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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR COOS COUNTY

PAMELA ELAINE LEWIS, and DIANE)	Case No. 22CV24082
ELAINE RICH,)	
)	
Plaintiffs,)	SECOND AMENDED COMPLAINT
)	(Election Contest; Declaratory Judgment;
v.)	Injunction; ORS 254.482; Appeal of County
)	Clerk; 42 USC § 1983)
COOS COUNTY, an Oregon municipal)	
corporation, MELISSA CRIBBINS, JOHN)	
SWEET, and DIRIS D. MURPHY,)	CLAIM NOT SUBJECT TO MANDATORY
)	ARBITRATION
Defendants.)	
)	
)	ATTORNEYS FEES REQUESTED

Plaintiffs allege:

General Allegations:

1.

Plaintiff Pamela Elaine Lewis, "Plaintiff Lewis" hereafter, is a resident of Coos County Oregon, a citizen of the United States of America, is a registered voter in the State of Oregon and was a candidate for Coos County public office in the May 2022 primary election. Plaintiff Lewis has associated herself with the Oregon Republican Party and registered as a member of that party.

2.

Plaintiff Diane Elaine Rich, "Plaintiff Rich" hereafter is a resident of Coos County Oregon, a citizen of the United States of America, is a registered voter in the State of Oregon and

1 was a candidate for the Coos County public office of Clerk in the May 2022 primary election.
2 Plaintiff Rich has associated herself with the Oregon Republican Party and registered as a
3 member of that party.

4 3.

5 Defendant Coos County is a municipal corporation in the State of Oregon and has all of
6 the statutory duties and constitutional obligations of a county in Oregon. At all relevant times all
7 relevant actions took place in Coos County.

8 4.

9 At all relevant times Defendant John Sweet was a Coos County Commissioner who was
10 also a candidate for office in the May 2022 primary election.

11 5.

12 At all relevant times Defendant Melissa Cribbins was a Coos County Commissioner who
13 was also a candidate for office in the May 2022 primary election.

14 6.

15 Prior to Monday, December 13th, Coos County Commissioners privately recruited and
16 then outside of a public meeting decided to appoint a highly partisan individual, who was chair
17 of the Democrat Party, Defendant Murphy to oversee their own election, even asking Mrs.
18 Murphy to resign from her position as Democrat Party Chair for the Coos County Chapter so that
19 she might qualify for the Interim County Clerk position. Sometime prior to January 3rd, 2022
20 and outside of a public meeting, a majority of the Coos County commissioners, Defendants
21 Sweet and Cribbins decided to recruit and appoint Diris D. Murphy as Interim County Clerk.
22 Diris D. Murphy was a known political ally and supporter of those two commissioners who were
23 up for re-election in 2022.

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7.

On March 5th, in Charleston, Oregon – Defendant Murphy stated on video that “they” asked her to run; “they” referring to the Commissioners and/or former County Clerk Debbie Heller. The officials, who are obligated to follow public meetings laws, intentionally and knowingly asked Defendant Murphy to apply for the position of Interim County Clerk so that they could appoint her. Defendant Murphy’s companion who attended the Listening Session with Mrs. Murphy confirmed on video that they asked Defendant Murphy to apply for the position. Further the Commissioners asked and convinced Diris D. Murphy to run for the position. Mrs. Murphy did not apply for the position the first time it was advertised, so at the Commissioners request, the timeline to apply for Interim Clerk was extended, and the position was held open and republished, to allow for Diris D. Murphy’s application for the position to be submitted.

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8.

The decision to appoint and hire Defendant Murphy was a violation of Oregon Public Meetings laws and began the process of election law violations for the May 2022 primary election. Defendant Murphy was in fact appointed and began serving as Interim Coos County Clerk. That decision was null and should have been voided at that time however the sixty day window to file public meetings laws violation passed by. The violation of public meetings laws in appointing an elections clerk, still constitutes on of the many illegal acts that took place relating to the canvassing of the votes in the May 2022 Coos County primary election.

