolutions to direct their county's tax bills for FY 2024 to exclude consideration of carry-forward mills and reflect only the current year calculated levy of 77.89 mills. Ex. 6.

Adoption of school equalization mills at 77.89 at the county level, instead of DOR's calculations at 95 mills, departs from the historical approach to school equalization and impedes the State of Montana'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" as mandated by Mont.

Const. art. X, § 1(3) by eliminating funding revenue for public school costs not included in the equalization formula.

Petitioner seeks extraordinary relief in the form of a writ of mandate directing the Respondents to levy taxes within their respective counties in accordance with historical administration and collection of school equalization levies: specifically, Petitioner seeks a Writ of Mandate directing Respondents to levy 95 state equalization mills in accordance with direction received from DOR and as required by statute.

As noted by the Beaverhead County Attorney, this is a matter of statewide importance. If only some or most counties vote to levy only 77.89 mills, homeowners in counties that levied taxes in accordance with DOR's calculations will be subjected to disproportionate, unfair, and unequal tax rates, compared to their counterparts in counties that opted not to levy in accordance with the law.

Petitioner's request for a Writ of Mandate is necessary to prevent departure from a decades-old practice of levying state equalization taxes on property within county jurisdictions in accordance with the calculation of mills to be levied by the State of Montana Department of Revenue.

IV. ARGUMENTS AND AUTHORITY SUPPORTING
ISSUANCE OF WRIT OF MANDATE

In *Smith v. County of Missoula*, 1999 MT 330, 297 Mont. 368, 992 P.2d 834, this Court articulated the standard applicable to grant of a writ of mandate pursuant to Mont. Code Ann. § 27-26-102:

The writ is available where the party who applies for it is entitled to the performance of a clear legal duty by the party against whom the writ is sought. If there is a clear legal duty, the district court must grant a writ of mandate if there is not speedy and adequate remedy available in the ordinary course of law. For a court to grant a writ of mandate, the clear legal duty must involve a ministerial act, not a discretionary act.

Smith, ¶ 28.

The issues presented in this petition implicate constitutional issues of statewide importance. Issuance of a writ would preserve the constitutionally aligned K-12 BASE Aid school funding formula. The urgency or emergency factors required by Mont. R. App. P. 14(4) exist here because, once tax bills are issued, the \$79 million shortfall in collections this year will be irreversible. Tax bills across the state are set to be distributed next week, Ex. 7, so any District court litigation over the proper mill rate is inadequate because a ruling will not be issued before the bills are sent out. Moreover, this case also involves purely legal questions of disputed statutory interpretations and the undisputed, consistent administration of equalization aid mills by DOR.

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).

There is applicable legal authority to compel counties to adhere to statutory mandates associated with the levy of mills for education. *State Ex. Rel. Woodahl v. Straub* (1974), 164 Mont. 141, 520 P.2d 776. In addition, applicable law establishes this Court’s prior direction to counties to ensure appropriate direction of revenues from equalization mills to school funding accounts. *Madison County v. State Ex. Rel. Office of Public Instruction*, 1998 MT 285, 291 Mont. 446, 968 P.2d 732.

In a 1989 seminal decision affecting Montana’s system of public education funding, this Court found that tax inequities based on wealth caused spending disparities among the state’s school districts. This Court held that these tax inequities deny students equality of educational opportunity as guaranteed by Article X, § 1(1) of the Montana Constitution. *Helena Elementary Sch. Dist. No. 1 v. State of Montana* (1989), 236 Mont. 44, 55, 769 P.2d 684, 690.

The 1993 Montana State Legislature enacted House Bill 667 to resolve the constitutional problems identified in *Helena Elementary* by codifying an earlier

temporary structure of uniform mills designed to reduce tax disparities among school districts located in wealthy or economically challenged communities, thereby reducing excessive reliance on local variable mills to fund Montana's public schools. The tax structure imposed for the purposes of rectifying unconstitutional school funding mechanisms was the imposition of 95 mills (33 elementary, 22 high school, and 40 statewide). Revenue captured through this funding formula promoted elementary equalization and state BASE (Base Amount for School Equity) funding program support.

Since the 1993 legislative session, DOR has calculated and counties have levied the 95 mills necessary to meet equalization funding requirements, pursuant to Mont. Code Ann. §§ 20-9-331, 20-9-333 and 20-9-360. Revenue from levying the 95 mills is distributed to the state general fund; however, all revenue collected under the equalization plan is required to be used for school equalization and K-12 BASE Aid. *Id.*; *see also* Mont. Code Ann. § 20-9-335.

