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Attorney for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

ELLIOT MERJA, RILEY DENNING,
TIMOTHY A. MILLER and
LAURIE L. MILLER,

Plaintiffs,

-vs-

CASCADE COUNTY, FORT SHAW
IRRIGATION DISTRICT,
WEST GREAT FALLS FLOOD and
DRAINAGE CONTROL DISTRICT, and
SANDRA MERCHANT, in her official
capacity as CASCADE COUNTY CLERK
and RECORDER,

Defendants.

Cause No. **ADV-23-0255**
DAVID J. GRUBICH
COMPLAINT

Plaintiffs allege and complain as follows:

1. Defendant Cascade County is a political subdivision of the State of Montana which has an elections office which conducts elections.
2. Defendant Sandra Merchant is the elected Cascade County Clerk and Recorder, and by virtue of that office is the elections administrator for elections in Cascade County.
3. Defendant Fort Shaw Irrigation District is an irrigation district governed by Montana law, the elections for which are subject to the provisions of Montana Code Annotated Title 85,

COMPLAINT

Chapter 7, Part 17, as well as such other statutes applicable to the extent not expressly addressed in Montana Code Annotated Title 85, Chapter 7, Part 17.

4. Defendant West Great Falls Flood and Drainage Control District is a drainage district governed by Montana law, the elections for which are subject to the provisions of Montana Code Annotated Title 85, Chapter 8, Part 3, as well as such other statutes applicable to the extent not expressly addressed in Montana Code Annotated Title 85, Chapter 8, Part 3.

5. On or about May 2, 2023, defendant Cascade County conducted mail elections to elect commissioners of defendants Fort Shaw Irrigation District and defendant West Great Falls Flood and Drainage Control District.

FIRST CLAIM FOR RELIEF
(against Cascade County, Fort Shaw Irrigation
District, and Sandra Merchant)

6. Plaintiffs reallege paragraphs 1 through 5 as if expressly alleged herein.

7. In elections of irrigation districts such as the Fort Shaw Irrigation District, electors must hold title or evidence of title to irrigable lands within certain tracts as specified by § 85-7-1710, M.C.A.

8. Plaintiffs Elliott Merja and Riley Denning are owners of such lands located within the Fort Shaw Irrigation District and were candidates in an election of commissioners held on May 2, 2023.

9. In connection with said election, Defendants violated provisions of Title 13, Montana Code Annotated, in at least the following respects:

- a. Defendants incorrectly instructed electors.
- b. Defendants did not send ballots to all electors allowing all electors to cast

votes for all irrigable land or major fractions of acres owned by said electors as permitted by § 85-7-1710(2), M.C.A.

c. Defendant Fort Shaw Irrigation District violated § 85-7-1710(5)(b) and (c) by refusing to accept valid change documents regarding qualified electors and/or designated agents at least 14 days prior to the election, by failing to notify the election office within 4 days of receiving said change documents, and by failing to provide the necessary information regarding the changes to the election office in order for the election office to administer the proper ballots.

d. Defendants Sandra Merchant and Cascade County violated the provisions of §§ 13-1-404(2) and 13-19-207(1), M.C.A., by mailing ballots to electors on April 20 and 21, 2023.

e. Defendants Sandra Merchant and Cascade County violated the provisions of § 13-19-106 by not providing electors with signature envelopes, secrecy envelopes, and a form that is the same as the form for absentee ballot signature envelopes (prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306).

10. Defendants' violations of Title 13, M.C.A., probably affected the outcome of the election such that pursuant to § 13-35-107(1)(a) the Court should find that the result of the election should be held void and a special election should be held at least 85 days after said finding.

SECOND CLAIM FOR RELIEF
(against Cascade County, West Great Falls
Flood and Drainage Control District, and
Sandra Merchant)

11. Plaintiffs reallege paragraphs 1 through 5 as if expressly alleged herein.

12. In elections of drainage districts such as the West Great Falls Flood and Drainage Control District, electors must hold title or evidence of title to irrigable lands within certain tracts as specified by § 85-8-305, M.C.A.

13. Plaintiffs Timothy A. Miller and Laurie L. Miller are owners of such tracts even though Timothy A. Miller was not sent a ballot for voting in said election and Laurie L. Miller was sent a ballot for a tract of land for which she had not been designated as the elector.

14. In connection with said election, Defendants violated provisions of Title 13, Montana Code Annotated, in at least the following respects:

a. Prior to the election, defendants Cascade County and Sandra Merchant prepared and sent a form entitled "Notice of Designation of Special District Agent" in which it stated in relevant part, "If you are a resident of the district . . . you do not need to complete this form and may vote" Residents who were not owners or designated by owners subsequently received ballots and voted.

b. The West Great Falls Flood and Drainage Control District is a drainage district governed by Title 85, Chapter 8, M.C.A., but the "Notice of Designation of Special District Agent" sent by the Elections Office incorporated the elector requirements of Title 85, Chapter 7, which applies to irrigation districts rather than to drainage districts and as such granted some electors more than one vote each, a result which is provided for in irrigation

district elections but not in drainage district elections.

c. Defendants Cascade County and Sandra Merchant instructed the Millers to designate particular persons to vote despite their being no such requirement in § 85-8-305 applicable to the Millers or other co-owners of lands in the West Great Falls Flood and Drainage Control District.

d. If it was somehow proper to apply § 85-7-1710, M.C.A., rather than § 85-8-305, M.C.A., to this election, Defendants Cascade County and Sandra Merchant sent the wrong ballots to persons who had been designated to vote other parcels, and in other instances no ballots for particular parcels to persons who had been designated to vote by the owner(s) of said parcels; and also sent ballots to and counted ballots of persons who had no title or evidence of title to any land within the West Great Falls Flood and Drainage Control District.

15. Defendants' violations of Title 13, M.C.A., probably affected the outcome of the election such that pursuant to § 13-35-107(1)(a) the Court should find that the result of the election should be held void and a special election should be held at least 85 days after said finding.

WHEREFORE, plaintiffs request judgment as follows:

1. Orders declaring both of the May 2, 2023, elections void and directing that special elections of both districts be conducted at least 85 days after the finding.
2. For plaintiffs' costs and disbursements incurred herein.
3. For such other and further relief as is just and proper.

DATED this 26th day of May, 2023.

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