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CASE NO _____ CASE NO _____
 2007 MAY -3 PM 4:24 2007 MAY -3 PM
 CLERK OF DISTRICT COURT CLERK OF DISTRICT COURT
 LATAH COUNTY LATAH COUNTY
 BY _____ DEPUTY _____

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD WEITZ, an individual and qualified elector of the Moscow School District No. 281, Plaintiff, vs. MOSCOW SCHOOL DISTRICT NO. 281, Defendant.)) Case No. <u>CV-07-436</u>)) VERIFIED COMPLAINT FOR) DECLARATORY JUDGMENT) AND INJUNCTIVE RELIEF)) Fee Category G.3: \$88.00))))))
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Plaintiff GERALD WEITZ, an individual and qualified elector of the Moscow School District No. 281, by and through his counsel of record, Racine Olson Nye Budge & Bailey, Chartered, states and alleges for his Verified Complaint for Declaratory Judgment and Injunctive Relief against Defendant MOSCOW SCHOOL DISTRICT NO. 281, as follows:

ORIGINAL

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to the Uniform Declaratory Judgment Act, Idaho Code §§ 10-1201 to 10-1217, and I.R.C.P. 57, for purposes of determining questions of actual controversy between the parties hereinafter described. This Court also has jurisdiction over this action pursuant to Idaho Code §§ 33-408 to 33-419, which govern challenges to elections conducted by school districts.

2. Plaintiff Gerald Weitz is and was at all times pertinent hereto an individual over the age of eighteen (18) years residing within Latah County, Idaho. Said Plaintiff has resided at all times pertinent hereto within the boundaries of Moscow School District No. 281. Said Plaintiff is a registered voter within Latah County, Idaho, and qualified to vote in all elections conducted by the Moscow School District No. 281. As a result of his ownership of real property within the boundaries of Moscow School District No. 281, Plaintiff is subject to the assessment of property taxes resulting from the levies and levy elections described below.

3. Defendant Moscow School District No. 281 (hereinafter "School District" or "MSD") is the corporate organization empowered by statute to govern the operation of a school system serving a portion of Latah County.

4. An actual controversy of a justiciable nature exists between Plaintiff and Defendant with regard to the validity of the levies and levy elections described below. Plaintiff and Defendant have not sought to have their respective rights, duties and liabilities with regard to the levies and levy elections adjudicated or determined in any other legal proceeding, and until the aforesaid controversy is judicially determined as requested herein, none of the parties will be able to ascertain and act upon their respective rights, duties and liabilities arising therefrom.

5. Venue is proper in this Court.

FACTUAL BACKGROUND

6. Plaintiff realleges all prior paragraphs as if fully set forth herein.

7. On May 17, 1988, the School District held a supplemental levy election requesting that the electorate approve a two-year supplemental levy in the amount of \$2,875,390. Less than a majority of the qualified electorate voted in favor of this request and the supplemental levy failed.

8. *Only four years later* on May 19, 1992, the School District held an election (hereinafter "1992 Election"), requesting that the electorate approve an "indefinite" term supplemental levy in the amount of \$3,796,000. A majority of the qualified electorate voted in favor of this request.

9. On May 16, 1995, the School District held a Supplemental Levy Increase Election (hereinafter "SLIE"), requesting that the electorate increase the indefinite term supplemental levy by an amount of \$750,000. A majority of the qualified electorate voted in favor of this request.

10. On November 15, 2001, the School District held a SLIE, requesting that the electorate increase the indefinite term supplemental levy by an amount of \$1,957,000. Less than a majority of the qualified electors voted in favor of the request and it failed.

11. On April 23, 2002, the School District held a SLIE, requesting that the electorate increase the indefinite term supplemental levy by an amount of \$1,100,000. A majority of the qualified electorate voted in favor of this request.

12. At no time after May 21, 1991, have the electors of the School District ever approved a two-year supplemental levy by majority vote.

13. On March 27, 2007, the School District held another SLIE. The Official Ballot for this SLIE presented the following question:

“Shall the Board of Trustees of Moscow School District No. 281, Latah County, State of Idaho, be authorized and empowered to levy an increase in the amount of \$1,970,000 (One Million Nine Hundred Seventy Thousand Dollars) annually in the Indefinite Term Supplemental Levy for an indefinite number of years, for the purpose of paying all lawful expenses of maintaining and operating the schools of the District?”

The election results indicated that 56.7% percent of the qualified electors voted in the affirmative as to the question presented in the above quoted ballot.

14. The School District purportedly held the 1992 Election and each subsequent SLIE pursuant to the provisions of Idaho Code § 33-802(5). The School District did not purport to hold the 1992 Election or any subsequent SLIE pursuant to any other Idaho statute or law.

FIRST CAUSE OF ACTION

DECLARATION THAT THE 2007 SLIE IS INVALID BECAUSE IT FAILED TO COMPLY WITH STATUTORY REQUIREMENTS

15. Plaintiff realleges all prior paragraphs as if fully set forth herein.

16. Even if Idaho Code § 33-802(5) is construed to permit an increase of an existing indefinite term supplemental levy, the School District nevertheless violated that statute.

17. The question presented by the School District in the Official Ballot of the 2007 SLIE failed to “clearly state the dollar amount that will be certified annually” under the indefinite term supplemental levy. *See* Idaho Code § 33-802(5). Although the School District intends to certify its 2007 SLIE in the total amount of \$7,616,000, this fact was not stated in the question presented in the Official Ballot.