The State of Montana subsequently defended the constitutionality of this funding formula by referencing the uniform imposition of 95 school equalization mills before the District Court and the Montana Supreme Court in *Columbia Falls Elementary School Dist. No. 6 v. State of Montana*, 2005 MT 69, 326 Mont. 304, 109 P.3d 257. District Court judge Sherlock incorporated findings of fact in reliance on the State's defense in this regard:

There are two principal sources of state revenue specifically earmarked for schools. The first of these state sources is a property tax of 95 mills levied statewide. Fifty-five of the 95 mills are actually “County Equalization Aid.” §§ 20-9-331, -333, MCA. Each county in Montana levies 55 mills on all taxable property within the district and that money is then applied to the BASE budget funding levels for all districts in the county (as more fully described below). If the amount of revenue raised by the 55 mills exceeds what is necessary to meet the BASE funding programs of all elementary and secondary schools in the county, the county remits the surplus to the Montana Department of Revenue for deposit into the State’s general fund.”

Ex. 8, at 7-8.

It was not until 2001, nearly eight years after House Bill 667 (1993) established the 95 mill equalization aid funding mechanism, that the Legislature enacted Mont. Code Ann. § 15-10-420.

For over 20 years, acting pursuant to its constitutional and statutory duties, DOR has consistently interpreted Mont. Code Ann. § 15-10-420, as requiring the DOR to calculate the maximum number of state equalization mills under the formula set forth in Mont. Code Ann. § 15-10-420(1)(a) and (1)(b). As the agency delegated the responsibility to administer and enforce the provisions of House Bill 124 (2001) and Mont. Code Ann. § 15-10-420, DOR’s interpretation carries substantial weight in the context of novel county challenges to the funding mechanism.

Respondents have levied the 95 mills as calculated by DOR every year since the codification of state equalization funding in 1993, including all fiscal years following the 2001 enactment of Mont. Code Ann. § 15-10-420. DOR has been

transparent in its calculations of State Equalization Aid and the statutes authorizing the 95 mills have guided county levies for just as long. Moreover, DOR's determination of mills to be carried forward, as described above, is reflected in annual reports and calculations to interim committees of the Montana Legislature, as well as in the calculations annually shared with Respondents for the purposes of ensuring that equalization aid is properly levied and accounted. Based on this longstanding interpretation and practice, DOR calculated the equalization mills for Fiscal Year 2024 and determined that they remain at 95 mills.

During the annual conference on September 24-27, 2023, MACo conducted a session regarding the levy of the 95 mills and distributed an information packet containing inaccurate information relating to the history of State Equalization Aid mills to its members. Ex. 5. "The Packet" information additionally challenged previously undisputed practices and questioned whether the 95 mills must be levied as indicated by DOR. MACo indicated that it "takes no position" on the issue, while advising its members that counties had the option of levying only 77.89 mills for state equalization or face tax protests from its taxpayers. *Id.*, at 1.

In "The Packet" distributed to its members, among other incorrect assertions, MACO advised its members that:

4. None of the money is directed to schools.
5. No reduction in the 95 mills will impact the schools—instead, it may impact the State General Fund's ending balance. Again, it has no impact on school funding.

Id., at 2.

Notwithstanding the significance of the General Fund’s “ending balance” to governmental funding generally and contrary to the MACo’s erroneous assertions in the 95 mills packet distributed to its members, the relevant statutes (Mont. Code Ann. §§ 20-9-331, 20-9-333, 20-9-335 and 20-9-360) all specifically direct that the revenue derived from the 95 mills must be collected and spent on school funding. It is simple logic that revenue from taxes not levied for school purposes is revenue unavailable to spend for school purposes.

Mont. Code Ann. § 20-9-331 provides in relevant part with emphasis added:

Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county...***for the purposes of elementary equalization and state BASE funding program support.***

Mont. Code Ann. § 20-9-333 provides in relevant part with emphasis added:

Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county...***for the purposes of high school equalization and state BASE funding program support.***

Mont. Code Ann. § 20-9-360 provides in relevant part with emphasis added:

Subject to 15-10-420, there is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state...Proceeds of the levy must be remitted to the department of revenue, as provided in 15-1-504, and ***must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana.***

Mont. Code Ann. § 20-9-225(4) requires that the county-levied equalization revenue is “the **first source** of revenue for financing the elementary and high school direct state aid payments.” (emphasis added).

In 2019, the Montana Legislature passed a resolution, HJ 35, establishing an interim committee to study state and local tax systems for the purposes of crafting recommendations for tax structure revisions that, among other things, “reflect principles of sound tax policy, including simplicity, competitiveness, efficiency, *predictability, stability, and ease of compliance and administration.*” Ex. 9.

