

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

SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK
& RECORDER and CASCADE COUNTY,

Respondents/Petitioners,

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY,
HON. BRENDA GILBERT

Respondent

From the Eighth Judicial District Court, Cascade County
Cause No. DV-23-222
The Honorable Brenda Gilbert, Presiding

PETITION FOR WRIT OF SUPERVISORY CONTROL

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Honorable Brenda Gilbert
District Court Judge
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(Chambers)
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Trustees*

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INTRODUCTION

Sandra Merchant, in her official capacity as Cascade County Clerk & Recorder (“Merchant”) is responsible for conducting elections in Cascade County (“County”). The Great Falls Public Library Board of Trustees’ (“Library”) brought an Emergency Verified Petition for Injunctive Relief (“Petition”) against Merchant and the County on May 10, 2023 asserting Merchant’s conducting the upcoming special election for the library on June 6, 2023 (the “Library Election”) would likely be a violation of Article II, Section 13 of the Montana Constitution and requesting injunctive relief under the auspices of Mont. Code Ann. § 13-35-108.

The Library also filed a Motion to Set Hearing and Appoint Monitor (“Library’s Motion”) on May 10, 2023 with its Petition. See **Exhibit A**. The Library filed a Notice of Supplemental Facts in Support of Motion to Set Hearing and Appoint Monitor on May 12, 2023. See **Exhibit B**. The Library filed an Opposed Motion and Brief Nominating Lynn DeRoche (“DeRoche”) as the Monitor on May 17, 2023. See **Exhibit C**.

Merchant and the County were served on May 11, 2023 and a hearing was scheduled for May 18, 2023, one week after service and thus well-before Merchant and the County’s answer to the Petition was even due. Merchant and the County opposed the request to appoint a “monitor” because:

- (1) The Library had cited to no precedent that the Court has authority to appoint somebody to monitor an elected official's actions in conducting an election;
- (2) The request with respect to the monitor's duties was impermissibly vague, unnecessary, and appeared to be an effort to spy on the activities of the Cascade County's Election Office; and
- (3) The so-called monitor proposed by the Library, Lynn DeRoche ("DeRoche") was not an unbiased, bipartisan individual.

See Respondents' Response to Petitioner's Motion to Appoint Monitor & Opposed Motion Nominating Lynn DeRoche as Monitor ("Response") attached as **Exhibit D**. The Court held a hearing on May 18, 2023 and ordered the appointment of the Library's requested monitor, DeRoche.

QUESTIONS PRESENTED

Should this Court exercise supervisory control and direct the District Court to withdraw its order appointing a so-called monitor?

If this Court determines the District Court had authority to appoint a monitor, should the District Court exercise supervisory control and direct the District Court to withdraw that part of its order appointing DeRoche as the monitor and require the appointment of an unbiased, bipartisan monitor without a previous history with Merchant who would be provided with clear reporting standards.

STATEMENT OF FACTS

1. Merchant was recently elected to the position of Cascade County Clerk & Recorder.

2. Ultimately, Merchant replaced the incumbent, Rina Fontana Moore (“Fontana Moore”).

3. Fontana Moore was the former long-time supervisor of DeRoche. See Affidavit of Carey Ann Haight in Support of Respondents’ Response to Petitioner’s Motion to Appoint Monitor (“Affidavit”) attached as **Exhibit E**, at ¶ 5.

4. Notably, Fontana Moore submitted an affidavit in support of Petitioner’s Verified Petition For Injunctive Relief (“Petition”) and against Merchant. See Exhibit B to the Petition (attached as **Exhibit F**).

5. By way of background with respect to DeRoche, she was hired on August 16, 2006 to work in the Cascade County Elections Office (“Elections Office”) and became the Election Supervisor in March of 2013, serving as Fontana Moore’s second in command. Affidavit, at ¶ 5.

6. DeRoche was as much the face of the Elections Office as Fontana Moore during Fontana Moore’s tenure. *Id.* at ¶ 6.

7. The Office of the Cascade County Clerk and Recorder was a contested race in 2022, wherein Fontana Moore was challenged by Merchant. *Id.* at ¶ 7.

8. During the contested election, Fontana Moore's role as Election Administrator for Cascade County and the operations of the Elections Office were the subject of continual public criticism by a relatively small group of registered voters who were supportive of Merchant ("Merchant's supporters"). *Id.* at ¶ 9.

9. Merchant's supporters included Devereau Biddick, who is now serving in the Elections Office as Election Specialist, and Julie Bass, whom Merchant has declared to be her Chief Election Judge. *Id.* at ¶ 10.

10. During the contested election, Merchant's supporters routinely criticized virtually every aspect of the former Elections Office's operations including: the training provided to Election Judges, utilization of the ES&S machine, demands for Cast Vote Records which do not exist in Cascade County, demands for security camera footage, unsubstantiated allegations of voter fraud, asking to establish a physically monitored and video surveilled ballot box, staging viewers outside the Courthouse Annex (where the Cascade County Elections Office is located) after hours, photographing vehicles and license plates of vehicles parked at the Courthouse Annex, demanding access to the Elections Office during non-business hours, etc.¹ Affidavit, at ¶ 11.

¹ Merchant and her campaign were not a part of these activities, but they happened nonetheless.

11. This campaign attack was effective, both Fontana Moore and DeRoche's election-related work were repeatedly painted as not only unethical and incompetent, but illegal. *Id.*, at ¶ 12.

12. At the conclusion of the election between Fontana Moore and Merchant, a canvas was conducted, and Fontana Moore requested a recount. *Id.*, at ¶ 13.

13. Merchant filed a verified petition for a TRO and injunction, seeking to enjoin the recount² as illegal. *Id.*, at ¶ 14.

14. Ultimately, Merchant was confirmed as the choice of Cascade County's voters.

15. DeRoche initially continued her employment with the Elections Office; however she separated her employment a mere 40 days after Merchant took office. *Id.*, at ¶ 15.

16. DeRoche effectively walked away from her 16-year career in elections and sustained a substantial pay cut. Affidavit, at ¶ 15.

17. DeRoche made \$24.12 per hour with the Elections Office and now makes \$16.49 per hour as a clerk in Justice Court. *Id.* This is a reduction of roughly \$7.63 per hour. *Id.*

//

²Notably, the recount was largely performed by DeRoche with the assistance of Brett Rutherford.

18. DeRoche brings considerable baggage to her appointment as the monitor with respect to her relationship with Merchant and others in the Elections Office. Affidavit, at ¶ 16.

19. Further, while Merchant and the County cannot speculate about the circumstances for DeRoche leaving her employment with the Elections Office, it appears that she and Merchant are not compatible. *Id.* at ¶¶ 15-16.

20. Additionally, DeRoche never held Merchant's position, which is supervisory to the position formerly held by DeRoche. *Id.* at ¶ 18.

21. Therefore, DeRoche is effectively monitoring somebody who was formerly her supervisor. *Id.*

22. There are other elected officials in other counties who would have experience in Merchant's actual position and would have been more appropriate to act as a monitor under the circumstances. *Id.*

23. DeRoche began acting as the monitor on May 23, 2023.

24. DeRoche is reporting to the Court on such topics as whether Merchant and other individuals in the Elections Office such as Devereau Biddick (who campaigned against Fontana Moore and how DeRoche conducted the Elections Office) greeted her. See **Exhibit G**, May 23, 2023 Report by DeRoche, at p. 1.

25. Although the monitor was appointed presumably to provide assistance and guidance, DeRoche's reports indicate that she is effectively watching and

condoning rather than providing any guidance or addressing actual issues she perceives as worthy of reporting to the Court. For instance, DeRoche watched individuals come to the counter, but nobody was apparently available and DeRoche made no effort to get somebody to the counter to assist the individual. See **Exhibit G**, May 23, 2023 Report by DeRoche, at p. 1

26. DeRoche's report further condones Merchant if she is, for instance at lunch during the noon hour or did not come out to personally answer a particular question. See **Exhibit G**, May 23, 2023 Report by DeRoche, at p. 3.

ARGUMENT

This Court has supervisory control over Montana courts and may, on a case-by-case basis, supervise another court through a writ of supervisory control. Mont. Const. Art. VII, § 2(2); Mont. R. App. P. 14(3). Supervisory control is appropriate when the normal appeal process is inadequate; when the case involves purely legal questions; and when one or more of the following exists: (1) the lower court is proceeding under a mistake of law and is causing a gross injustice, (2) constitutional issues of state-wide importance are involved, or (3) the lower court has granted or denied a motion for substitution of judge in a criminal case. *Tipton v. Mont. Thirteenth Judicial Dist. Ct.*, 2018 MT 164, ¶ 9, 392 Mont. 59, 421 P.3d 780. Here, as discussed below, the District Court is proceeding under a mistake of law and is causing a gross injustice.

I. The District Court Lacks Authority to Appoint a So-Called Monitor.

The Montana Supreme Court has explained that “[w]ithin constitutional limits, the Legislature has the exclusive authority to provide, define, and limit the procedures, standards, and remedies available for enforcement of compliance with Montana's election laws.” *Larson v. State*, 2019 MT 28, ¶ 21, 394 Mont. 167, 184, 434 P.3d 241, 253. The Library did not cite to any statute or other legislative grant of authority supporting Petitioner’s right to have a “monitor” appointed to oversee the activities of an elected official and her office under the circumstances. The only statute cited by the Library at all was Mont. Code Ann. § 13-35-108. That statute confers powers upon the *District Court* as follows:

In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

Merchant and the County did not contest that the District Court has jurisdiction over the relevant election and is empowered to compel or enjoin actions required by election laws, if warranted. However, the statute does not confer the power to appoint a “monitor” to be inserted into the election process. The Library provided no authority suggesting that Mont. Code Ann. § 13-35-108, or any other statute, confers the power to appoint a monitor, nor are Merchant and the County aware of any Montana case supporting the Library’s request.

The only case cited by the Library that addressed elections at all, *Larson*, did not involve the appointment of a monitor. Rather, that case recognized the power of the District Court to grant declaratory and injunctive relief regarding elections. To the extent there is any supervision of the Library Election, it should be solely through the Court. *Larson* is irrelevant to whether a person that the Library terms a “monitor” should be appointed. There is no authority to appoint somebody to monitor the activities of an elected official such as Merchant.

In sum, it appears that the appointment of a “monitor” by the District Court was the first of its kind in the State of Montana. It sets a dangerous precedent, especially in light of the history of DeRoche with Merchant and the current Elections Office.

II. The Library’s Request for a Monitor and the Court’s Order on the Monitor’s Duties are Impermissibly Vague and Have Resulted in a Monitor whose Reports are Irrelevant to Any Issue of Whether the Library Election is being Lawfully Conducted.

Petitioner requested, and the District Court granted, the monitor with “unfettered access” to the Elections Office and all of its operations. Merchant and the County argued that it is entirely unclear what this means and what the monitor would be permitted to do. They questioned whether a monitor would be following Merchant around, looking over Merchant’s shoulder when she drafts emails, and sitting with Merchant while she answers the telephone. They questioned whether a monitor, who is not an elected official, would have the right to access the Election

Offices when nobody else is present and potentially tamper with election materials or other materials in the office. The District Court ordered that the monitor would be permitted to be in the Elections Office after hours. Further, Merchant and the County questioned what activities the monitor would attend and what interactions the monitor would be permitted to have with employees and the public. The Court did not answer these questions and Merchant and the County understand that DeRoche has interpreted the District Court's Order as allowing her to question the public who come into the Elections Office and also to report on questions going unanswered while refusing to provide any guidance herself. See **Exhibit G**, May 23, 2023 Report by DeRoche, at pp. 1-3. By her reports, it is clear that DeRoche is effectively attempting to tattle on Merchant and the operations of the Elections Office, rather than to actually report to the Court on any issue which needs to be addressed in order for the Library Election to be lawfully conducted.

A monitor was an unnecessary appointment as well. Prior to DeRoche's requested appointment, the Library admitted Merchant had already voluntarily provided it with drafts of the ballots and instructions for write-in candidates. Had the Library wanted to do so, the Library could have had an individual of its choosing review the relevant documents and suggest revisions. In fact, the Library did suggest revisions and, where appropriate, those revisions were accepted. To the extent the Library believed there was still an issue, the Library could have filed

the relevant document with the District Court along with a request under Mont. Code Ann. § 13-35-108 for the Court to instruct Merchant to correct the issue. A monitor to take that step under the circumstances is wholly unnecessary. The Library had already somewhat³ followed this procedure with respect to the notice of election published in the Great Falls Tribune. See Notice of Supplemental Facts in Support of Motion to Set Hearing and Appoint Monitor attached as **Exhibit B**. As noted, the District Court is the only authority with the power to actually require a change. The monitor is unnecessary. This Court could simply require reporting to the Library on each step in the Library Election process, something that Merchant was already doing, and if the Library took issue with anything that was actually going to happen, the Library could file a request with the Court.

Instead of following this process, the Library filed a request for a biased individual to insert herself into the workings of the Elections Office. The District Court sanctioned this request and now a biased individual is disrupting the Elections Office and effectively tattling to the Court on everything she does not like, including things that in no way would invalidate the Library Election.

³ The term “somewhat” is utilized because the Library filed what it perceived as an inappropriate notice with the Court as purported supplemental authority for Petitioner’s Motion. See **Exhibit B**. If Petitioner truly sought to affect change, it could simply have filed the notice with a request for the Court to require a correction. A monitor does not change this procedure as the Court is the only authority who can ultimately require change.

III. The Monitor is Irrefutably Biased.

DeRoche is the sole person that the Library was willing to consider for the role as monitor. This was despite that the County and Merchant suggested numerous other highly qualified individuals from other counties who would not be biased and who do not have any political history or baggage with respect to Merchant. See Email Chain between Elizabeth Lund and Raph and Ben Graybill attached as **Exhibit H**. Petitioner inserted an incredibly biased individual into the role as monitor to effectively spy on and publicly report about anything DeRoche personally views as inappropriate, a *potential* issue, or not to the former standards or procedures of DeRoche's former employer Fontana Moore.

If the unrefuted history regarding the Cascade County Clerk & Recorder race between Merchant and Fontana Moore were not enough, DeRoche apparently already perceived her working with Merchant as untenable given the circumstances of her move to Justice Court Clerk. DeRoche did so just 40 days after Merchant took office and she took a substantial pay cut in doing so. Under these circumstances, inserting DeRoche into the Elections Office was wildly improper. The Library's refusal to consider other qualified individuals to act as a monitor reflects that the true goal of the Library is to undermine Merchant.

Merchant and the County requested that the Court consider the Clerk and Recorder or Elections Administrator from any other county it deemed appropriate

that was not involved in the contested election involving Merchant and Fontana Moore. The County and Merchant argued that these individuals are all familiar with election laws and are not biased. Further, the County and Merchant suggested that the Court could also consider an individual from the Secretary of States office. *Larson* 2019 MT 28, at ¶ 41 (explaining “the legislature has charged the secretary of state with general supervision over the administration of various Montana election laws . . .”). The District Court did not do so.

