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*Pro hac vice pending*

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**MONTANA FOURTH JUDICIAL DISTRICT COURT,  
MISSOULA COUNTY**

JOHN R. LOTT JR., Ph.D., and  
MISSOULA COUNTY ELECTION  
INTEGRITY PROJECT

Plaintiffs,

v.

MISSOULA COUNTY ELECTIONS  
OFFICE,  
and BRADLEY SEAMAN  
IN HIS OFFICIAL CAPACITY,

Defendants.

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\* Cause No.: \_\_\_\_\_  
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\* **COMPLAINT FOR**  
\* **DECLARATORY AND**  
\* **INJUNCTIVE RELIEF**

## INTRODUCTION

COMES NOW, PLAINTIFFS, by and through undersigned counsel, and files this Complaint for Declaratory and Injunctive relief.

1. This constitutional and statutory challenge seeks to enjoin Defendants from their systematic practice of destroying video, data, and documentary election records. It is, therefore, a request for prospective relief.

2. Upon information and belief, the Missoula Elections Office installed video recording device(s) (hereinafter referred to as the “vote count video”) for the 2020 election cycle in the vote count room to ensure election transparency and public trust in the elections process.

3. Video camera installation was pursuant to the Missoula County Policy Book. The link to the book is on the county website, with the following URL: <https://www.missoulacounty.us/home/showdocument?id=26889>.

4. The Missoula County Policy Book requires videos like the vote count video to be stored on hardware in a secure area of Missoula County and to be retained for no more than 60 days unless there is an ongoing investigation or litigation.

5. The vote count video is a public record for which the public has a right to inspect pursuant to Mont. Code Ann. §§ 2-6-1006 and 7-4-2611.

Destruction of elections-related records is a violation of federal law under 52 U.S.C. § 20701.

6. In October 2020, in advance of the 2020 election cycle, the Integrity Project notified the Missoula Elections Office that it intended to use the vote count video as part of an investigation into election integrity, putting the Elections Office on notice that the vote count video should be retained after the 2020 election.

7. Upon information and belief, the vote count video was operable during the 2020 election cycle, successfully live broadcasted vote counting and then archived pursuant to record retention policies.

8. On December 22, 2020, the Election Integrity Project again requested to view the vote count video.

9. On or about January 7, 2021, the Elections Office confirmed that while the vote count video had been properly broadcasted and properly archived, it had since been "purged."

10. Defendants failed to preserve the vote count video. Rather, Defendants destroyed it, afterwards informing Plaintiffs that the vote count video had been purged.

11. More recently, on or about May 22, 2022, the Elections Office informed Plaintiffs that it has a practice of destroying voter roll records, saving over them, rather than preserving them pursuant to Montana and federal statutes.

12. In addition to the above illegal destruction of video and data, Defendants have a regular practice of destroying grant application documents to

private entities.

13. Failure to preserve elections records is unconstitutional and contrary to Montana and Federal statutes. Because the Defendants are destroying video recorded elections evidence, the Court should enjoin them from continuing to do the same and order the preservation of all future election documents and recordings.

### **JURISDICTION AND VENUE**

14. Plaintiffs seek declaratory and injunctive relief against the Missoula Elections Office from destroying public elections records for future elections, which violates Plaintiffs' statutory and constitutional rights as set forth herein.

15. Plaintiffs bring this lawsuit under Article II, §§ 4 (equal protection, et al.) and 17 (due process) of the Montana Constitution and the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-201, *et. seq.*

16. Plaintiffs also have a declaratory judgment cause of action for violation of their constitutional rights under Article II, § 9 of the Montana Constitution, as declaratory relief.

17. This court has jurisdiction and venue lies in this Court. See Mont.Code Ann. §§ 3-5-302(1)(c), (5); 25-2-126(3); See also, §§ 27-8-313, and 2-6-1009.