On August 21, 2020, a Legislative Staff Attorney offered a memorandum regarding “Carry-Forward Authority for State Mill Levies – Section 15-10-420” to the HJ 35 Interim Committee. In the memorandum, the interim committee learned that there were arguments on both sides pertaining to whether carry-forward authority was permitted under the statute, which was not a “model of clarity.” Ex. 10. In addition, the memorandum acknowledged the deference owed to an administrative agency’s interpretation of statutes over which it has regulatory responsibility. This is consistent with this Court’s very recent acknowledgment of the same principle as to DOR. *Tiegs v. Dept. of Revenue*, 2023 MT 168, ¶ 8, 413 Mont. 233 (“the interpretation by administrative boards over statutes under their respective domains should be given deference.” *citing Mont. Soc’y of*

Anesthesiologists v. Mont. Bd. of Nursing, 2007 MT 290, ¶ 37, 339 Mont. 472, 171 P.3d 704).

Though advised of DOR's interpretation of Mont. Code Ann. § 15-10-420 relative to carry-forward authority, as to property taxes, the Interim Committee's report recommended an unrelated revision to § 15-10-420 and chose not to recommend clarification of the statute legislatively overrule DOR's practice of calculating carry-forward mills. Notably, MACo's Executive Director occupied a public member seat on the committee that chose to refrain from amending the statute to end DOR's consistent practice of directing counties to levy 95 mills, including carry-forward mills. Ex. 11, at 2.

Despite the convening of two legislative sessions since the memorandum was distributed to legislators, no alterations or clarifications of the statute have been introduced or passed legislatively. Since 2001, the Montana Legislature has not amended Mont. Code Ann. § 15-10-420 to supplant DOR's interpretation and practice, nor have any bills been introduced at the behest of the MACo or the counties that have recently decided to follow MACo's unprecedented interpretation of existing law.

The Respondents, through their duly elected county commissioners, each have a statutory obligation under Mont. Code Ann. §§ 20-9-331, 20-9-333, and 20-9-360, to impose elementary, high school, and statewide mills as calculated by DOR under

§ 15-10-420(8), with the proceeds from such levies to be appropriated by the Legislature and distributed through K-12 BASE Aid for the purposes of equalization aid and K-12 BASE Aid support for the public schools of Montana.

Rather than seeking a declaratory ruling or judicial intervention to mitigate the school funding impact of their novel and untested 11th-hour strategy regarding DOR's calculations, several counties have either already voted to disregard DOR's 95 mill calculation and impose 77.89 mills instead. Other counties have scheduled meetings at which consideration of this issue is listed on the agenda.

If counties statewide vote to disregard the DOR calculation, the lower mills imposed will result in collections from the school equalization mills approximately \$79 million below the level of funding from such mills incorporated in the 2023 Legislature's revenue estimate in House Joint Resolution 2 and correspondingly \$79 million below the level of funds appropriated for school equalization purposes by the Legislature in House Bill 2, the state's general fund budget bill.

The impact of a two-year shortfall in collections of approximately \$178 million would reduce the current projected ending fund balance of the state by 33% and would require that the 2025 Legislature pass a supplemental appropriation of \$160 million to cover the cost of appropriated funding of the basic system of free quality schools through the K-12 BASE aid formula. Ex. 12.

Despite the significant cumulative financial effect if the counties impose 77.89 mills instead of 95 mills, DOR has calculated that the difference in revenue generated at 77.89 mills compared to 95 school equalization mills will save a homeowner of a primary residence with a median-priced home an average of only \$45 per year. *Id.* DOR has also calculated reduced tax collections as high as \$4 million per year for the largest corporate property taxpayers in Montana.

It remains unclear how many counties will follow the lead of counties that have already voted to impose 77.89 mills instead of the 95 mills calculated by DOR. If Respondents are not mandated to impose the 95 mills calculated by DOR as required by the state equalization statutes and Mont. Code Ann. § 15-10-420(8) before the October 16, 2023, deadline for sending out tax bills, public schools will be irreparably harmed by disruption to school equalization funding in the current biennium with no apparent ability to recover equalization dollars when DOR's levy calculations are affirmed.

Unlike public schools and the students they serve, and as suggested by MACo's materials, those opposing the current interpretation are able to pay taxes under protest and recover the expenditure in the unlikely event DOR's levy calculations are deemed contrary to statute.

V. LEGAL QUESTIONS AND ISSUES ANTICIPATED TO BE RAISED

The legal question involved in this proceeding is whether counties may reject DOR's interpretation of § 15-10-420, a statute DOR is responsible for administering, by unilaterally recalculating state equalization mill levy requirements contrary to the mandates of Mont. Code Ann. §§ 20-9-331, 20-9-333 and 20-9-360.