The Library’s argument that DeRoche is the only person able to act as the monitor because she is the most familiar with Cascade County’s procedures is unsupported. The Library Election is to be evaluated under State laws, rather than any regulation or law that is unique to Cascade County. Affidavit, at ¶ 17. Any individual with election experience can apply the same State laws he or she is applying in his or her own county to the Library Election. An election will not be invalidated because Merchant does things differently than her predecessor, as long as the difference does not also violate State law. Further, as to procedures unique to Cascade County, Merchant was entitled to change those procedures provided applicable State laws are not violated. Indeed, Cascade County voters previously voted to replace Fontana Moore presumably in part based on how DeRoche previously ran elections. The District Court’s appointment of DeRoche ignored the voters’ decision with respect to the Elections Office and its policies.

CONCLUSION

Based on the foregoing, the County and Merchant respectfully request that this Court exercise supervisory control over the District Court and vacate its Order appointing a monitor for the Library Election. In the alternative, if this Court determines the District Court had authority to appoint a monitor, to vacate that part of the District Court's Order appointing DeRoche and order the District Court to appoint an individual who is not biased. Additionally, the duties of the monitor should be clearly defined.

DATED this 1st day of June, 2023.

BERG LILLY, PC

By /s/ Elizabeth W. Lund
ELIZABETH W. LUND
Attorneys for Respondents/Petitioners

CERTIFICATE OF COMPLIANCE

I hereby certify that the lines in this document are double spaced, the type in this document is proportionately spaced and is in 14 point font, and this document consists of a total of 3063 words, excluding the table of contents, table of citations, certificate of service, and certificate of compliance.

/s/ Elizabeth W. Lund
Elizabeth W. Lund

CERTIFICATE OF SERVICE

I undersigned hereby certifies that on the 2nd day of June, 2023, a true and correct copy of this PETITION FOR WRIT OF SUPERVISORY CONTROL was submitted to all interested parties by email and the Montana Courts E-Filing System:

Honorable Brenda Gilbert
District Court Judge
414 E Callendar St.
Livingston, Montana 59047
(Chambers)
Respondent

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Attorneys for Petitioner

/s/ Elizabeth W. Lund
Elizabeth W. Lund

TABLE OF EXHIBITS

EXHIBIT A

Petitioner's Motion to Set a Hearing and Appoint Monitor

EXHIBIT B

Petitioner's Notice of Supplemental Facts in Support of Motion to Set Hearing and Appoint Monitor

EXHIBIT C

Petitioner's Opposed Motion and Brief Nominating Lynn DeRoche as the Monitor

EXHIBIT D

Respondents' Response to Petitioner's Motion to Appoint Monitor & Opposed

Motion Nominating Lynn DeRoche as Monitor

EXHIBIT E

Affidavit of Carey Ann Haight in Support of Respondents' Response to Petitioner's Motion to Appoint Monitor & Opposed Motion Nominating Lynn DeRoche as Monitor

EXHIBIT F

Petitioner's Verified Petition for Injunctive Relief

EXHIBIT G

May 23, 2023 Report by Lynn DeRoche

EXHIBIT H

Email Chain between Elizabeth Lund and Raph and Ben Graybill

EXHIBIT A

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Benjamin R. Graybill
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Attorneys for Petitioner

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY


<p>GREAT FALLS PUBLIC LIBRARY BOARD OF TRUSTEES,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK & RECORDER and CASCADE COUNTY,</p> <p style="text-align: center;">Respondent.</p>	<p>Cause No.: <u>DV-23-222</u></p> <p style="text-align: center;">Hon. David J. Grubich</p> <p style="text-align: center;">MOTION TO SET HEARING AND TO APPOINT MONITOR</p> <p style="text-align: center;"><i>Expedited Consideration Requested Hearing Requested</i></p>
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Petitioner the Great Falls Public Library Board of Trustees (“the Library”) respectfully moves the Court under § 13-35-108, MCA, to set an expedited hearing at which time Respondents Cascade County and Sandra Merchant, in her Official Capacity as Cascade County Clerk & Recorder, should show cause why a Monitor should not be appointed in connection with the June 6 Library Mill Levy Special Election. The motion is supported by the Emergency Verified Petition for Injunctive Relief and associated affidavits, as well as the concurrently filed Brief in Support. A proposed order setting a hearing is attached.

Counsel for Petitioner contacted counsel for Respondents. Counsel for Respondents stated that Respondents do not oppose setting a hearing, but do oppose the appointment of a Monitor.

Respectfully submitted this 10th day of May, 2023.

GRAYBILL LAW FIRM, P.C.

By  _____
Raph Graybill

CERTIFICATE OF SERVICE

I, Raphael Jeffrey Carlisle Graybill, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion for Hearing to the following on 05-10-2023:

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: Cascade County, Sandra Merchant
Service Method: eService

Benjamin R. Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Great Falls Public Library Board of Trustees
Service Method: eService

Electronically signed by Emma Edwards on behalf of Raphael Jeffrey Carlisle Graybill
Dated: 05-10-2023

EXHIBIT B

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Benjamin R. Graybill
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MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>GREAT FALLS PUBLIC LIBRARY BOARD OF TRUSTEES,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK & RECORDER and CASCADE COUNTY,</p> <p style="text-align: center;">Respondent.</p>	<p>Cause No.: DV-23-222 Hon. Brenda R. Gilbert</p> <p>NOTICE OF SUPPLEMENTAL FACTS IN SUPPORT OF MOTION TO SET HEARING AND APPOINT MONITOR</p>
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Errors in the administration of the June 6 Library Mill Levy Special Election (the “Library election”) continue. Attached to this notice as Exhibit A is a true and accurate copy of the required notice of election published today, May 12, 2023, in the Great Falls Tribune. The notice incorrectly lists the date of the Library election as “May 2, 2023.” The Library election is on June 6, 2023. The notice also incorrectly states that “Absentee ballots will be mailed out between May 17-May 22.” Absentee ballots must be mailed 20 days prior to the election, which is May 17, 2023. See §§ 13-13-214(1)(b) and -205(1)(b), MCA.

The Great Falls Public Library Board of Trustees is contemporaneously providing a copy of this Notice to the Election Administrator and requesting a correction be published.

Respectfully submitted this 12th day of May, 2023.

GRAYBILL LAW FIRM, P.C.

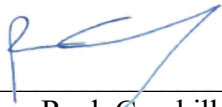
By  _____
Raph Graybill

EXHIBIT A

for the latest...



Legals

Bringing forth land patent benefit see
<https://bizzbox7.wixsite.com/lvk2>
(5632738) 3/19-5/18.

MNAXLP

Great Falls Public Library Mill Levy Election

Notice is hereby given that the Great Falls Public Library Mill Levy Election for the City of Great Falls will be held On Tuesday, June 6, 2023. Electors will consider the following:

This ballot measure asks voters to approve or disapprove a permanent annual levy of up to 17 mills to provide for the operation, maintenance and capital needs of the Great Falls Public Library.

Absentee ballots will be mailed out between May 17-May 22 and must be returned by mail to PO Box 2305, Great Falls, MT 59403 or 325 2nd Ave N, Great Falls, MT 59401 or can be dropped off at the Cascade County Elections office 325 2nd Ave. N, Great Falls, MT during regular business hours (8am-5pm) weekdays through June 5th.

On Election Day, May 2, 2023 ballots can be dropped off and poll voting will be available at Exhibition Hall- Expo Park, 400 3rd St. NW, Great Falls until 8pm in order to be counted. All ballots will be tallied at the Exhibition Hall at Montana Expo Park beginning at 10am on June 6, 2023. Applications to register for an absentee ballot will be available until Noon the day before the election but must be received in the Elections office or at Expo Park by 8pm on June 6, 2023.

If you miss the regular registration deadline (30 days prior to the election) voters may still register, update registration information, or reactivate their registration status at the County Election Office prior to election day or at Expo Park on election day to receive a ballot.

Dated this 8th day of May, 2023

(5697490) 5/12, 5/19, 5/26.

CERTIFICATE OF SERVICE

I, Raphael Jeffrey Carlisle Graybill, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice to the following on 05-12-2023:

Elizabeth Worth Lund (Attorney)
1 West Main Street
Bozeman MT 59715
Service Method: eService
E-mail Address: lund@berglawfirm.com

Electronically signed by Emma Edwards on behalf of Raphael Jeffrey Carlisle Graybill
Dated: 05-12-2023

EXHIBIT C

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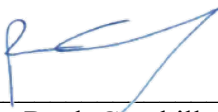
MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>GREAT FALLS PUBLIC LIBRARY BOARD OF TRUSTEES,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK & RECORDER and CASCADE COUNTY,</p> <p style="text-align: center;">Respondent.</p>	<p>Cause No.: DV-23-222 Hon. Brenda R. Gilbert</p> <p style="text-align: center;">OPPOSED MOTION NOMINATING LYNN DEROCHE AS MONITOR</p>
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Petitioner respectfully moves the Court for an Order appointing Lynn DeRoche as Monitor in the capacity described in Petitioner's Verified Petition for Injunctive Relief. As to reasons for granting this request please see Petitioner's brief in support attached.

Respectfully submitted this 17th day of May, 2023.

GRAYBILL LAW FIRM, P.C.

By 

Raph Graybill

CERTIFICATE OF SERVICE

I, Raphael Jeffrey Carlisle Graybill, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to the following on 05-17-2023:

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Electronically signed by Emma Edwards on behalf of Raphael Jeffrey Carlisle Graybill
Dated: 05-17-2023

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Attorneys for Petitioner

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>GREAT FALLS PUBLIC LIBRARY BOARD OF TRUSTEES,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK & RECORDER and CASCADE COUNTY,</p> <p style="text-align: center;">Respondent.</p>	<p>Cause No.: DV-23-222 Hon. Brenda R. Gilbert</p> <p style="text-align: center;">BRIEF IN SUPPORT OF PETIONER’S OPPOSED MOTION NOMINATING LYNN DEROCHE AS MONITOR</p>
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In accordance with the Court’s order of May 11, 2023, Petitioner nominates Lynn DeRoche to act in the capacity as Monitor as described in Petitioner’s Verified Petition for Injunctive Relief. Ms. DeRoche is the most qualified person to act as Monitor and is willing to accept the role as defined by the Court.

Ms. DeRoche worked as an employee in the Cascade County Elections Office for the past 16 years, until transferring recently to work in the Cascade County Justice Court. In the Elections Office, Ms. DeRoche worked her way up to Elections Supervisor. Since 2013, she was responsible for all aspects of preparing for and managing elections in Cascade County. Her duties included preparing and proofing ballots and voter instructions, organizing and completing

voter packets that included secrecy and signature envelopes as well as voter instructions and ballots. She was responsible for knowing and meeting deadlines for sending out voter packets and publishing election notices. She helped build and was fully trained on Elect Montana, the Secretary of State's new voter tracking database, which must be utilized in absentee ballot elections to confirm voters' ballots have been sent, received by the Election Office, and accepted as valid. She was responsible for answering voter questions. She programmed and operated Cascade County's vote tabulators. She managed Cascade County's polling place on Election Day, including supervising Election Judges, operating the count board, and balancing accepted ballots on the database with physical ballots counted, managing the resolution of provisional ballots, and performed numerous other election related duties. She is the only available person in Cascade County with the experience and expertise to serve as Monitor the Library Levy Election.


Counsel for the Respondent was notified of this motion and objects to it.

CONCLUSION

For the reasons state above, Petitioner respectfully requests Lynn DeRoche be appointed as Monitor for the Library Levy Election.

Respectfully submitted this 17th day of May, 2023.

GRAYBILL LAW FIRM, P.C.

By  _____
Raph Graybill

CERTIFICATE OF SERVICE

I, Raphael Jeffrey Carlisle Graybill, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 05-17-2023:

Carey Ann Ann Haight (Govt Attorney)
121 4th Street North, Suite 2A
Great Falls
Montana
Great Falls MT 59401
Representing: Cascade County, Sandra Merchant
Service Method: eService

Elizabeth Worth Lund (Attorney)
1 West Main Street
Bozeman MT 59715
Representing: Cascade County, Sandra Merchant
Service Method: eService

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: Cascade County, Sandra Merchant
Service Method: eService

Electronically signed by Emma Edwards on behalf of Raphael Jeffrey Carlisle Graybill
Dated: 05-17-2023

EXHIBIT D

ELIZABETH W. LUND
BERG LILLY, PC
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Attorneys for Respondents

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

GREAT FALLS PUBLIC LIBRARY)
BOARD OF TRUSTEES,)
)
Petitioner,)
)
v.)
)
SANDRA MERCHANT, in her official)
capacity as CASCADE COUNTY)
CLERK & RECORDER and CASCADE)
COUNTY,)
)
Respondents. _____

Cause No. DV-23-222
Hon. Brenda Gilbert

**RESPONDENTS’ RESPONSE TO
PETITIONER’S MOTION TO
APPOINT MONITOR & OPPOSED
MOTION NOMINATING LYNN
DEROCHE AS MONITOR**

I. INTRODUCTION

Respondents Sandra Merchant in her official Capacity as Cascade County Clerk & Recorder (“Merchant”) and Cascade County (“County” and “Collectively Respondents”) oppose Petitioner Great Falls Public Library Board of Trustees’ (“Petitioner”) Motion to Appoint a Monitor (“Petitioner’s Motion”) for the upcoming special election to be held on June 6, 2023 (the “Library Election”). Petitioner’s Motion should be denied because there is no legal authority in Montana permitting this Court to appoint a monitor under the circumstances. It requests the Court effectively decide all issues in the case against Respondents before Respondents’ answer to the Petition is even due. A monitor is unnecessary because this Court is the only authority vested with the power to make changes to the way the Library Election is run

in any event. If Petitioner has any issue with the way the Library Election is conducted, Petitioner can raise that issue with the Court. A so-called monitor will not expedite or change this procedure.

Further, as a practical matter, the scope of Petitioner's request is entirely undefined and impermissibly vague. Other than to apparently attempt to interfere with the process and gather information for Petitioner, what a theoretical monitor might be doing is unclear. Finally, on the afternoon before the hearing, Petitioner filed an Opposed Motion Nominating Lynn DeRoche as Monitor. As discussed in detail below, Lynn DeRoche ("DeRoche") is not bipartisan, but rather is already likely biased against Merchant and carries considerable baggage. To the extent a monitor is appointed, DeRoche is an inappropriate choice. There are many other options for the Court to consider instead of DeRoche and Petitioner's refusal to consider any other highly qualified and unbiased individuals further supports the inappropriateness of Petitioner's Motion.

II. BACKGROUND

Merchant was recently elected to the position of Cascade County Clerk & Recorder. Ultimately, Merchant replaced the incumbent, Rina Fontana Moore ("Fontana Moore"). Fontana Moore was the former long-time supervisor of DeRoche. See Affidavit of Carey Ann Haight in Support of Respondents' Response to Petitioner's Motion to Appoint Monitor ("Affidavit") attached as **Exhibit A**, at ¶ 5. Notably, Fontana Moore submitted an affidavit in support of Petitioner's Verified Petition For Injunctive Relief ("Petition") and against Merchant. See Exhibit B to the Petition.