## **PARTIES**

18. Dr. John R. Lott, Ph. D. is a registered voter and resident of Missoula, Montana, and member of the Missoula County Election Integrity Project (Integrity Project). He voted in the November 2020 election. He has worked closely with the Missoula County Election Integrity Project since 2020. He has studied voting issues, serving as a statistical expert for USA Today after the 2000 general election, writing the US Civil Rights Commission minority statistical report on the 2000 election, serving as the statistical expert for the McCain-Feingold campaign finance case that went to the US Supreme Court, as a statistical expert in multiple court cases, and has published a couple dozen peer-reviewed journal papers on voting by both voters and politicians. Lott has held research or teaching positions at various academic institutions including the University of Chicago, Yale University, the Wharton School of the University of Pennsylvania, Stanford University, UCLA, and Rice University.

19. The Integrity Project is a non-partisan, all-volunteer organization created for election-related issues local to Missoula, Montana. It is not affiliated with any political party. Its members are united around a common purpose, which is to promote matters relating to election integrity, transparency, and the rule of law.

20. The Missoula County Elections Office (Elections Office) is the

agency responsible for administering elections in Missoula County, located at 140 N. Russell Street, Missoula, Montana, 59801. It is the agency or entity responsible for record keeping of elections data, public records, and maintaining accurate election-related records for public inspection.

21. The Elections Office describes its duties on the Missoula County Website, with a link entitled, “How Missoula County Ensures Election Integrity,” which can be viewed here: <https://www.missoulacounty.us/government/administration/elections-office/how-missoula-county-ensures-election-integrity>.

22. Bradley Seaman is the Missoula County Elections Administrator for the Missoula County Elections Office. He held this office when the vote count video, voter rolls, and grant applications to private entities were destroyed or otherwise not provided for inspection to The Integrity Project.

## **FACTS**

### **The Missoula County Election Office Destroyed Election-Related or Lawfully Installed Video Recordings**

23. Per the local Missoula County Policy Book, the Elections Office uses a video camera that is affixed in the vote count room, also known as the Counting Center, which is used to broadcast vote counts and then archived pursuant to local retention schedules and relevant statutes.

24. The Elections Office is solely responsible for the upkeep and

maintenance of the video recording.

25. The Elections Office has acknowledged the existence of the requested video records in multiple written communications with The Integrity Project both before and after the 2020 election cycle.

26. The Elections Office admitted to destroying or the despoilment of the video recording.

27. According to an email communication from Defendant Bradley Seaman on January 7, 2021, the video recording has been “purged.”

28. According to the same email communication, the latest videos retained were from December 20, 2020, as of January 7, 2021.

29. Ultimately, Mr. Seaman, speaking about the existence of the video, stated on January 12, 2021, “We were not able to recover footage of the livestream from the Counting Center.”

30. In this case, the County appears to have saved or “archived” the video from the “Counting Center,” but then had destroyed it by January 12, 2021.

31. The Integrity Project followed up with the Elections Office to review the vote count video after the 2020 election cycle because of a vote discrepancy between the number of absentee ballot envelopes and the corresponding number of ballots counted. The Integrity Project found 4,592 more ballots than were counted than the requisite number of envelopes.

32. In addition, the Integrity Project discovered at least 482 envelopes that were incomplete.

33. In totality, the Integrity Project discovered that possibly as high as 7 percent or 5,074 ballots were counted illegally or otherwise were counted contrary to the legal requirements.

34. Given the vast gap between absentee ballot envelopes and the enclosed ballots the Integrity Project sought to exercise its constitutional rights under the Montana Constitution to examine the video recording that could have shown why the vote totals did not match the number of possible ballots.

35. The Integrity Project had still more reason to examine the video recording. The Elections Office produced records, upon information and belief, that it printed 12,833 excess ballots, in addition to the purchase of a machine that can print ballots.

36. Invoices from Allegra Printing finds that 100,999 ballots were ordered. As of sometime in December 2020, Missoula County reported 79,127 active voters, and had 90,747 total active, inactive, and provisional voters.

37. When the Integrity Project reviewed three districts, it observed that the Elections Office ordered 631 ballots for only 114 voters, 568 ballots for 407 voters, and 2,480 ballots for 1,983 voters, in each respective district or precinct.