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23

9.

On March 15, 2022 Plaintiff Pam Lewis was approved by Defendant Murphy as an authorized observer pursuant to ORS 254.482 to watch the receiving and counting of votes. Defendants, including Defendant Murphy did not publicly announce all of the times and dates

1 that they would be receiving and counting ballots. As of April 12, 2022 Defendants announced
2 that they would only allow observers to watch the receiving and counting of votes on May 17,
3 2022. Defendant Murphy announced that she would begin receiving and counting votes on
4 either the 2nd or 5th of May, 2022 an not allow observers. During the May, 2022 primary election
5 Defendant Murphy did receive and count ballots without giving notice to, or allowing the
6 approved observers to watch the receiving and counting of ballots.

7 10.

8 Plaintiffs associated themselves with other individuals, who were also electors,
9 supporters, or members of their political party to take turn observing all of the receiving and
10 counting of ballots in the May, 2022 Coos County primary election. Plaintiffs and their
11 associated observers were denied the opportunity to observe. Plaintiffs and their associated
12 observers were denied the opportunity to challenge ballots as observers are allowed to do under
13 Oregon law.

14 11.

15 During the entire May, 2022 primary election Defendants denied persons, and denied
16 authorized observers to observe the signature verification process and challenge ballots pursuant
17 to ORS 254.415 and ORS 254.431. This violation of Plaintiffs rights is a violation of state law
18 and Plaintiffs due process of law rights under the Oregon and United States Constitutions.
19 During the May, 2022 primary election, including but not limited to from May 2, to at least May
20 24th and continuing after that date until certification observers were denied access to the Coos
21 County elections office at various times while the receiving of ballots, vote counting and
22 processing was taking place. This includes the following practices alleged herein. Observers
23 were denied access to the vote counting room. Observers were denied sufficient proximity to

1 even see the computer screens for signature verification, and the ballot counting tables for
2 tabulation and challenges. Plaintiffs had the right to have observers there to watch, and
3 challenge ballots when and where appropriate. Defendants acts of excluding observers violates
4 State laws, rules and elections manuals on processing ballots, and was done with restraint and
5 threats of restraints that directly and indirectly unduly influenced persons desiring to be
6 observers from challenging and being able to challenge persons who offered to vote. Observers
7 were threatened by Defendant Murphy and her county elections staff, including by threat of
8 arrest and removal, so those observers could not observe, gather evidence of legal violations, or
9 assert their rights. Observers were told false information about when ballot receiving would take
10 place, when signature verification would be taking place, and when vote counting would be
11 taking place. Observers were physically locked out of the elections office during times ballots
12 were being received and counted. Observers were not allowed to observe during the public
13 certifications required by ORS 254.485. All actions and failures of Defendants alleged herein
14 were committed in the defendant roles as the County Commissioners on behalf of the County or
15 as the County's head elections official the County Clerk. Defendants did not repeat the public
16 certification test prior to processing ballots, or after each lapse of time between certification and
17 counting as required by law, or at least did not do so in the presence of observers. Denesa Rains
18 witnessed election workers sorting ballots without any observers there, even though Denesa had
19 signed up over 67 persons to be observers so at least one observer would be available to be there
20 at all times there was receiving and counting taking place. Defendant Murphy crossed out
21 observer time slots on the sign-up sheet so that observers could not be slotted into those time
22 slots to observe, but then proceeded to allow her peer another former Democrat party chairperson
23 to be in the verification election worker room. One event on election day took place

1 immediately after Defendant Murphy had stated that the janitor was going to lock everyone out
2 at 9:00, even though they planned to keep processing ballots after 9:00. Another individual
3 Ladonna Jenkins showed up to work as an observer and was threatened with arrest for recording
4 the denial of access to observers.

5 12.

