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**FILED**

MAY 01 2020

By ANGIE SPARKS Clerk of District Court  
Deputy Clerk

10 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

11 MONTANA PUBLIC EMPLOYEES'  
12 RETIREMENT BOARD,

13 Plaintiff,

14 v.

15 LEWIS AND CLARK COUNTY,

16 Defendant.

Cause No. DDV 2020 739

**COMPLAINT FOR  
DECLARATORY RELIEF**

**JAMES P. REYNOLDS** *oo ✓*  
Presiding Judge

17 **COMPLAINT**

18 Plaintiff, the Montana Public Employees' Retirement Board ("MPERB"), by and  
19 through its counsel, William J. Holahan, for its Complaint against Defendant states and  
20 alleges as follows:

21 **NATURE OF THE ACTION**

22 1. This action involves the interpretation of provisions of the Montana Constitution, at  
23 Article VIII, § 15. The Plaintiff contends, *inter alia*, that Article VIII, § 15 vests the  
24 MPERB with the constitutional authority to impose withdrawal liability against a PERS  
25 participating employer when, as here, a component unit of the participating employer  
26 terminates its participation in a MPERB administered defined benefit plan.

27 2. Twenty-five years after partnering with PureView Health Center ("PureView") for  
PureView to become a separate legal entity and component unit of the County, the Lewis  
and Clark County Commission ("Commission") approved a plan to privatize PureView as

1 an independent non-profit. Under the terms of the separation agreement between PureView  
2 and the County, this privatization became effective on March 1, 2020.

3 3. Prior to Lewis and Clark County's ("County") privatization of PureView,  
4 PureView employed more than 60 people as County employees. Like other County  
5 employees, employees at PureView were part of the Public Employees' Retirement System  
6 ("PERS"), which the MPERB administers. While participating in PERS, employees of  
7 PureView and the County both made contributions toward future PERS pension benefits  
8 for PureView employees.

9 4. When the County's privatization of PureView became effective on March 1, 2020,  
10 the county employees working at PureView were terminated as County employees and are  
11 now no longer eligible to participate in PERS. As a result, the County has left behind  
12 current PERS retirees who accrued PERS benefits while working at PureView and who are  
13 already receiving benefits, former County employees currently employed at PureView, and  
14 former County employees no longer employed at PureView who have remained in the  
15 PERS system with accrued benefits up until the entity's date of separation. Although these  
16 individuals will no longer accrue benefits in the PERS system, the MPERB will be  
17 required to pay the future retirement liabilities for these employees.

18 5. As determined by the MPERB's actuary, Cavanaugh Macdonald, LLC, unfunded  
19 pension liabilities attributable to these PureView employees sits at an estimated \$4.5  
20 million to \$5.165 million and constitutes approximately 25% of the total outstanding PERS  
21 unfunded pension liabilities of the County estimated to be \$18 million.

22 6. As determined by MPERB's actuary Cavanaugh Macdonald, LLC, unless the  
23 County pays its actuarially determined proportionate share of unfunded actuarial liability  
24 attributable to PureView, all other PERS covered employers and employees will be forced  
25 to shoulder the estimated additional burden of \$4.5 million to \$5.165 million in unfunded  
26 liability.

27 7. As determined by MPERB's actuary Cavanaugh Macdonald, LLC, this is due to  
the fact that the portion of unfunded liability attributable to PureView cannot be paid for  
by the County going forward because the actuarially required contributions paid by the  
County to the PERS trust fund to do so were terminated when PureView left PERS.

8. On October 15<sup>th</sup>, 2019, staff of the MPERB, the Montana Public Employee  
Retirement Administration ("MPERA"), informed the County that it was invoking the

1 MPERB's independent constitutional authority found at Article VIII, Section 15 of the  
2 Montana Constitution, to require the County to furnish a listing of current and former  
3 PureView staff so that MPERB's actuary could calculate the exact amount of unfunded  
4 PERS liabilities attributable to PureView that Lewis and Clark County ceased funding  
after February 28<sup>th</sup>, 2020.

