

1 John W. Larson, District Judge
2 Fourth Judicial District, Dept. 3
3 Missoula County Courthouse
4 200 West Broadway
5 Missoula, MT 59802

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 JOHN R. LOTT, JR., Ph.D,

9 Plaintiff,

10 MISSOULA COUNTY ELECTIONS
11 OFFICE, and BRADLEY SEAMAN
12 in his official capacity,

13 Defendants.

Dept. 3
Cause No. DV-22-729

**OPINION AND ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

14 Before the Court is Defendants' Motion for Summary Judgment. The
15 Honorable Ed McLean conducted a mediation on August 4, 2023. After
16 completion of mediation, the only issue that remains is whether Missoula
17 County retains and manages database records in compliance with state and
18 federal law. The parties have waived hearing, and the matter is ready for
19 decision.
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22 **BACKGROUND**

23 The Court finds the facts as the following. On June 27, 2022, Plaintiff
24 was one of the parties that filed this suit seeking declaratory judgment and
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1 injunctive relief. The suit was filed regarding claims surrounding the 2020
2 presidential election. The Complaint was initially brought by the Missoula
3 County Election Integrity Project (“MCEIP”) and Dr. Lott. Plaintiff MCEIP
4 requested to be released from the suit prior to answering discovery, and Dr.
5 Lott remains the sole Plaintiff. Plaintiff claimed that Defendants are in violation
6 of the Civil Rights Act of 1960. Among other claims previously asserted,
7 Plaintiff sought injunctive relief holding that the County is obligated to preserve
8 what the County terms “snapshots” of changes to the voter database, which is
9 under the control of and operated by the State of Montana Secretary of State’s
10 office, and faulting the County for failing to do so in the past. See generally,
11 Complaint for Declaratory and Injunctive Relief, 15-16 (June 27, 2022).

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15 Mediation was held on August 4, 2023, and the issues of whether video
16 surveillance of the Missoula County elections offices constitute election
17 records and whether Missoula County wrongfully denied grant application
18 documents to Plaintiff were resolved. The remaining issue is whether
19 Missoula County retains and manages database records in compliance with
20 state and federal law. See Sept. 7, 2023, Mediation Report.

21 22 23 **Standard**

24 Summary judgment is proper when the record shows no genuine issue
25 of material fact and the moving party is entitled to judgment as a matter of
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1 law. Mont. R. Civ. P. 56(c)(3). “The evidence must be viewed in the light
2 most favorable to the nonmoving party, and all reasonable inferences are to
3 be drawn in favor of the party opposing summary judgment.” *Thornton v.*
4 *Flathead County*, 2009 MT 367, ¶ 13, 353 Mont. 252, 220 P.3d 395.

5 **Discussion**

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7 Defendant Missoula County argues it has complied with right to know
8 obligations and followed record retention guidelines as a matter of law. See
9 Mont. Code Ann. § 2-6-1001 *et seq.* Defendant County argues that relevant to
10 this suit, “[l]ocal governments shall manage public records according to the
11 provisions of Title 2, chapter 6, part 12, and the rules and guidelines
12 established by the secretary of state, the local government records committee,
13 and the Montana historical society.” *Id.* at § 2-6-1012(1)(c). The County
14 further argues that these legislative requirements are supplemented by public
15 retention schedules designed to ensure reasonable access to public records
16 and minimum thresholds for retention. Defendants assert Dr. Lott’s injunctive
17 request for historical voter database data is not properly directed at Missoula
18 County.
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23 Plaintiff Lott responds that Missoula County’s voter registration records
24 violate Montana’s records retention law and Federal preservation obligations.
25 Plaintiff contends that Montana election administrators have an independent
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1 obligation to retain election records severable from the obligation of the
2 Secretary of State. See Mont. Code Ann. § 13-1-301. The Secretary of State
3 has an independent duty to maintain accurate election records, and election
4 administrators have an additional duty to provide election-related data. Mont.
5 Code Ann. § 13-1-204. Plaintiff contends that Defendants cannot be relieved
6 of their statutory obligation to maintain for open inspection of those records,
7 regardless of other submission requirements to the Secretary of State.
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9 Plaintiff asserts Defendants concede that they are unable to provide voter lists,
10 ballots, or stubs as they existed in November 2020 because these pieces of
11 election data are maintained in a database that is “live,” and these records are
12 continually destroyed upon a new incidental update such as an addition,
13 deletion, or substitution of some relevant voter data. Plaintiff contends that
14 due to the “live” nature of Defendants’ record retention system, each new
15 update overwrites the previous record, causing the original to be permanently
16 lost. Plaintiff argues that Defendants’ ongoing destruction of these records
17 violates federal law. Plaintiff asserts that with respect to ballots and stubs,
18 LGRC Schedule 3 requires minimum retention of twenty-two (22) months.
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20 Regarding voter lists maintained by registration data, LGRC Schedule 3
21 requires data to be maintained for up to as long as five years. Plaintiff asserts
22 that Montana election administrators have an independent obligation to retain
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1 election records that is severable from the obligation of the Secretary of State.
2 Plaintiff contends that the Court should find that Defendants' obligation remain
3 after the election records are transferred to the Secretary of State. Plaintiff
4 also argues that Montana law requires that the Secretary of State is
5 responsible to keep all county records relating to elector registration and
6 elections, and implementation of other provision of applicable federal law
7 governing elections. Mont. Code Ann. § 13-1-301. Plaintiff argues that the
8 fact that the Secretary is ultimately responsible for keeping county records,
9 and for implementing federal law does not absolve the County of the
10 responsibility under federal law to manage its data. Plaintiff argues that
11 Defendants' failure to join the Secretary should not be held against Plaintiff.
12 Rule 19(1)(A), M.R.Civ.P.