By way of background with respect to DeRoche, she was hired on August 16, 2006 to work in the Cascade County Elections Office ("Elections Office") and became the Election Supervisor in March of 2013, serving as Fontana Moore's second in command. Affidavit, at ¶ 5.

DeRoche was as much the face of the Elections Office as Fontana Moore during Fontana Moore's tenure. *Id.* at ¶ 6.

The Office of the Cascade County Clerk and Recorder was a contested race in 2022, wherein Fontana Moore was challenged by Merchant. *Id.* at ¶ 7. During the contested election, Fontana Moore's role as Election Administrator for Cascade County and the operations of the Elections Office were the subject of continual public criticism by a relatively small group of registered voters who were supportive of Merchant ("Merchant's supporters"). *Id.* at ¶ 9. Merchant's supporters included Devereau Biddick, who is now serving in the Elections Office as Election Specialist, and Julie Bass, whom Merchant has declared to be her Chief Election Judge. *Id.* at ¶ 10.

During the contested election, Merchant's supporters routinely criticized virtually every aspect of the former Elections Office's operations including: the training provided to Election Judges, utilization of the ES&S machine, demands for Cast Vote Records which do not exist in Cascade County, demands for security camera footage, unsubstantiated allegations of voter fraud, asking to establish a physically monitored and video surveilled ballot box, staging viewings outside the Courthouse Annex (where the Cascade County Elections Office is located) after hours, photographing vehicles and license plates of vehicles parked at the Courthouse Annex, demanding access to the Elections Office during non-business hours, etc.¹ Affidavit, at ¶ 11. This campaign attack was effective, both Fontana Moore and DeRoche's election-related work were repeatedly painted as not only unethical and incompetent, but illegal. *Id.*, at ¶ 12. At the conclusion of the election between Fontana Moore and Merchant, a canvas was conducted, and Fontana Moore requested a recount. *Id.*, at ¶ 13. Merchant filed a verified petition for a TRO

¹ Merchant and her campaign were not a party of these activities, but they happened nonetheless.

and injunction, seeking to enjoin the recount² as illegal. *Id.*, at ¶ 14. Ultimately, Merchant was confirmed as the choice of Cascade County’s voters.

DeRoche initially continued her employment with the Elections Office; however she separated her employment a mere 40 days after Merchant took office. *Id.*, at ¶ 15. DeRoche effectively walked away from her 16-year career in elections and sustained a substantial pay cut. Affidavit, at ¶ 15. DeRoche made \$24.12 per hour with the Elections Office and now makes \$16.49 per hour as a clerk in Justice Court. *Id.* This is a reduction of roughly \$7.63 per hour. *Id.*

If DeRoche were appointed as the so-called monitor, she would be bringing considerable baggage with respect to her relationship with Merchant. Affidavit, at ¶ 16. Further, while Respondents cannot speculate about the circumstances for DeRoche leaving her employment with the Elections Office, it appears that she and Merchant are not compatible. *Id.* at ¶¶ 15-16. Additionally, DeRoche has never held Merchant’s position, which is supervisory to the position formerly held by DeRoche. *Id.* at ¶ 18. Therefore, if DeRoche is appointed as the so-called monitor, she would effectively be monitoring somebody who was formerly her supervisor. *Id.* There are other elected officials in other counties who would have experience in Merchant’s actual position and would be more appropriate to act as a monitor under the circumstances. *Id.*

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²Notably, the recount was largely performed by DeRoche with the assistance of Brett Rutherford. Although Petitioner has not requested the use of Mr. Rutherford as a monitor, Mr. Rutherford would be objectionable because of his former involvement and relationship. This is the only out-of-County person that would be objectionable if the Court were to appoint somebody.

III. ARGUMENT

A. Petitioner's Request for A Monitor Is Unsupported.

The Montana Supreme Court has explained that “[w]ithin constitutional limits, the Legislature has the exclusive authority to provide, define, and limit the procedures, standards, and remedies available for enforcement of compliance with Montana's election laws.” *Larson v. State*, 2019 MT 28, ¶ 21, 394 Mont. 167, 184, 434 P.3d 241, 253. Noticeably absent from Petitioner's Motion is any statute or other legislative grant of authority supporting Petitioner's right to have a “monitor” appointed to oversee the activities of an elected official and her office under the circumstances. The only statute cited in Petitioner's Motion at all is Mont. Code Ann. § 13-35-108. That statute confers powers upon the *District Court* as follows:

In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

Respondents do not contest that this Court has jurisdiction over it and is empowered to compel or enjoin actions required by election laws, if warranted. As noted, the statute does not confer power to appoint a “monitor” to be inserted into the election process. Petitioner has cited to no case suggesting that this statute, or any other statute, confers the power to appoint a monitor, nor are Respondents aware of any Montana case supporting Petitioner's request.

The only case cited by Petitioner in Petitioner's Motion that addresses elections at all, *Larson v. State*, does not involve the appointment of a monitor either. Rather, that case recognizes the power of the Court to grant declaratory and injunctive relief regarding elections. Again, Respondents do not take issue with the powers of this Court. To the extent there is any supervision of the Library Election, it should be through the Court. *Larson* is therefore irrelevant

to whether a person that Petitioner terms a “monitor” should be appointed. There is no authority to appoint somebody to monitor the activities of an elected official such as Merchant.

In sum, if this Court were to appoint a monitor for the Election at Petitioner’s request, it appears that such appointment would be the first of its kind in the State of Montana. Such appointment is not authorized by any statute or published Montana case either. It sets a dangerous precedent, especially in light of the history of the identity of the proposed monitor in this case. Respondents therefore respectfully request the Court deny Petitioner’s Motion.

B. Petition’s Request for A Monitor is Impermissibly Vague and Further is Unnecessary.

Petitioner requests that the monitor be provided with “unfettered access” to the Elections Office and all of its operations. See Petitioner’s Motion, p. 4. It is entirely unclear what this means. Does this mean that a monitor would be following Merchant around, looking over her shoulder when she drafts emails (including for instance correspondence to the undersigned), and sitting with Merchant while she answers the telephone? Would the monitor, who is not an elected official, have the right to access the Election Offices when nobody else is present and potentially tamper with Election materials or other materials in the office? What exactly would the monitor attend and what interactions would the monitor be permitted to have with employees and the public?

Of the vague job duties proposed, Petitioner suggests the purported monitor would serve two “roles”:

- (1) provide regular *public* reports to the Court to include perceived irregularities, unlawful practices, or “anticipated or burgeoning issues” and
- (2) provide technical advice to the Election Administrator regarding the above-described issues.

See Petitioner's Motion, p. 5. As to the first role, it seems counterintuitive that Petitioner would want to publicly highlight perceived issues with the election process where Petitioner is *theoretically* interested in having the election results upheld. This supports that Petitioner's goal in this exercise is actually to discredit Merchant and is political in nature. This inappropriate alternative goal is further highlighted by Petitioner's choice of a monitor. To the extent any reporting is required, it should only be on issues that can actually affect the legitimacy of the election as a clear violation of a law rather than "irregularities" or the "anticipated or burgeoning issues" proposed by Petitioner. This type of subjective reporting, especially from somebody like DeRoche, is more of an effort to try to make Merchant publicly look bad than an effort to safeguard the results of an election.

The second proposed "role," providing "technical advice," is also very vague. Advice on what? Who specifically is the advice provided to? Is Merchant required to accept the advice? If the advice is accepted, does it wind up in a report under "role 1"? In what form is the advice to be provided, i.e. written, verbal, etc. Will it be recorded in some fashion? Does the "technical advice" require citation to particular authority? Does anybody review the advice? How long does Merchant have to consider the advice or act on it? If the advice is incorrect- who is responsible? Does Petitioner intend to take on any responsibility for advice that is provided?

Finally, a so-called monitor taking on these roles is wholly unnecessary. Petitioner admits Merchant already voluntarily provided it with drafts of the ballots and instructions for write-in candidates. See Petitioner's Motion, p. 3. Had Petitioner wanted to do so, Petitioner could have had an individual of its choosing review the relevant documents and suggest revisions. Indeed, Petitioner did suggest revisions and, where appropriate, those revisions were accepted. To the extent Petitioner believed there was still an issue, Petitioner could have filed

the relevant document with the Court along with a request under Mont. Code Ann. § 13-35-108 for the Court to instruct Merchant to correct the issue. A monitor to take this step is wholly unnecessary. Petitioner has already somewhat³ followed this procedure with respect to the notice of election published in the Great Falls Tribune. See Notice of Supplemental Facts in Support of Motion to Set Hearing and Appoint Monitor. As noted, this Court is the only authority with the power to actually require a change. The monitor is unnecessary. This Court could simply require reporting to Petitioner, something that Merchant has already been doing, and if Petitioner takes issue with anything that is actually going to happen, Petitioner can file a request with the Court.

Instead of following this process, Petitioner has filed a request for a biased individual to insert herself into the workings of the Elections Office. This is unquestionably improper and there is no Montana authority supporting such a request. It should be denied.

C. Petitioner’s Requested “Monitor” is Inappropriate.

DeRoche is the sole person that Petitioner is willing to consider for the role as monitor. This is in the face of suggestions of numerous other highly qualified individuals from other counties who would not be biased and who do not have any political history or baggage with respect to Merchant. See Email Chain between Elizabeth Lund and Raph and Ben Graybill attached as **Exhibit B**. Petitioner is attempting to insert a biased individual into the role as monitor to effectively spy on and publicly report about anything DeRoche personally views as inappropriate, a *potential* issue, or not to the former standards or procedures of DeRoche’s

³ Respondents utilize the term “somewhat” because Petitioner filed what it perceived as an inappropriate notice with the Court as purported supplemental authority for Petitioner’s Motion. If Petitioner truly sought to affect change, it could simply have filed the notice with a request for the Court to require a correction. A monitor would not change this procedure as the Court is the only authority who can ultimately require change.

former employer Fontana Moore. Further, if the previous history regarding the Cascade County Clerk & Recorder race between Merchant and Fontana Moore were not enough, DeRoche has apparently already perceived her working with Merchant as untenable given the circumstances of her move to Justice Court clerk. DeRoche did so just 40 days after Merchant took office and she took a substantial pay cut in doing so. Under these circumstances, inserting DeRoche into the Elections Office is wildly improper. Petitioner's refusal to consider other qualified individuals to act as a monitor speaks volumes about what this motion is really about: Petitioner seeks to undermine Merchant.

Conversely, although Respondents object to a so-called monitor, Merchant suggested a number of highly qualified individuals who would not be objectionable and obviously biased:

Penny Plachy, previously the Meagher County Elections Administrator;

Regina Plettenberg, Ravalli County Clerk and Recorder;

Angie Paulsen from Broadwater County (an Elections Administrator); or

The Elections Administrator from Flathead County.

This Court might consider the Clerk and Recorder or Elections Administrator from any other county it deems appropriate that was not involved in the contested election involving Merchant and Fontana Moore. These individuals are all familiar with election laws and are not biased.

The Court may also consider an individual from the Secretary of States office. *Larson v. State*, 2019 MT 28, ¶ 41 394 Mont. 167, 434 P.3d 241 (explaining “the legislature has charged the secretary of state with general supervision over the administration of various Montana election laws . . .”)

Petitioner has suggested that only DeRoche is appropriate because she is the most familiar with Cascade County's procedures. This argument fails in light of the fact that the

Election is to be evaluated under State laws, rather than any regulation or law that is unique to Cascade County. Affidavit, at ¶ 17. Any individual with election experience can apply the same State laws he or she is applying in his or her own county to the Library Election. An election will not be invalidated because Merchant does things differently than her predecessor, as long as the difference does not also violate State law. Further, as to procedures unique to Cascade County, Merchant was entitled to change those procedures provided applicable State laws are not violated. Indeed; Cascade County voters previously voted to replace Fontana Moore presumably in part based on how DeRoche previously ran elections. If this Court appoints DeRoche in any capacity, it would be ignoring the voters' decision with respect to the Elections Office and its policies.

IV. CONCLUSION

For the aforementioned reasons, Respondents respectfully request the Court deny Petitioner's Motion.

To the extent the Court considers granting Petitioner's Motion, Respondents respectfully request the Court to set forth exactly what a monitor may and may not do. Additionally, Respondents request the Court to appoint an individual who is not biased against Merchant and who is from a different county.

DATED this 18th day of May, 2023.

BERG LILLY, PC

By



ELIZABETH W. LUND

Attorneys for Respondents

ELIZABETH W. LUND
 BERG LILLY, PC
 1 West Main Street
 Bozeman, MT 59715
 406-587-3181 – telephone
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Attorneys for Respondents

MONTANA EIGHTE JUDICIAL DISTRICT COURT, CASCADE COUNTY

GREAT FALLS PUBLIC LIBRARY)
 BOARD OF TRUSTEES,)
)
 Petitioner,)
)
 v.)
 SANDRA MERCHANT, in her official)
 capacity as CASCADE COUNTY)
 CLERK & RECORDER and CASCADE)
 COUNTY,)
)
 Respondents.)

Cause No. DV-23-222
 Hon. Brenda Gilbert

**AFFIDAVIT OF
 CAREY ANN HAIGHT IN SUPPORT
 OF RESPONDENTS’ RESPONSE TO
 PETITIONER’S MOTION TO
 APPOINT MONITOR**

State of Montana)
 : ss.
 County of Cascade)

Carey Ann Haight, being first duly sworn, deposes and says:

1. I am over the age of 21 years, am legally competent to execute this Affidavit, and execute this Affidavit based upon my personal knowledge, and not upon information and belief.
2. I am the Chief Civil Deputy County Attorney (Chief Civil Deputy) for Cascade County. I have held this position since January 20, 2015.
3. As Chief Civil Deputy, I provide legal counsel to the Board of Cascade County Commissioners and all elected officials pursuant to MCA 7-4-2711, including the elected Cascade County Clerk and Recorder/Election Administrator, related to the Official’s statutory responsibilities and the operations of their elected office.

4. In this capacity, I worked closely with former Cascade County Clerk and Recorder/Election Administrator Rina Fontana Moore and her election staff, including Lynn DeRoche.

5. Ms. DeRoche was hired on August 16, 2006, by Ms. Fontana Moore to work in the elections office and became the Election Supervisor in March of 2013, serving as Ms. Fontana Moore's second in command. Ms. DeRoche's last day in that position was February 10, 2023.

6. While Ms. Fontana Moore was the elected official in charge of elections for Cascade County during her elected tenure, Ms. DeRoche operated and managed the elections office and elections with Ms. Fontana Moore and as such the Ms. DeRoche was as much the face of the Elections Office in Cascade County as Ms. Fontana Moore.

7. The Office of the Cascade County Clerk and Recorder was a contested race in 2022, wherein Ms. Fontana Moore was challenged by Sandra Merchant.

8. I worked closely with Ms. Fontana Moore and Ms. DeRoche on a regular and frequent basis on various election related matters which arose during the 2022 federal general election, including but not limited to the contested Cascade County Clerk and Recorder race.

