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MONTANA, EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

BETH CUMMINGS and  
DENA BURNHAM JOHNSON,

*Plaintiffs,*

-v-

BOB KELLY, ERIC HINEBAUCH, JOE  
MCKENNEY, RICK TRYON, and  
SUSAN WOLFF, in their respective  
official capacities as COMMISSIONERS  
OF THE CITY OF GREAT FALLS;  
DAVID DENNIS, in his official capacity  
as ATTORNEY FOR THE CITY OF  
GREAT FALLS; and THE CITY OF  
GREAT FALLS, a Political Subdivision  
of the State of Montana,

*Defendants.*

**CAUSE NO. DV-2023-379**

*Hon. Heather M. Perry*

**ORDER GRANTING DEFENDANTS’  
MOTION TO DISMISS AND DENYING  
PLAINTIFFS’ MOTION FOR LEAVE TO  
AMEND PETITION**

This case is currently before the Court for resolution of two issues<sup>1</sup> based on Plaintiffs’ filing of a  
Petition to Annul and Set Aside or Void Election and Other Injunctive Relief (Dkt. # 1). Defendants  
responded with a Motion to Dismiss (Dkt. # 17) and supporting brief (Dkt. # 18), after which Plaintiffs

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1. An issue regarding two affidavits filed by Plaintiffs has already been addressed by agreement of the parties  
and order of this Court (*See* Dkt. # 36).

1 filed an Opposition to Respondents' Motion to Dismiss (Dkt. # 24) and Brief in Opposition to  
2 Respondents' Motion to Dismiss (Dkt. # 25). Defendants then filed a Reply Brief in Support of Motion to  
3 Dismiss (Dkt. # 27). The Motion to Dismiss is thus fully briefed and ready for ruling.  
4

5 Plaintiffs subsequently filed a Motion for Leave to Amend Petition (Dkt. # 31) and supporting  
6 brief (Dkt. # 32). Defendants filed a Brief in Opposition (Dkt. # 33), and Plaintiffs filed a Reply Brief in  
7 Support of Motion for Leave to Amend Petition (Dkt. # 34). The Motion for Leave to Amend is thus also  
8 fully briefed and ready for ruling.  
9

### 10 **I. Parties**

11 Beth Cummings and Dena Burnham Johnson are the Plaintiffs in this matter and are  
12 appearing/acting *pro se*.<sup>2</sup> Plaintiffs are both residents of the City of Great Falls, Montana ("Great Falls"  
13 or "the City"), are qualified to vote in Great Falls elections, and own taxable property in Great Falls. Pet.  
14

¶ 1.

15 Defendants are the following parties:

- 16 - Bob Kelly, Eric Hinebauch, Joe McKenney, Rick Tryon, and Susan Wolff are the Great Falls  
17 City Commissioners ("the Commissioners").
- 18 - David Dennis is the Great Falls City Attorney ("the City Attorney").
- 19 - The City of Great Falls is a political subdivision of the State of Montana.  
20  
21

22 Defendants are collectively represented in this matter by attorneys Jordan Y. Crosby and James R.  
23 Zadick of the Ugrin Alexander Zadick, P.C. law firm.  
24  
25

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26  
27 2. Although Plaintiffs are proceeding *pro se*, Defendants note that Dena Burnham Johnson was previously an  
28 active attorney and member of the State Bar of California from 1983 through 2002. Defs' Br. in Supp. p. 6  
n. 2. That fact plays no role in the Court's analysis here, other than its noting that Plaintiffs' filings are  
significantly more professional than most *pro se* documents this Court sees.

1 **II. Factual Background** <sup>3</sup>

2 On February 21, 2023, the Great Falls City Commission adopted *Resolution No. 10488* (“the Levy  
3 Resolution”), which adopted *Ordinance No. 3254* (“the Levy Ordinance”), amending Article 1, Section 3  
4 of the *Charter of the City of Great Falls* (“Charter”) and calling for a special mill levy election (the Great  
5 Falls Public Library Mill Levy Election, hereinafter, “the Levy Election”) to be held on June 6, 2023. Pet.

6 ¶ 14. The Levy election would address funding for the Great Falls Public Library.  
7

8 The Levy Resolution read, in relevant parts:  
9

10 **RESOLUTION NO. 10488**

11 **A RESOLUTION REFERRING ORDINANCE NO. 3254, AN ORDINANCE AMENDING**  
12 **ARTICLE I, SECTION 3 OF THE CHARTER OF THE CITY OF GREAT FALLS TO**  
13 **INCREASE THE AUTHORIZED ADDITIONAL MILLS FOR OPERATION,**  
14 **MAINTENANCE AND CAPITAL NEEDS OF THE GREAT FALLS PUBLIC LIBRARY**  
15 **FROM TWO (2) MILLS TO SEVENTEEN (17) MILLS AND SUBMITTING SUCH**  
16 **CHARTER AMENDMENT TO THE ELECTORS OF THE CITY OF GREAT FALLS TO**  
17 **BE CONDUCTED AT A SPECIAL ELECTION TO BE HELD ON JUNE 6, 2023.**

18 ...

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

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

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

3. For purposes of this Order, the Court has accepted Plaintiffs’ recitation of facts as true, so this section is drawn entirely from their briefing. However, the Court notes that Plaintiffs include substantial amounts of opinion, analysis, and even conjecture in their “Background” section. The Court has thus confined its recitation here to the actual facts relevant to this matter. All other content is considered later in the Analysis sections of this Order. The Court also notes that Defendants do not identify any substantive mistakes or controversies in the facts at issue here. Thus, the relevant facts here are essentially agreed. The parties disagree about the meaning and legal interpretation of those facts.