6 On April 29, 2022 and again during the process of inserting ballots into the vote tally
7 machines, Defendants caused or allowed the intentional incorrect operation of the ClearBallot
8 scanners by inserting unfolded papers into the scanner, to obtain an artificially high accuracy
9 rating -while knowing that during ballot processing only folded ballots would be used, and as
10 explained in the operators manual that is contradictory to the manufacturers recommendations.
11 This was known to give, and intended to give artificially high and erroneous accuracy ratings, as
12 compared to when correct operation of the machines produces a different result and produces
13 ballots that have to be “corrected” and duplicated, which is done out of the sight of observers.
14 Defendant Murphy and Defendant Coos County intentionally prevented or attempted to prevent
15 the correct operation of the voting machines and vote tally system which is a violation of ORS
16 260.645. Defendants intentionally caused information identifying Coos County voter’s party
17 affiliation to be printed on the outside of the voter envelop which unlawfully and discriminatorily
18 enables disparate treatment of ballots of the Clerk’s same party affiliation, and more stringent
19 treatment of ballots of the Clerk’s opposing political party. Defendants failed to re-test and
20 repeat public certification after lapses of time as required by ORS 254.485 and the Oregon
21 Elections Manual.

22 13.

23 On information and belief Defendants failed to file a security plan with the Secretary of

1 State that met the legal requirements of law pursuant to ORS 254.074, and if one was indeed
2 filed in secret, Defendants failed to follow the County Elections Security plan or that plan
3 violated state law. Defendants failed to follow state law procedures governing election observers
4 and therefore also violated any county elections security plan and that plan (if any) procedures
5 governing election observers. Defendant Murphy announced that the security plan was to only
6 have one driver, who a long-time elections official who had already been deputized to deliver all
7 of the ballots. Ballots were transported by non- election persons and non-deputized persons.
8 Defendants allowed improper, unsworn persons to transport ballots. One person believed to be
9 named June Hinjosa was witnessed picking up ballots individually, without a second person
10 there, without being deputized staff or law enforcement. She was seen being sworn in and
11 deputized after she had already picked up ballots, been alone with those ballots for a long period
12 of time, and then delivering them to the Clerk's office. Another person, who was a boyfriend of
13 an elections worker named Lark was seen driving a ballot box on that back of his motorcycle
14 from Powers, without any law enforcement or deputized personnel being with him.

15 14.

16 The County Clerk, or other elections workers altered the voter registration cards, and
17 changed the party affiliation of voters, specifically republicans who were supporters of Plaintiffs,
18 without their consent, prior to a primary election. Oregon law does not allow clerks or election
19 workers to consider a voter inactive due to not voting or not updating their registration for a
20 period of time. Coos County electors had their voters registrations and party identification
21 changed by Defendants prior to the May, 2022 primary election. Plaintiffs and their supporters

22 15.

23 Defendants placed or allowed to be placed political electioneering materials from a select

1 group that they approved of inside the County Clerks' election office. Defendants allowed
2 candidate information cards, sheets and a book or pamphlet to be placed at the clerks office in
3 plain public view by an activist and ideological organization called the League of Women Voters
4 which publicly supports climate change theory, immigration reform policies in the form of
5 family reunification and asylum, as well as publicly supporting affordable health care, including
6 the Affordable Care Act, birth control and abortion. Oregon law prohibits this kind of
7 electioneering.

8 16.

9 On information and belief Defendants allowed uncertified and outdated voting machines
10 from the Clear Ballot Group, Inc. to be used and Defendants are currently planning to continue to
11 use those same voting systems in Coos County elections even though the systems are not
12 certified by the Elections Assistance Commission nor examined and approved by the Voting
13 Systems Testing Laboratory, and therefore cannot have been approved under OAR 165-007-
14 0350 or ORS Chapter 246 and specifically 246.550. Defendants knew or should have known
15 their vote systems were out of certification and used an approved system. Defendants used a
16 voting system that is capable of being remotely controlled in an unsecure and unprotected
17 manner.

18 17.