9. During this timeframe, Ms. Fontana Moore's role as Election Administrator for Cascade County and the operations of the election office were the subject of continual public criticism by a relatively small group of registered voters who were clearly affiliated with and supportive of Ms. Merchant ("Ms. Merchant's supporters").

10. Ms. Merchant's supporters, included Devereau Biddick who is now serving in the Elections Office as Election Specialist, and Julie Bass whom Ms. Merchant has declared to be her Chief Election Judge.

11. Ms. Merchant's supporters routinely criticized virtually every aspect of the Elections Office operations including: the training provided to Election Judges, utilization of the ES&S machine, demands for Cast Vote Records which do not exist in Cascade County, demands for security camera footage, unsubstantiated allegations of voter fraud, asking to establish a physically monitored and video surveilled ballot box, staging viewers outside the Courthouse Annex (where the Cascade County Elections Office is located) after hours, photographing vehicles and license plates of vehicles parked at the Courthouse Annex, demanding access to the Elections Office during non-business hours, etc.

12. The foregoing described conflict targeted at Ms. Fontana Moore and Ms. DeRoche by Ms. Merchant's supporters was an effective, sustained, and orchestrated attack on every aspect of the Elections Office and its operations, which repeatedly painted Ms. Fontana Moore and Ms. DeRoche's election-related work as not only unethical and incompetent, but illegal.

13. At the conclusion of the election, a canvas was conducted. Following the canvas, Ms. Fontana Moore submitted a request for a recount (a hand count).

14. In response, on November 25, 2022, Ms. Merchant filed a Verified Petition for TRO and Injunction, seeking to enjoin a recount of the Clerk and Recorder's race on the grounds and for the reasons that conducting the recount – which was largely performed by Ms. DeRoche with the assistance of Brett Rutherford, who served as a contracted election specialist based upon his lengthy career and experience as the Yellowstone County Election Administrator -was illegal.

15. While Ms. DeRoche initially remained with the Elections Office, she separated her employment from that office a mere 40 days after Ms. Merchant took office. Ms. DeRoche

separated her employment from the Elections Office despite her 16 year career in Elections, and critically, she sustained a pay cut of roughly \$7.63 per hour to work as a clerk in Justice Court. She is currently making \$16.49 per hour, as contrasted with her former wage of \$24.12 per hour.

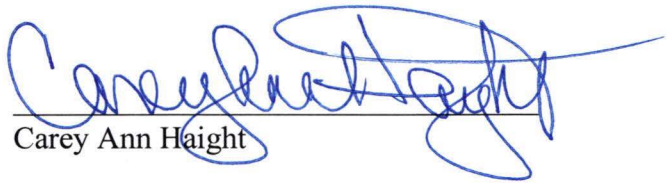
16. While I cannot speculate about the reasons for Ms. DeRoche's separation, it appears that Ms. DeRoche and Ms. Merchant are not compatible. If Ms. DeRoche is appointed to oversee Ms. Merchant, she would be bringing considerable baggage with respect to her relationship with Ms. Merchant.

17. The subject Mill Levy Election in Cascade County does not necessitate an election monitor be from or have experience with Cascade County particularly given that the subject election is subject to Title 13 of the Montana Code. On the contrary, any election monitor appointed must be an individual who is neutral and without any real or perceived political, personal or other connection whatsoever with the Fontana Moore Election Administration.

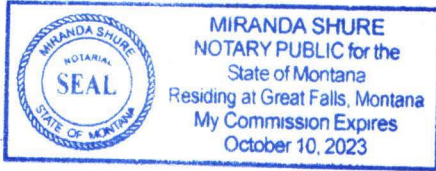
18. Finally, it is worth noting that while Ms. DeRoche was in the Elections Office, she never held Ms. Merchant's position as an elected official. She was always subservient to Ms. Fontana Moore, who formerly held Ms. Merchant's position. Therefore, if Ms. DeRoche is appointed as the monitor, she would effectively be monitoring somebody who was formerly her supervisor. There are other elected officials in other counties who would have experience in Ms. Merchant's actual position and would be more appropriate to act as a monitor under the circumstances.


FURTHER AFFIANT SAYETH NOT.

DATED this 17th day of May, 2023


Carey Ann Haight

SUBSCRIBED AND SWORN to before me this 17 day of May, 2023.





Notary Public for the State of Montana
(Print Name: Miranda Shure)
Residing at Cascade County, Montana
My Commission Expires: Oct 10, 2023

Lilla Lund

From: Raph Graybill <rgraybill@silverstatelaw.net>
Sent: Wednesday, May 17, 2023 1:26 PM
To: Lilla Lund; 'Ben Graybill'
Subject: RE: GFPLT v. Merchant

Lilla:

Ms. Merchant is making this partisan. She apparently still thinks she has an opponent.

The Library Board does not oppose Ms. Merchant. The Board wants this election to be administered fairly, transparently, and lawfully. The Board believes Ms. Merchant wants the same.

Lynn DeRoche is, without question, the best person to assist both Parties to achieve what they both want. Many of the persons you have suggested for the monitor position are highly qualified, but they simply lack necessary experience with Cascade County.

We intend to ask Judge Gilbert to write a detailed order delimiting the Monitor's role, duties, and the restrictions on her authority—it's pejorative and counterproductive to conceive of the Monitor as simply "tailing" Ms. Merchant.

Ms. Merchant's concerns are personal and political; she needs to put that aside. Ms. DeRoche will follow the Court's instructions; she's not there to interfere with Ms. Merchant politically.

Raph

Raph Graybill
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
(406) 452-8566
<https://www.graybilllawfirm.com/>

From: Lilla Lund <lund@berglawfirm.com>
Sent: Wednesday, May 17, 2023 11:41 AM
To: Raph Graybill <rgraybill@silverstatelaw.net>; 'Ben Graybill' <brg@silverstatelaw.net>
Subject: RE: GFPLT v. Merchant

Raph:

Your selection smacks of partisanship and places Ms. Merchant in the untenable position of being effectively constantly tailed by an individual who worked for her opponent for many years and who already decided continued employment under Ms. Merchant was untenable. Ms. DeRoche is unquestionably biased.

It is truly disappointing that your client is unwilling to consider other, highly qualified options. This decision speaks volumes about your client's true motives with respect to the use of a monitor.

Sincerely,

Lilla

Elizabeth W. Lund
lund@berglawfirm.com
Berg Lilly, PC
1 West Main Street
Bozeman, Montana 59715
Telephone: (406) 587-3181 x106
Fax: (406) 587-3240



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From: Raph Graybill <rgraybill@silverstatelaw.net>
Sent: Wednesday, May 17, 2023 10:24 AM
To: Lilla Lund <lund@berglawfirm.com>; 'Ben Graybill' <brg@silverstatelaw.net>
Subject: RE: GFPLT v. Merchant

Lilla –

Thank you for the names.

We reject out of hand the characterization of DeRoche as in any way partisan. That is not our intent. She is a nonpartisan current county employee, and held nonpartisan positions in the elections office for 16 years.

The fact remains that there is no person more qualified or experienced in the operations of Cascade County elections. We intend to nominate her and will note the objection.

Raph

From: Lilla Lund <lund@berglawfirm.com>
Sent: Wednesday, May 17, 2023 10:15 AM
To: Raph Graybill <rgraybill@silverstatelaw.net>; 'Ben Graybill' <brg@silverstatelaw.net>
Subject: RE: GFPLT v. Merchant

Raph:

Also, Angie Paulsen from Broadwater County.

Sincerely,
Lilla

Elizabeth W. Lund
lund@berglawfirm.com
Berg Lilly, PC

1 West Main Street
Bozeman, Montana 59715
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Fax: (406) 587-3240



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From: Raph Graybill <rgraybill@silverstatelaw.net>
Sent: Wednesday, May 17, 2023 10:02 AM
To: Lilla Lund <lund@berglawfirm.com>; 'Ben Graybill' <brg@silverstatelaw.net>
Subject: RE: GFPLT v. Merchant

Lilla –

So that we may consider your suggestions, do you mean Regina Plettenberg the Ravalli County Clerk and Recorder? Or the current Lewis & Clark Election administrator?

Raph

From: Lilla Lund <lund@berglawfirm.com>
Sent: Wednesday, May 17, 2023 9:58 AM
To: Ben Graybill <brg@silverstatelaw.net>
Cc: rgraybill@silverstatelaw.net
Subject: RE: GFPLT v. Merchant

Ben:

My clients object. When I spoke to Raph last Friday, he indicated the Library was going to suggest a non-partisan monitor. Requesting Lynn DeRoche appears to be purely political and an effort to undermine the process. I spoke to Sandra Merchant and she advises that while she objects to a monitor, the following individuals would not be partisan or biased as the monitor you suggested:

Penny Plachy, previously the Meagher County Elections Administrator. She just retired so would likely have availability if she's willing to do it.

Regina Pletinburg from Lewis & Clark County

Or the Elections Administrator from Flathead County.

Sincerely,
Lilla

Elizabeth W. Lund
lund@berglawfirm.com
Berg Lilly, PC
1 West Main Street
Bozeman, Montana 59715
Telephone: (406) 587-3181 x106
Fax: (406) 587-3240



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From: Ben Graybill <brg@silverstatelaw.net>
Sent: Tuesday, May 16, 2023 3:27 PM
To: Lilla Lund <lund@berglawfirm.com>
Cc: rgraybill@silverstatelaw.net
Subject: GFPLT v. Merchant

Lilla

We intend to nominate Lynn DeRoche for monitor. As you likely know, Lynn worked in the Cascade Co. Elections Office for 16 years and was Elections Supervisor until she left this year. I presume your client objects, but please confirm. We intend to file our motion tomorrow.

We did not receive the final instructions. I will have Susie McIntyre ask Ms. Merchant for them directly. We would like to see the instructions as soon as possible.

Ben Graybill
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
406-452-8566

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CERTIFICATE OF SERVICE

I, Elizabeth Worth Lund, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 05-18-2023:

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: Sandra Merchant, Cascade County
Service Method: eService

Carey Ann Ann Haight (Govt Attorney)
121 4th Street North, Suite 2A
Great Falls
Montana
Great Falls MT 59401
Representing: Sandra Merchant, Cascade County
Service Method: eService

Raphael Jeffrey Carlisle Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Great Falls Public Library Board of Trustees
Service Method: eService

Benjamin R. Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Great Falls Public Library Board of Trustees
Service Method: eService

Electronically Signed By: Elizabeth Worth Lund
Dated: 05-18-2023

EXHIBIT E

ELIZABETH W. LUND
 BERG LILLY, PC
 1 West Main Street
 Bozeman, MT 59715
 406-587-3181 – telephone
 406-587-3240 – fax
lund@berglawfirm.com
Attorneys for Respondents

MONTANA EIGHTE JUDICIAL DISTRICT COURT, CASCADE COUNTY

GREAT FALLS PUBLIC LIBRARY)
 BOARD OF TRUSTEES,)
)
 Petitioner,)
)
 v.)
 SANDRA MERCHANT, in her official)
 capacity as CASCADE COUNTY)
 CLERK & RECORDER and CASCADE)
 COUNTY,)
)
 Respondents.)

Cause No. DV-23-222
 Hon. Brenda Gilbert

**AFFIDAVIT OF
 CAREY ANN HAIGHT IN SUPPORT
 OF RESPONDENTS' RESPONSE TO
 PETITIONER'S MOTION TO
 APPOINT MONITOR**

State of Montana)
 : ss.
 County of Cascade)

Carey Ann Haight, being first duly sworn, deposes and says:

1. I am over the age of 21 years, am legally competent to execute this Affidavit, and execute this Affidavit based upon my personal knowledge, and not upon information and belief.
2. I am the Chief Civil Deputy County Attorney (Chief Civil Deputy) for Cascade County. I have held this position since January 20, 2015.
3. As Chief Civil Deputy, I provide legal counsel to the Board of Cascade County Commissioners and all elected officials pursuant to MCA 7-4-2711, including the elected Cascade County Clerk and Recorder/Election Administrator, related to the Official's statutory responsibilities and the operations of their elected office.

4. In this capacity, I worked closely with former Cascade County Clerk and Recorder/Election Administrator Rina Fontana Moore and her election staff, including Lynn DeRoche.

5. Ms. DeRoche was hired on August 16, 2006, by Ms. Fontana Moore to work in the elections office and became the Election Supervisor in March of 2013, serving as Ms. Fontana Moore's second in command. Ms. DeRoche's last day in that position was February 10, 2023.

6. While Ms. Fontana Moore was the elected official in charge of elections for Cascade County during her elected tenure, Ms. DeRoche operated and managed the elections office and elections with Ms. Fontana Moore and as such the Ms. DeRoche was as much the face of the Elections Office in Cascade County as Ms. Fontana Moore.

7. The Office of the Cascade County Clerk and Recorder was a contested race in 2022, wherein Ms. Fontana Moore was challenged by Sandra Merchant.

8. I worked closely with Ms. Fontana Moore and Ms. DeRoche on a regular and frequent basis on various election related matters which arose during the 2022 federal general election, including but not limited to the contested Cascade County Clerk and Recorder race.

9. During this timeframe, Ms. Fontana Moore's role as Election Administrator for Cascade County and the operations of the election office were the subject of continual public criticism by a relatively small group of registered voters who were clearly affiliated with and supportive of Ms. Merchant ("Ms. Merchant's supporters").

10. Ms. Merchant's supporters, included Devereau Biddick who is now serving in the Elections Office as Election Specialist, and Julie Bass whom Ms. Merchant has declared to be her Chief Election Judge.

11. Ms. Merchant's supporters routinely criticized virtually every aspect of the Elections Office operations including: the training provided to Election Judges, utilization of the ES&S machine, demands for Cast Vote Records which do not exist in Cascade County, demands for security camera footage, unsubstantiated allegations of voter fraud, asking to establish a physically monitored and video surveilled ballot box, staging viewers outside the Courthouse Annex (where the Cascade County Elections Office is located) after hours, photographing vehicles and license plates of vehicles parked at the Courthouse Annex, demanding access to the Elections Office during non-business hours, etc.

12. The foregoing described conflict targeted at Ms. Fontana Moore and Ms. DeRoche by Ms. Merchant's supporters was an effective, sustained, and orchestrated attack on every aspect of the Elections Office and its operations, which repeatedly painted Ms. Fontana Moore and Ms. DeRoche's election-related work as not only unethical and incompetent, but illegal.

13. At the conclusion of the election, a canvas was conducted. Following the canvas, Ms. Fontana Moore submitted a request for a recount (a hand count).

14. In response, on November 25, 2022, Ms. Merchant filed a Verified Petition for TRO and Injunction, seeking to enjoin a recount of the Clerk and Recorder's race on the grounds and for the reasons that conducting the recount – which was largely performed by Ms. DeRoche with the assistance of Brett Rutherford, who served as a contracted election specialist based upon his lengthy career and experience as the Yellowstone County Election Administrator -was illegal.

15. While Ms. DeRoche initially remained with the Elections Office, she separated her employment from that office a mere 40 days after Ms. Merchant took office. Ms. DeRoche

separated her employment from the Elections Office despite her 16 year career in Elections, and critically, she sustained a pay cut of roughly \$7.63 per hour to work as a clerk in Justice Court. She is currently making \$16.49 per hour, as contrasted with her former wage of \$24.12 per hour.