38. As facially irrational as this is, upon information and belief, the

Elections Office only ordered additional ballots in 3 precincts, with 65 precincts having no additional ballots printed, with 2 having no ballots printed.

39. The Integrity Project hoped that the vote count video would have shed light on the discrepancies in Missoula County, resolving concerns about election integrity in Missoula County for the 2020 election cycle.

**The Elections Office Destroyed or Failed to Retain Grant Applications to the Center for Tech and Civic Life For Which the Video Recording Is Essential**

40. On October 6, 2020, or shortly thereafter, but otherwise less than one month before the general election on November 3, 2020, the Elections Office received approximately \$312,818.00 from a private organization called the Center for Tech and Civic Life (CTCL).

41. The Elections Office, upon information and belief, has produced documents indicating that it was using CTCL private funding, rather than ordinary tax revenue, to pay salaries and benefits until at least June 29, 2021.

42. The Integrity Project requested the grant applications to CTCL to be produced in a letter dated June 8, 2021.

43. The Elections Office, upon information and belief, has destroyed or cannot produce the grant request documents related to this private funding that came less than a month before election day.

44. Mark Zuckerberg, CEO of Facebook (a/k/a Meta), has publicly

admitted to donating more than \$419 million to CTCL.

45. The coordinated actions between the CTCL and local elections officials have been deemed illegal or legally suspicious in some form by other states that have investigated their activity, upon information and belief. For example, the Office of Special Counsel in Wisconsin investigated CTCL's conduct during the 2020 election cycle and issued a Report. Chapter 1 of the 136-page Report is entitled, "*The Center for Tech and Civic Life's \$8,800,000 Zuckerberg Plan Grant with the Cities of Milwaukee, Madison, Racine, Kenosha and Green Bay (the Zuckerberg 5) Facially Violates Wisconsin Law Prohibiting Election Bribery.*" <https://legis.wisconsin.gov/assembly/22/brandtjen/media/1552/osc-second-interim-report.pdf>

46. The Integrity Project sought to examine the video recording which could have helped determine what role CTCL may have had within the Elections Office.

47. The destruction or failure to retain the relevant grant applications is a further impermissible practice of destruction of election-related documents.

48. Plaintiffs are injured because Plaintiff Lott, a Missoula County voter and Integrity Project member, has a right to see election records, which are public records.

## **Defendants Are Routinely Destroying Voter Rolls or General Election Data**

49. In May of 2022, Defendants informed the Plaintiffs that they are not retaining voter registration information from November 3, 2020.

50. Rather than retaining the data, the Elections Office is saving over it with new data.

51. This pattern or practice prevents the lawful inspection of the elections data that Plaintiffs have the right to inspect.

### **LEGAL CLAIMS**

#### **First Claim for Relief**

**(Montana Constitution art. II, § 9; Montana Code Annotated § 13-1-109—  
Right to Examine Public Records)**

52. Plaintiffs reassert the above paragraphs as if fully set forth herein.

53. Montana Const. rt. II, § 9 provides, in pertinent part: “No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.”

54. The above Constitutional provision provides what is commonly understood at law to be a right to know, serving the public interest, where those who hold the public’s trust, must afford transparency to the public regarding public

documents, including video recordings serving the same purpose.

55. No individual privacy right is involved in this case as it involves public video recordings installed pursuant to law and video recordings which were broadcast to the public.

56. Upon information and belief, no provision exists permitting the destruction of election records in the manner conducted by defendants.

57. In addition, “all records pertaining to . . . elections are public records. They shall be open for inspection during regular office hours.” Mont. Code Ann. § 13-1-109.

58. Pursuant to both the Montana Constitution, and Montana statutory law Plaintiffs requested to examine the vote count video both before and after the 2020 election cycle.

59. Under the current legal framework, Defendants should maintain operable recording devices, retain the video from the same, and provide it to Plaintiffs for reasonable inspection.

60. The voter rolls or voter data in existence on November 3, 2020, the date of the previous general election, should be preserved.

61. The grant applications to private entities for election related funding in existence on November 3, 2020, should be preserved.