18. Because the 2007 SLIE violated the requirements of Idaho Code § 33-802(5), it was conducted in violation of Idaho law and must be declared invalid and set aside.

SECOND CAUSE OF ACTION

**DECLARATION THAT EACH SLIE IS INVALID
BECAUSE THERE IS NO STATUTORY PROVISION PERMITTING AN INCREASE
OF AN EXISTING INDEFINITE TERM SUPPLEMENTAL LEVY**

19. Plaintiff realleges all prior paragraphs as if fully set forth herein.

20. Idaho Code § 33-802(5) provides the School District with an authorized mechanism, conditioned upon seven years of authorized short-term supplemental levies, to hold an election for an “indefinite term” supplemental levy. However, that statute provides no mechanism or authorization for the “increase” of an existing “indefinite term” supplement levy.

21. No other Idaho statute provides for an increase an existing indefinite term supplemental levy.

22. Because each SLIE purported to increase of an existing indefinite term supplement levy, each SLIE was conducted in violation of Idaho law and must be declared invalid and set aside.

THIRD CAUSE OF ACTION

**DECLARATION THAT EACH SLIE IS INVALID
BECAUSE THEY FAILED TO COMPLY
WITH STATUTORY REQUIREMENTS**

23. Plaintiff realleges all prior paragraphs as if fully set forth herein.

24. Even if Idaho Code § 33-802(5) is construed to permit an increase of an existing indefinite term supplemental levy, the School District nevertheless violated that statute with regard to each SLIE held after 1992.

25. The School District has not been, for a period of *at least seven consecutive years* prior to each SLIE, authorized through an election to certify a supplemental levy that has annually been equal to or greater than twenty percent (20%) of the total general maintenance and operation fund. *See Idaho Code § 33-802(5).*

26. Because each SLIE violated the requirements of Idaho Code § 33-802(5), each SLIE was conducted in violation of Idaho law and must be declared invalid and set aside.

FOURTH CAUSE OF ACTION

DECLARATION THAT THE 1992 ELECTION WAS INVALID BECAUSE IT FAILED TO COMPLY WITH STATUTORY REQUIREMENTS

27. Plaintiff realleges all prior paragraphs as if fully set forth herein.

28. The School District violated Idaho Code § 33-802(5) with regard to the 1992 Election.

29. The School District had not been, for a period of *at least seven consecutive years* prior to the 1992 Election, authorized through an election to certify a supplemental levy that has annually been equal to or greater than twenty percent (20%) of the total general maintenance and operation fund. *See Idaho Code § 33-802(5).*

30. Because the 1992 Election violated the requirements of Idaho Code § 33-802(5), it was conducted in violation of Idaho law and must be declared invalid and set aside.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

31. Plaintiff realleges all prior paragraphs as if fully set forth herein.

32. Because the 1992 Election and each subsequent SLIE, including but not limited to the 2007 SLIE, was conducted in violation of Idaho law and must be declared invalid, Plaintiff is entitled to a permanent injunction prohibiting the collection of any taxes based thereon.

ATTORNEY FEES AND COSTS

33. Plaintiff realleges all prior paragraphs as if fully set forth herein.

34. Plaintiff has been required to retain the services of counsel in order to bring this action for declaratory judgment and injunctive relief. He is therefore entitled to recover his reasonable attorney fees and costs pursuant to the applicable provisions of Idaho law, including but not limited to I.R.C.P. 54(e) and Idaho Code §§ 12-117, 12-121, and the private attorney general doctrine.

35. Plaintiff is also entitled to recover all costs of the instant suit pursuant to the applicable provisions of Idaho law, including but not limited to I.R.C.P. 54(d) and Idaho Code § 33-418.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against Defendant as follows:

A. For a Declaration that the 2007 SLIE was conducted in violation of Idaho law and is invalid;

B. For a Declaration that each SLIE between 1992 and 2007 was conducted in violation of Idaho law and are invalid.

C. For a Declaration that the 1992 Election was conducted in violation of Idaho law and is invalid.

D. For a Permanent Injunction enjoining the collection of any taxes based upon the unlawful and invalid 1992 Election and each subsequent unlawful and invalid SLIE described above.

E. For an Order granting Plaintiff his reasonable attorney fees and costs pursuant to applicable law.

F. For such other and further relief as the court deems just and equitable under the circumstances.

PURSUANT TO IDAHO CODE § 33-413, PLAINTIFF IS PREPARED TO IMMEDIATELY FILE A BOND, WITH SECURITY TO BE APPROVED BY THE COURT, FOR THE PAYMENT OF "COSTS" IN THE EVENT THAT THE ELECTIONS ARE CONFIRMED.

DATED this 2 day of May 2007.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

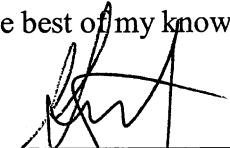
By: 
SCOTT J. SMITH

VERIFICATION

STATE OF IDAHO)
 : ss
County of LATAH)

GERALD WEITZ, after first being duly sworn on oath, deposes and states as follows:

That I am the Plaintiff in this case; that I have read the contents of the foregoing instrument; and that the facts therein stated are true and correct to the best of my knowledge and belief.




GERALD WEITZ

SUBSCRIBED AND SWORN TO before me on this 3 day of May, 2007.

Brian D. Thie
Notary Public
State of Idaho

(SEAL)



NOTARY PUBLIC FOR IDAHO
Residing at: MOSCOW, IDAHO
Commission expires: 8/13/07