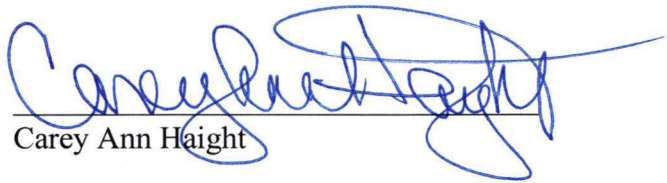
16. While I cannot speculate about the reasons for Ms. DeRoche's separation, it appears that Ms. DeRoche and Ms. Merchant are not compatible. If Ms. DeRoche is appointed to oversee Ms. Merchant, she would be bringing considerable baggage with respect to her relationship with Ms. Merchant.

17. The subject Mill Levy Election in Cascade County does not necessitate an election monitor be from or have experience with Cascade County particularly given that the subject election is subject to Title 13 of the Montana Code. On the contrary, any election monitor appointed must be an individual who is neutral and without any real or perceived political, personal or other connection whatsoever with the Fontana Moore Election Administration.

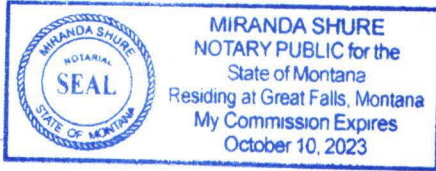
18. Finally, it is worth noting that while Ms. DeRoche was in the Elections Office, she never held Ms. Merchant's position as an elected official. She was always subservient to Ms. Fontana Moore, who formerly held Ms. Merchant's position. Therefore, if Ms. DeRoche is appointed as the monitor, she would effectively be monitoring somebody who was formerly her supervisor. There are other elected officials in other counties who would have experience in Ms. Merchant's actual position and would be more appropriate to act as a monitor under the circumstances.


FURTHER AFFIANT SAYETH NOT.

DATED this 17th day of May, 2023


Carey Ann Haight

SUBSCRIBED AND SWORN to before me this 17 day of May, 2023.





Notary Public for the State of Montana
(Print Name: Miranda Shure)
Residing at Cascade County, Montana
My Commission Expires: Oct 10, 2023

EXHIBIT F

Raph Graybill
Benjamin R. Graybill
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Attorneys for Petitioner

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>GREAT FALLS PUBLIC LIBRARY BOARD OF TRUSTEES,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK & RECORDER and CASCADE COUNTY,</p> <p style="text-align: right;">Respondents.</p>	<p>Cause No.: <u>DV-7-2023-0000222-IJ</u></p> <p style="text-align: center;">Judge David J. Grubich</p> <p style="text-align: center;">EMERGENCY VERIFIED PETITION FOR INJUNCTIVE RELIEF</p> <p style="text-align: center;"><i>Expedited Consideration Requested Hearing Requested</i></p>
--	---

The Great Falls Public Library Board of Trustees (“the Library”) brings this Emergency Petition for Injunctive Relief under § 13-35-108, MCA, and Article II, Section 13 of the Montana Constitution, and in support thereof states the following:

PARTIES

1. The Library is a resident of Cascade County. Its Board of Trustees exercises the independent powers and duties provided in § 22-1-308, MCA, to ensure the “effective use and management of the library.”
2. Merchant is the Cascade County Clerk and Recorder and serves as the Election

Administrator in Cascade County. In this capacity, she is responsible for the management of elections in Cascade County, including the May 2, 2023 Great Falls school district election and the planned June 6, 2023 Library Mill Levy Special Election. She is sued in her official capacity only.

3. Cascade County is a political subdivision of the State of Montana and has assumed responsibility for the conduct of the Library election through its Election Administrator, Merchant.

JURISDICTION AND VENUE

4. This Court has jurisdiction under § 13-35-108, MCA, and Article II, Section 13 of the Montana Constitution.

5. Venue is properly laid in Cascade County pursuant to §§ 25-2-125 and -126, MCA, because the matters that are the subject of the causes of action arise in Cascade County and because all parties reside in Cascade County.

GENERAL ALLEGATIONS

6. This is an action under the election laws of the State of Montana, § 13-35-108, MCA, and Article II, Section 13 of the Montana Constitution to ensure the lawful, orderly administration of the June 6 Library Mill Levy Special Election (the “Library election”).

7. Due to escalating costs of operations, a levy is necessary to continue to meet state library standards and to provide sustainable annual funding for the Library.

8. The Great Falls City Commission voted to call for a special election to be held on June 6th, 2023, for the purpose of placing a Library mill levy of 15 mills before the voters.

9. If the Library Election is delayed beyond June—or if it is invalidated and re-conducted after June—the Library will suffer immediate injury.

10. If voters approve the additional mills after June, the additional mills will not apply or result in Library funding until the following year. The Library will incur immediate losses in staff, community services, and the ability to meet the Public Library Standards of the State of Montana.

11. Specifically, if the election is pushed after June—due to delay or invalidation and being re-conducted—the following will occur:

- a. Failure to meet Montana Public Library Standards, and disqualification of the Library from receiving approximately \$30,000 in State Library Aid;
 - b. Inability to adequately address Library safety so that parents, seniors and families feel welcome at the Library;
 - c. Reduced early literacy and afterschool programs for children and parents;
 - d. No homebound services and programming for people who are disabled and seniors;
 - e. No computer and technology classes and reduced support for job seekers;
 - f. No College Readiness Program for teens (literacy programs, test prep, and application assistance);
 - g. Library staff will be laid off;
 - h. Reduction in hours to be open only five days a week providing less service to all community members; and
 - i. Bookmobile service maintained at only 3 days a week providing inadequate service to daycares, schools and seniors.
12. Merchant assumed the office of Cascade County Clerk & Recorder in 2023.
13. On information and belief, Merchant has no prior experience as an election

administrator in Montana, or in the Cascade County Clerk & Recorder's office.

14. After Merchant took office, several office staff experienced in election administration left the office, leaving the office with extremely limited experience and institutional knowledge regarding the requirements of Montana's election laws and procedures.

15. To date, Merchant has supervised at least three elections in Cascade County.

16. Each of these elections has featured severe errors and unlawful deviation from statutory requirements.

17. The errors and unlawful deviations are severe enough that they threaten the validity of the elections.

18. Most recently, Merchant oversaw the Great Falls school district election. It was rife with errors, violations of Montana law, and other irregularities that undermine its validity.

19. Eligible voters were disenfranchised. There was a failure to incorporate into the election all electors, within applicable tax levy districts, who are assessed for Great Falls high school levies. For example, property owners living in Levy District 29A, located east of Great Falls, are assessed mills for numerous Great Falls high school levies (Exhibit A). All such persons, who are qualified electors in Levy District 29A, were entitled to vote in Great Falls Public Schools elections. However, they were not allowed to vote in the recent Great Falls school trustee election. Ex. A, Aff. of Charlotte Mehmke, ¶¶ 4-8; Ex. B, Aff. of Rina Moore, ¶ 5. Upon information and belief qualified electors in Levy District 29 and other relevant levy districts did not receive absentee ballots for the election.

20. There was a failure to comply with § 13-13-241, MCA, which requires that all absentee ballot signatures be verified before separating the elector's signature envelope from the ballot. This must occur prior to counting the ballot, and ballots must remain with the signature

envelope until verification. In violation of the statute, electors' signatures on the signature envelope were not compared to their signatures in the elector database before separating and relocating the ballots from the signature envelope. Signature comparisons were, in fact, made after the votes were counted when it is impossible to retrieve the ballot for any mismatched signatures. This means counted ballots were not verified as being regular ballots that could be counted, and, therefore, it is not possible to know how many invalid ballots were counted. Ex. B, Aff. of Rina Moore, ¶ 8.

21. This serious election law violation is evident because when absentee ballots are mailed to electors they are each marked "sent" in a statewide database. When they are returned to the Elections Office they are each marked "received." When the comparison of signatures occurs and the signatures match, they are marked "accepted" and treated as regular ballots. With regard to the school trustee election, a large number of absentee ballots were marked "accepted" after they were counted. Ex. B, Aff. of Rina Moore, ¶ 7.

22. There are examples of a failure to send absentee ballots to the persons who formally requested to have their ballots sent to an address different than the one listed on the absentee ballot application, which ultimately prevented these electors from voting in the school trustee election. Ex. C, Aff. of Jim Humphrey, ¶ 7; Ex. D, Aff. of Linda Fuller, ¶ 10.

23. In violation of §13-17-103(1)(i), MCA, absentee ballots did not have a designated area for write-in candidates. Ex. B, Aff. of Rina Moore, ¶ 12.

24. Inaccurate instructions were given to electors regarding how to accomplish write-in voting. Ex. B, Aff. of Rina Moore, ¶ 12.

25. Absentee electors received incorrect instructions regarding where to drop off absentee election ballots on Election Day. The instructions indicate ballots could be dropped off

at the “COUNTY ELECTION OFFICE.” In fact, that office was closed on Election Day— voters had to go to Montana ExpoPark to drop off absentee ballots on Election Day. Ex. E.

26. Absentee ballots were mailed in envelopes that were never sealed. Ex. F, Aff. of Maggie Nybo, ¶ 5.

27. Upon information and belief, absentee ballots were improperly folded so that the ballots did not fit into the secrecy envelope. Multiple additional folds of the ballot were required to fit it into the secrecy envelope, and no instructions were provided to electors about how to deal with this problem, including to avoid cutting the ballot to make it fit.

28. Upon information and belief, multiple absentee ballots were mailed to some absentee electors.

29. Electors were turned away on Election Day because precinct “registers,” i.e. elector lists for each precinct, were unavailable at the polling place at the scheduled start of voting, delaying the start of voting. Ex. B, Aff. of Rina Moore, ¶¶ 9-11.

30. Electors were also turned away on Election Day because ballots and poll books were unavailable at the precinct tables until after 8:00 am, delaying the start of voting. Ex. B, Aff. of Rina Moore, ¶ 10-11.

31. Standing alone, any of the above violations of Montana election law could invalidate the recent election. Taken together, this array of statutory violations and other irregularities almost certainly would allow any affected person with standing to challenge the election.

32. The Library has been in contact with Merchant for months to obtain information about Merchant’s plans to conduct the Library election. Merchant has provided virtually no information.

33. On the morning of May 8, 2023—just a week before ballots must be mailed—the Library received for the first time a copy of the ballot for the Library election. Ex. G. This was represented by Merchant as a “corrected ballot proof” because “[t]he first had errors and was sent back for correction.” But the second line of the “corrected ballot proof” contained a glaring error: it provided instructions for write-in candidates. There are no write-in candidates—or candidates at all—in the Library election. If a voter follows the ballot’s instructions and “write[s] in a name” as directed, it risks invalidating the ballot.

34. The Library received a second corrected ballot on the morning of May 9, 2023.

35. Also on the morning of May 9, 2023, the Library received for the first time a copy of the instructions to accompany absentee ballots. Ex. H. These contained significant errors. The instructions contained instructions for write-in candidates. There are no write-in candidates in the Library election. If a voter follows these instructions and writes in a candidate, it risks invalidating the ballot. The instructions fail to mention that the Cascade County Elections Office moves to the ExpoPark for election day, and instead directs voters to the Courthouse Annex (which will be closed). On information and belief, Merchant does not maintain a ballot drop box at the Courthouse Annex, and no staff will be there on election day—rendering these instructions inaccurate and misleading. The instructions also fail to list the hours or days the Elections Office will be open in the Courthouse Annex location, the only location listed. A voter who follows the instructions will be unable to return their ballot on election day at the address listed, or know anything about the office’s hours or change in location. Even so, the incorrect instructions warn in bold face text that “[f]ailure to follow these instructions may invalidate part or all of your ballot.”

36. The above errors already affecting the Library election are similar to errors that

occurred at the same point in time during the school district election. But while these early errors can be corrected, the types of errors that appeared later in the school district election (disenfranchising voters, failing to have ballots and other materials ready in time, failure to follow state law regarding signature validation before counting ballots) cannot be reversed and undermine the validity of the election.

37. This is also especially concerning for the Library because Elections Office volunteers have recently engaged in explicit anti-Library Levy electioneering in the Elections Office building while working on the school district election. Ex. I, Aff. of Shannon Wilson, ¶ 4.

38. As described above, the Library will suffer immediate damage if the election is invalidated due to violations of Montana election law or other procedural irregularities and errors.

COUNT ONE

Violation of Article II, Section 13 of the Montana Constitution

39. Petitioners incorporate herein all of the foregoing allegations as if set forth in full.

40. Article II, Section 13 of the Montana Constitution provides that, “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

41. Merchant’s failure to conduct the recent Great Falls school trustee election in Cascade County according to the election laws of the state of Montana and her failure to conduct the election with proficiency, burdens the right secured in Article II, Section 13.

42. Merchant’s failure to conduct elections in Cascade County according to the election laws of the State of Montana presents a present and threatened injury to the Library by interfering with the free exercise of the right of suffrage in the Library election:

- a. Free and open elections necessarily require orderly, lawful administration;
- b. Unclear, opaque, or irregular election procedures burden and interfere with the free exercise of the right of suffrage;
- c. Unclear, opaque, or irregular election information burdens and interferes with the free exercise of the right of suffrage; and
- d. An invalid election result, due to unlawful election procedure, defeats the right of suffrage.

43. The right secured by Article II, Section 13 is a fundamental right.

44. Merchant's failure to provide for an orderly and lawful election advances no compelling government interest, nor is it narrowly tailored to any government interest. It is contrary to the government's interest.

COUNT TWO

Injunctive Relief Under § 13-35-108, MCA

45. Petitioners incorporate herein all of the foregoing allegations as if set forth in full.

46. Section 13-35-108, MCA, provides that, "In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws."

47. "Section 13-35-108, MCA, is a broadly applicable remedy expressly provided by the Legislature for enforcement of the provisions of Title 13, MCA." *Larson v. State By & Through Stapleton*, 2019 MT 28, ¶ 32, 394 Mont. 167, 434 P.3d 241. It provides "a private right of action for enforcing" Montana election law. *Id.*, ¶ 34.

48. Merchant has done acts prohibited by, and failed to perform acts required

by, the election laws of the State of Montana, including but not limited to the items described in paragraphs 19-35.

49. Merchant's failure to conduct elections in Cascade County according to the election laws of the State of Montana and to otherwise conduct them with proficiency is a present and threatened injury to the Library that requires injunctive relief from this Court under § 13-35-108, MCA.

50. Under the powers provided in § 13-35-108, MCA, the Court should "enjoin [Merchant] to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws" by appointing a Monitor for the Library election.

51. The Monitor should be an individual deeply experienced in Montana election law, such as a former non-elected member of the Cascade County Elections Office staff or the current or former election administration from another Montana county.

52. The Court should order that the Monitor have direct, unfettered access to the Elections Office and all of its operations.

