

In the Supreme Court of the State of Montana

No. DA-23-0689

Lake County,

Plaintiff/Appellant,

v.

State of Montana

Defendant/Appellee.

APPELLANT'S OPENING BRIEF

From the Twentieth Judicial District Court, Lake County, Montana
Lake County v. State of Montana
Cause No. DV-22-117
Honorable Amy Eddy

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STATEMENT OF THE ISSUES

1. Whether the district court erred in refusing to apply the continuous violation or equitable tolling doctrines to toll the statutes of limitation on Lake County’s claims of unfunded mandate and unjust enrichment (Counts One and Two, respectively.)

2. Whether the district court erred in its declaratory order by ruling that an appropriation of \$1 was sufficient to satisfy Mont. Code Ann. § 2-1-301(2)’s requirement that “the State shall reimburse Lake County for assuming criminal jurisdiction under [Public Law 280] annually to the extent funds are appropriated by the legislature.”

STATEMENT OF THE CASE

Plaintiff Lake County (“Lake County”) is local Montana government unit as defined by the Montana Constitution, Art. 11, § 1. It brought this case seeking past and present reimbursement for its costs incurred in fulfilling the State of Montana’s obligation to assume criminal jurisdiction over Indians of the Flathead Reservation under Public Law 280 and Mont. Code Ann. § 2-1-301(1) (Doc. 1 Compl. 16 (July 14, 2022), App. 1). It also sought a declaratory judgment establishing the State’s reimbursement obligation going forward. (*Id.*)

By way of background, Congress enacted Public Law 280 (“PL 280”) in 1953 to authorize the transfer of portions of criminal jurisdiction over “Indians in

the areas of Indian Country” from the federal government to the states in which the reservations existed. 18 U.S.C. § 1162. PL 280 conferred this jurisdiction on six so-called “mandatory” states, while allowing other states—like Montana—the *option* to assume into PL 280 jurisdiction. 25 U.S.C § 1321. Montana enacted legislation assuming PL 280 jurisdiction over the Flathead Reservation in 1963, pursuant to the statute now codified at Mont. Code Ann. § 2-1-301. The statute reads:

The State of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by [PL 280].

Only the Flathead Reservation entered into the transfer of jurisdiction under PL 280. *See Id.* In its Complaint, Lake County asserted that because the State lacks the infrastructure and has not supplied adequate funding, the County has been required to fund the vast majority of services necessary to the State’s exercise of PL 280 jurisdiction. (Doc. 1 Compl. ¶ 14, App. 1).

The County’s Complaint sought judgment affirming that the ultimate obligation to fund the exercise of PL 280 jurisdiction lies with the State, not the County, and that the State has breached its obligations by failing to fund and failing to provide the services necessary to fulfill its obligation. (*Id.* ¶¶ 14, 36, 42, 48; and Prayer for Relief).

Lake County’s claims were dismissed below upon two motions by the State. The first was a Rule 12(b)(6) Motion to Dismiss. (Doc. 4 Mot. to Dismiss (Dec.

13, 2022), App. 2). Agreeing with some, but not all, of the State’s arguments, the Court dismissed Counts One (Unfunded Mandate) and Two (Unjust Enrichment) on a statutes of limitation basis. (Doc. 29 Order Mot. to Dismiss 16 (May 4, 2023), App. 3). The Court allowed Lake County to proceed on Count Three (Declaratory Judgment). (*Id.* 18).

The second order followed cross-motions for summary judgment filed by the State and Lake County regarding the remaining declaratory judgment count. That order (Doc. 45) denied Lake County’s summary judgment motion and granted the State’s. The Court decided the issue as a pure matter of law—specifically, statutory interpretation. It concluded the language of § 2-1-301, MCA did not “obligate[] the State to appropriate any particular dollar amount, range, or even a reasonable dollar amount, to reimburse Lake County” and thus that the “Court lacks the authority to grant the relief Lake County seeks.” (Doc. 45 Order Mot. for S.J. 10 (Nov. 9, 2023), App. 4).

Lake County appeals both of these orders. It seeks a determination as a matter of law that the State of Montana is obligated to reimburse Lake County for the costs associated with exercising PL 280 jurisdiction on behalf of the State, and further that Lake County be permitted to recover such costs retroactively within the applicable statute of limitations periods. Lake County believes the District Court erred in its application of statutes of limitations rules, and in its interpretation of

Mont. Code Ann. § 2-1-301.

STATEMENT OF THE FACTS

Both district court orders were decided purely on issues of law. The first order responded to the State’s Rule 12(b)(6) Motion to Dismiss. For purposes of such a motion, “all allegations of fact contained [in the Complaint] are taken as true.” *Cowan v. Cowan*, 2004 MT 97 ¶¶10-11, 321 Mont. 13, 89 P.3d 6. The Complaint is in the record at Doc. 1. For purposes of analyzing the Motion to Dismiss, the operative facts are therefore those stated in the Complaint. In the interests of brevity, the facts stated there are incorporated by reference. Where relevant to a particular argument, specific allegations are quoted and cited in the *Argument* section, below.

The second order granted the State’s Motion for Summary Judgment and denied Lake County’s cross-motion. Although summary judgment motions sometimes rely on one side’s presentation of facts, the district court in this instance decided the issue purely as a matter of law—specifically as an issue of statutory interpretation. Since the second order was decided purely on issues of law, no factual issues were presented to the district court. Both parties did discuss the legislative history of the laws in question. A court may take judicial notice of official legislative acts pursuant to Mont. R. Evid. 202(4). Legislative history and acts are discussed where relevant to the argument, below.

STANDARD OF REVIEW

The standard of review for a Rule 12(b)(6) motion to dismiss is *de novo*. *Shepard v. Farmers Ins. Exch.*, 2020 MT 320, ¶ 14, 402 Mont. 359, 477 P.3d 1114.

The “standard of review in appeals from summary judgment rulings is *de novo*.” *Molina v. Panco Const., Inc.*, 2002 MT 136, ¶ 14, 310 Mont. 185, 49 P.3d 570.

SUMMARY OF ARGUMENT

In the first of its two orders, the district court addressed Counts One (Unfunded Mandate) and Two (Unjust Enrichment) of Lake County’s Complaint. Analyzing Count One, the court correctly recognized “Lake County has sufficiently stated a claim that the Legislature was required to fund P.L. 280 jurisdiction and its failure to do so violated Mont. Code Ann. § 1-2-112(1)” (i.e., the statutory prohibition on unfunded mandates). (Doc. 29 Order Mot. to Dismiss 12, App. 3). With respect to Count Two, the court appeared to acknowledge that an unjust enrichment claim became viable as of 2017 because “Lake sought to withdraw consent [to enforcing the State’s assumption of PL 280 jurisdiction] but had no mechanism to do so.” (*Id.* 13). Notwithstanding its recognition of potential causes of action, the court dismissed the two counts on a statute of limitations basis. (See *Id.* 14-15). The court determined there was “no set of facts under which the doctrine of continuing violation could be applied to toll the statutes of

limitation in this case.” (*Id.* 14). It further found “there was no set of facts under which the doctrine of equitable tolling could be applied to the statutes of limitation in this case. (*Id.* 15).