5 9. On October 15<sup>th</sup>, 2019, staff of the MPERB further informed the County that it was  
6 invoking the MPERB's independent constitutional authority found at Article VIII, Section  
7 15 of the Montana Constitution, to require the County to pay to the PERS trust fund a sum  
8 equal to this total calculated unfunded pension liability that would otherwise be left  
unfunded by the County after PureView's departure from the PERS system.

9 10. On January 9, 2020, the Commission formally transmitted its written position to  
10 MPERB stating that since the County itself was not terminating the entirety of its PERS  
11 contract with the MPERB, it was therefore not responsible for PureView's unfunded  
12 pension liability. The County's basis for its written position of January 9, 2020 relied upon  
13 the fact that it believes it is not a "terminating agency" under § 19-3-201, MCA and  
14 therefore cannot be assessed liability by the MPERB. Section 19-3-201, MCA holds that  
15 upon the receipt of a termination resolution by a PERS covered employer, MPERB "may  
16 withhold approval of the termination of contract until satisfactory arrangements are made  
17 to provide funding for . . . any excess accrued liabilities not previously funded by the  
terminating agency." § 19-3-201, MCA.

18 11. On January 9, 2020, the Commission formally concluded MPERB's interpretation  
19 of its independent constitutional authority to impose withdrawal liability upon the County  
20 under Mont. Const. Art. VIII, § 15 to be invalid and further concluded that "MPERA lacks  
21 any authority" to determine and assess unfunded pension liabilities owed by the County  
22 related to PureView's separation and that "any further decision or administrative action by  
23 MPERA or the Board is invalid and without effect" with respect to the County. The  
24 conclusion, which is incorrect as a matter of law, effectively nullifies efforts by the  
25 MPERB to collect the County's unfunded liability attributable to its decision to terminate  
26 PureView's participation and affiliation with PERS under MPERB's constitutional  
authorities and mandates found at Mont. Const. Art. VIII, § 15.

27 12. The County's action to terminate a component unit's participation and affiliation  
with PERS and its refusal to pay the unfunded liability estimated to be approximately \$4.5

1 million to \$5.165 million owed to the PERS trust fund as a result of this separation, puts at  
2 risk the viability of the PERS trust fund. A multi-employer pension plan, be it public or  
3 private, only succeeds if all the employers either stay in the plan to contribute to the  
4 obligations of their retirees and current employees, or pay their actuarial share of any  
5 unfunded liability to terminate its or a component unit's affiliation. Approximately 52,000  
6 Montanans are either active or retired members of the PERS trust fund and the security of  
7 their retirement depends on the proper enforcement of MPERB's constitutional authority  
8 concerning its ability to determine the amount and compel the payment of unfunded  
9 liabilities owed to PERS as a result of separation, without exception.

10 13. Accordingly, the MPERB seeks a declaratory judgment from this Court under the  
11 Uniform Declaratory Judgments Act, Mont. Code Ann. § 27-8-101, *et seq.* and M. R. Civ.  
12 P. 57, that Article VIII, § 15 of the Montana Constitution vests the MPERB with the  
13 authority to: 1) actuarially determine the amount of unfunded pension liabilities  
14 attributable to PureView, a former component unit of the County, that has terminated its  
15 participation in PERS; and 2) compel the County to make payment of PureView's PERS  
16 unfunded pension liability to the PERS trust fund.

#### 17 PARTIES

18 14. Plaintiff, the MPERB, is an independent, seven-member fiduciary board provided  
19 for in § 2-15-1009, MCA. MPERB members are appointed by the Governor to administer  
20 eight retirement systems and the State's Deferred Compensation Plan for over 80,000  
21 members.

22 15. Defendant, Lewis and Clark County ("County") is a political division of the State  
23 that is governed by an elected three-member commission.

#### 24 JURISDICTION AND VENUE

25 16. This court has jurisdiction over this matter under the Uniform Declaratory  
26 Judgments Act, Mont. Code Ann. § 27-8-101, *et seq.*

27 17. The events that give rise to this Complaint took place in Lewis and Clark County,  
Montana, and the actions complained of will occur within this District and throughout the  
State of Montana. The Defendants are located in Lewis and Clark County.