53. The Monitor should serve two roles. First, the Monitor should provide regular reports to the Court regarding the lawful and orderly administration of the Library election, enabling the Court to use its powers under § 13-305-108, MCA to act to enjoin any violations of Montana election law, or otherwise secure the orderly and lawful administration of the election. The Monitor's reports of any irregularities, unlawful practices, or anticipated or burgeoning issues should be made to the Court and copied to the Library, Merchant, and the Cascade County Commission. The reports would be

public, to promote confidence in the election and the eradication of any unlawful or irregular activity.

54. Second, the Monitor should provide advice and technical expertise for Merchant's consideration to help prevent issues from emerging. The Monitor should also report to the Court on the advice and expertise furnished.

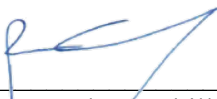
PRAYER FOR RELIEF

Wherefore, Petitioners pray that this Court:

1. Set an emergency hearing so that the Election Administrator and the County may be heard.
2. Following the hearing, appoint the Monitor.
3. Utilize the Court's powers under § 13-35-108, MCA to enjoin, prohibit, or compel the acts necessary—following reports from the Monitor—to secure the lawful and orderly administration of the Library election.
4. Award Petitioner its costs and attorney fees, including under the Private Attorney General Doctrine, and any other further relief as the Court deems just and appropriate.

Respectfully submitted this 10th day of May, 2023.

GRAYBILL LAW FIRM, P.C.

By  _____
Raph Graybill


VERIFICATION

I, Susie McIntyre, being first duly sworn, upon oath depose and say:

1. I verify the foregoing Emergency Verified Petition for Injunctive Relief for an on behalf of Plaintiff.

2. I have personal knowledge that the facts and information set out in the foregoing Emergency Verified Petition for Injunctive Relief are true; that the facts therein have been assembled by counsel and Plaintiff; and that the allegations therein are true and correct to the best of my knowledge.

3. I declare under penalty of perjury that the foregoing is true and correct.



Susie McIntyre

Subscribed and sworn to before me this 10th day of May, 2023

(NOTARIAL SEAL)



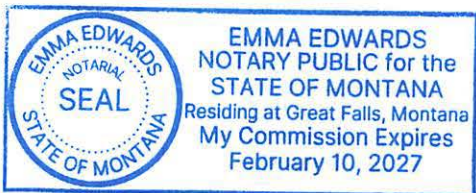


EXHIBIT A

Raph Graybill
Benjamin R. Graybill
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Attorneys for Petitioner

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>GREAT FALLS PUBLIC LIBRARY BOARD OF TRUSTEES,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK & RECORDER and CASCADE COUNTY,</p> <p style="text-align: right;">Respondents.</p>	<p>Cause No.: _____</p> <p style="text-align: center;">AFFIDAVIT OF CHARLOTTE MEHMKE</p>
--	--

STATE OF MONTANA)
 : ss.
County of Cascade)

I, Charlotte Mehmke, being first duly sworn upon her oath, depose and say:

1. I am Charlotte Mehmke of 8244 US Highway 89, Great Falls, Cascade County, Montana.
2. I am a qualified voter in Cascade County as I am registered to vote in Cascade County, am over 18 years of age, have been a resident of Montana and Cascade County for more than 30 days, and am a citizen of the United States.
3. I was turned away from the polling place for the Great Falls Public Schools trustee

election and unable to vote on May 2, 2023.

4. When I entered the building, at ExpoPark, I talked to the front desk attendant, who sent me to the provisional desk. They sent me to Sandra Merchant. She looked up my name in the computer and stated that I was in the Belt area.

5. I explained that my daughter attended CM Russell High School and that was the district we were in. She said that the school district probably had changed, but didn't tell me when that had changed. She didn't ask me when my daughter was in school.

6. It should be noted that I have gotten ballots for the Belt school, but I understand that is because I am in Belt grade school district and CM Russell High School district.

7. Sandra Merchant was unable to resolve my issue and did not suggest how I could follow up with my concerns about where I could vote. Sandra Merchant would not let me vote; she told me I had to vote in Belt school elections.

8. I am informed that I live in Levy District 29A and pay taxes for the Great Falls high schools and that makes me eligible to vote in Great Falls school elections.

Dated this 9th day of May, 2023.


Charlotte Mehmke

SUBSCRIBED AND SWORN TO before me this 9th day of May, 2023.

(NOTARIAL SEAL)



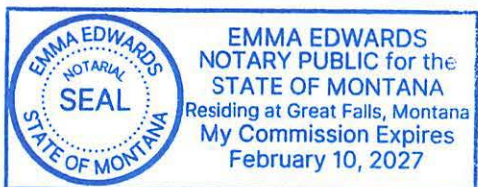


EXHIBIT B

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Attorneys for Petitioner

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>GREAT FALLS PUBLIC LIBRARY BOARD OF TRUSTEES,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK & RECORDER and CASCADE COUNTY,</p> <p style="text-align: center;">Respondents.</p>	<p>Cause No.: _____</p> <p style="text-align: center;">AFFIDAVIT OF RINA MOORE</p>
---	---

STATE OF MONTANA)
 : ss.
 County of Cascade)

I, Rina Moore, being first duly sworn upon her oath, depose and say:

1. I am Rina Moore of Great Falls, County of Cascade, Montana.
2. I was Cascade County Clerk and Recorder and the Cascade County elections administer from 2007 until 2023. I am thoroughly familiarly with administering elections, including school trustee elections, in Cascade County.
3. When directing an election for Great Falls Public School District, the election administrator must incorporate into the election all voters within all applicable tax levy districts,

namely all voters who are assessed for Great Falls school levies.

4. Levy Districts 5A, 29A, and 29AA, which are all located east of Great Falls, are assessed mills for numerous Great Falls high school levies. Qualified electors in these districts are entitled to vote in Great Falls Public Schools elections, and they must be sent an absentee ballot if they have applied for an absentee ballot and have been approved to receive one.

5. In the recent school trustee election, the current Cascade County election administrator did not incorporate qualified voters from all applicable levy districts. She did not send absentee ballots to qualified voters in Levy Districts 29A and 29AA. She was, in fact, advised of this mistake before the election, but took the position that voters in these levy districts were ineligible to vote in the election and she did not send them absentee ballots. Presumably, she turned these voters away if they came to the polling place.

6. An election administrator is required, for each elector who returns an absentee ballot, to compare to the signature on the elector's signature envelope with the elector's signature on the absentee ballot request form or the elector's voter registration form. Only if the signatures match, can the ballot be accepted and counted. If the signatures do not match, the election administrator must notify the elector and resolve the issue before accepting the ballot for counting. The ballot and the signature envelope cannot be separated until the signature comparison is made and the ballot is accepted for counting, otherwise it would be impossible to determine if the ballot should have been treated as a regular ballot and counted.

7. The current Cascade County election administrator did not follow this procedure. Based on the fact that the school trustee election absentee ballots were not marked "accepted" in the Secretary of State's voter information database until after the ballots were counted on Election Day, it is clear that the ballots were separated from their signature envelopes and

counted before signature comparisons was made.

8. This is a serious mistake—an absentee ballot cannot be counted until the signature match is verified. It is also a mistake because after the signature envelope and the ballot are separated, it is not possible to find the ballot if it is found later that the signatures do not match, which means that invalid votes were potentially counted.

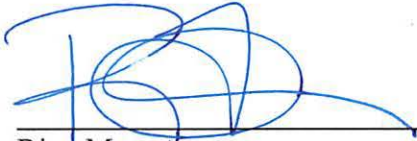
9. I was present at the polling place, Montana ExpoPark, on Election Day. I witnessed that the no precinct “registers,” which are elector lists for each precinct, were at the precinct tables when voting was scheduled to start. Polling place voting cannot happen until the registers are present. I had to explain that to Elections Office staff. Voting was delayed until the registers were delivered to the polling place.

10. Voting was also delayed because ballots and poll books were not at the precinct tables. I had to tell Elections Office staff to get these to the precinct tables.

11. I personally witnessed voters who were turned away from the polls, and leaving Montana ExpoPark, because voting was delayed for an hour from the scheduled start time.

12. The ballots used for the school trustee election did not have a designated place for voting for write-in candidates, which all ballots listing candidate must have. The instructions accompanying the absentee ballots inaccurately instructed voters about how to vote for write in candidates. If voters do not vote for write in candidates correctly their ballots may be invalidated.

Dated this 9th day of May, 2023.



Rina Moore

SUBSCRIBED AND SWORN TO before me this 9th day of May, 2023.

(NOTARIAL SEAL)

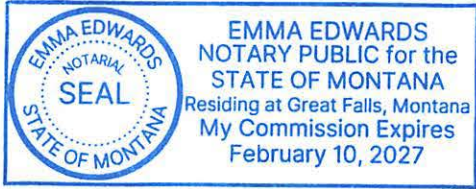


EXHIBIT C

Raph Graybill
Benjamin R. Graybill
GRAYBILL LAW FIRM, P.C.
300 4th Street North
P.O. Box 3586
Great Falls, MT 59403
Phone: (406) 452-8566
rgraybill@silverstatelaw.net
brg@silverstatelaw.net

Attorneys for Petitioners

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>GREAT FALLS PUBLIC LIBRARY BOARD OF TRUSTEES,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>SANDRA MERCHANT, in her official capacity as CASCADE COUNTY CLERK & RECORDER and CASCADE COUNTY,</p> <p style="text-align: center;">Respondents.</p>	<p>Cause No.: _____</p> <p style="text-align: center;">AFFIDAVIT OF JIM HUMPHREY</p>
--	---

STATE OF MONTANA)
 : ss.
County of Cascade)

I, Jim Humphrey, being first duly sworn upon his oath, depose and say:

1. I am Jim Humphrey of Great Falls, Cascade County, Montana.
2. I am a qualified voter in Cascade County as I am registered to vote in Cascade County, I am over 18 years of age, I have been a resident of Montana and Cascade County for more than 30 days, and I am a citizen of the United States.
3. My wife is Lucretia Humphrey. For all of the reasons stated in paragraph 2, Lucretia Humphrey is also qualified to vote in Cascade County.

3. We applied for absentee ballots from the Cascade County Elections Office, and were approved. We usually vote via absentee ballot.

4. We intended to vote in the 2023 Great Falls Public School District trustee election by absentee ballot.

5. Because we planned to be out of town when the absentee ballots were sent, I went to the Elections Office before absentee ballots were mailed to request that our absentee ballots be sent to our temporary out-of-state address. I spoke with Dev Biddick at the counter. She had me fill out a form stating our temporary address. I fully completed the form in the Elections Office and gave it to her. She assured me that solved our problem and we would receive our absentee ballots.

6. We believed her because we have received our absentee ballots at our out-of-state address in the past.

7. We did not receive our absentee ballots. On the day before Election Day, I called the Elections Office and was told our absentee ballots were sent to our Great Falls, Montana address. As a result, Lucretia and I were unable to vote.

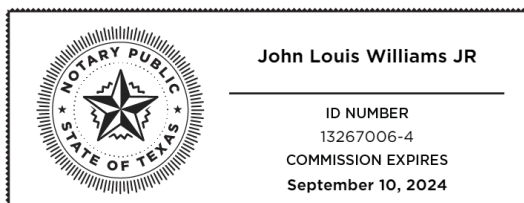
Dated this 9th day of May, 2023.

State of Texas
County of Harris


~~James A. Humphrey~~ James A Humphrey
JLWJR

SUBSCRIBED AND SWORN TO before me this 9th day of May, 2023.
by James A Humphrey.

(NOTARIAL SEAL)





John Louis Williams JR
Notary Public, State of Texas
13267006-4

EXHIBIT D

Raph Graybill
Benjamin R. Graybill
GRAYBILL LAW FIRM, P.C.
300 4th Street North
P.O. Box 3586
Great Falls, MT 59403
Phone: (406) 452-8566
rgraybill@silverstatelaw.net
brg@silverstatelaw.net

Attorneys for Petitioner

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

GREAT FALLS PUBLIC LIBRARY
BOARD OF TRUSTEES,

Petitioner,

vs.

SANDRA MERCHANT, in her official
capacity as CASCADE COUNTY CLERK &
RECORDER and CASCADE COUNTY,

Respondents.

Cause No.: _____

AFFIDAVIT OF LINDA FULLER

STATE OF MONTANA)
 : ss.
County of Cascade)

I, Linda Fuller, being first duly sworn upon her oath, depose and say:

1. I am Linda Fuller of Great Falls, Cascade County, Montana.

2. I am a qualified voter in Cascade County as I am registered to vote in Cascade County, am over 18 years of age, have been a resident of Montana and Cascade County for more than 30 days, and am a citizen of the United States.

3. I am married to Harold Nicholls who, for all of the same reasons stated in paragraph 2 is also qualified to vote in Cascade County.

4. My husband and I applied for absentee ballots from the Cascade County Elections Office, and were approved. We usually vote via absentee ballot.

5. We intended to vote in the 2023 Great Falls Public School District trustee election by absentee ballot.

6. On April 17, 2023 I went to the Cascade County Elections Office and explained I had a new address and would like to have my absentee ballot sent to the new address.


7. I was referred to Sandra Merchant. She met me at the counter. She had me write my new address down on a piece of paper. She took it and told me I would get my absentee ballot at the new address.

8. The next day my husband and I went down to the office and went through the same process with him. My husband has Parkinson's disease. It is hard for him to get around; he needs my assistance. That is one of the reasons we vote absentee.

9. My husband and I then assumed we would get absentee ballots. We rely on getting our absentee ballots to remember to vote.

10. Late on Election Day, I realized it was Election Day and neither of us had received our absentee ballots. I was working, teaching a class at my dance studio in the evening and could not get myself or my husband to the polls. As a result of trusting that we would receive our absentee ballots and not receiving them we were not able to vote.

Dated this 9th day of May, 2023.


Linda Fuller

SUBSCRIBED AND SWORN TO before me this 9th day of May, 2023.

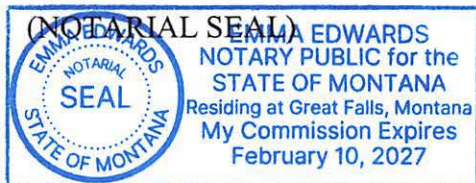
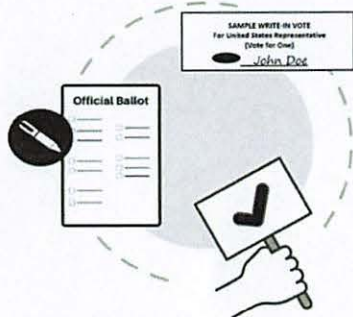




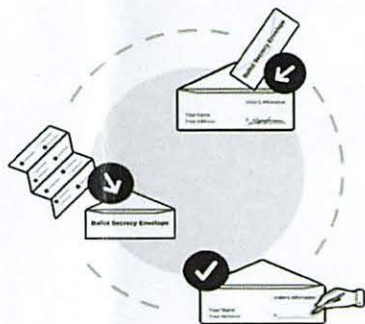
EXHIBIT E

VOTE YOUR BALLOT



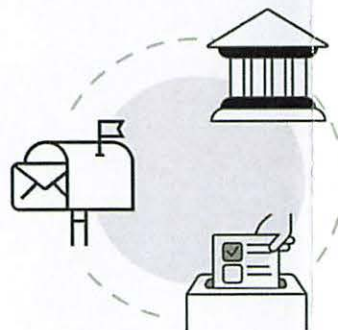
- With a blue or black ink pen fill in the oval for each race.
 - Skipping a race will not invalidate your ballot
- To write in a candidate's name, completely fill in the oval next to the line and print the name in the blank space.
- The following are not allowed:
 - An X, v, or another mark.
 - Crossing out, erasing, or using correction fluid.
 - Any identifying marks on your ballot.
 - Marking more choices than allowed for each race.
- If you make a mistake, request a replacement ballot from your county election office.