The court misapplied statutes of limitation concepts. It erred in dismissing Counts One and Two based on statutes of limitation, failing to recognize the continuous nature of the State's violations. Count One, alleging an unfunded mandate, and Count Two, asserting unjust enrichment, both stem from the State's ongoing failure to reimburse Lake County for costs incurred enforcing criminal law jurisdiction under Public Law 280 on the Flathead Reservation. The persistent inaction by the State constitutes a "continuing violation," warranting application of the continuing violations doctrine, which would permit recovery of damages despite the longstanding duration of the State's refusal to provide funding.

Even if the continuing violation doctrine did not apply, Lake County's diligent efforts to resolve this funding dispute through legislation beginning in 2017 should invoke the doctrine of equitable tolling. Lake County's consistent engagement with the State to find a legislative solution demonstrates a good faith attempt to address the financial burden imposed by the State's assumption of criminal jurisdiction and the corresponding imposition of the associated responsibility on Lake County. Therefore, the statutes of limitation should be equitably tolled, acknowledging Lake County's proactive and reasonable conduct

in pursuing alternate legal remedies, and enabling the recovery of damages incurred retroactive to 2017. This approach underscores the principles of equity and justice, seeking to prevent the State from benefiting from its continuous failure to address the financial strain placed on Lake County due to the enforcement of PL 280 jurisdiction.

In the second of its two orders, the district court addressed Count Three (Declaratory Judgment). The court began by agreeing with Lake County that “it is clear under the plain statutory language [of § 2-1-301(1)] that the State is ‘obligated’ to provide for criminal jurisdiction on the Flathead Reservation, with or without the consent of Lake County.” However, it went on to rule that “Nothing in Mont. Code Ann. § 2-1-301 obligates the State to appropriate any particular dollar amount, range, or even a reasonable dollar amount to reimburse Lake County’s costs incurred pursuant to P.L. 280.” (Doc. 45 Order Mot. for S.J. 10, App. 4). Concluding that the “Court lacks the authority to grant the relief Lake County seeks”, the district court suggested, “If the financial burden Lake County bears is unacceptable, which by all accounts it appears to be, its remedy is to withdraw.” (*Id.*).

In this ruling, the court ignored the context and legislative history surrounding the obligations Montana assumed when it elected to implement jurisdiction under PL 280.

The subject statute reads as follows:

Unless the Confederated Salish and Kootenai tribes or Lake County withdraws consent to enforcement pursuant to 2-1-306, the state shall reimburse Lake County for assuming criminal jurisdiction under this section annually to the extent funds are appropriated by the legislature. The annual amount of reimbursement must be adjusted each year based on the consumer price index.

Amd. Laws 2021, ch. 556, § 1; eff. July 1, 2021. The State of Montana thus has a statutory obligation to reimburse Lake County for costs incurred in assuming criminal jurisdiction over Indians of the Flathead Indian Reservation, as part of Public Law 280. The legislative and historical context of these statutes mandates reimbursement to prevent the imposition of an unfunded mandate on the County. Unfortunately, the district court adopted the State's overly simplistic analysis which contended that even a reimbursement of \$1 or \$0 would meet the requirements of the statute.

Statutory interpretation should consider the entire legislative context, historical background, and the purpose of the statute. The legislative amendments and historical developments affirm the State's responsibility to bear the costs associated with assuming criminal jurisdiction over Indians of the Flathead Reservation. The statute's phrase "to the extent funds are appropriated by the Legislature" should not be used to justify nominal or no reimbursement, as such an interpretation would lead to absurd results and violate principles of statutory construction that aim to prevent unfunded mandates.

ARGUMENT

I. BACKGROUND REGARDING THE STATE OF MONTANA'S ADOPTION OF PL 280 JURISDICTION.

This case has enormous implications for the people of Lake County and western Montana. The issues before the Court are rooted in PL 280 and the State of Montana's decision, in 1963, to opt into jurisdiction thereunder. Because the State assumed jurisdiction "in accordance with the consent of the United States given by [PL 280]," it is essential to understand the historical context of PL 280 in order to understand the nature and scope of the obligations assumed by the State and their relationship to the issues presented in this appeal.

- a. The state assumed the burdens and responsibilities associated with exercising PL 280 jurisdiction.

PL 280 was "the first jurisdictional bill of general applicability ever to be enacted by Congress." *Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 488, 99S.Ct.740, 58 L.Ed.2d 740 (1979). It "reflected congressional concern over the law-and-order problems on Indian reservations and the financial burdens of continued federal jurisdictional responsibilities on Indian lands." *Id.* (citation omitted).

With the enactment of PL 280, Congress expressly stated that one of the primary objectives was to accomplish a "withdrawal of Federal responsibility for Indian affairs wherever practicable." *Three Affiliated Tribes of Fort Berthold*

Reservation v. Wold Eng'g, P. C., 476 U.S. 877, 895, 106 S. Ct. 2305, 90 L.Ed.2d 881 (1986) (Rehnquist, J., dissenting) (quoting S. Rep. No. 699, 83d Cong., 1st Sess. (1953)). Thus, with PL 280, Congress aimed to curb federal expenditures for law enforcement in Indian country, fully understanding that states would need to bear the costs of assuming jurisdiction without federal assistance. PL 280 did not authorize or provide any federal funding to states assuming jurisdiction thereunder. *See* Pub. L. No. 83-280, 67 Stat. 588 (1953). In fact, the legislative history makes clear that, under PL 280, the financial burden associated with law enforcement in Indian country was considered “a problem which the States should deal with and accept without Federal financial assistance” *Bryan v. Itasca Cnty.*, 426 U.S. 373, 382 and n. 9, 96 S. Ct. 2102, 48 L.Ed.2d 710 (1976) (quoting Unpublished Transcript of Hearings on H.R. 1063 before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 83d Cong., 1st Sess. (1953)).