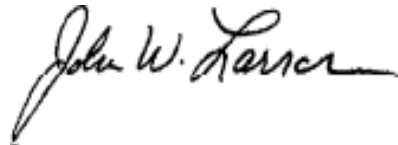
16 In reply briefing, Defendant County agrees is does not dispute the
17 history of the Civil Rights Act, except as its argued application by Plaintiff Lott
18 to the particulars of the Complaint's allegations. The County contends that it
19 follows the retention and provision guidance of the Secretary of State for
20 election records. The County also asserts it provides any public information
21 within its control to the public on request. The County contends that the
22 Secretary of State and the legislature are responsible for choices as to
23 statewide database and any controls imposed.
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1 Here, Plaintiff largely agrees to the material facts. The parties conceded
2 to submit the motion on the briefs. The Court has determined that Defendant
3 County's guidelines are provided by the Secretary of State as to election
4 records. The Secretary of State is primarily responsible for elections in
5 Montana as well as any interpretation of election regulations. Mont. Code
6 Ann. § 13-1-202. "The secretary of state is the chief election officer of this
7 state, and it is the secretary of state's responsibility to obtain and maintain
8 uniformity in the application, operation, and interpretation of the election laws
9 other than those in Title 13, chapter 35, 36, or 37." *Id.* at § 13-1-201. There is
10 no genuine issue of material fact that Missoula County does not own the voter
11 database which was in place in 2020 or 2022 (Facts, ¶ 28). The Secretary of
12 State provides Missoula County with controlled access to this database
13 (Facts, ¶¶ 31-32). Missoula County is obligated to input data into this
14 database in order to update voter registrations (Facts, ¶ 33). There also is no
15 genuine issue of material fact that the County does not have access to the
16 information that Plaintiff seeks, nor a mechanism for how the information can
17 be provided. Missoula County retains and holds records of the election, such
18 as voted and unvoted ballots, stubs, and unused ballots for the required
19 extended duration in a federal election year. Exh. B to Def Motion, Declaration
20 of Seaman.
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1 Evidence in the record shows that Montana’s election law structure is
2 controlled by the Secretary of State, and any relief requested from the Court is
3 more appropriately directed to the Legislature. Plaintiff has not produced
4 evidence that Missoula County or its employees misused its limited access to
5 this database or operated those controls in an abuse of voter databases in
6 2020 or 2022. As there is no genuine issue of material fact as to the
7 remaining issue in this case, injunctive relief that the County is obligated to
8 preserve “snapshot” of changes in voter database, Defendants are entitled to
9 summary judgment as a matter of law. Accordingly,
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13 IT IS HEREBY ORDERED that the Defendants’ Motion for Summary
14 Judgment is GRANTED.

15 Dated this 17th day of October, 2023.

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20 JOHN W. LARSON, DISTRICT JUDGE
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