18. Jurisdiction and venue are therefore proper in this Court and this county,  
respectively.

GENERAL ALLEGATIONS

1 19. The 1945 Montana Legislature enacted the Public Employees Retirement Law  
2 creating the PERS defined benefit plan for public employees effective July 1, 1945. Mont.  
3 Code Ann. § 19-3-103.

4 20. PERS is governed by Montana Code Annotated Title 19, chapters 2 and 3.

5 21. PERS consists of both the defined benefit plan and the defined contribution plan.  
6 Mont. Code Ann. § 19-3-103.

7 22. For purposes of this Complaint "PERS" refers only to the defined benefit plan  
8 which is a qualified plan under Internal Revenue Code Section 401(a). As a defined benefit  
9 plan a monthly benefit is calculated based on each member's total years of service credit  
10 and highest average compensation, rather than the account balance or the performance of  
the financial markets.

11 23. PERS has approximately 28,908 active members and 23,245 benefit recipients  
12 receiving retirement, disability or survivorship benefits.

13 24. PERS members are employees of the State of Montana, its university system or any  
14 of the colleges, schools, components, or units of the university system and any municipal  
15 corporation, county or public agency who contracts with MPERB for provision of a  
retirement system.

16 25. Employees are required to become members of PERS on the first day of service  
17 unless the employee opts to become a member of the State's defined contribution plan.  
18 Mont. Code Ann. § 19-3-401.

19 26. Employees are statutorily required to contribute a percentage of their pay to PERS.  
20 *Id.* at § 19-3-315.

21 27. Employers are statutorily required to contribute a percentage of employee pay to  
22 PERS. *Id.* at § 19-3-316.

23 28. Retirement benefits vest after five years of membership service. *Id.* at § 19-2-  
303(56).

24 29. Generally, members hired before July 1, 2011 with a minimum of 30 years of  
25 membership service, or that have reached the age of 60 and have five years of membership  
26 service, or members who have reached age 65 regardless of years of service are eligible to  
27 retire. *Id.* at § 19-3-901.

1 30. Generally, members hired after July 1, 2011 that have reached the age of 65 and  
2 have five years of membership service, or members who have reached age 70 regardless of  
3 years of service are eligible to retire. *Id.* at § 19-3-901.

4 31. PERS retirement benefits are determined and paid pursuant to Montana Code  
5 Annotated Title 19, Chapter 3, parts 9, 10, 12, 15, and 16.

6 32. Members hired before July 1, 2011 with less than 25 years of service are eligible to  
7 receive a retirement benefit of the greater of one fifty-sixth of the member's highest  
8 average compensation multiplied by the total service credit or "the actuarial equivalent of  
9 double the member's accumulated contributions". *Id.* at § 19-3-904.

10 33. Members hired before July 1, 2011 with 25 or more years of service are eligible to  
11 receive a retirement benefit of "the greater of 2% of the member's highest average  
12 compensation multiplied by the number of years of the member's total service credit" or  
13 "the actuarial equivalent of double the member's accumulated contributions". *Id.*

14 34. Members hired after July 1, 2011 with less than 10 years of service are eligible to  
15 receive a retirement benefit of "the greater of 1.5% of the member's highest average  
16 compensation multiplied by the number of years of the member's total service credit" or  
17 "the actuarial equivalent of double the member's accumulated contributions".

18 35. Members hired after July 1, 2011 with 10 or more years of service but less than 30  
19 years of service are eligible to receive a retirement benefit of the greater of one fifty-sixth  
20 of the member's highest average compensation multiplied by the total service credit or "the  
21 actuarial equivalent of double the member's accumulated contributions". *Id.*

22 36. Members hired after July 1, 2011 with 30 or more years of service are eligible to  
23 receive a retirement benefit of "the greater of 2% of the member's highest average  
24 compensation multiplied by the number of years of the member's total service credit" or  
25 "the actuarial equivalent of double the member's accumulated contributions". *Id.*

26 37. The highest average compensation is the average of the highest three consecutive  
27 years of earned compensation for employees hired prior to July 1, 2011. The highest  
average compensation for employees hired on or after July 1, 2011 is the average of the  
highest five consecutive years of earned compensation. *Id.* at § 19-3-108.