19 On or about May 24, 2022 Defendant Murphy held approximately 6000 ballots which
20 had not been counted at the time, were later counted, and were sufficient in number to change the
21 outcome of Plaintiffs elections. There were no observers allowed to observe the counting of
22 these ballots and 6000 votes is more than enough to change the outcome of Plaintiff's races and
23 other races in Coos County in the May, 2022 primary. The aforementioned elections law

1 violations, deliberate and material violations of elections laws, illegal votes, illegal vote
2 counting, mistakes and frauds in the canvassing of votes, fraud in the counting of the votes, and
3 non-deliberate and material errors in the distribution of the ballots are all grounds for both setting
4 aside the 2022 primary election results and enjoining those violations and illegal practices in
5 coming elections.

6 **REMEDIES**

7 18.

8 Plaintiffs are entitled to a judgment setting aside the results of the Coos County primary
9 election results from May 2022 in their respective races, and are entitled to a permanent
10 injunction prohibiting the Coos County Clerk and Coos County from violating state elections
11 laws and Plaintiff's civil rights in the aforementioned ways. Plaintiffs are entitled to recover
12 their reasonable attorney fees, costs and disbursements from Defendants because Plaintiffs are
13 seeking to vindicate important stator and constitutional rights applying to all citizens and not
14 vindicating individualized and different interests or any pecuniary or other special interest of
15 their own except those which are shared with the public at large, other residents, citizens or
16 electors. *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975); *Armatta v. Kitzhaber*, 327 Or 250,
17 959 P2d 49 (1998); *Lehman v. Bradbury*, 334 Or 579, 583, 54 P3d 591 (2002); *Swett v.*
18 *Bradbury*, 335 Or 378, 67 P3d 391 (2003); and *Dennehy v. City of Gresham*, 314 Or 600, 602
19 (1992); or *DeYoung v. Brown*, 368 Or 64. Prevailing plaintiffs are also entitled to reasonable
20 attorney fees, costs and disbursements when a violation of the U.S. constitution and civil rights
21 has occurred. 48 USC § 1988. Plaintiffs are entitled to reasonable attorney fees and as an
22 equitable remedy as a allowed by law. *Deras v. Myers*, 272 Or 47.

23 **FIRST CLAIM FOR RELIEF**

1 (Election Contest - ORS 258.016 - ORS 258.036)

2 19.

3 Plaintiffs re-allege and hereby incorporate the allegations in paragraphs 1 through 18 as if
4 fully alleged herein.

5 20.

6 Plaintiffs are electors and residents of Coos County who were entitled to vote for
7 themselves, and in their respective races and for each other in the May, 2022 primary election in
8 Coos County. Plaintiffs were candidates for office in the May 2022 primary election in Coos
9 County. Defendants Sweet, and Cribbins were also candidates for election or nomination.

10 21.

11 As alleged above and fully incorporated herein, Defendant deliberately and materially
12 violated multiple provisions of Oregon election law in connection with the May, 2022 primary
13 election including but not limited to:

14 **Count 1**

- 15 a) Acting either alone or with or through any other person, directly or indirectly
16 subject any person to undue influence with the intent to induce any person to refrain
17 from challenging a person offering to vote (ORS 260.665);

18 **Count 2**

- 19 b) Preventing or attempting to prevent the correct operation of any voting machine
20 or vote tally system (ORS 260.645).

21 **Count 3**

- 22 c) Permitting electioneering within a local government elections office (ORS
23 260.695(3))

1 **Count 4**

- 2 d) Allowing or instructing person other than elections officials to remove ballots
3 from ballot boxes (ORS 260.695(11))

4 **Count 5**

- 5 e) Denying authorized persons and candidates the ability to observe the receiving
6 and counting of votes (ORS 254.482)

7 **Count 6**

- 8 f) Denying electors the ability to challenge ballots (ORS 254.415)

9 **Count 7**

- 10 g) Failing to file or follow a compliant elections security plan or failing to follow
11 said plan (ORS 254.074).