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

4 **Shall the City of Great Falls be authorized to amend Article I, Section 3 of the Charter of the**  
5 **City of Great Falls to levy up to 17 mills, an increase of 15 mills, raising approximately**  
6 **\$1,594,500 for the purpose of providing funds for the operation, maintenance and capital**  
7 **needs of the Great Falls Public Library.**

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

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

14 Pet. Ex. D.

15 The Levy Ordinance read, in relevant part:

16 **ORDINANCE NO. 3254**

17 **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF GREAT FALLS**  
18 **AMENDING ARTICLE I, SECTION 3 OF THE CHARTER OF THE CITY OF GREAT**  
19 **FALLS TO INCREASE THE AUTHORIZED ADDITIONAL MILLS FOR OPERATION,**  
20 **MAINTENANCE AND CAPITAL NEEDS OF THE GREAT FALLS PUBLIC LIBRARY**  
21 **FROM TWO (2) MILLS TO SEVENTEEN (17) MILLS AND SUBMITTING SUCH**  
22 **CHARTER AMENDMENT TO THE ELECTORS OF THE CITY OF GREAT FALLS**

23 **BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS,**  
24 **MONTANA:**

25 Section 1: That Article I, Section 3 of the Charter of the City of Great Falls be amended as depicted  
26 in Exhibit "A" attached hereto, removing the language indicated by ~~strikeout~~ and adding the  
27 language indicated by underline, and that such amendment be subject to a separate vote by the  
28 electors of the City of Great Falls; and

Section 2: REFERRAL TO ELECTORS. This Ordinance shall be referred to the electors of the  
City of Great Falls at a special election to be conducted on June 6, 2023; and

Section 3: EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days after second  
reading and final adoption as provided by law, but the amendment to the Charter of the City of  
Great Falls reflected in said Ordinance shall be effective only if certified as approved by the  
electors as provided by law and then, if so approved, shall become effective on July 1, 2023.

1 Pet. Ex. E.

2 On May 12, 19, and 26, 2023, a Notice of the Levy Election was published in the Great Falls  
3 Tribune. Pet. ¶ 18. The Levy Notice read, in relevant part, as follows:  
4

5 Great Falls Public Library Mill Levy Election  
6 Notice is hereby given that the Great Falls Public Library Mill Levy  
7 Election for the City of Great Falls will be held On Tuesday, June 6, 2023.  
8 Electors will consider the following:  
9 This ballot measure asks voters to approve or disapprove a permanent  
10 annual levy of up to 17 mills to provide for the operation, maintenance and  
11 capital needs of the Great Falls Public Library.  
12 ...

12 Pet. Ex. G.

13 The Levy Election was held on June 6, 2023. The relevant portion of the ballot read as follows:  
14

15 **GREAT FALLS PUBLIC LIBRARY MILL LEVY**  
16 **(VOTE IN ONE OVAL)**  
17 **Proposal:** On February 21, 2023, the City Commissioners of the City of Great Falls adopted  
18 Ordinance 3254 referring this ballot measure to the voters. If approved, this ballot measure would  
19 amend Article I, Section 3 of the current Charter language as follows:  
20 The total mill levy shall not exceed that allowed to general powers cities of the first class by  
21 Montana law, except that the City Commission may levy not more than ~~two (2)~~ seventeen (17)  
22 additional mills for the purpose of providing ~~additional~~ funds for the operation, maintenance and  
23 capital needs of the Great Falls Public Library.  
24 The foregoing mill levy is permanent and shall continue indefinitely in future fiscal years. This  
25 levy is not cumulative, which means the number of mills will not increase over time. This levy is  
26 in addition to any other mill levies authorized by Charter or law.  
27 **Residential Property Impact:** If approved, the annual property tax increase in fiscal year 2023  
28 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.

Pet. Ex. B.

Both Petitioners identified what they deemed problematic discrepancies and/or mistakes in and throughout the above-cited documents. Pet. ¶¶ 8-45. Those issues can largely be summarized as follows:

- Alleged discrepancies regarding the number of mills and dollar values associated with those mills on the Levy Ballot (Pet. ¶¶ 8, 27-34)
- “Conflicts and Errors” within “Official Sources of Information (Pet. ¶¶ 14-17)
- Inaccuracy regarding the Levy Notice (Pet. ¶¶ 18-26)
- Overburdening of City taxpayers for Library services (Pet. ¶¶ 35-45)

Petitioners contacted multiple Defendants prior to the election seeking explanations and/or clarification regarding their questions, but those attempts either failed to assuage their concerns or did not receive responses. Pet. ¶¶ 9-11. The Levy Election was held as scheduled on June 6, 2023, and the levy passed, with unofficial results showing 13,827 votes cast in total, 7,223 in favor of the levy and 6,604 against it.

Pet. ¶ 12.

### **III. Preliminary Matters**

#### **A. Request for Hearing**

In the caption of their Petition, Plaintiffs note “Hearing Requested Pursuant to MCA § 7-7-106.” They repeat that request in the conclusion, asking this Court to, “Set a hearing as required under MCA § 7-7-106 . . . .” Pet. p. 25. The Montana law cited in that request, however, exists in a chapter that addresses local government debt management, specifically bonds. That particular provision is titled “Hearing and Determination on Challenge.” The “challenge” referenced is not just any challenge, though, but rather a

1 “challenge” as contemplated by that chapter and part of the Montana Code. The preceding code  
2 provision—MCA § 7-7-105<sup>4</sup>—provides clarification, as it addresses “Challenges To Local Government  
3 Bond Elections.” Thus, the “challenge” referenced in MCA 7-7-106 is a challenge to a local government  
4 bond election. That is not the procedural posture of this case. Plaintiffs address all of their complaints  
5 toward the Great Falls Public Library Mill Levy Election (the “Levy Election”). A levy election is not a  
6 bond election; the two are separate and distinct, and governed by different portions of Montana law.  
7