62. The Plaintiffs have the right to inspect this information.

63. The destruction of the above-described public elections-related records is a breach of the public trust and codified rules ensuring transparency and election integrity.

### **Second Claim for Relief**

**(Montana Code Annotated § 13-1-204; 52 United States Code § 20701, *et seq.*; 52 United States Code § 20510—Elections Records Retention)**

64. Plaintiffs reassert the above paragraphs as if fully set forth herein.

65. Plaintiffs are requesting prospective relief to enjoin the Defendants from taking down the cameras within the Elections Office, to ensure that those cameras remain operable, and to not destroy the video recordings created therewith.

66. Plaintiffs are requesting prospective relief to enjoin the Defendants from destroying or failing to retain all grant applications to private or non-governmental organizations, such as CTCL.

67. Plaintiffs are requesting prospective relief to enjoin the Defendants from its practice of destroying or the despoilment of voter roll data. Defendants have a duty to retain or not save-over voter roll data from each general election.

68. Montana has broad elections record-keeping statutes which require the retention of elections records and provides for public inspection. Mont. Code Ann. § 13-1-204 states, in pertinent part, that the “records . . . must be open for public inspection during normal office hours.” Mont. Code Ann. § 13-1-303(2) requires

election administrators to prepare retention and destruction retention schedules in accordance with the Local Government Records Committee. Plaintiffs have been denied public records, as requested, in violation of Mont. Code Ann. § 2-6-1009.

69. In addition, Elections Officers, including Defendants, are to retain records relating to Elections. See 52 U.S.C. § 20701: “Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election . . .”

70. In addition, under 52 U.S.C. § 20510 “the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.”

71. Because the overall purpose of Montana election law is to perform and secure trustworthy elections and the resulting data derived from the same, voter roll information from general elections should be retained and not saved-over after elections are completed for at least 22 months, if not longer.

72. Similarly, grant applications to private entities should not be

destroyed after elections are completed for at least 22 months after the election cycle, if not longer.

73. Finally, vote count videos which are broadcast to the public and then archived should not be purged until at least 22 months after the election cycle, if not longer.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a declaratory judgment that Defendants' destruction or despoilment of the video recording violated the Montana Constitution, under Mont. Const. art. II § 9;
2. For a declaratory judgment that Defendants' destruction or despoilment of the video recording violated Montana statutory law, under both Mont. Code Ann. § 13-1-109 and § 13-1-204;
3. For a declaratory judgment that Defendants' destruction or despoilment of the video recording violated federal election law, under 52 U.S.C. §20701;
4. For an injunction for prospective relief enjoining Defendants from the future destruction or despoilment of such public records under Defendants' future control, and compliance with Montana's constitutionally and statutorily required preservation of public records

laws;

5. For an injunction mandating that Defendants produce Plaintiffs' requested grant application and administration documents relating to CTCL for all of 2020 through the present or, in the alternative, Defendants' sworn certification that it does not possess such documents and an explanation for the occurrence of same;
6. For an injunction mandating that Defendants preserve any and all correspondence with CTCL or groups with whom Defendants apply or interact with to obtain funds or election-related assistance;
7. For an injunction mandating that voter roll data will be retained for at least 22 months after the general election, even after subsequent updates to voter rolls;
8. For an injunction mandating that election-related information, such as voter roll data, will be preserved for inspection by Plaintiffs;
9. For an injunction mandating that election-related information and the documents referenced herein will be available for production under the Montana open records or public trust constitutional and statutory regime;
10. For an award of attorneys' fees, court costs, and all other legal and equitable relief to which Plaintiffs may be entitled;

11. And such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs hereby demand trial by jury on all counts so triable.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of June, 2022.

By: /s/\_Abby J. Moscatel  
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## **CERTIFICATE OF SERVICE**

I, Abby J. Moscatel, hereby certify that I have served true and accurate copies of the foregoing Complaint and Jury Demand to the following via Montana's e filing service on June 27, 2022 upon permission granted by the Missoula County Attorney's Office on June 27, 2022 at approximately 8:30 a.m.

Brian West (Attorney)  
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Electronically signed by Abby J. Moscatel  
Dated June 27, 2022