Additionally, this Court must determine whether counties that resolve to reject DOR's calculations act outside of their constitutional and legislatively granted authority in doing so.

VI. CONCLUSION

Despite the clarity and transparency of DOR's past practice and the mandates of Title 20, Chapter 9, county opposition to the imposition of required state equalization mills places schools and students in the crossfire of a turf battle between the state and county elected officials articulated in a recent missive from MACo governing officials to Montana's governor. Exs. 13 and 14.

County officials from across the state have advanced the alternative interpretation of Mont. Code Ann. § 15-10-420 only recently and at odds with DOR's historical interpretation.

For the foregoing reasons, Petitioner respectfully requests that the Court issue a writ of mandate requiring that Respondents, and each of them, defer to the calculation of mills performed by DOR as provided in Mont. Code Ann. §§ 15-10-

420(8), 20-9-331, 20-9-333, 20-9-360, and levy the 95 mills calculated by DOR in accordance with DOR's memo to the counties on September 11, 2023.

DATED this 10th day of October, 2023.

By: /s/ Elizabeth A. Kaleva
Elizabeth A. Kaleva
KALEVA LAW OFFICES
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11 and 14, I hereby certify that the foregoing petition is printed with a proportionately-spaced Times New Roman typeface of 14 points; is double-spaced except for lengthy quotations or footnotes; and the word count excluding caption, tables, certificates, and signature blocks is 3650 as calculated by Microsoft Word.

DATED this 10th day of October, 2023.

By: /s/ Elizabeth A. Kaleva
Elizabeth A. Kaleva
KALEVA LAW OFFICES
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I, Elizabeth A. Kaleva, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 10-11-2023:

Beaverhead County (Respondent)
2 South Pacific Street, Suite 4
Dillon MT 59725
Representing: Self-Represented
Service Method: Conventional

Big Horn County (Respondent)
PO Box 908
Hardin MT 59034
Representing: Self-Represented
Service Method: Conventional

Blaine County (Respondent)
PO Box 278
Chinook MT 59523
Representing: Self-Represented
Service Method: Conventional

Broadwater County (Respondent)
515 Broadway Street
Townsend MT 59644
Representing: Self-Represented
Service Method: Conventional

Carbon County (Respondent)
PO Box 887
Red Lodge MT 59068
Representing: Self-Represented
Service Method: Conventional

Carter County (Respondent)
PO Box 315
Ekalaka MT 59324
Representing: Self-Represented
Service Method: Conventional

Cascade County (Respondent)
325 2nd Avenue N
Number 111
Great Falls MT 59401
Representing: Self-Represented
Service Method: Conventional

Chouteau County (Respondent)
PO Box 459
Fort Benton MT 59442
Representing: Self-Represented
Service Method: Conventional

Custer County (Respondent)
1010 Main Street, Ste. 22
Miles City MT 59301
Representing: Self-Represented
Service Method: Conventional

Daniels County (Respondent)
PO Box 247
Scobey MT 59263
Representing: Self-Represented
Service Method: Conventional

Dawson County (Respondent)
207 West Bell Street
Glendive MT 59330
Representing: Self-Represented
Service Method: Conventional

Deer Lodge County (Respondent)
800 Main Street
Anaconda MT 59711
Representing: Self-Represented
Service Method: Conventional

Fallon County (Respondent)
PO Box 846
Baker MT 59313
Representing: Self-Represented
Service Method: Conventional

Fergus County (Respondent)
712 W Main St # 210
Lewistown MT 59457
Representing: Self-Represented
Service Method: Conventional

Flathead County (Respondent)
800 S Main St
Kalispell MT 59901
Representing: Self-Represented
Service Method: Conventional

Gallatin County (Respondent)
311 W Main St #306
Bozeman MT 59715
Representing: Self-Represented
Service Method: Conventional

Garfield County (Respondent)
PO Box 7
Jordan MT 59337
Representing: Self-Represented
Service Method: Conventional

Glacier County (Respondent)
512 East Main
Cut Bank MT 59427
Representing: Self-Represented
Service Method: Conventional

Golden Valley County (Respondent)
PO Box 10
Ryegate MT 59074
Representing: Self-Represented
Service Method: Conventional

Granite County (Respondent)
PO Box 925
Philipsburg MT 59858
Representing: Self-Represented
Service Method: Conventional

Hill County (Respondent)
315 4th Street
Havre MT 59501
Representing: Self-Represented
Service Method: Conventional

Jefferson County (Respondent)
PO Box H
Boulder MT 59632
Representing: Self-Represented
Service Method: Conventional