Hence, at the time of enactment, states understood that opting in under PL 280 entailed significant financial and functional obligations and responsibilities. Indeed, the transfer of criminal jurisdiction under PL 280 is, on its face, expansive, and the powers and responsibilities that shift from the federal government to state governments cannot be overstated. PL 280 “obligate[s] and bind[s] *the State*” to assume the federal government’s responsibility for exercising “jurisdiction over criminal offenses committed by or against Indians ... in Indian country ... to the

same extent that such State has jurisdiction over any such offense committed elsewhere within the State.” Pub. L. No. 83-280, 67 Stat. 588 (1953) (emphasis added); 25 U.S.C. § 1321(a)(1). Under PL 280, state criminal laws become enforceable “as they [are] elsewhere within the State” and the federal government no longer generally exercises jurisdiction under the General Crimes Act (18 U.S.C. § 1152) or the Major Crimes Act (18 U.S.C. § 1153). *See* 18 U.S.C. § 1162(a); 25 U.S.C. § 1321(a)(1); *see also* 18 U.S.C. § 1162(d); 25 U.S.C. § 1321(a)(2) (providing a mechanism for restoration of federal jurisdiction, concurrent with that of the state, under the General Crimes Act and Major Crimes Act but only “[a]t the request of an Indian tribe” and only if the United States Attorney General “consent[s]” to the request).

Thus, under PL 280, states assume responsibility for investigating, prosecuting, and punishing virtually all criminal offenses committed by and against Indians in Indian country, including, but not limited to, the most dangerous and serious felony offenses, like murder, manslaughter, kidnapping, incest, assault, child abuse or neglect, arson, burglary, and robbery. *See* 18 U.S.C. § 1153; *see also* 18 U.S.C. § 1162(a); 25 U.S.C. § 1321(a)(1); 18 U.S.C. § 1162(d); 25 U.S.C. § 1321(a)(2).

As of 1963, PL 280 retained its original form, allowing states, such as Montana, the *option* to assume criminal jurisdiction where the people of the state

“by affirmative legislative action obligate and bind the State to the assumption thereof”:

The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act (referring to §§ 2 and 4, see n. 1, supra), to assume jurisdiction at such time and in such manner as *the people of the State* shall, by affirmative legislative action, *obligate and bind the State* to assumption thereof.

Act of 8/15/1953, Pub.L. No. 83-280, § 7, 67 Stat. 588, 590; Codified § 25 U.S.C. §§ 1321 (1964 ed., Supp. V) (emphasis added).

Pursuant to this version of PL 280, Montana passed HB 55 in 1963, enacting Ch. 81, Laws of 1963, Section 1 extending criminal jurisdiction over Indians of the Flathead Reservation and *obligating* and *binding* itself to the assumption. (Session Laws Chs. 80-81, Doc. 34 Ex 2, App. 5). Thus, the statutory phrase “obligates and binds itself” has a meaning rooted in the express language of PL 280. Indeed, the State’s acceptance of this condition was a Congressional prerequisite to the jurisdictional transfer.

Critically, the phrase “the State shall . . . obligate and bind the State to assumption thereof” conveys not only *authority* to exercise jurisdiction, but a corresponding *obligation* to discharge the broad and expansive responsibilities that come with that authority. Referencing the phrase, the Supreme Court of the United States has “emphasized the need for the responsible jurisdictions to ‘manifes[t] by

political action their willingness and ability to discharge their new responsibilities.”” *Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 754, n. 30 (italics added).

More recently, the Eighth Circuit has described PL 280 as “Congress’ offer of jurisdiction over Indians” conditioned upon whether a state’s authorizing statute demonstrates “substantive compliance with PL 280, i.e. is the jurisdiction statute sufficient to accept Congress’ offer of jurisdiction over Indians.” *Rosebud Sioux Tribe v. State of S.Dak.*, 900 F.2d 1164, 1169 (8th Cir. 1990). Noting that an effective state jurisdictional statute must “reflect[] an acceptance of the burden of jurisdiction”, the Eighth Circuit found South Dakota’s statute ineffective because it did not respond to one of the principal concerns underlying PL 280’s enactment—a transfer of the financial burden from the federal government to the state. *Id.* at 1171.

Mindful that PL 280 itself only authorized jurisdiction where *the people of the State* shall, by affirmative legislative action, *obligate and bind the State* to assumption thereof, it is clear that when Montana voluntarily opted into jurisdiction a decade after PL 280’s enactment, it did so on behalf of the State of Montana as a whole, not just the people of Lake County. Further, it is clear that Congress, and subsequently the Supreme Court, recognized that a State’s decision to assume jurisdiction bore with it the burdens and responsibilities associated with

the exercise of that jurisdiction.

In sum, the scope and burden of PL 280 jurisdiction was broad and substantial. In making its offer to transfer jurisdiction to a state, it is clear that Congress intended the State itself, not a small governmental entity like a county, to carry the burden and fulfill the responsibilities assumed under PL 280. The statute by which Montana assumed jurisdiction—now codified at Mont. Code Ann. § 2-1-301(1), must be read in light of this Congressional intent, and binds the *State of Montana* to this obligation—not *Lake County*.

- b. The statutory language reflects that the State of Montana accepted fully the benefits and burden of PL 280 jurisdiction on the Flathead Reservation.

As mentioned, *supra*, the State of Montana assumed jurisdiction by passing House Bill 55 in 1963. Presently codified at § 2-1-301(1), the statute contains carefully chosen language. The State obligated and bound itself “in accordance with the consent of the United States given by [PL 280].” The jurisdictional transfer authorized by PL 280 was conditional; It plainly required that *the people of the state* (i.e. not just the people of the impacted county) obligate and bind *the state* to the jurisdiction being transferred. “Nor was the requirement of affirmative legislative action an idle choice of words; the legislative history of PL 280 shows that the requirement was intended to assure that state jurisdiction would not be extended until the jurisdictions to be responsible for the portion of Indian country

concerned manifested by political action their willingness and ability to discharge their new responsibilities.” *Kennerly v. Dist. Ct. of Ninth Jud. Dist. of Mont.*, 400 U.S. 423, 427, 91 S. Ct. 480, 482, 27 L. Ed. 2d 507 (1971)(citing H.R.Rep.No. 848, 83d Cong., 1st Sess., 6, 7 (1953)).

The legislative history of HB 55 is limited, but highlights that the Legislature was aware of the potential financial cost of discharging these responsibilities: “. . . Senator Mahoney took the opportunity to state that it would cost the state a lot of money.” (Judiciary Committee Minutes, Steve Demurres, Jan. 15, 1963 Doc. 18 Ex. D, App. 6) (underline added) At the January 15, 1963 Judiciary Committee meeting, Steve Demurres, a proponent and representative of the Flathead Tribe explained the problem the Bill was intended to address:

I am a member of the Flathead Tribe and allotted on that reservation and authorized to appear before the Committee and speak in support of House Bill No. 55. We would like to call attention of the Committee that there has been in effect a “no-man's land” as far as law and order are concerned. The Federal Government has limited itself to the ten major crimes and beyond that have done nothing. The state, counties, and others cannot assume jurisdiction and will not because they don't have legal authority. It has fallen on the Tribal Council to spend \$30 to \$40 thousand a year attempting to provide some semblance of law and order among its people.