PREPARE YOUR BALLOT FOR RETURN



- Place and seal the voted ballot in the secrecy envelope.
- Place and seal the secrecy envelope into the return signature envelope.
- Sign your name on the voter affirmation line on the return signature envelope. (Do not sign for another person.)

RETURN YOUR BALLOT



- Mail your ballot. The Postal Service recommends you mail your ballot at least one week before the election. (Note: ___ cents postage required)
- OR
- Drop off your ballot at your county election office:

COUNTY ELECTION OFFICE

ADDRESS

325 2nd Ave. N

CITY/ZIP

Great Falls, MT 59404



2023 SCHOOL ELECTION VOTING INSTRUCTIONS

VOTED BALLOT MUST BE **RECEIVED**
(A POSTMARK IS NOT ACCEPTED)
AT THE ELECTION OFFICE BY
8:00 P.M. ON ELECTION DAY,
May 2, 2023.

OTHER INFORMATION:

- Track your ballot:
<https://app.mt.gov/voterinfo>
- Military/overseas voters:
<https://sosmt.gov/elections/military-overseas>
- For questions, or if you need assistance, contact your county election office:

COUNTY ELECTION OFFICE

325 2nd Ave N

ADDRESS

Great Falls, MT 59404

Failure to follow these instructions may invalidate part or all of your ballot.

EXHIBIT F

Raph Graybill
Benjamin R. Graybill
GRAYBILL LAW FIRM, P.C.
300 4th Street North
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Great Falls, MT 59403
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--	--

STATE OF MONTANA)
 : ss.
County of Cascade)

I, Maggie Nybo, being first duly sworn upon her oath, depose and say:

1. I am Maggie Nybo of Great Falls, Cascade County, Montana.
2. I am a qualified voter in Cascade County as I am registered to vote in Cascade County, am over 18 years of age, have been a resident of Montana and Cascade County for more than 30 days, and am a citizen of the United States.
3. I applied for an absentee ballot from the Cascade County Elections Office, and was approved. I usually vote via absentee ballot.
4. I received an absentee ballot for the recently conducted school trustee election for

the Great Falls Public School District.

5. When I received my ballot the envelope in which it was contained was unsealed.

6. I examined the envelope and found, based on my observation, that the envelope had never been sealed because the adhesive did not appear to have ever been moistened.

7. After completing the ballot, I could not fit my ballot in the secrecy envelope as it was too large. I had to refold my ballot to insert it in the secrecy envelope.

Dated this 8th day of May, 2023.


Maggie Nybo

SUBSCRIBED AND SWORN TO before me this 8th day of May, 2023.

(NOTARIAL SEAL)



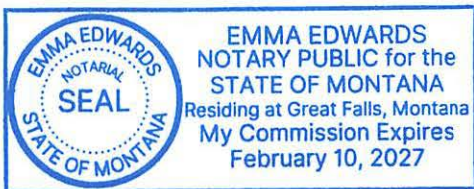


EXHIBIT G

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

1. TO VOTE, COMPLETELY FILL IN (●) THE OVAL USING A BLUE OR BLACK PEN.
2. To write in a name, completely fill in the oval to the left of the line provided, and on the line provided print the name of the write-in candidate for whom you wish to vote.
3. DO NOT MAKE AN IDENTIFYING MARK, CROSS OUT, ERASE, OR USE CORRECTION FLUID. If you make a mistake or change your mind, exchange your ballot for a new one.

BALLOT ISSUES

GREAT FALLS PUBLIC LIBRARY MILL LEVY
(VOTE IN ONE OVAL)

Proposal: On February 21, 2023, the City Commission of the City of Great Falls adopted Ordinance 3254 referring this ballot measure to the voters. If approved, this ballot measure would amend Article I, Section 3 of the current Charter language as follows:

The total mill levy shall not exceed that allowed to general powers cities of the first class by Montana law, except that the City Commission may levy not more than ~~two (2)~~ seventeen (17) additional mills for the purpose of providing additional funds for the operation, maintenance and capital needs of the Great Falls Public Library.

The foregoing mill levy is permanent and shall continue indefinitely in future fiscal years. This levy is not cumulative, which means the number of mills will not increase over time. This levy is in addition to any other mill levies authorized by Charter or law.

Residential Property Impact: If approved, the annual property tax increase in fiscal year 2023 on a home valued at \$100,000 is approximately \$20.25 per year. The annual property tax increase in fiscal year 2023 on a home valued at \$200,000 is approximately \$40.50 per year.

Shall the City of Great Falls be authorized to amend Article I, Section 3 of the charter of the city of Great Falls to levy up to 17 mills, an increase of 15 mills, raising approximately \$1,594,500 for the purpose of providing funds for the operation, maintenance and capital needs of the Great Falls Public Library.

- FOR amending the Charter of the City of Great Falls to increase the authorized mills to levy for the operation, maintenance and capital needs of the Great Falls Public Library from two (2) mills to seventeen (17) mills as provided for in Ordinance No. 3254.
- AGAINST amending the Charter of the City of Great Falls to increase the authorized mills to levy for the operation, maintenance and capital needs of the Great Falls Public Library from two (2) mills to seventeen (17) mills as provided for in Ordinance No. 3254.

END OF BALLOT

21A

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0004

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

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BALLOT ISSUES

GREAT FALLS PUBLIC LIBRARY MILL LEVY
(VOTE IN ONE OVAL)

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Residential Property Impact: If approved, the annual property tax increase in fiscal year 2023 on a home valued at \$100,000 is approximately \$20.25 per year. The annual property tax increase in fiscal year 2023 on a home valued at \$200,000 is approximately \$40.50 per year.

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END OF BALLOT

21B

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0005

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

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BALLOT ISSUES

GREAT FALLS PUBLIC LIBRARY MILL LEVY
(VOTE IN ONE OVAL)

Proposal: On February 21, 2023, the City Commission of the City of Great Falls adopted Ordinance 3254 referring this ballot measure to the voters. If approved, this ballot measure would amend Article I, Section 3 of the current Charter language as follows:

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The foregoing mill levy is permanent and shall continue indefinitely in future fiscal years. This levy is not cumulative, which means the number of mills will not increase over time. This levy is in addition to any other mill levies authorized by Charter or law.

Residential Property Impact: If approved, the annual property tax increase in fiscal year 2023 on a home valued at \$100,000 is approximately \$20.25 per year. The annual property tax increase in fiscal year 2023 on a home valued at \$200,000 is approximately \$40.50 per year.

Shall the City of Great Falls be authorized to amend Article I, Section 3 of the charter of the city of Great Falls to levy up to 17 mills, an increase of 15 mills, raising approximately \$1,594,500 for the purpose of providing funds for the operation, maintenance and capital needs of the Great Falls Public Library.

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END OF BALLOT

22A

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0006

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

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BALLOT ISSUES

GREAT FALLS PUBLIC LIBRARY MILL LEVY
(VOTE IN ONE OVAL)

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The foregoing mill levy is permanent and shall continue indefinitely in future fiscal years. This levy is not cumulative, which means the number of mills will not increase over time. This levy is in addition to any other mill levies authorized by Charter or law.

Residential Property Impact: If approved, the annual property tax increase in fiscal year 2023 on a home valued at \$100,000 is approximately \$20.25 per year. The annual property tax increase in fiscal year 2023 on a home valued at \$200,000 is approximately \$40.50 per year.

Shall the City of Great Falls be authorized to amend Article I, Section 3 of the charter of the city of Great Falls to levy up to 17 mills, an increase of 15 mills, raising approximately \$1,594,500 for the purpose of providing funds for the operation, maintenance and capital needs of the Great Falls Public Library.

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END OF BALLOT

22B

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0007

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

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BALLOT ISSUES

GREAT FALLS PUBLIC LIBRARY MILL LEVY
(VOTE IN ONE OVAL)

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The foregoing mill levy is permanent and shall continue indefinitely in future fiscal years. This levy is not cumulative, which means the number of mills will not increase over time. This levy is in addition to any other mill levies authorized by Charter or law.

Residential Property Impact: If approved, the annual property tax increase in fiscal year 2023 on a home valued at \$100,000 is approximately \$20.25 per year. The annual property tax increase in fiscal year 2023 on a home valued at \$200,000 is approximately \$40.50 per year.

Shall the City of Great Falls be authorized to amend Article I, Section 3 of the charter of the city of Great Falls to levy up to 17 mills, an increase of 15 mills, raising approximately \$1,594,500 for the purpose of providing funds for the operation, maintenance and capital needs of the Great Falls Public Library.

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END OF BALLOT

23

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0008

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

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BALLOT ISSUES

GREAT FALLS PUBLIC LIBRARY MILL LEVY
(VOTE IN ONE OVAL)

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The foregoing mill levy is permanent and shall continue indefinitely in future fiscal years. This levy is not cumulative, which means the number of mills will not increase over time. This levy is in addition to any other mill levies authorized by Charter or law.

Residential Property Impact: If approved, the annual property tax increase in fiscal year 2023 on a home valued at \$100,000 is approximately \$20.25 per year. The annual property tax increase in fiscal year 2023 on a home valued at \$200,000 is approximately \$40.50 per year.

Shall the City of Great Falls be authorized to amend Article I, Section 3 of the charter of the city of Great Falls to levy up to 17 mills, an increase of 15 mills, raising approximately \$1,594,500 for the purpose of providing funds for the operation, maintenance and capital needs of the Great Falls Public Library.

- FOR amending the Charter of the City of Great Falls to increase the authorized mills to levy for the operation, maintenance and capital needs of the Great Falls Public Library from two (2) mills to seventeen (17) mills as provided for in Ordinance No. 3254.
- AGAINST amending the Charter of the City of Great Falls to increase the authorized mills to levy for the operation, maintenance and capital needs of the Great Falls Public Library from two (2) mills to seventeen (17) mills as provided for in Ordinance No. 3254.

END OF BALLOT

24

Typ:01 Seq:0009 Spl:01

0009

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

1. TO VOTE, COMPLETELY FILL IN (●) THE OVAL USING A BLUE OR BLACK PEN.
2. To write in a name, completely fill in the oval to the left of the line provided, and on the line provided print the name of the write-in candidate for whom you wish to vote.
3. DO NOT MAKE AN IDENTIFYING MARK, CROSS OUT, ERASE, OR USE CORRECTION FLUID. If you make a mistake or change your mind, exchange your ballot for a new one.

BALLOT ISSUES

GREAT FALLS PUBLIC LIBRARY MILL LEVY
(VOTE IN ONE OVAL)

Proposal: On February 21, 2023, the City Commission of the City of Great Falls adopted Ordinance 3254 referring this ballot measure to the voters. If approved, this ballot measure would amend Article I, Section 3 of the current Charter language as follows:

The total mill levy shall not exceed that allowed to general powers cities of the first class by Montana law, except that the City Commission may levy not more than ~~two (2)~~ seventeen (17) additional mills for the purpose of providing additional funds for the operation, maintenance and capital needs of the Great Falls Public Library.

The foregoing mill levy is permanent and shall continue indefinitely in future fiscal years. This levy is not cumulative, which means the number of mills will not increase over time. This levy is in addition to any other mill levies authorized by Charter or law.

Residential Property Impact: If approved, the annual property tax increase in fiscal year 2023 on a home valued at \$100,000 is approximately \$20.25 per year. The annual property tax increase in fiscal year 2023 on a home valued at \$200,000 is approximately \$40.50 per year.

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END OF BALLOT

25

Typ:01 Seq:0010 Spl:01

0010

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

1. TO VOTE, COMPLETELY FILL IN (●) THE OVAL USING A BLUE OR BLACK PEN.
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VOTE IN NEXT COLUMN

END OF BALLOT

26A

Typ:01 Seq:0011 Spl:01

0011

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

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BALLOT ISSUES

GREAT FALLS PUBLIC LIBRARY MILL LEVY
(VOTE IN ONE OVAL)

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VOTE IN NEXT COLUMN

26B

END OF BALLOT

Typ:01 Seq:0012 Spl:01

0012

OFFICIAL SPECIAL ELECTION BALLOT
CASCADE COUNTY, MONTANA - JUNE 6, 2023

INSTRUCTIONS TO VOTERS

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BALLOT ISSUES

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(VOTE IN ONE OVAL)

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END OF BALLOT

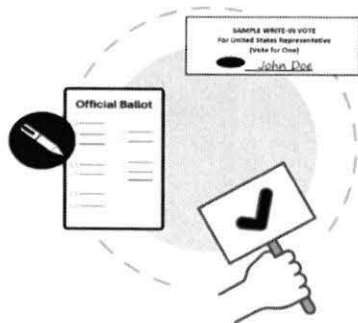
27

Typ:01 Seq:0013 Spl:01

0013

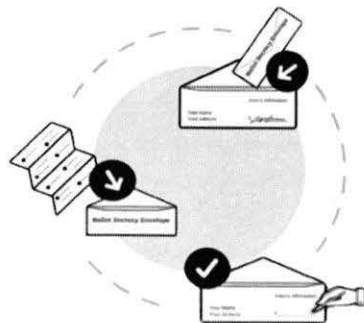
EXHIBIT H

VOTE YOUR BALLOT



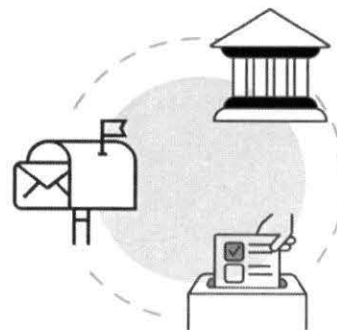
- With a blue or black ink pen fill in the oval for each race.
 - Skipping a race will not invalidate your ballot
- To write in a candidate's name, completely fill in the oval next to the line and print the name in the blank space.
- The following are not allowed:
 - An X, v, or another mark.
 - Crossing out, erasing, or using correction fluid.
 - Any identifying marks on your ballot.
 - Marking more choices than allowed for each race.
- If you make a mistake, request a replacement ballot from your county election office.

PREPARE YOUR BALLOT FOR RETURN



- Place and seal the voted ballot in the secrecy envelope.
- Place and seal the secrecy envelope into the return signature envelope.
- Sign your name on the voter affirmation line on the return signature envelope. (Do not sign for another person.)

