

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

**IN THE MATTER OF REMOVING
ELECTION ADMINISTRATION DUTIES
FROM THE OFFICE OF THE CASCADE
COUNTY CLERK AND RECORDER/AUDITOR
AND APPOINTING AN ELECTION ADMINISTRATOR FOR
CASCADE COUNTY**

RESOLUTION 23-62

WHEREAS, Cascade County is an incorporated political subdivision of the State of Montana; and

WHEREAS, pursuant to MCA § 7-5-2101(1), the Board of Cascade County Commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law; and

WHEREAS, pursuant to MCA § 7-5-2101(2), the Board of Cascade County Commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government; and

WHEREAS, pursuant to MCA § 7-5-2102, the Board of Cascade County Commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary; and

WHEREAS, pursuant to MCA § 13-1-301(1), the county Clerk and Recorder of each county is the Election Administrator unless the governing body of the county designates another official or appoints an Election Administrator; and

WHEREAS, to date, the Board of Cascade County Commissioners has declined to exercise their authority under to MCA § 13-1-301(1) such that the duties of the Election Administrator for Cascade County are performed by Cascade County Clerk and Recorder; and

WHEREAS, pursuant to MCA § 7-4-2203, the Cascade County Clerk and Recorder is an elected office in Cascade County; and

WHEREAS, pursuant to MCA § 7-4-2203, the election administrator is not an elected office in Cascade County; and

WHEREAS, pursuant to MCA § 7-5-2107, the Board of Cascade County Commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties; and

WHEREAS, by declining to previously act pursuant to MCA § 13-1-301(1) to appoint an Election Administrator for Cascade County, the Cascade County Clerk and Recorder served as Cascade County's Election Administrator during the 2022 election cycle, despite being a candidate named on the ballot; and

WHEREAS, despite multiple repeat requests and an abundance of opportunity to do so, Cascade County's Election Administrator refused to voluntarily recuse herself from serving as Cascade County's Election Administrator while seeking re-election as Cascade County's Clerk and Recorder; and

WHEREAS, by failing to recuse herself from serving as Cascade County's Election Administrator during her 2022 bid to be re-elected as Clerk and Recorder, the Board of Cascade County Commissioners received multiple complaints, concerns, and criticisms surrounding the perceived lack of transparency and appearance of impropriety of having the Cascade County Clerk and Recorder in charge of all election operations while also appearing as a candidate on the ballot; and

WHEREAS, unlike the requirements under Montana Code Annotated Title 2, Chapter 3, Parts 1 and 2, and MCA §§ 7-5-2122 and 7-5-2125, which require all meetings of the board of county commissioners to be publicly noticed and conducted and receive public comment and participation, there is no such transparency or public participation requirement for actions taken by an independently elected official, such as the Cascade County Clerk and Recorder; and

WHEREAS, appointing an Election Administrator to serve at the direction of the Board of Cascade County Commissioners will place the Election Administrator's office under the control and direction of the Board of County Commissioners, thereby opening the operations of the election's office to the same statutory transparency required of acts of the Board of County Commissioners under Montana Code Annotated Title 2, Chapter 3, Parts 1 and 2, and MCA §§ 7-5-2122 and 7-5-2125; and

WHEREAS, appointing an Election Administrator to serve at the direction of the Board of Cascade County Commissioners will eliminate the appearance of impropriety as any single Commissioner whose seat appears on the ballot in a given calendar years shall be required to abstain from all decisions concerning the operation and management of the election office during that calendar year until such time as the election for said office is finalized; and

WHEREAS, Cascade County recently purchased two (2) Election Systems & Software (ES&S) election ballot tabulators (models DS850 ad DS950) at a total cost of roughly \$200,000 which are maintained in the election office and subject to sole operational control and oversight of Cascade County's Elections Administrator; and

WHEREAS, Cascade County has received persistent criticism and concerns from certain members of the public who are openly politically aligned to the currently elected Clerk and Recorder that the county's ES&S tabulators are Wi-Fi connected, capable of being manipulated by foreign governments or other nefarious actors, and that the only way to remove such fears is for Cascade County to open the tabulators for public inspection; and

WHEREAS, appointing an Election Administrator to serve at the direction of the Board of Cascade County Commissioners will ensure that the Board of Cascade County Commissioners is able to responsibly secure, and properly maintain and operate the ES&S tabulators at all times, in full compliance with their warranties, and assuage fears from certain members of the public that the tabulators will be tampered with, which would immediately void the tabulators' essential warranties and functionality and render \$200,000 worth of county assets worthless; and

WHEREAS, Cascade County elections has under the current Clerk and Recorder been sued multiple times for irregularities and technical errors in the elections she has thus far conducted; and

WHEREAS, several of these lawsuits remain unresolved in the Montana court system, are being litigated at taxpayer expense, and may ultimately require Cascade County to bear the cost of rerunning one or more elections; and

WHEREAS, the Board of Cascade County Commissioners has a responsibility to ensure that the electoral process in Cascade County assures confidence among all of Cascade County’s electorates and has the responsibility to oversee Cascade County operations, including the Election Office, upholding the confidence of and assurance to voters in Cascade County that elections in Cascade County will be conducted with the utmost professionalism and accuracy.

NOW THEREFORE BE IT HEREBY RESOLVED by the Board of Cascade County Commissioners that effective immediately, pursuant to MCA § 13-1-301(1) the Board of County Commissioners hereby removes all election administration duties from the Office of the Cascade County Clerk and Recorder/Auditor; and

NOW THEREFORE BE IT FURTHER RESOLVED by the Board of Cascade County Commissioners that pursuant to MCA § 13-1-301(1) the Board of County Commissioners shall assume all responsibilities for elections operations in Cascade County and appoint an Election Administrator to hereafter serve at the direction of the Board of County Commissioners.

Passed and adopted this 12th day of December 2023.

BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA

Rae Grulkowski, Chairman

James L. Larson, Commissioner

Joe Briggs, Commissioner

Attest

On this _____day of December 2023, I hereby attest the above-written signatures of the Board of Cascade County Commissioners.

Sandra Merchant, Cascade County Clerk and Recorder

* APPROVED AS TO FORM:
Josh Racki, County Attorney

DEPUTY COUNTY ATTORNEY

* THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.