38. Montana law provides that retirement benefits "are payable pursuant to a contract  
as contained in statute. The contract is entered into on the first day of a member's covered  
employment and may be enhanced by the legislature...." *Id.* at § 19-2-502.

1 39. MPERB has the constitutional duty to administer and operate the majority of the  
2 state retirement systems including PERS. Mont. Const. Art. VIII, § 15; Mont. Code Ann. §  
3 19-2-403.

4 40. MPERB has the constitutional duty to ensure that the public retirement systems,  
5 including PERS, are funded on an actuarially sound basis. Mont. Const. Art. VIII, § 15.

6 41. An “actuarially sound basis” means “that contributions to each retirement plan  
7 must be sufficient to pay the full actuarial cost of the plan,” including “both the normal  
8 cost of providing benefits as they accrue in the future and the cost of amortizing unfunded  
9 liabilities over a scheduled period of not more than 30 years.” Mont. Code Ann. § 19-2-  
10 409.

11 42. MPERB has the constitutionally imposed duty to ensure “Public retirement system  
12 assets, including income and actuarially required contributions, shall not be encumbered,  
13 diverted, reduced or terminated and shall be held in trust to provide benefits to participants  
14 and their beneficiaries and to defray administrative expenses.” Mont. Const. Art. VIII, §  
15 15.

16 43. MPERB also has the constitutional duty to “administer the system, including  
17 actuarial determinations” with the unique charge under that provision, to act as “fiduciaries  
18 of system participants and their beneficiaries.” Mont. Const. Art. VIII, § 15.

19 44. The June 30, 2019 actuarial valuation of PERS reported the system’s unfunded  
20 actuarial liability to be \$2.05 billion, and the system's funded ratio was 74.19%.

21 45. PERS is required to amortize unfunded actuarial liability in 30 years or less to be  
22 considered actuarially sound, and as of June 30, 2019, PERS’s unfunded actuarial liability  
23 amortized in 36 years.

24 46. The June 30, 2019 actuarial valuation of PERS reported that the monetary  
25 difference between the system amortizing in 30 years or less as opposed to its current  
26 amortization period of 36 years was an estimated \$8,856,140 of additional PERS active  
27 member covered payroll for the fiscal year ending June 30<sup>th</sup>, 2019.

47. The County joined the PERS system in 1947 when it entered into a formal contract  
with MPERB to have county employees covered by the system.

48. MPERB currently pays over \$85 million in yearly PERS benefits to County  
retirees, including pension and disability benefits.

- 1 49. In 1994, PureView partnered with the County to form a separate legal entity and  
2 component unit of the County.
- 3 50. From 1994 until its separation from the County on March 1, 2020, PureView  
4 participated in the PERS System as a component unit of the County under its former name,  
5 the "Cooperative Health Center" as well as under its current name.
- 6 51. The County has previously recognized that it was financially accountable for  
7 PureView as a component unit of the County. More specifically, the County stated the  
8 following in its Comprehensive Annual Financial Report for Fiscal Year 2018:  
9 "Component Units - the County includes one separate legal entity in its report – the  
10 PureView Health Center. Although legally separate, this component unit is important  
11 because the County is financially accountable for it."
- 12 52. On September 5<sup>th</sup>, 2019, the Lewis and Clark County Commission approved a plan  
13 to privatize PureView, a component unit of the County, as an independent non-profit  
14 effective March 1, 2020.
- 15 53. When the County's privatization of PureView became effective on March 1, 2020,  
16 the county employees working at PureView were terminated as County employees and are  
17 now no longer eligible to participate in PERS.
- 18 54. As a result of the County's privatization of PureView, the County has left behind  
19 current PERS retirees who accrued PERS benefits while working at PureView and who are  
20 already receiving benefits, former County employees currently employed at PureView, and  
21 former County employees no longer employed by PureView who have remained in the  
22 PERS system with accrued benefits up until the entity's date of separation. Although these  
23 individuals will no longer accrue benefits in the PERS system, the MPERB will be  
24 required to pay the future retirement liabilities for these employees.
- 25 55. As determined by the MPERB's actuary, Cavanaugh Macdonald, LLC, unfunded  
26 pension liabilities attributable to these PureView employees sits at an estimated \$4.5  
27 million to \$5.165 million and constitutes approximately 25% of the total outstanding PERS  
unfunded pension liabilities of the County estimated to be \$18 million.
- 56. As determined by MPERB's actuary, Cavanaugh Macdonald, LLC, unless the  
County pays its actuarially determined proportionate share of unfunded actuarial liability  
attributable to PureView to the PERS trust fund, all other PERS covered employers and