Montana, on our reservation, is crossed by two of the national highways, 10 and 93. We have problems of law and order with regard to highway patrol. Serious problems lie within our juvenile delinquents and there is no court to take them. Also, there are considerable problems with welfare matters. On the Flathead Reservation we urge that the bill be passed.

(Doc. 18, Ex. D) (emphasis original).

As the legislative record reflects, the State’s jurisdictional assumption was intended to improve law enforcement by providing resources the federal and tribal governments were not able to adequately provide. The history also indicates that the State’s assumption of jurisdiction was not intended to burden Lake County. When asked about the financial burden, the bill’s sponsor, Rep. Turnage, stated “As far as Lake County is concerned, it will be no extra burden.” (Doc. 18, Ex. D, App. 8). On May 15, 1964, the Tribes passed Ordinance 40-A (Revised), agreeing to come under PL 280 jurisdiction. On October 8, 1965, Governor Babcock issued the statutory proclamation by which the State assumed jurisdiction. (Proclamation 1965, Doc. 5 Ex. 1, App. 7)

Taken in context, 1963’s HB 55, still codified at § 2-1-301(1), represents a clear acknowledgement that the State of Montana was itself taking on the responsibilities of exercising PL 280 jurisdiction. The State of Montana accepted and bound itself to Congress’ conditional offer of jurisdictional transfer.

II. THE DISTRICT COURT ERRED IN ITS APPLICATION OF STATUTES OF LIMITATION TO COUNTS ONE AND TWO.

Counts One and Two were dismissed following the State’s Rule 12(b)(6) Motion to Dismiss. Count One alleged the existence of an unfunded mandate in violation of Mont. Code Ann. § 1-2-112 and 116. (*See* Doc. 1 Compl. ¶¶ 25-36, App. 1). Count Two sought equitable relief in the form of a claim for unjust

enrichment. It alleged that the State's assumption of criminal law jurisdiction on the Flathead Reservation imposed a unique and costly burden not faced by other counties in Montana. It alleged that it was inequitable for Lake County to bear the burden of the State's assumption without reimbursement from the State. (*See id.* ¶¶ 40-42). Both counts sought repayment for the costs borne by Lake County. (*See id.* ¶¶ 36 and 42). The State asserted a number of arguments in favor of dismissing these counts. However, the only one adopted by the District Court was the statute of limitations argument. (*See generally* Order Doc. 29, Order Mot. to Dismiss 12-16, App. 3). Hence, Lake County limits its discussion to that issue.

The District Court began its analysis by determining the applicable statutes of limitation: Two years for the unfunded mandate claim, pursuant to Mont. Code Ann. § 27-2-211(1)(c)(liability created by statute), and three years for the unjust enrichment claim, pursuant to Mont. Code. Ann. § 27-2-202(3). Lake County has no issue with the court's determination that these are the applicable statutes. However, the District Court erred when it refused to recognize that the ongoing nature of the violations justified application of the continuing violations doctrine. The court furthered its error when it also declined to apply the doctrine of equitable tolling.

- a. The State's failure to pay for the burden of exercising PL 280 jurisdiction constitutes a continuing violation which is not barred by the statute of limitations.

Lake County's claims are not time-barred because they are premised on the State's ongoing, continuous actions, rather than a single discrete incident. The effect a continuing violation has on the statute of limitations depends on which of the two versions of the theory a court adopts—to either limit damages to a retroactive period within the applicable statute of limitations or allow a plaintiff to recover damages dating back to the beginning of the violation. *Anderson v. BNSF Ry.*, 2015 MT 240, ¶ 24, 380 Mont. 319, 328, 354 P.3d 1248, 1257. The State's violation of its obligation to Lake County has continued unabated since *at least* 2017, when Lake County first tried to arrange a legislative solution with the State to pay for the mounting costs associated with PL 280. *See* (Doc. 1, Compl. ¶ 18, App. 1). Lake County is therefore entitled to damages dating back to 2017.

- i. *The State's failure to reimburse Lake County for enforcing PL 280 on the State's behalf constitutes a "continuing violation" of the State's obligation.*

A "continuing violation", which can toll the applicable statute of limitations, is one that is not capable of being captured by a definition of time and place of injury because it is an active, progressive and continuing occurrence; it is taking place at all times. *Christian v. Atl. Richfield Co.*, 2015 MT 255, ¶ 17, 380 Mont. 495, ¶ 17, 358 P.3d 131, ¶ 17. Courts have extended the continuing violation

doctrine to other continuous, tortious wrongs beyond common law torts, including statutory rights. *See Benjamin v. Anderson*, 2005 MT 123, ¶ 39, 327 Mont. 173, 183, 112 P.3d 1039, 1046 (applying the continuing violation doctrine to a hostile work environment claim); *See also Zabrocki v. Teachers' Ret. Sys.*, 2021 MT 48N, ¶ 17, 403 Mont. 546, ¶17, 480 P.3d 833, ¶¶ 16-17 (applying the continuing violation doctrine to a claim arising under Mont. Code Ann. § 27-2-211(1),—the same statute of limitations the State argues applies to Lake County's unfunded mandate claim. Although *Zabrocki* is a memorandum opinion and therefore not binding on this Court, it provides an example of the application of this principle)

When determining whether a financial injury may be considered a “continuing violation,” “case-specific considerations should play a role in [the] analysis, while keeping in mind the overarching policy goals of both statutes of limitations and the continuing tort exception.” *Christian*, ¶ 53. That said, the “case-specific considerations” are the same that play into any continuing violation claim—the continuing violation doctrine “applies to a temporary injury that gives rise to a new cause of action each time that it repeats.” *Burley v. Burlington N. & Santa Fe Ry. Co.*, 2012 MT 28, ¶ 14, 364 Mont. 77, ¶ 14, 273 P.3d 825, ¶ 14.

