

1 Ed McLean, District Judge
2 Department No. 1
3 Fourth Judicial District
4 Missoula County Courthouse
5 Missoula, Montana 59802
6 Telephone: (406) 258-4771

FILED MAR 08 2012

SHIRLEY E. FAUST, CLERK
By *Laura M. Driscoll*
Deputy

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 PATTY LOVAAS,) Dept. 1
9 Plaintiff,) Cause No. DV-11-1139
10 -vs-) OPINION AND ORDER
11 COUNTY OF MISSOULA, Acting by and)
12 through Jean Curtiss, Bill Carey, and Michelle)
13 Landquist as their official capacity as)
14 Commissioners, Vickie Zeier in her official)
15 Capacity as Clerk and Recorder, and STATE)
16 OF MONTANA, Acting by and through Linda)
17 McCullough in her official capacity as)
Defendants.)

18 Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief

19 asks the Court to "prevent the defendants from implementing the property tax
20 increases as a result of the county wide mail-in election which were certified
21 as to the accuracy of the results in the May 3, 2011 County mail-in election."
22 The May 3, 2011 election was a local school levy election conducted by a
23 local election administrator that is responsible for the administration of local
24 elections and certified by the local school trustees.
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1 The Court having received Plaintiff's Proposed Order to Open Ballots for
2 Inspection and Recount (Ct.Doc.28), the Court will treat the proposed order
3 as if filed as a motion. The primary focus of the Plaintiff's proposed order is a
4 request that this Court order opening of "processed and accepted ballots and
5 undeliverable ballots" for her and her group of volunteers to personally
6 inspect. The Plaintiff's proposed order is based on Plaintiff's Request for
7 Production No. 7 which states:
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9 Please arrange a convenient time and place for all voter envelopes,
10 processed and accepted ballots and undeliverable ballots to be
11 reviewed by Plaintiff. The estimated time to complete the review is 3
12 days.

13 The County responded with: "Missoula County objects to this request
14 as the documents are sealed." Plaintiff replied that MCA §13-1-109 states:

15 Election records open to public. Unless specifically provided otherwise,
16 all records pertaining to elector registration and elections are public
17 records.

18 However, MCA § 13-1-303 provides an exception to § 13-1-109, by
19 stating in relevant part that:

20 The voted ballots, detached stubs, unvoted ballots, and unused ballots
21 from an election must be kept in the unopened packages received from
22 the elections judges for a period of 12 months. The packages may be
23 opened only when an order for opening is given by the proper official
24 either for a recount procedure or to process provisional ballots.

25 This statute clearly provides very limited circumstances under which the
26 stubs and ballots may be unsealed, i.e. "for a recount procedure or to process

1 provisional ballots." Provisional ballots are not at issue. Moreover, there is
2 no provision in the law to open sealed ballots for public inspection, and
3 allowing the Plaintiff and her group of volunteers to open and inspect the
4 sealed ballots is not going to happen under any foreseeable circumstances.

5 If on the other hand, Plaintiff wants a recount by the proper officials, she
6 will need to comply with all of the procedures required under Title 13 for
7 seeking a recount procedure by the proper officials under §§ 13-16-301, et
8 seq.,
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10 MCA § 13-16-310(b) provides that an elector may apply for an order
11 directing the county recount board to make a recount. The application must
12 be filed "within 5 days after the canvass of election records." The Court was
13 not provided with the date of the canvass of election records but assumes
14 that since the election at issue was held on May 3, 2011, more than 5 days
15 have passed since the canvass. If the Plaintiff wants the county recount
16 board to do a recount of the votes, she would be required to prove to this
17 Court that there is probable cause to conduct a recount pursuant to § 13-16-
18 307, and Plaintiff will need to pay for the recount by depositing funds with the
19 county recount board in the amount of the probable expense of making a
20 recount.
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25 This Order does not address the appropriateness of the filing of a
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1 petition seeking a recount more than 5 days after the election, Nor does the
2 Court address whether a recount procedure is warranted. Plaintiff will first
3 have to prove to this Court there is probable cause to order the county
4 recount board to conduct a recount based on the Plaintiff's allegations there
5 are verifiable "known discrepancies in the voter data base and that this
6 controversy can only be justly adjudicated by inspection of the ballots, and
7 elector registrations, the undeliverable ballots and the voter envelopes."
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9 As to Plaintiff's discovery motion to be allowed to personally inspect
10 voter envelopes under the public records statute cited above, Missoula
11 County objects to the Plaintiff's request because the request is vague. The
12 Court agrees with the County. If the Plaintiff is able to specify the envelopes
13 requested, such request should be made to Missoula County in an amended
14 request for production.
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17 Therefore, for the above reasons, IT IS HEREBY ORDERED that the
18 Plaintiff's "Proposed Order" is DENIED.
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20 SO ORDERED and DATED this 8th day of March, 2012.

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23 ED MCZEAN, District Judge

24 cc: Dorothy Brownlow, Missoula Deputy County Attorney
25 Patty Lovaas, pro se
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