RETURN YOUR BALLOT



- Mail your ballot. The Postal Service recommends you mail your ballot at least one week before the election. (Note: 63 cents postage required)

OR

- Drop off your ballot at your county election office:

COUNTY ELECTION OFFICE
Courthouse Annex

ADDRESS
325 2nd Ave N

CITY/ZIP
Great Falls, MT 59404



2023

Library Mill Levy Election

VOTING INSTRUCTIONS

VOTED BALLOT MUST BE **RECEIVED**
(A POSTMARK IS NOT ACCEPTED)
AT THE ELECTION OFFICE BY
8:00 P.M. ON ELECTION DAY,
June 6, 2023.

OTHER INFORMATION:

- Track your ballot:
<https://app.mt.gov/voterinfo>
- Military/overseas voters:
<https://sosmt.gov/elections/military-overseas>
- For questions, or if you need assistance, contact your county election office:

COUNTY ELECTION OFFICE
406-454-6803

ADDRESS
325 2nd Ave N Great Falls

Failure to follow these instructions may invalidate part or all of your ballot.

EXHIBIT I

Raph Graybill
Benjamin R. Graybill
GRAYBILL LAW FIRM, P.C.
300 4th Street North
P.O. Box 3586
Great Falls, MT 59403
Phone: (406) 452-8566
rgraybill@silverstatelaw.net
brg@silverstatelaw.net

Attorneys for Petitioners

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

GREAT FALLS PUBLIC LIBRARY
BOARD OF TRUSTEES,

Petitioner,

vs.

SANDRA MERCHANT, in her official
capacity as CASCADE COUNTY CLERK &
RECORDER and CASCADE COUNTY,

Respondents.

Cause No.: _____

**AFFIDAVIT OF SHANNON
WILSON**

STATE OF MONTANA)
 : ss.
County of Cascade)

I, Shannon Wilson, being first duly sworn upon her oath, depose and say:

1. I am Shannon Wilson of Great Falls, Cascade County, Montana.

2. From April 5th through the 7th and from April 12th through the 14th, I volunteered at the Cascade County Elections Office. I was in the Elections Office, also known as the annex, on those days.

3. I had never volunteered in the Elections Office before. I do have election experience as I have had training to be and am qualified as an election judge in Montana. I have

previously served as an election judge in Cascade County.

4. While I was volunteering in the Elections Office, in the annex, I was offered an anti-Library Levy bumper sticker by Cathy Workman, another volunteer. I declined. I was then asked why I did not want the sticker. I explained I was not opposed to Library Levy. Then other volunteers explained why they opposed the Library Levy.

5. I saw that the same anti-Library levy sticker was passed to another volunteer.

6. My impression is that Cathy Workman was not trained about not engaging in election activities for or against an issue on the ballot while in the Elections Office and did not know it was improper.

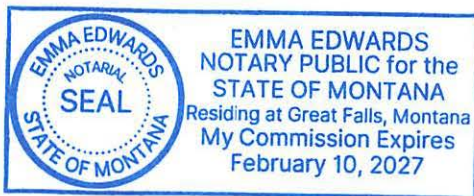
Dated this 9th day of May, 2023.


Shannon Wilson

SUBSCRIBED AND SWORN TO before me this 9th day of May, 2023.

(NOTARIAL SEAL)





CERTIFICATE OF SERVICE

I, Raphael Jeffrey Carlisle Graybill, hereby certify that I have served true and accurate copies of the foregoing Petition - Petition to the following on 05-10-2023:

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Service Method: eService
E-mail Address: jracki@cascadecountymt.gov

Electronically signed by Emma Edwards on behalf of Raphael Jeffrey Carlisle Graybill
Dated: 05-10-2023

EXHIBIT G

May 23, 2023, 10:00am

I came into the elections the office and was only greeted by Patrick Coley, and he asked if I was the monitor. I replied with yes and introduced myself as Lynn DeRoche. I got no greetings from Sandra or Dev.

I requested some reports from Sandra: copy of how many ballots were printed in each precinct, a copy of how many absentees' ballots were mailed in each precinct and a daily report of how many ballots were accepted. As of 3:00pm this afternoon I had not received any of these reports.

Dev Biddick waited on all voters that came into the elections office.

10:03am- Dev Biddick helping a voter. The voter (Michael Bloechl got permission to use his name) had come into the office to change his address from Missoula County to Cascade County. After he filled out his voter registration card Dev asked for ID, and he gave her his MT DL which is a picture ID. But she was also, requiring him to have a second piece of ID so, he had to look up his utility bill on phone. He eventually was given his absentee ballot.

10:24am- Husband & Wife (Everette & Carol Hall got permission to use their names) both came into the office to drop off their voted ballots but also, let Sandra know they also received one additional affirmation envelope in each of their ballot packets that belonged to another voter. I requested a copy of the affirmation envelopes that belong to Margaret Halko & Delynn Hall. Dev then addressed Sandra with the issue and to see how to deal with it. Dev, called the SOS was told she would need to contact these voters to see if they receive their ballots and if not then would need to work out a plan on how to get the ballots to the voters. As of 3:00pm this afternoon when I left the issue was still not addressed.

10:30am- Five voters had come into the office to drop off ballots and no election personnel was around to come to counter to help them.

10:36am-Voter (Lynn Stubbs got permission to use her name) came to get a replacement and no personnel were there to come to counter to help her.

10:47am-Voter came into the office to check her and husband's voter registration status and to see if their address was current since they had moved. Sandra did NOT explain it was late registration so, the lady had taken 2 voter registration forms with her and stated that she would put them in the mail. Now, she thinks she will receive ballots in the mail.

10:56am- Sandra and Rae had left the elections office for meeting and returned to back to the office around 1:00pm.

11:04am- I asked Dev Biddick when is the close of regular registration: May 5,2023 and when late registration begins: May 8th,2023.

11:19am-I asked Patrick when he is processing the mail and he comes across a ballot that has a mismatched signature how do they handle those. His response was he puts them off to the side and at the end of the day maybe Sandra or Dev will look at them to compare the signatures. As of 3:00pm neither Sandra nor Dev had looked at the mismatched signatures.

11:38am-Rosalie Holliman (got permission to use her name) she stated she called the office yesterday (Monday May 22,2023) and talked to Dev about her and her husband not receiving their absentee ballots as, they were mailed to Georgia. She stated that she had the same issued with school election so, she had to go to Exhibition Hall at the fairgrounds to go vote and while she was there, they had updated their mailing address back to their Great Falls address. Dev looked her up in the system and that change was never made. The husband did not have his ID with him so, I had advised Dev that as long as, he had anything with his name and current address that was a proper form of ID per MCA 13-13-114.

11:40am-Voter came into the election office as he and his wife received a call yesterday (Monday May 22,2023) and was told since they both signed the affirmation envelope and both ballots were in the one envelope that they could not count their ballots. So, both ballots were rejected and will not count.

11:46am-6 voters waiting at the counter waiting to be helped and no staff besides Dev in the office. Dev is on the phone and Pat had left the office.

11:52am-Martha Reeves (got permission to use her name) came into see why she has not received her absentee ballot in the mail. I asked Dev when her ballot was sent, and it was not mailed from the election's office until May 18,2023.

12:13pm-Pam Wiens (got permission to use her name) came into drop off her ballot but wanted to make sure it was ok since the affirmation envelope was ripped, she was told she needed a new affirmation, or her ballot would not count be rejected.

12:17pm-voter who is an election judge has not been contacted to work this election. She wanted to know when she would be contacted, and Dev took her name and number.

12:43pm-An elderly voter came into update her address and get an absentee ballot. She also, wanted to know what she needed to do to get her friend's address updated and make sure the friend received her ballot. Dev was unsure on how to assist on making sure the friend got the address updated and was able to receive a ballot. Sandra was still not back from her meeting so, Dev had no one to ask or assist her on this issue.

1:03pm-Voter came into the elections office and wanted to vote but was not given the option to pick up an absentee ballot only option to vote on election day June 6,2023.

1:07pm-Carol Robinson a volunteer came into the office wanted to why I was in the office and what are my job duties. I responded with she would need to speak to Sandra on this issue as, I was just monitoring the Library Election process. Sandra, at this time was back in her office and did not come out to address the issue.

2:43pm-Husband and wife voter came into the office to pick up a ballot as, they were going to be out of town due to some medical procedures. They wanted to know what they needed to do and was only given the option they had to sign-up to be on the absentee voter list in order to pick up a ballot. This is not true they can pick an absentee ballot and not be put on the absentee voter list.

2:55pm-Husband and wife voter came into the office to change their absentee mailing address as, they are snowbirds and are back in Great Falls for the summer. Their ballots were mailed on May 18,2023 to their AZ address.

3:02pm-Donovon Dennis a Uniformed and Overseas Voter called and was inquiring about his ballot. Dev was not able to assist him. So, she took his phone number and email address and gave the message to Sandra. I am not sure if this issue was resolved when I left at 3:15pm.

3:11pm- I asked Sandra if they would be working after hours and her response was that she would not be there after 5:00pm but was unsure if Pat or Dev would be working. So, I asked Pat, and he responded he would be processing ballots into the system, and he would work until 8:00pm or 9:00pm tonight and he would be the only one in the office.

3:15pm-I left the Elections Office.

EXHIBIT H

Lilla Lund

From: Raph Graybill <rgraybill@silverstatelaw.net>
Sent: Wednesday, May 17, 2023 1:26 PM
To: Lilla Lund; 'Ben Graybill'
Subject: RE: GFPLT v. Merchant

Lilla:

Ms. Merchant is making this partisan. She apparently still thinks she has an opponent.

The Library Board does not oppose Ms. Merchant. The Board wants this election to be administered fairly, transparently, and lawfully. The Board believes Ms. Merchant wants the same.

Lynn DeRoche is, without question, the best person to assist both Parties to achieve what they both want. Many of the persons you have suggested for the monitor position are highly qualified, but they simply lack necessary experience with Cascade County.

We intend to ask Judge Gilbert to write a detailed order delimiting the Monitor's role, duties, and the restrictions on her authority—it's pejorative and counterproductive to conceive of the Monitor as simply "tailing" Ms. Merchant.

Ms. Merchant's concerns are personal and political; she needs to put that aside. Ms. DeRoche will follow the Court's instructions; she's not there to interfere with Ms. Merchant politically.

Raph

Raph Graybill
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
(406) 452-8566
<https://www.graybilllawfirm.com/>

From: Lilla Lund <lund@berglawfirm.com>
Sent: Wednesday, May 17, 2023 11:41 AM
To: Raph Graybill <rgraybill@silverstatelaw.net>; 'Ben Graybill' <brg@silverstatelaw.net>
Subject: RE: GFPLT v. Merchant

Raph:

Your selection smacks of partisanship and places Ms. Merchant in the untenable position of being effectively constantly tailed by an individual who worked for her opponent for many years and who already decided continued employment under Ms. Merchant was untenable. Ms. DeRoche is unquestionably biased.

It is truly disappointing that your client is unwilling to consider other, highly qualified options. This decision speaks volumes about your client's true motives with respect to the use of a monitor.

Sincerely,

Lilla

Elizabeth W. Lund
lund@berglawfirm.com
Berg Lilly, PC
1 West Main Street
Bozeman, Montana 59715
Telephone: (406) 587-3181 x106
Fax: (406) 587-3240



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From: Raph Graybill <rgraybill@silverstatelaw.net>
Sent: Wednesday, May 17, 2023 10:24 AM
To: Lilla Lund <lund@berglawfirm.com>; 'Ben Graybill' <brg@silverstatelaw.net>
Subject: RE: GFPLT v. Merchant

Lilla –

Thank you for the names.

We reject out of hand the characterization of DeRoche as in any way partisan. That is not our intent. She is a nonpartisan current county employee, and held nonpartisan positions in the elections office for 16 years.

The fact remains that there is no person more qualified or experienced in the operations of Cascade County elections. We intend to nominate her and will note the objection.

Raph

From: Lilla Lund <lund@berglawfirm.com>
Sent: Wednesday, May 17, 2023 10:15 AM
To: Raph Graybill <rgraybill@silverstatelaw.net>; 'Ben Graybill' <brg@silverstatelaw.net>
Subject: RE: GFPLT v. Merchant

Raph:

Also, Angie Paulsen from Broadwater County.

Sincerely,
Lilla

Elizabeth W. Lund
lund@berglawfirm.com
Berg Lilly, PC

1 West Main Street
Bozeman, Montana 59715
Telephone: (406) 587-3181 x106
Fax: (406) 587-3240



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From: Raph Graybill <rgraybill@silverstatelaw.net>
Sent: Wednesday, May 17, 2023 10:02 AM
To: Lilla Lund <lund@berglawfirm.com>; 'Ben Graybill' <brg@silverstatelaw.net>
Subject: RE: GFPLT v. Merchant

Lilla –

So that we may consider your suggestions, do you mean Regina Plettenberg the Ravalli County Clerk and Recorder? Or the current Lewis & Clark Election administrator?

Raph

From: Lilla Lund <lund@berglawfirm.com>
Sent: Wednesday, May 17, 2023 9:58 AM
To: Ben Graybill <brg@silverstatelaw.net>
Cc: rgraybill@silverstatelaw.net
Subject: RE: GFPLT v. Merchant

Ben:

My clients object. When I spoke to Raph last Friday, he indicated the Library was going to suggest a non-partisan monitor. Requesting Lynn DeRoche appears to be purely political and an effort to undermine the process. I spoke to Sandra Merchant and she advises that while she objects to a monitor, the following individuals would not be partisan or biased as the monitor you suggested:

Penny Plachy, previously the Meagher County Elections Administrator. She just retired so would likely have availability if she's willing to do it.

Regina Pletinburg from Lewis & Clark County

Or the Elections Administrator from Flathead County.

Sincerely,
Lilla

Elizabeth W. Lund
lund@berglawfirm.com
Berg Lilly, PC
1 West Main Street
Bozeman, Montana 59715
Telephone: (406) 587-3181 x106
Fax: (406) 587-3240



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From: Ben Graybill <brg@silverstatelaw.net>
Sent: Tuesday, May 16, 2023 3:27 PM
To: Lilla Lund <lund@berglawfirm.com>
Cc: rgraybill@silverstatelaw.net
Subject: GFPLT v. Merchant

Lilla

We intend to nominate Lynn DeRoche for monitor. As you likely know, Lynn worked in the Cascade Co. Elections Office for 16 years and was Elections Supervisor until she left this year. I presume your client objects, but please confirm. We intend to file our motion tomorrow.

We did not receive the final instructions. I will have Susie McIntyre ask Ms. Merchant for them directly. We would like to see the instructions as soon as possible.

Ben Graybill
Graybill Law Firm, PC
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Great Falls, MT 59403
406-452-8566

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CERTIFICATE OF SERVICE

I, Elizabeth Worth Lund, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 06-02-2023:

Benjamin R. Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Great Falls Public Library Board of Trustees
Service Method: eService

Raphael Jeffrey Carlisle Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Great Falls Public Library Board of Trustees
Service Method: eService

Brenda Gilbert (Respondent)
414 E. Callendar Street
Livingston MT 59047
Representing: Self-Represented
Service Method: Conventional

Electronically Signed By: Elizabeth Worth Lund
Dated: 06-02-2023