Courts have consistently agreed that a financial wrong that occurs on an established, regular basis should be considered “continuing.” For instance, in *Anderson v. Boyne USA, Inc.*, the U.S. District Court for the District of Montana

considered whether a claim for breach of contract constituted a “continuing claim,” which, like a “continuing tort,” requires “a series” of incidents and cannot be based on a ““a single distinct event which has ill effects that continue to accumulate over time.” *Anderson v. Boyne USA, Inc.*, No. CV-21-95-GF-BMM, 2022 WL 2528242, at *2 (D. Mont. July 7, 2022). In *Boyne*, the District Court rejected defendants’ assertion that the statute of limitations began running from the first time plaintiffs’ received an inflated monthly statement. *Id.* at *2. Rather, “[t]he fact that Boyne submits ‘monthly’ statements to Plaintiffs demonstrates that Boyne’s contractual obligations, and the alleged breach thereof, are continuous.” *Id.*

In crafting the Montana Supreme Court’s “case-specific” approach to applying the continuing violation doctrine to unjust enrichment, the Montana Supreme Court in *Christian, supra.*, analyzed two diverging North Carolina cases. *Id.* at ¶ 53. In the first, the North Carolina Court of Appeals declined to apply the continuing violation doctrine because the claim was based on “the continuing effects of a single occurrence,” whereas the same court applied the continuing violation doctrine to a claim where the plaintiff alleged a recurring failure to make monthly salary payments because “refusal to pay the salary month after month constituted a series of continual unlawful acts.” *Id.* (comparing *Stratton v. Royal Bank of Canada*, 211 N.C.App. 78, 712 S.E.2d 221, 229 (2011) with *Marzec v. Nye*, 203 N.C.App. 88, 690 S.E.2d 537, 542 (2010)).

Just as the defendant's violations in *Marzec* and *Boyne* recurred on a regular basis, the State has continually declined to compensate Lake County for its enforcement of PL 280 jurisdiction each year that the Legislature has been in session. The Legislature is explicitly, statutorily burdened with reassessing the annual amount to be allocated to Lake County for this purpose. *See* Mont. Code Ann. § 2-1-301(2). Moreover, even before Mont. Code Ann. § 2-1-301(2) went into effect in 2021, the Legislature still had the recurring opportunity to appropriate funds to support Lake County's PL 280 enforcement and declined to do so. For instance, the Legislature prepared a fiscal analysis in 2017 that revealed that Lake County's annual PL 280 costs were already in excess of \$4 million and rising, yet they failed to appropriate any money toward easing this financial burden. (Doc. 1 Compl. ¶ 18, App. 1; Doc. 19, Ex. 1, App. 9). The State knew of the financial burden it was foisting upon Lake County, in violation of Mont. Code Ann. § 1-2-112, and Mont. Code Ann. § 1-2-116, but it failed to correct the harm year after year. This is the very essence of a continuing violation.

- ii. *The State's ongoing violations entitle Lake County to damages dating back to at least 2017.*

The State's continuing violation against Lake County entitles Lake County to damages preceding the statute of limitation period measured from the Complaint's filing date of July 14, 2022. "The effect the continuing violations doctrine has on the statute of limitations depends on which of the two versions of

the theory a court adopts.” *Anderson v. BNSF Ry.*, 2015 MT 240, ¶ 24, 380 Mont. 319, 328, 354 P.3d 1248, 1257. The first is sometimes called a “pure” continuing violation theory and states that so long as any of the negligent conduct occurred within the limitations period, the plaintiff may recover damages for all of the negligent conduct, even the portion of it that occurred outside the limitations period. *Id.* The second is sometimes called a “modified” continuing violation theory and still recognizes the negligent conduct as a single whole, rather than separate, discrete acts, but nonetheless limits recovery to that portion of the damages that falls within the limitations or “look-back” period. *Id.*

The Montana Supreme Court has applied both the “pure” and “modified” continuing violation theory in various cases in the past. *Compare Graveley Ranch v. Scherping*, 240 Mont. 20, 26, 782 P.2d 371, 375 (1989) (limiting recovery for continuing nuisance to damages sustained within two years of the Complaint being filed) to *Zabrocki v. Teachers’ Ret. Sys.*, 2021 MT 48N, ¶ 18, 403 Mont. 546, 480 P.3d 833 (allowing recovery for the entire course of conduct). Although courts have been inconsistent in determining whether the “pure” or “modified” theory applies to a continuing violation claim, the analysis generally depends on the gravamen of the claim and the equitable and efficiency interests. Kyle Graham, *The Continuing Violations Doctrine*, 43 Gonz. L. Rev. 271, 296 (2008).

In considering the “particular policies of the statute of limitations in

question, as well as the nature of the wrongful conduct and harm alleged,” it becomes apparent that equity favors backdating Lake County’s damages to at least 2017. *Christian v. Atl. Richfield Co.*, 2015 MT 255, ¶ 53, 380 Mont. 495, 522, 358 P.3d 131, 151. “The statute of limitations should not be interpreted in a manner that allows the defendant to acquire a right to continue the tortious conduct.” *Anderson v. BNSF Ry.*, 2015 MT 240, ¶ 41, 380 Mont. 319, ¶ 41, 354 P.3d 1248, ¶ 41. To avoid such a result, the Court has allowed plaintiffs to recover damages beyond the statute of limitations when to do otherwise would create “an ‘open-ended license to continue’ [the] wrongful conduct with knowledge that doing so will not increase [the] penalty.” *Zabrocki v. Teachers’ Ret. Sys.*, 2021 MT 48N, ¶ 18, 403 Mont. 546, 480 P.3d 833 (quoting *Page v. United States*, 729 F.2d 818, 823 (D.C. Cir. 1984); *Taylor v. Meirick*, 712 F.2d 1112, 1119 (7th Cir. 1983)).

The nature of Lake County’s relationship with the State also encourages the application of the pure theory of continuing violation damages. Courts have typically applied a pure theory of continuing violations to claims involving “an ‘unbalanced’ relationship between the parties,” in recognition of the fact that the plaintiff is suing for dealings in which the plaintiff “[was] necessarily at a disadvantage to question” the defendant’s actions. Kyle Graham, *The Continuing Violations Doctrine*, 43 Gonz. L. Rev. 271, 300 (2008) (quoting *Siegel v. Kranis*, 288 N.Y.S.2d 831, 834 (N.Y. App. Div. 1968)). Lake County was left at a

significant disadvantage in negotiating with the State to obtain funding for PL 280. *See* Mont. Code Ann. § 7-1-114 (binding local governments to the laws and procedures of the state government). This was particularly relevant for any damages incurred prior to January 1, 2022, which was the first date on which Lake County had the option of withdrawing from PL 280 enforcement. *See* Mont. Code Ann. § 2-1-306.

The State has wielded its significant power over Lake County to force Lake County to unjustly assume the financial burden of PL 280 for many years. To bar Lake County from recovering damages would be to ignore the nature of Lake County's claims and the nature of the parties' relationship.

- b. Any statute of limitations, if applicable, should be equitably tolled in recognition of Lake County's attempts to solve its issues with the state through other legal avenues.