8         The Levy Election at issue in this case was authorized and administered based on the City of Great  
9 Falls Code and Charter, along with other sections of Montana law, including MCA §§ 22-1-304 Tax Levy  
10 – Special Library Funds – Bonds<sup>5</sup>, 15-10-425 Mill Levy Election, and 13-1-108 Notice of Political  
11 Subdivision Elections. In no reading of the relevant laws was the Levy Election a local government bond  
12 election, the City of Great Falls did not issue any bonds for the library during the relevant timeframe, and  
13 Plaintiffs’ challenge is thus not governed by MCA §§ 7-7-105 or 106. Consequently, Plaintiffs are not  
14 entitled to a hearing based on that law.  
15  
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17         Overall, the Court, having reviewed all the pleadings, has also determined that a hearing is not  
18 necessary for it to decide each of the matters now at issue in this case appropriately and comprehensively.  
19 The documents are detailed, the relevant facts are uncontroverted, and the arguments are clear from the  
20 information already provided and available. The Court does not find that a hearing would be helpful in  
21 advancing this case, and it thus declines to order one.  
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25 4. All citations to the Montana Code in this brief reference the 2021 version, as that is the law relevant to this  
26 case. Although the election at issue occurred in 2023, the 2023 code did not go into effect until July 1, 2023,  
27 while the election occurred on June 6, 2023 and all issues relevant to Plaintiffs’ complaints accrued either  
28 on or prior to that date.

5. The reference to bonds here does not implicate this case, as that statute simply states that the governing  
body of a city/county may issue bonds in the manner prescribed by law for certain library  
projects/expenditures. The City of Great Falls did not issue any such bonds.

1           **B. Dual Issues**

2           Although the Motion to Dismiss and Motion for Leave to amend are separate legal issues and were  
3 independently briefed by both Plaintiffs and Defendants, the Court has reviewed and analyzed those  
4 matters in a more holistic manner. The reason for that is the Court’s determination that both issues are  
5 interrelated; if the Court were to grant the Motion to Amend, the Motion to Dismiss would ultimately be  
6 moot. If the Motion to Dismiss was legally sound and compelling, however, the Court would have to  
7 evaluate whether the Motion to Amend overcame the issues warranting dismissal or was ultimately futile.  
8

9           Based on that reality, the Court has evaluated all the filings and considered the case in whole in  
10 deciding both pending issues. Based on that review, and as discussed in greater detail below, the Court  
11 will grant Defendants’ Motion to Dismiss pursuant to M.R.Civ.P. 12(b)(6), as it has found that Plaintiffs’  
12 have failed to state any legally cognizable claims, and deny Plaintiffs’ Motion for Leave to Amend  
13 Petition, as it has determined that Plaintiffs’ claims are fatally flawed in all circumstances, amendment is  
14 thus futile, and allowing this case to proceed any further than it already has would cause Defendants undue  
15 prejudice and burden.  
16

17  
18           **IV. Law & Analysis – Motion to Dismiss**

19           Plaintiffs’ Petition raises five (5) counts regarding the 2023 Great Falls Public Mill Levy Election.  
20 Based on those, they ask this Court to enjoin the City of Great Falls from collecting property taxes pursuant  
21 to said election, annul and set aside or void said election, and award them costs. Pet. p. 26, “Prayer for  
22 Relief.” Plaintiffs’ complaints largely center on asserted errors/discrepancies within the Levy Resolution,  
23 Ordinance, and Ballot, which Plaintiffs claim were unduly confusing and/or misleading and ultimately  
24 violative of Montana law. Plaintiffs also claim that in allowing the Library Election to move forward, the  
25 City Commissioners breached a duty to the taxpayers of the City of Great Falls by overburdening them  
26 for Library services that are used/enjoyed by a broader group of people.  
27  
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1           **A. Controlling Law**

2           Although the Court will discuss additional applicable law later in its analysis of Plaintiffs’  
3 individual claims, this is generally evaluation of a motion to dismiss under M.R.Civ.P 12(b)(6) for failure  
4 to state a claim upon which relief can be granted. In such matters, Plaintiffs bear the initial burden of  
5 pleading, “[t]he presence of all the elements necessary to make out a claim.” *Mysse v. Martens*, 279 Mont.  
6 253, 266, 926 P.2d 765, 773 (1996). “The focus of Rule 12(b)(6) motion to dismiss is whether the  
7 complaint is facially sufficient to state a cognizable legal claim entitling the claimant to relief on the facts  
8 pled.” *Matter of the Est. of Swanberg*, 2020 MT 153, ¶ 6, 400 Mont. 247, 465 P.3d 1165. “A claim is  
9 subject to dismissal under Rule 12(b)(6) if it either fails to state a cognizable legal theory for relief or  
10 states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant  
11 to relief under the claim. *Id.* at ¶ 6. “[A] court is under no duty to take as true legal conclusions or  
12 allegations that have no factual basis or are contrary to what has already been adjudicated. *Cowan v.*  
13 *Cowan*, 2004 MT 97, ¶ 14, 321 Mont. 13, 89 P.3d 6.”

14           **B. Plaintiffs’ Counts**

15           **1. COUNT ONE: Violations of Article II, Section 13 and 17 of the Montana**  
16           **Constitution**

17           Plaintiffs first allege violations of their rights to suffrage and due process, claiming the Levy  
18 Election ballot language was “confusing or in conflict with other official sources of information to the  
19 extent . . . that Petitioners’ right of suffrage [was] burdened and that their right to due process [was]  
20 violated.” Pet. ¶ 50. They further assert the Levy Resolution and Notice of Levy Election were  
21 “incomplete, inaccurate, and misleading,” which thereby further violated their rights of suffrage and to  
22 due process. Pet. ¶¶ 52-53. Plaintiffs conclude this count by alleging, “The Commissioners failed to  
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1 conduct the Levy Election in a lawful manner, and an unlawful election is an invalid election that deprived  
2 both the suffrage rights and the due process rights of Petitioners.” Pet. ¶ 58.

