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COURT RULES STATE PROPERTY TAX INCREASE IS UNCONSTITUTIONAL

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Topics: Bill Ritter, Bob Schaffer, Christina Habas, Colorado State Board of Education, Independence Institute, John Suther Caldara, Peggy Littleton, TABOR

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In a ruling announced Friday afternoon, a Denver District Court Judge has ruled the state acted unconstitutionally when it failed to ask voters' permission to raise property tax rates in the vast majority of Colorado's school districts.



Gov. Bill Ritter

In a [strongly worded order](#), Judge **Christina Habas** found the 2007 School Finance Act violates the Taxpayer's Bill of Rights, which requires voter approval of any change in tax policy which results in a net increase of government revenue.

The case, *Mesa County Board of County Commissioners, et al. v. Colo. Dept. of Education, the State of Colorado and Governor Bill Ritter, Jr.*, was brought by [a coalition of taxpayer activists organized by the Golden-based Independence Institute](#). The lawsuit was later certified as a class action lawsuit on behalf of affected property owners across the state.

The School Finance Act, or Senate Bill 199, removed a provision in state law which required school districts to adjust downward the mill levy on property when property assessments increased, to keep tax revenue constant. Lawyers for the plaintiffs argued TABOR's plain language requires the state to ask permission for such a repeal, which would result in \$3.8 billion in new taxes over the next decade.

Gov. **Bill Ritter**, a Democrat, elected to intervene in the case, using [\\$150,000 in taxpayer money](#) to hire a high-profile trial attorney to defend against the lawsuit. Ritter's spokesperson told the *Denver Post* the state will appeal the decision soon.

"The Bill Ritter follies continue," said Rep. **Cory Gardner**, R-Yuma.

"This decision is a major victory for Colorado citizens," said Attorney General **John Suthers** in a press release. "Judge Habas rightly vindicated the rights of Coloradans to vote on all property tax increases before they are instituted."

The General Assembly passed a state budget for the fiscal year beginning July 1 based on the increased property tax revenue stream. Habas acknowledged her order, which prohibits that money from being collected, could cause heartburn for those who must spend the new cash. "SB-199 allowed the State to provide an additional 5,500 new slots for pre-school children in the State of Colorado," she wrote.

"You cannot do good with money that is taken illegally," said **Jon Caldara**, president of the Independence Institute. "Gentle ask first, and Judge Habas has now told Gov. Ritter he needs to ask like one."

During the legislative session, Republicans had attempted to account for the possibility of the state losing the lawsuit in official revenue projections, which then guide the budget process. Those efforts were defeated on party-line votes.

"Bill Ritter can spin this so-called 'freeze' all he wants, but a tax increase is a tax increase," said Sen. **Josh Penry**, R-Grand Junction. "The Court got it right."

While Ritter vows an appeal, the Colorado State Board of Education will face renewed contention over its involvement in fighting the lawsuit. Vice-Chairman **Bob Schaffer**, R-Fort Collins, and board member **Peggy Littleton**, R-Colorado Springs, [had attempted to secure a public vote](#) on whether or not the Department of Education should agree with the claims against the state, leaving Ritter as the sole defendant.

The Board will have to decide whether or not to pursue an appeal, although such a decision could again be made behind closed doors, like the original vote to retain legal counsel.

"The sad thing is, citizen groups like the Independence Institute have to spend gobs of money in order to get the Governor to the constitution," Caldara said.

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