Although the State's continuing violation forecloses any statute of limitations argument, even if the State's violation was not continuous, Lake County has nonetheless diligently pursued alternate remedies to solve the State's neglect of financial support for PL 280 since at least 2017. (*See* Doc. 1 Compl. ¶ 18 - 22, App. 1). Lake County's claims are therefore entitled to equitable tolling back to 2017 in recognition of Lake County's pursuit of alternate remedies since that time. Under Montana's three-part test for equitable tolling, a statute of limitations may be tolled when a party reasonably and in good faith pursues one of several possible

legal remedies and the claimant meets three criteria: (1) timely notice to the defendant within the applicable statute of limitations in filing the first claim; (2) lack of prejudice to the defendant in gathering evidence to defend against the second claim; and (3) good faith and reasonable conduct by the plaintiff in filing the second claim. *Lozeau v. Geico Indem. Co.*, 2009 MT 136, ¶ 14, 350 Mont. 320, ¶ 14, 207 P.3d 316, ¶ 14.

Lake County has asserted its claim for reimbursement before the Legislature and sought to remedy the State's financial neglect through legislative means for several years. As the State acknowledged below, Lake County originally approached the State with its concerns regarding Lake County's inability to pay for enforcement of PL 280 in early 2017. *See* Resolution No. 17-01 (Resolution 17-01, Feb. 16, 2017, Doc. 18 Ex. E, App. 8). In Resolution No. 17-01, Lake County clearly stated its position that it "does not have the economic resources to continue participation in Public Law 280 without detriment to the real property taxpayers of Lake County, Montana," and "resolved" to remedy this issue by "work[ing] with the Montana Legislature to address the funding issues regarding continued implementation of PL 280." *Id.* Lake County has attempted to work with the Montana Legislature multiple times and each time the State refused to grant Lake County the relief to which it is entitled. In 2017, the Legislature introduced, but failed to pass, a bill that would have required reimbursement to Lake County from

the Department of Justice for net costs associated with enforcing criminal jurisdiction on the reservation. (Doc. 1 Compl. ¶ 18, App. 1). In 2021, the Legislature passed a bill to reimburse Lake County for PL 280 enforcement, but, once again, Lake County did not receive any meaningful funding from the State. *See* Mont. Code Ann. § 2-1-301(2); (Doc. 1 Compl. ¶ 20, App. 1 (clarifying that the State appropriated only \$1 under § 2-1-301(2), MCA)). Lake County continually attempted to coordinate an amicable resolution with the State to avoid “a law enforcement vacuum of catastrophic proportions.” *See* (Doc. 1 Compl. ¶ 23, App. 1). Most recently, during the 2023 Legislative Session, Lake County succeeded in obtaining passage of HB 479. As the district court noted, “HB 479 authorized appropriating \$2.5 million each year in the biennium” to fund Lake County’s PL 280 services. (Doc. 45 Order Mot. for S.J. 6, App. 4). Unfortunately, Governor Gianforte vetoed the bill. (*Id.* 7).

Lake County has thus demonstrated good faith and reasonable conduct as a litigant, satisfying the third prong of *Lozeau*’s equitable tolling test. In terms of the first and second prongs, the State cannot credibly claim that it lacked notice or suffered prejudice by virtue of Lake County pursuing alternate, possible remedies, since it was the State with whom Lake County engaged in these potential, legislative resolutions. Therefore, Lake County has satisfied the elements justifying equitable tolling of the statute of limitations. *See Lozeau v. Geico Indem. Co.*, 2009

MT 136, ¶ 14, 350 Mont. 320, ¶ 14, 207 P.3d 316, ¶ 14.

The State previously attempted to argue that Lake County’s attempts at seeking a remedy through the Montana Legislature fall outside the conventional “possible legal remedies” conceived of by the three-part test, but the Montana Supreme Court has reiterated time and again that “the rationale behind the doctrine of equitable tolling serves broader purposes than merely those embodied by this test.” *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 16, 366 Mont. 78, ¶ 16, 285 P.3d 494, ¶ 16. The policy behind the doctrine is to “avoid forfeitures and allow good faith litigants their day in court.” *Addison v. State*, 21 Cal.3d 313, 146 Cal. Rptr. 224, 578 P.2d 941, 945 (Cal. 1978). A plaintiff should not be deprived of his or her claims “when such an approach would serve no policy purpose.” *Schoof v. Nesbit*, 2014 MT 6, ¶ 34, 373 Mont. 226, ¶ 34, 316 P.3d 831, ¶ 34.

The State has been aware of Lake County’s PL 280 financing issues for years, as Lake County has engaged in active discussions with the Legislature to come to some kind of resolution. The Montana Supreme Court has “reject[ed] any one-size-fits-all approach that would serve only to undermine the purpose of the equitable tolling doctrine and . . . deprive a plaintiff of his or her rights. . . .” *Schoof*, ¶ 37 (quoting *Weidow v. Uninsured Employers’ Fund*, 2010 MT 292, ¶ 28, 359 Mont. 77, ¶ 28, 246 P.3d 704, ¶ 28). Lake County has diligently sought to achieve a resolution with the State that would have avoided the law enforcement

vacuum and public safety risk which the parties must now confront. For the Court now to decide that Lake County's claims are defeated by this very act of good faith would not only "serve no policy purpose," it would actively *undermine* important public policies, including the promotion of public safety and the cooperation of local governments with State directives. *See* Mont. Code Ann. § 7-1-114(f).

III. COUNT THREE (DECLARATORY JUDGMENT) SHOULD HAVE BEEN RESOLVED IN FAVOR OF LAKE COUNTY, NOT AGAINST IT.

Count Three was dismissed following cross-motions for summary judgment filed by both parties. The District Court erred in its interpretation of the subject statute. It failed to address the extensive historical and legislative context underlying Mont. Code Ann. § 2-1-301 and 306, instead adopting the State's overly simplistic analysis to conclude the State had no obligation to reimburse Lake County under the statutes.

The parties' cross-motions requested a declaration of statutory obligations "[S]tatutory interpretation is a question of law." *State v. Ramsey*, 2007 MT 31, ¶ 13, 336 Mont. 4, 152 P.3d 710. As such, district courts may order summary judgment based purely on statutory interpretation without the need to resolve issues of material fact. *See, e.g., Ritchie v. Town of Ennis*, 320 Mont. 94 ¶¶ 30-34, 86 P.3d 11, 149 Lab.Cas.P 59, 841 (affirming district court's denial of deposition costs because district court's order granting summary judgment was based solely on a statutory interpretation). Here, the district court issued its ruling solely as a

matter of statutory interpretation. (Doc. 45 Order Mot. for S.J. 10, App. 4). Its decision is therefore subject to *de novo* review.