3  
4 The Montana constitutional provisions cited by Plaintiffs in this count, which address suffrage and  
5 due process, are both short and straightforward:

6 Section 13. **RIGHT OF SUFFRAGE.** All elections shall be free and open, and no power,  
7 civil or military, shall at any time interfere to prevent the free exercise of the right of  
8 suffrage.

9 . . .  
10 Section 17. **DUE PROCESS OF LAW.** No person shall be deprived of life, liberty, or  
11 property without due process of law.

12 Mont. Const. Art II, Secs. 13 & 17. The Court will examine Plaintiffs’ claims regarding each of the above  
13 provisions in turn.

#### 14 a. Right of Suffrage

15 The right of suffrage is the right to vote. “The right to vote freely . . . is of the essence in a  
16 democratic society, and any restrictions on that right strike at the heart of representative government.”  
17 *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). “The right to vote is fundamental.” *McDonald v. Jacobsen*,  
18 2022 MT 160, ¶ 57, 409 Mont. 405, 515 P.3d 777. “[T]he right of suffrage can be denied by a debasement  
19 or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of  
20 the franchise.” *Big Spring v. Jore*, 2005 MT 64, ¶ 18, 326 Mont 256, 109 P.3d 219 (internal citations  
21 omitted).

22 In this matter, Plaintiffs do not claim that they were prevented from voting; in fact, Petitioner  
23 Johnson admits that she voted (*See* Pet. ¶ 11), while it seems that Petitioner Cummings voted absentee  
24 and under protest (*See* Pet. ¶ 9).<sup>6</sup> Instead, they claim that discrepancies and errors throughout the pre-  
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<sup>6</sup> It is unclear from the filings whether Petitioner Cummings actually voted or simply stated that she would  
be filing a ballot under protest. Regardless of whether she actually did vote, she was in no way prevented  
from doing so, so resolution of that issue is not required for accurate analysis of this point.

1 election process, up to and including the election ballot itself, caused them so much confusion that they  
2 were unable to meaningfully exercise their voting rights. Pet. ¶ 50. Specifically:

3  
4 Petitioners, as qualified electors of the City of Great Falls, Montana, have the right of  
5 suffrage, including the right to the meaningful exercise of their voting rights. . . . Plaintiffs  
6 had the right to expect the Levy Election ballot language to be plain and accurate—**not**  
confusing or in conflict with other official sources of information to the extent (as was the  
case here) that Petitioner’s right of suffrage would be burdened . . . .

7  
8 The Commissioners failed to conduct the Levy Election in a lawful manner, and an  
unlawful election is an invalid election that deprived both the suffrage rights and the due  
process rights of Petitioners.

9  
10 Pet. ¶¶ 50, 58.

11 Plaintiffs devote a significant portion of their Petition to alleging various discrepancies and errors  
12 throughout the Library Election process, from the Levy Resolution through the actual levy ballot itself,  
13 which they claim were so confusing and/or misleading that they were unable to meaningfully exercise  
14 their right to vote. Plaintiffs also allege that they attempted to resolve their questions by reaching out to  
15 some Defendants prior to the Library Election seeking clarification, but that they failed to receive any  
16 useful responses.

17  
18 Despite Petitioner’s extensive list of alleged grievances, this Court does not find their claims  
19 sufficient to constitute a violation of their right to suffrage. The Court actually finds many of their  
20 assertions difficult to parse out and fully understand. While the Court does not find that there were  
21 absolutely no issues throughout this process, it does not believe any of those issues rose to the level of  
22 “debasement or dilution of [either Petitioner’s] vote,” as required by law. Plaintiffs did vote, or at very  
23 least had the unfettered opportunity to vote. Thus, for this Court to find a violation of their constitutional  
24 right to suffrage, it would have to determine that the Library Election was so seriously flawed that  
25 Petitioner’s votes were essentially meaningless. While Plaintiffs point to various supposed mistakes and  
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1 contradictions throughout that process, the Court does not believe those, even considered in aggregate,  
2 truly left them so confused and/or misinformed that their votes were entirely debased.

3  
4 The Court agrees with Defendants that the *Burger* case is instructive. As in *Burger*, “[t]his is not  
5 a case where any electors were deprived a right to vote or where there was any debasement or dilution in  
6 their votes. Nor is it a case where the voters were misled with respect to the content or meaning of any of  
7 the issues submitted to them.” *Burger v. Judge*, 364 F. Supp. 504, 511 (D. Mont), *aff’d*, 414 U.S. 1058  
8 (1973). This was an election regarding funding for the Great Falls Public Library in which voters were  
9 asked to either approve or disapprove additional funding for that library. Any alleged errors,  
10 inconsistencies, or other issues were not severe enough to rise to the level of a constitutional violation.