1 employees will be forced to shoulder the estimated additional burden of \$4.5 million to  
2 \$5.165 million in unfunded liability.

3 57. The State of Montana, employing 35% of the remaining PERS employees, would  
4 face an additional estimated \$1.575 to \$1.785 million in liability with PureView's share of  
5 unfunded pension liability estimated at \$4.5 million to \$5.165 million being forced upon it.

6 58. As determined by MPERB's actuary Cavanaugh Macdonald, LLC, this is due to the  
7 fact that the portion of unfunded liability attributable to PureView cannot be paid for by the  
8 County going forward because the actuarially required contributions paid by the County to  
9 the PERS trust fund to do so were terminated when PureView left PERS.

10 59. On October 15<sup>th</sup>, 2019, staff of the MPERB, the Montana Public Employee  
11 Retirement Administration ("MPERA"), informed the County that it was invoking the  
12 MPERB's independent constitutional authority found at Article VIII, Section 15 of the  
13 Montana Constitution, to require the County to furnish a listing of current and former  
14 PureView staff so that MPERB's actuary could calculate the exact amount of unfunded  
15 PERS liabilities attributable to PureView that Lewis and Clark County ceased funding  
16 after February 28<sup>th</sup>, 2020.

17 60. On October 15<sup>th</sup>, 2019, staff of the MPERB further informed the County that it was  
18 invoking the MPERB's independent constitutional authority found at Article VIII, Section  
19 15 of the Montana Constitution, to require the County to pay to the PERS trust fund a sum  
20 equal to this total calculated unfunded pension liability that would otherwise be left  
21 unfunded by the County after PureView's departure from the PERS system.

22 61. On January 9, 2020, the Commission formally transmitted its written position to  
23 MPERB stating that since the County itself was not terminating the entirety of its PERS  
24 contract with the MPERB, it was therefore not responsible for PureView's unfunded  
25 pension liability.

26 62. On January 9, 2020, the Commission formally concluded MPERB's interpretation  
27 of its independent constitutional authority to impose withdrawal liability upon the County  
under Mont. Const. Art. VIII, § 15 to be invalid and further concluded that "MPERA lacks  
any authority" to determine and assess unfunded pension liabilities owed by the County  
related to PureView's separation and that "any further decision or administrative action by  
MPERA or the Board is invalid and without effect" with respect to the County. The  
conclusion, which is incorrect as a matter of law, effectively nullifies efforts by the

1 MPERB to collect the County's unfunded liability attributable to its decision to terminate  
2 PureView's participation and affiliation with PERS under MPERB's constitutional  
3 authorities and mandates found at Mont. Const. Art. VIII, § 15.

4 63. The County's action to terminate a component unit's participation and affiliation  
5 with PERS and its refusal to pay the unfunded liability estimated to be approximately \$4.5  
6 million to \$5.165 million owed to the PERS trust fund as a result of this separation, puts at  
7 risk the viability of the PERS trust fund.

8 64. A multi-employer pension plan, be it public or private, only succeeds if all the  
9 employers either stay in the plan to contribute to the obligations of their retirees and  
10 current employees, or pay their actuarial share of any unfunded liability to terminate its or  
11 its component unit's affiliation.

12 65. There are approximately 28,908 active members and 23,245 benefit recipients of  
13 the PERS trust fund and the security of their retirement depends on the consistent  
14 enforcement of MPERB's constitutional authority concerning its ability to determine the  
15 amount and compel the payment of unfunded liabilities owed to PERS as a result of  
16 separation, without exception.