By its summary judgment motion concerning Count Three, Lake County requested a judicial declaration of “rights, status or other legal relations” pursuant to the Montana Uniform Declaratory Judgments Act, Mont. Code Ann. § 27-8-202, et seq. Specifically, it asked the District Court to determine the State’s reimbursement obligations under Mont. Code Ann. § 2-1-301. (Doc. 34, Brief in Supp. Mot. S.J. 3 (August 18, 2023)) Originally enacted in 1963, § 2-1-301(1) states:

The *state of Montana* hereby *obligates* and *binds* itself to assume, as provided in this section, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd congress, 1st session).

(En. Laws 1963, ch. 81, § 1; RCM 1947 83-801) (emphasis added).

The declaratory judgment action placed the second subsection in issue, Mont. Code Ann. § 2-1-301(2). Enacted in 2021 with an effective date of July 1 of that year, it states:

Unless the Confederated Salish and Kootenai tribes or Lake County withdraws consent to enforcement pursuant to 2-1-306, the state shall reimburse Lake County for assuming criminal jurisdiction under this section annually to the extent funds are appropriated by the legislature. The annual amount of reimbursement must be adjusted each year based on the consumer price index.

(Amd. Laws 2021, ch. 556, § 1; eff. July 1, 2021). Lake County argued these

provisions, taken together and in light of legislative history, mandated that the County receive reimbursement so that it would not continue to suffer an unfunded mandate. The State took the opposite position, arguing it has no statutory obligation to reimburse Lake County any sum at all.

As discussed *supra*. in the background section of this brief, the historical context of PL 280 and the State’s opt-in to jurisdiction establish that Congress intended the State itself, not a small governmental entity like a county, to carry the burden and fulfill the responsibilities assumed under PL 280. The statute by which Montana assumed jurisdiction—now codified at Mont. Code Ann. § 2-1-301(1), must be read in light of this Congressional intent, and binds the *State of Montana* to the obligation—not *Lake County*.

From 1965 until 1993, the jurisdictional situation on the Flathead Reservation remained essentially unchanged. In 1993, the Legislature enacted SB 368, amending Mont. Code Ann. § 2-1-306 to allow the transfer of misdemeanor jurisdiction to the Tribes. This transfer was accomplished by Governor Marc Racicot’s 1994 Proclamation, the opening line of which recognizes,

. . . [T]he State of Montana *obligated itself* to assume criminal jurisdiction over Indians on the Flathead Indian Reservation in accordance with the consent of the United States given by [PL 280]; . . .

(State of Montana Proclamation, September 13, 1994, Doc. 34 Ex 1, App. 10)

(emphasis added). In 2017, the statute was further amended to allow the Tribes to

withdraw from state *felony* jurisdiction *if they wished*. § 2-1-306(1)(2017). They have not done so.

On January 11, 2017, the Lake County Board of Commissioners passed the aforementioned Resolution No. 17-01. (Doc. 18, Ex. E, App. 8). The resolution stated there are “significant benefits to all residents of Lake County in respect to crime prevention, investigation, deterrence, prosecution, rehabilitation and treatment.” (*Id.* 2) However, it went on to state that circumstances “had changed significantly in 40 years . . .” (*Id.*) The resolution goes on to state “Lake County is without adequate revenue to fund construction of a Detention Center or added law enforcement to provide for continued participation in PL 280.” The resolution itself was to work with the Legislature to address the funding issues. (*Id.*)

Shortly thereafter, at the 2017 Legislature, representative Greg Hertz introduced HB 450 which would have required reimbursement to Lake County from the Montana Department of Justice for net costs associated with enforcing criminal jurisdiction under PL 280. The State prepared a fiscal analysis. (Fiscal Analysis; Doc. 19 Ex 1, App. 9) The State’s own fiscal analysis determined that the estimated cost to reimburse Lake County would have been \$4.011 Million in FY 2018, rising to \$4.383 Million by FY 2021. The bill did not pass. However, in 2021, the Legislature did pass HB 656, providing:

Unless the Confederated Salish and Kootenai tribes or Lake County withdraws consent to enforcement pursuant to 2-1-306, the state shall

reimburse Lake County for assuming criminal jurisdiction under this section annually to the extent funds are appropriated by the legislature. The annual amount of reimbursement must be adjusted each year based on the consumer price index.

The new law was codified at § 2-1-301(2) and remains in effect today. However, only \$1 was appropriated for this purpose in 2021 (Doc. 1 Compl. ¶ 20, App. 1).

In 2023, the Legislature passed HB 479 which would have appropriated \$2.5 million/yr during the current biennium, but Governor Gianforte vetoed the bill (Doc. 45, Order Mot. for S.J. 6-7, App. 4).

The rules of statutory construction are well established. In its most recent summary of those rules, the Montana Supreme Court stated:

When interpreting a statute, this Court's goal is to “ascertain and give effect to the legislative intent.” *State v. Quensel*, 2009 MT 388, ¶ 16, 353 Mont. 317, 220 P.3d 634 (quoting *Shelby Distributors, LLC v. Mont. Dept. of Revenue*, 2009 MT 80, ¶ 18, 349 Mont. 489, 206 P.3d 899). To do so, we look at the statute in its entirety, noting that “statutory construction is a ‘holistic endeavor’ and must account for the statute's text, language, structure, and object.” *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898 (quoting *State v. Heath*, 2004 MT 126, ¶ 24, 321 Mont. 280, 90 P.3d 426) (internal citations omitted). “The duty of this Court is to ‘read and construe each statute as a whole’ so that we may ‘give effect to the purpose of the statute.’” *City of Missoula*, ¶ 18 (quoting *State v. Triplett*, 2008 MT 360, ¶ 25, 346 Mont. 383, 195 P.3d 819) (internal citations omitted).

State v. Pehringer, 2023 MT 146, ¶ 10, 413 Mont. 122, 533 P.3d 657. Thus, it is appropriate to look at the entirety of § 2-1-301; Subsection 2 cannot be interpreted in a vacuum.

Furthermore, “When [courts] interpret a statute, [they] must construe it ‘as a whole and in light of its surrounding sections to avoid conflicting interpretations.’” *Meyer v. Jacobsen*, 2022 MT 93 ¶31, 408 Mont. 369, 510 P.3d 52 (quoting *City of Missoula v. Sadiku*, 2021 MT 295 ¶14, 406 Mont. 271, 498 P.3d, 765). Along with amending § 2-1-301, HB 656 also added language to § 2-1-306. It too must be considered for context:

No sooner than 6 months after [the effective date of this act], and after consulting with tribal government officials concerning withdrawal, the board of county commissioners of Lake County may, by resolution, withdraw consent to enforce criminal jurisdiction *on behalf of* the state of Montana over the Confederated Salish and Kootenai tribes. Within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.