11  
12 **b. Right to Due Process**

13 Plaintiffs also allege the same defects on which their suffrage claims are based also constitute a  
14 violation of their right to due process. Montana Courts have provided guidance on these types of claims.  
15 “[D]ue process is satisfied if the voters are informed by or with the ballot of the subject of the amendment,  
16 are given a fair opportunity by publication to consider its full text, and are not deceived by the ballot’s  
17 words.” *State ex rel. Montana Citizens for the Pres. Of Citizens’ Rts. V. Waltermire*, 227 Mont. 85, 90,  
18 738 P.2d 1255 (1987). “Voters may not be misled to the extent they do not know what they are voting for  
19 or against.” *Id.* Even in the case of a “mathematical misstatement,” if a ballot “statement captures the  
20 purpose and fiscal impacts in summary fashion and is sufficient to inform voters of the implication of a  
21 vote for or against the measure,” the requirements of MCA § 13-27-312 (2017) are satisfied. *Montanans*  
22 *Against Tax Hikes v. State by & through Fox*, 2018 MT 201 ¶ 7, 392 Mont. 344, 423 P.3d 1078.

23  
24  
25 Given that the errors complained about in *Montanans Against Tax Hikes* were significantly more  
26 substantial than those Plaintiffs complain of here, this Court declines to find a violation of Petitioners’ due  
27 process rights under the facts they have pled. Plaintiffs detailed statement of facts, including the issues  
28

1 about which they have complaints, demonstrate that they were informed throughout this process, that they  
2 had ample opportunity to study and consider the ballot language, and that they generally understood the  
3 consequences of their vote. Any confusion as to the precise fiscal impact of their votes was not so  
4 significant as to constitute a taking within the meaning of the law. Ultimately, the Court—having reviewed  
5 the relevant documents here—does not actually find anything truly confusing about this entire process.  
6

7 As the Court reads the ordinance, it seems clear that the proposed changes involved increasing the  
8 authorized library mills from two (2) to seventeen (17). Removal of the word “additional” is tangential to  
9 that main reality, at best. Moreover, even the mathematical mistake regarding the fiscal impact of the  
10 election, which Defendant Hinebauch agreed was an error when confronted by Plaintiff Cummings, was  
11 fairly minor ( $\$45,000/\$1,594,500 = 3\%$ ). Given that the MT Supreme Court, in *Montanans Against Tax*  
12 *Hikes*, held that a 200% error in monetary calculations did not “prevent a voter from casting an intelligent  
13 and informed ballot,” this Court cannot say that a 3% error is fatal here. *Id.* at ¶ 7. Beyond that, it does not  
14 seem that Plaintiffs allege that Defendants failed to adhere to publication requirements; instead, they again  
15 point to supposedly confusing language issues, which they assert prevented voters from understanding the  
16 true nature and/or impact of the Levy Election and related votes. Again, this Court, no matter how it  
17 contorts the available facts, cannot identify any defect or anomaly serious enough that it would rise to the  
18 level of a colorable constitutional claim, despite Plaintiffs’ claims to the contrary.  
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22 Ultimately, the Court agrees with Defendants that “[Petitioners] do not advance any legally  
23 cognizable, non-speculative, or good faith argument that the Ordinance, Resolution, Notice, or Ballot so  
24 fundamentally misled electors that they violated due process.” Br. in Supp. of Mot. to Dismiss p. 17.

## 25 **2. COUNT TWO: Injunctive Relief Under Section [sic] MCA § 7-7-105**

26 The Court declines to spend substantial time on this count because, simply put, MCA § 7-7-105 is  
27 entirely irrelevant to this action and fact pattern. First off, the Court refers back to its analysis in § II(A),  
28

1 *supra*, regarding Petitioner’s request for a hearing under this same code section, and it incorporates that  
2 here by reference. In addition, as accurately argued by Defendants, “Title 7, ch. 7, does not apply to the  
3 Library mill levy election. Title 7, ch. 7 applies to governmental issuances of debt, like bonds. Mill levy  
4 increases are property tax elections governed by Title 15, ch. 10, part 4, not debt issuance elections under  
5 Title 7, ch. 7.” Br. in Supp. of Mot. to Dismiss p. 18.

7 The Court concurs with the above. The law cited by Plaintiffs is plainly not applicable to this  
8 matter, and the Court cannot endeavor to twist it into relevance. Petitioner’s Count Two thus fails to state  
9 a claim upon which any relief can be granted, as the code section under which they are seeking relief is  
10 entirely inapplicable to the facts of this particular case.

12 **3. COUNT THREE: Injunctive Relief Under Section 13-35-108, MCA**

13 Similar to the preceding count, the Court’s analysis here will be fairly straightforward because  
14 Plaintiffs again misapply Montana law. As Plaintiffs themselves state, “MCA § 13-35-108 provides, ‘In  
15 any action brought under the election laws of this state, the appropriate district court may enjoin any  
16 person to prevent the doing of any prohibited act or to compel the performance of any act *required by the*  
17 *election laws.*’” Pet. ¶ 72 (emphasis added). Plaintiffs then go on to assert that because of alleged  
18 deficiencies in how the Library Election was conducted, “Under the powers provided by MCA § 13-35-  
19 108, the Court should enjoin the City of Great Falls from collecting property taxes pursuant to the passage  
20 on June 6, 2023, of [the] Great Falls Public Library Mill Levy.” *Id.* ¶ 75.