Judith Basin County (Respondent)

PO box 427
Stanford MT 59479
Representing: Self-Represented
Service Method: Conventional

Lake County (Respondent)
106 4th Avenue E, Room 211
Polson MT 59860
Representing: Self-Represented
Service Method: Conventional

Lewis and Clark County (Respondent)
316 N. Park Avenue
Helena MT 59623
Representing: Self-Represented
Service Method: Conventional

Liberty County (Respondent)
PO Box 459
Chester MT 59522
Representing: Self-Represented
Service Method: Conventional

Lincoln County (Respondent)
512 California Ave
Libby MT 59923
Representing: Self-Represented
Service Method: Conventional

Madison County (Respondent)
PO Box 278
Virginia City MT 59755
Representing: Self-Represented
Service Method: Conventional

McCone County (Respondent)
PO Box 199
Circle MT 59215
Representing: Self-Represented
Service Method: Conventional

Meagher County (Respondent)
PO Box 309
White Sulphur Springs MT 59645
Representing: Self-Represented
Service Method: Conventional

Mineral County (Respondent)
PO Box 550

Superior MT 59872
Representing: Self-Represented
Service Method: Conventional

Missoula County (Respondent)
200 W Broadway
Missoula MT 59802
Representing: Self-Represented
Service Method: Conventional

Musselshell County (Respondent)
506 Main Street
Roundup MT 59072
Representing: Self-Represented
Service Method: Conventional

Park County (Respondent)
200 E. Park Street
Livingston MT 59047
Representing: Self-Represented
Service Method: Conventional

Petroleum County (Respondent)
PO Box 226
Winnett MT 59087
Representing: Self-Represented
Service Method: Conventional

Phillips County (Respondent)
PO Box 360
Malta MT 59538
Representing: Self-Represented
Service Method: Conventional

Pondera County (Respondent)
20 4th Avenue SW, Suite 205
Conrad MT 59425
Representing: Self-Represented
Service Method: Conventional

Powder River County (Respondent)
PO Box 200
Broadus MT 59317
Representing: Self-Represented
Service Method: Conventional

Powell County (Respondent)
409 Missouri Ave
Deer Lodge MT 59722

Representing: Self-Represented
Service Method: Conventional

Prairie County (Respondent)
PO Box 125
Terry MT 59349
Representing: Self-Represented
Service Method: Conventional

Ravalli County (Respondent)
215 S 4th St STE A
Hamilton MT 59840
Representing: Self-Represented
Service Method: Conventional

Richland County (Respondent)
201 West Main Street
Sidney MT 59270
Representing: Self-Represented
Service Method: Conventional

Roosevelt County (Respondent)
400 2nd Ave S
Wolf Point MT 59201
Representing: Self-Represented
Service Method: Conventional

Rosebud County (Respondent)
PO Box 47
Forsyth MT 59327
Representing: Self-Represented
Service Method: Conventional

Sanders County (Respondent)
PO Box 519
Thompson Falls MT 59873
Representing: Self-Represented
Service Method: Conventional

Sheridan County (Respondent)
100 W Laurel Ave
Plentywood MT 59254
Representing: Self-Represented
Service Method: Conventional

Silver Bow County (Respondent)
155 W Granite Street
Butte MT 59701
Representing: Self-Represented

Service Method: Conventional

Stillwater County (Respondent)
PO Box 970
Columbus MT 59019
Representing: Self-Represented
Service Method: Conventional

Sweet Grass County (Respondent)
PO Box 888
Big Timber MT 59011
Representing: Self-Represented
Service Method: Conventional

Teton County (Respondent)
PO Box 610
Choteau MT 59422
Representing: Self-Represented
Service Method: Conventional

Toole County (Respondent)
226 1st St South, Suite 201
Shelby MT 59474
Representing: Self-Represented
Service Method: Conventional

Treasure County (Respondent)
PO Box 392
Hysham MT 59038
Representing: Self-Represented
Service Method: Conventional

Valley County (Respondent)
501 Court Square, PO Box 1
Glasgow MT 59230
Representing: Self-Represented
Service Method: Conventional

Wheatland County (Respondent)
PO Box 1903
Harlowton MT 59036
Representing: Self-Represented
Service Method: Conventional

Wibaux County (Respondent)
PO Box 199
Wibaux MT 59353
Representing: Self-Represented
Service Method: Conventional

Yellowstone County (Respondent)
PO Box 35000
Billings MT 59107
Representing: Self-Represented
Service Method: Conventional

Electronically signed by Kimberly Witt on behalf of Elizabeth A. Kaleva
Dated: 10-11-2023