Mont. Code Ann. § 2-1-306(3) (2021) (italic added).

As explained earlier, § 2-1-301(1) established a legal duty on the part of the State, not Lake County, to fulfill the responsibilities associated with PL 280 jurisdiction. The 2021 statutory provision, § 2-1-301(2) must be construed in a manner consistent with the original (unchanged) language of § 2-1-301(1) and the other language of HB 656, § 2-1-306(3). Courts “read and construe a statute as a whole to give effect to its purpose and avoid an absurd result.” *Montana Indep. Living Project v. Dep't of Transportation*, 2019 MT 298 ¶ 21, 398 Mont. 204, 454 P.3d 1216.

At the time the Legislature enacted the new statutory subsections in 2021, it

remained the State’s obligation to provide the services associated with PL 280 jurisdiction. HB 656’s language explicitly recognized that Lake County is “enforce[ing] criminal jurisdiction on behalf of the state of Montana over the Confederated Salish and Kootenai tribes.” Mont. Code Ann. § 2-1-306(3)(2021)(emphasis added). Taking the statute as a whole, the State thus remains ultimately responsible for providing the services necessary to fulfill PL 280 jurisdiction although Lake County has been supplying services *on the State’s behalf*. With this in mind, the Legislature enacted language mandating that “the state shall reimburse Lake County for assuming criminal jurisdiction under this section annually to the extent funds are appropriated by the legislature.” Mont. Code Ann. § 2-1-301(2)(2021).

The State argued that the phrase “to the extent funds are appropriated by the Legislature” legitimizes the State’s reimbursement of a mere \$1. The State’s argument is essentially that the reimbursement requirement is no requirement at all; It contends the reimbursement of a meaningless sum¹ fulfills the statutory purpose.

Courts “construe, interpret and apply the law so as to avoid absurd results.” *State v. McGowan*, 2006 MT 163, ¶ 15, 332 Mont. 490, 139 P.3d 841. If allowed,

¹ The sum allocated would not purchase a single ream of copier paper. *See, e.g.*, https://www.staples.com/dps-by-staples-recycled-8-5-x-14-copy-paper-20-lbs-92-brightness-500-sheets-ream-dps08514rcy-cc/product_841766

the State's implementation and interpretation of the statute results in true absurdity, treating the responsibilities of exercising PL 280 jurisdiction as if they were as trivial and inconsequential as purchasing a single candy bar for the law enforcement officers and residents of Lake County. It utterly ignores the nature and scope of responsibility assumed by *the State* under § 2-1-301(1) and PL 280. Moreover, it would render nonsensical the statute's requirement that "The annual amount of reimbursement must be adjusted each year based on the consumer price index."

We also note the Legislature's selection of the word, "reimburse". The word has a specific meaning: "to pay back someone" or "to make restoration or payment of an equivalent to". *Reimburse*, Merriam-Webster.com (accessed Aug. 17, 2023). In order to remain consistent with the use of the word "reimburse" and to avoid absurdity, the statute must be read as a requirement that the Legislature reimburse a sum reflecting Lake County's actual cost of implementing PL 280 jurisdiction on the State's behalf.

Moreover, the Legislature operates under self-imposed limits. HB 656 cannot result in an *unfunded mandate* as this would violate Mont. Code Ann. § 1-2-112(1). The State's preferred interpretation of the clause "to the extent funds are appropriated by the Legislature" would do just that. Montana law prohibits the Legislature from enacting a law requiring a local government unit to perform an

activity “not expected of local governments in the scope of their usual operations” without providing a specific means to finance the activity:

[A] law enacted by the legislature that requires a local government unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds and that is not expected of local governments in the scope of their usual operations must provide a specific means to finance the activity, service, or facility other than a mill levy. Any law that fails to provide a specific means to finance any activity, service, or facility is not effective until specific means of financing are provided by the legislature from state or federal funds.

Mont. Code Ann. § 1-2-112(1) (2021). Thus, if the clause were intended to authorize meaningless reimbursements, the remainder of the statute would be ineffective, and would run afoul of the prohibition on unfunded mandates.

The newly enacted laws contained within HB 656 required Lake County to “enforce criminal jurisdiction on behalf of the State of Montana over the Confederated Salish and Kootenai tribes” and barred Lake County from passing a resolution of withdrawal before July 1, 2021, and from withdrawing until, “within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.” § 2-1-306(3). Thus, HB 656 created a mandate that Lake County continue providing services. Yet, it appropriated only \$1 for this purpose, “an amount patently absurd under the State’s own fiscal note.” (Doc. 29, Order Mot. to Dismiss 18, App. 3).

Thus, applying a holistic interpretation of the new laws passed in 2021, and ensuring they remain consistent with Montana’s obligations and public policy, the

reimbursement requirement mandates reimbursement at a level that will avoid imposing an unfunded mandate on Lake County. Certainly, the State is authorized to appropriate more funds for this purpose—for example to expand on existing programs. However, subsection 3 cannot be read to authorize reimbursement at an amount that would leave Lake County with an unfunded mandate.

Rather than adopting the State’s argument and granting its motion for summary judgment dismissal of Count Three, the District Court should have adopted Lake County’s interpretation of the statutes and issued a declaratory judgment stating that the State has an obligation to reimburse Lake County for its costs associated with implementing PL 280 jurisdiction on the State’s behalf.

CONCLUSION

For the foregoing reasons, Lake County requests the Court reverse the District Court’s rulings and remand the case for further proceedings.

DATED this 23rd day of February, 2024.

REEP, BELL, & JASPER, P.C.

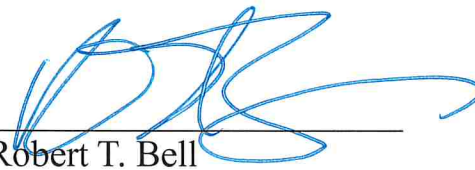
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with proportionally spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is 9084 words, excluding certificate of service and certificate of compliance.

By: 
Robert T. Bell

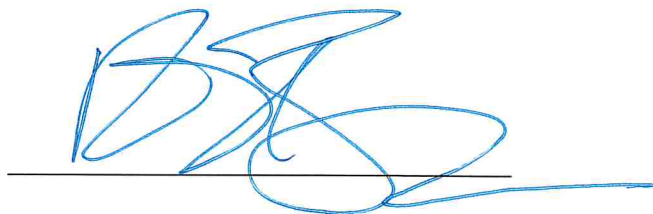
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The undersigned hereby certifies that on the 23rd day of February 2024, a true and correct copy of the foregoing was sent via electronic means to the following:

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A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the undersigned.

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Service Method: eService

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Electronically signed by Courtney Johnson on behalf of Robert T. Bell

Dated: 02-23-2024