23 Defendants respond that, “Count Three initially fails because § 13-35-108, MCA, only applies to  
24 . . . conduct either prohibited or required ‘by the election laws’ of Montana. . . Collecting property taxes  
25 is **not** a function either required or prohibited by Montana’s election laws.” Br. in Supp. of Mot. to Dismiss  
26 p. 19. Defendants are correct. Consequently, the Court sees no reason to even consider whether Montana  
27 election law was violated here because the relief sought by Plaintiffs under this count is a legal  
28

1 impossibility. Election laws do not regulate the collection of taxes in Montana. Thus, Petitioner’s request  
2 herein that this Court “enjoin the City of Great Falls from collecting property taxes” is misplaced and  
3 lacks any substantive grounding in controlling Montana law.  
4

5 It is not this Court’s job to fix pleadings or otherwise endeavor to find a way to make Petitioner’s  
6 claims valid. The Court assumes that Plaintiffs knew what they were requesting when they filed this  
7 Petition, and it declines to delve deeply into legal claims that are flawed from the very outset. As  
8 Defendant’s accurately summarize in their briefing, “Count Three advances inapplicable statutes, claims  
9 inappropriate relief against the wrong entity, and fails to comply with the proper, but not invoked, statutory  
10 regime regardless.” Br. in Supp. of Mot. to Dismiss p. 20. The Court agrees, and it thus finds that Count  
11 Three thus fails to state a claim upon which relief can be granted.  
12

#### 13 **4. COUNT FOUR: Voiding Election Under MCA Section 13-35-107**

14 Plaintiffs explain this claim as follows:

15  
16 77. MCA § 13-35-107(1)(a) provides, in part, “If a court finds that the *violation of any*  
17 *provision of this title* by any person probably affected the outcome of any election, the  
18 result of that election may be held void and a special election held at least 85 days after the  
19 finding.” (emphasis added)

20 78. [Reiterating alleged election defects]]

21 79. The serious election irregularities and defects enumerated herein necessarily **did** affect  
22 the outcome of the Levy Election because there is no way of determining what the voters  
23 actually believed they were voting for (or against) when marking their ballots. More  
24 importantly, the ballot contained an irreconcilable difference between the number of mills  
25 and the amount of money to be raised—a material mistake of fact that rendered the election  
26 results unascertainable.

27 80. The series of election irregularities and defects in the Levy Election procedure as  
28 conducted by the Commissioners affected the free and intelligent casting of votes,  
rendering the Levy Election invalid.

Pet. ¶¶ 77-80. Based on those claims, Plaintiffs ask this Court to “void the Great Falls Public Library Mill  
Levy Election conducted by the City on June 6, 2023. *Id.* ¶ 81.

Given the plain wording of the statute at issue here, in order for the Court to grant the relief  
Plaintiffs seek in this claim, it must find 1) a violation of any provision of Title 13, which 2) probably

1 affected the outcome of the Levy Election. MCA § 13-35-107(1)(a). The Court thus reviews Petitioners’  
2 filing to determine whether they have adequately identified such a violation with such an impact.

3  
4 Nowhere in the section of their brief focused on Count Four do Plaintiffs actually identify which  
5 provision of Title 13 they claim was violated here. And throughout the entirety of the introductory portion  
6 of their Petition in paragraphs 1 through 46, in which they lay out the factual and some legal bases of their  
7 complaints, this Court can only identify one instance of Plaintiffs asserting a possible violation of MCA,  
8 Title 13. That occurs beginning in paragraph 19 on page 6, wherein Plaintiffs state, “MCA § 15-10-425(3)  
9 provides, in part, ‘Notice of the election must be prepared by the governing body and given as provided  
10 in 13-1-108.’” Thus, the Court can only assume that Plaintiffs are asserting Defendants violated MCA §  
11 13-1-108 as grounds for the relief sought in this count.  
12

13 MCA § 13-1-108 reads, in its entirety, as follows:

14  
15 **13-1-108. Notice of political subdivision elections.** (1) Except as otherwise provided in  
16 this section an election administrator conducting a political subdivision election shall give  
17 notice of the election at least three times no earlier than 40 days and no later than 10 days  
18 before the election. The notice must be published in a newspaper of general circulation in  
19 the jurisdiction where the election will be held or by broadcasting the notice on radio or  
20 television as provided in **2-3-105** through **2-3-107**. The notice must be given using the  
21 method the election administrator believes is best suited to reach the largest number of  
22 potential electors. The provisions of this subsection are fulfilled upon the third publication  
23 or broadcast of the notice.

(2) If the newspaper of general circulation within a political subdivision is a weekly  
newspaper, the notice may be published only two times and the notice requirements are  
fulfilled upon the second publication of the notice.

(3) With respect to an election on the creation or dissolution of a special purpose district  
or the alteration of a special purpose district’s boundaries, the notice must include a specific  
description of the proposed boundaries or the proposed change to the boundaries.

24 Despite their cursory assertion that Defendants breached this law, Plaintiffs themselves admit that, “As  
25 required by MCA § 15-10-425(3), the Commission prepared a Notice of the Great Falls Public Library  
26 Mill Levy Election, which notice was published on May 12, 19, and 26, 2023.” Pet. ¶ 18. Thus, it would  
27 seem that Plaintiffs themselves admit that Defendants actually complied with the above-cited section of  
28

1 Title 13. Petitioners, however, claim that even though Defendants complied with the notice requirements  
2 of MCA § 13-1-108, the notice itself was fatally flawed.

3 MCA § 13-1-108 provides no details as to the contents of an election notice. While MCA § 15-10-  
4 425 does provide additional guidance on “the form of the ballot,” Title 15 of the Montana Code is not  
5 Title 13. Thus, Petitioner’s complaints about the content of the notice and/or election ballot itself are not  
6 adequately grounded in Title 13, the code provision under which they seek relief for this count. This Court  
7 has reviewed the entirety of Title 13, in fact, and can identify nothing in that section of Montana law that  
8 provides additional guidance, requirements, or restrictions regarding notice requirements for an election.  
9

10 Moreover, the Court believes, given the facts pled here, that Defendants clearly complied with  
11 MCA § 15-10-425. Based on its review, the Levy Notice accurately reflected the text of the final ballot  
12 and the text of the proposed ballot included in both the Levy Ordinance and Levy Resolution (*see* § II,  
13 *supra*). The Court cannot identify any clear way in which the Levy Notice did not accurately reflect the  
14 form of the ballot in this case.  
15