17 66. The County's stated intention to circumvent the express language of Mont. Const.  
18 Art. VIII, § 15, and in particular the requirement to pay for future obligations of PureView  
19 retirees and inactive members of PureView that the County has left behind, if successful,  
20 would have drastic consequences for the PERS trust fund, and the employers, retirees, and  
21 active and inactive members that remain.

22 67. Besides current PureView retirees who are already receiving benefits, current  
23 PureView employees or any inactive PureView employees may remain in PERS, although  
24 not accrue further benefits. MPERB, through contributions from other PERS employers  
25 and employees, will have to pay the future retirement liabilities for these former PureView  
26 employees as well as benefits for inactive members.

27 68. Unless the County pays its actuarially determined proportionate share of unfunded  
actuarial accrued liability attributable to PureView, the future viability of the PERS trust  
fund will be imperiled and all the other PERS employers and employees will be forced to  
shoulder an additional burden of approximately 4.5 million to \$5.165 million in unfunded  
liability.

**COUNT I – Request for Declaratory Judgment**

1  
2 69. Plaintiff incorporates and re-alleges paragraphs 1-68 above as if fully set forth  
3 herein.

4 70. MPERB seeks declaratory relief under the Uniform Declaratory Judgments Act,  
5 Mont. Code Ann. § 27-8-101, *et seq.* and M. R. Civ. P. 57 as Plaintiff is an independent,  
6 fiduciary board appointed by the Governor who's constitutional mandate under Mont.  
7 Const. Art. VIII, § 15 to ensure that the PERS System "shall be funded on an actuarially  
8 sound basis" by ensuring that "actuarially required contributions" are not "reduced" or  
9 "terminated" is being adversely and unlawfully nullified by the Defendant's refusal to  
10 make payment of PureView's PERS unfunded pension liability to the PERS trust fund.

11 71. The rights, obligations, and legal relations of MPERB and the County are affected  
12 by Mont. Const. Art. VIII, § 15.

13 72. A judicial determination of the MPERB's vested authority under Mont. Const. Art.  
14 VIII, § 15 for the imposition of withdrawal liability on a participating public employer,  
15 such as the County, who terminates a component unit's participation and affiliation with  
16 PERS, will resolve the uncertainty and controversy giving rise to this action.

17 73. There is an actual controversy that is substantial and concrete between MPERB and  
18 the County, regarding whether Mont. Const. Art. VIII, § 15 vests the MPERB with the  
19 authority to impose withdrawal liability against the County for its action to terminate its  
20 component unit's, PureView's, participation and affiliation with PERS.

21 74. MPERB is entitled to a determination of rights, obligations, and legal relations of  
22 MPERB and the County under Mont. Const. Art. VIII, § 15 that:

23 The Montana Constitution vests the MPERB with the authority to: 1) actuarially  
24 determine the amount of unfunded pension liabilities attributable to PureView, a  
25 former component unit of Lewis and Clark County, that has terminated its  
26 participation in PERS; and 2) compel Lewis and Clark County to make payment of  
27 PureView's PERS unfunded pension liability to the PERS trust fund.

75. Pursuant to M. R. Civ. P. 57, MPERB requests that the Court order a speedy  
hearing of this declaratory judgment action and advance it on the calendar.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

1. A Court order adjudicating and declaring that subject to Mont. Const. Art. VIII, § 15 that the Montana Constitution vests the MPERB with the authority to: 1) actuarially determine the amount of unfunded pension liabilities attributable to PureView, a former component unit of Lewis and Clark County, that has terminated its participation in PERS; and 2) compel Lewis and Clark County to make payment of PureView's PERS unfunded pension liability to the PERS trust fund.
2. Judgment against the County in the amount of PureView's termination liability as calculated by MPERB's designated actuary, together with interest.
3. Costs as permitted by statute and other applicable law.
4. Such other and further relief as the Court deems appropriate.

DATED this 1st day of May, 2020.

MONTANA PUBLIC EMPLOYEES'  
RETIREMENT BOARD



William Holahan, MPERB Chief Legal Counsel and  
Special Assistant Attorney General  
Attorney for Plaintiff