16 Given that Plaintiffs themselves admit that Defendants complied with election notice requirements  
17 by publishing notice of the Levy Election three times in an appropriate newspaper, this Court cannot find  
18 where or how Plaintiffs have alleged a violation of Montana Code Annotated, Title 13 that would entitle  
19 them to relief under MCA § 13-35-107(1)(a). Their assorted assertions regarding discrepancies, errors, or  
20 other confusion in some of the relevant language do not automatically constitute such a violation, and  
21 Plaintiffs have thus failed to adequately identify how this count is grounded in and valid under the relevant  
22 law. For that reason, the Court finds that Count Four fails to state a claim upon which relief can be granted.  
23  
24  
25  
26  
27  
28

1           **5. COUNT FIVE: Breach of Duty Under Article II, Section 2 of the Charter of the**  
2                           **City of Great Falls**

3  
4           In their final count, Plaintiffs argue that Defendant Commissioners “did not act in good faith on  
5 behalf of their own constituents. In fact, **they acted utterly contrary to their constituents’ fiscal**  
6 **interests when they proceeded with the City-only Levy Election.** Because the levy passed, City  
7 taxpayers, including Petitioners, will suffer significant, irreparable, and long-term financial harm if the  
8 City of Great Falls is not enjoined from collecting property taxes pursuant to the passage of the Library  
9 tax levy if the Levy Election is not annulled and set aside or voided.” Pet. ¶ 86.

10  
11           Broadly speaking, this Court rests on the reality that the Levy Election only imposes additional  
12 library costs on residents of the City of Great Falls, even though the library itself serves residents of  
13 Cascade County.<sup>7</sup> Plaintiffs thus argue that Defendant Commissioners breached a fiduciary duty to their  
14 constituents in advancing and allowing the Levy Election to happen at all, as doing so wrongfully  
15 burdened only city taxpayers for something used and enjoyed by a broader group of people. Plaintiffs  
16 allege this constitutes a breach of Article II, Section 2 of the Charter of the City of Great Falls, which  
17 states in relevant part, “The City Commission shall . . . [a]dopt policies and procedures and enact  
18 ordinances and resolutions as necessary for the proper execution of **governmental functions and**  
19 **responsibilities** [emphasis added].” *Id.* ¶¶ 82-86.

20  
21  
22           This Court agrees with Defendants that “Count Five presents the classical nonjusticiable political  
23 question while also implicating clear Montana law restricting the authority of governments to their legal  
24 jurisdictions.” Br. in Supp. of Mot. to Dismiss p. 22. Such nonjusticiable claims “revolve around policy  
25 choices and value determinations constitutionally committed for resolution to other branches of  
26

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27 7. As far as the Court can tell, the library serves anyone who chooses to patronize it and places no restrictions  
28 on who may do so, regardless of where they reside. Given its location, however, the majority of its clients  
come from the City of Great Falls and Cascade County. MCA § 22-1-303 would also allow the creation and  
funding of a Cascade County Library, if residents and officials so desired.

1 government or to the people in a manner provided by law.” *Larson v. State By & Through Stapleton*, 2019  
2 MT 28, 39, 394 Mont 167, 434 P.3d 241. While Plaintiffs attempt to paint the relevant section as a duty  
3 and Defendants’ actions as a breach, the legal reality here is that Defendants actions were instead  
4 undertaken well within their respective duties and obligations. As Defendants correctly observe, “[A] city-  
5 only mill levy is explicitly permitted by § 15-10-425, MCA.” Br. in Supp. of Mot. to Dismiss p. 22. Thus,  
6 the actions about which Plaintiffs complain are firmly grounded in Montana law. Nothing elsewhere in  
7 that law, at least based on this Court’s review, suggests that City Commissioners are precluded from  
8 seeking city funding of services simply because those services are also utilized by non-city residents.  
9

10  
11 Therefore, based on the foregoing, the Court finds that Count Five fails to state a claim upon which  
12 relief can be granted.

### 13 **6. Conclusion**

14 As their filings make abundantly clear, Plaintiffs are not pleased that Defendants decided to hold  
15 the Levy Election and that it passed. However, such dissatisfaction does not, in and of itself, constitute  
16 adequate grounds for a legal complaint. While Plaintiffs take great issue with certain alleged discrepancies  
17 and/or errors within the entirety of the Levy Election process, they fail to adequately demonstrate that any  
18 such issues—even accepting all as true—rose to the level of a legally redressable harm.  
19

20 Defendants were all involved in the Levy Election at issue here, which unequivocally sought  
21 approval among Great Falls City voters for an increase in funding to the Great Falls Library. Plaintiffs  
22 voted (or at very least had ample opportunity to vote) in the Levy Election, and nothing about the language  
23 within the various related Resolutions, Ordinances, Notices, and Ballot was so confusing or misleading to  
24 constitute debasement or dilution of their vote. Similarly, nothing about how the election was drafted,  
25 noticed, or actually held rose anywhere near a due process violation. Plaintiffs are mistaken in their  
26 attempts to apply Title 7 of the Montana Code to the instant proceeding, as this was not a proceeding  
27  
28

1 governed by Title 7. Similarly, Plaintiff’s complaints under Title 13 of the Montana Code are insufficiently  
2 grounded in that law and seek remedies outside of what the law provides for. Finally, Plaintiffs final count  
3 is essentially a nonjusticiable political question, and the Court declines to find that Defendant  
4 Commissioners “breached” any “duty” in fulfilling their functions related to the Levy Election. Overall,  
5 then, all of Plaintiff’s counts constitute failures to state claims upon which relief can be granted, and  
6 Defendant’s Motion to Dismiss is thus well taken.  
7

8         The Court also feels it necessary to briefly comment, even if purely as *dicta*, that the Library Levy  
9 Election at issue here was a major point of reporting and discussion throughout Great Falls, and even the  
10 State of Montana, for a significant period of time in the first half of 2023. There were many articles written  
11 about the election, citizen groups which formed both in support of and against its passage, and generally  
12 many signs that this was not an issue “flying under the radar,” as it were. This reality further undermines  
13 Plaintiff’s complaints, as despite all the flaws they alleged, none of these were seriously raised before or  
14 during the election despite the significant amount of attention paid to it by substantial numbers of people.  
15 At its root, this election involved a question about increased funding for a local library, and nothing  
16 presented by Plaintiffs undermines this Court’s confidence that said election was legally conceived,  
17 organized, and held by the appropriate parties. Any actual problems were harmless error.  
18  
19

20 **V. Law & Analysis – Motion for Leave to Amend**  
21

22         Approximately three (3) months after filing their Petition and one (1) month after briefing was  
23 completed on Defendants’ Motion to Dismiss, Plaintiffs filed a Motion for Leave to Amend Petition and  
24 supporting brief. All parties have completed briefing, and that matter is now before the Court (Dkt. # 35).  
25

26 **A. Controlling Law**

27         Montana Rule of Civil Procedure 15 governs Amended and Supplemental Pleadings. As Plaintiffs  
28 did not seek to amend their petition within 21 days of service after Defendants filed their Motion to

1 Dismiss [Pursuant to Rule 12(b)(6)] on August 25, 2023, M.R.Civ.P. 15(a)(2) applies here: “Other  
2 Amendments. In all other cases, a party may amend its pleading only with the opposing party’s written  
3 consent or the court’s leave. The court should freely give leave when justice so requires.” Defendants have  
4 not consented to Plaintiffs’ request to amend, so they can only do so here with this Court’s leave.  
5

6 “[A] proposed amendment should be permitted, in keeping with the policy that leave to amend  
7 ‘shall be freely given when justice so requires,’ unless: (1) the ‘motion causes undue delay, is made in bad  
8 faith, is based upon a dilatory motive on the part of the movant, or is futile,” or (2) ‘the party opposing the  
9 amendment would incur substantial prejudice as a result of the amendment.’” *Stevens v. Novartis*  
10 *Pharmaceuticals Corp.*, 2010 MT 282, ¶ 64, 247 P.3d 244. However, “this does not mean that a court  
11 must automatically grant a motion to amend.” *Kershaw v. Montana Dep’t of Transp.*, 2011 MT 170, ¶ 25,  
12 361 Mont. 215, 257 P.3d 358. The District Court should use its discretion to deny a motion to amend  
13 where the proposed amendments are futile, frivolous, or meritless. *Biterroot Int’l Sys., Ltd. v. W. Star*  
14 *Trucks, Inc.*, 2007 MT 48, ¶ 50, 336 Mont. 145, 153 P.3d 627.  
15  
16

## 17 **B. Analysis**

18 Although the Court takes Plaintiffs at their word that they do not believe their motion is futile or  
19 would cause Defendants undue prejudice (Br. in Supp. of Mot. for Leave to Am. ¶ 5), the Court  
20 respectfully disagrees.  
21

22 First, the Court incorporates its analysis regarding the merit of Plaintiff’s original Petition in §  
23 IV(B) of this Order, *supra*, by reference here. The Court would highlight that it has already found that  
24 none of Plaintiffs’ initially asserted Counts have legal merit. Moreover, the fact of the matter is that none  
25 of those decisions was particularly close. Overall, the Court finds nothing in Plaintiff’s original Petition  
26 that suggests they have valid claims. While they are obviously unhappy about the Levy Election and its  
27 results, such dissatisfaction does not constitute a viable legal complaint.  
28

1           Simply put, in evaluating the totality of the circumstances here and all filings in the docket, this  
2 Court is firmly convinced that any attempts to amend this matter would be futile. While Plaintiffs aver  
3 that they wish to add additional allegations that have come to light since their initial filings, correct minor  
4 errors, and simplify/clarify their allegations by amending their Petition, this Court remains thoroughly  
5 unconvinced that any of the proposed amendments would make this matter legally sound.  
6

7           In addition, the Court finds that granting Plaintiffs' Motion for Leave to Amend at this point would  
8 cause Defendants substantial prejudice. Defendants have already retained counsel, filed and thoroughly  
9 briefed their Motion to Dismiss, and filed and thoroughly briefed their opposition to amendment of the  
10 Petition. Defendants have thus already devoted substantial time to this case, much of it devoted to pointing  
11 out the legal futility of Plaintiff's claims and almost all of which this Court finds compelling. Allowing  
12 Plaintiffs to amend their complaint now, in addition to being futile given the underlying nature of their  
13 case, would force Defendants to spend even more time and effort than they already have responding to  
14 generally specious arguments. Based on that reality, the Court finds here that the interests of justice  
15 actually weigh in favor of denying Plaintiff's Motion for Leave to Amend, and that will be its order.  
16  
17

## 18 **VI. Conclusion and Order**

19           Based on the entirety of the record before it, the Court finds that all of Plaintiffs' alleged counts  
20 are fatally flawed and fail to state any legally cognizable claims upon which this Court could grant relief.  
21 Although their filings are detailed and generally well organized, every one of their legal arguments is  
22 wrong. They are consistently mistaken about which sections of law actually apply to the instant matter,  
23 misread and misapply controlling precedent, and generally find fault where no fault actually exists or any  
24 error was clearly harmless. It is difficult to read their filings and come away with any impression other  
25 than that this action is a thinly veiled attempt to undo an election result they dislike rather than a truly  
26 justified complaint about a mishandled or otherwise legally problematic election.  
27  
28