12 **Count 8**

- 13 h) Failing to utilize law enforcement or two-person ballot transportation (Elections
14 Manual)

15 **Count 9**

- 16 i) Altering voter registrations to disaffiliate Republicans from their chosen political
17 party (ORS 247.125)

18 **Count 10**

- 19 j) Displaying electioneering materials at an election site (ORS 260.695)

20 **Count 11**

- 21 k) Failing to re-test and verify correct operation of voting machines (ORS 254.485)

22 22.

23 Defendants committed multiple mistakes, fraud, and misrepresentations of the times the

1 clerk would be receiving and counting the votes, and violations in the canvassing of the votes.
2 The number of ballots taken from Plaintiffs due to the errors, and the number of ballots tallied
3 pursuant to the errors and due to the errors is more than enough to change the outcome of the
4 election by reducing the legal votes of Plaintiffs opponents to the votes cast for Plaintiffs.
5 Defendants, or their agents in the Coos County elections office conducted or permitted the
6 altering of voter registrations to change the affiliation of republican party voters from their
7 chosen registered party to un-affiliated voters which deprived registered republicans the ability to
8 vote in their primary. Defendants facilitated the blocking of observers. Defendants organized the
9 printing of party identifying information on the outside of the ballots. Pursuant to ORS 258.016
10 these constitute sufficient grounds to overturn an election and issue a permanent injunction on
11 the unlawful practices. Some of Defendants' violations are separate civil or criminal offenses and
12 alleged below in separate causes of action and are also sufficient grounds to set aside the primary
13 election results.

14 23.

15 Plaintiffs are entitled to a remedy called for in ORS 258.026 the election should be set
16 aside because the number of votes cast in violation of the election laws, illegal votes, mistakes
17 and frauds in the canvass of votes, fraud in the count of votes, and material errors in the
18 distribution of ballots mentioned above, if all the erroneously counted ballots were for Plaintiffs,
19 would reverse the election result and Plaintiffs would have been elected.

20 24.

21 Another election, the 2022 General Election will take place in November of 2022
22 wherein ballots again will be cast, observers will be denied access, ballots will be handled in
23 violation of state law, security plans will be ignored and failed to be implemented. Unless this

1 court orders Defendants to comply with state law the Plaintiffs votes and voting rights will
2 continue to be violated.

3 **SECOND CLAIM FOR RELIEF**

4 (Declaratory Judgment – 28.010)

5 25.

6 Plaintiffs re-allege and hereby incorporate the allegations in paragraphs 1 through 24 as if
7 fully alleged herein.

8 26.

9 Plaintiffs are entitled to a declaration that Defendants practices and actions alleged
10 herein, including but not limited to paragraphs 21 (a)-(k) were in violation of state law and
11 therefore should be permanently enjoined.

12 **THIRD CLAIM FOR RELIEF**

13 (Violations of ORS 260.695)

14 27.

15 Plaintiffs re-allege and hereby incorporate the allegations in paragraphs 1 through 26 as if
16 fully alleged herein.

17 28.

18 Defendants should be enjoined from further violations of ORS 260.695 and even though
19 the Secretary of State and other election officials such as Defendants should be compelled by
20 court order to follow the law.

21 **FOURTH CLAIM FOR RELIEF**

22 (Violation of ORS 254.482)

23 29.

1 Plaintiffs re-allege and hereby incorporate the allegations in paragraphs 1 through 28 as if
2 fully alleged herein.

3 30.

4 Defendants unlawfully and illegally denied Plaintiffs and their supporters their statutory
5 right to observe the receiving and counting of votes guaranteed by ORS 254.482.

6 31.

7 Defendants should be enjoined from denying Plaintiffs and other voters from performing
8 their lawful right to observe all phases of the receiving and counting of ballots, as stated in ORS
9 254.482 except for the confidential processes that take place after a ballot has been challenged.

10 **FIFTH CLAIM FOR RELIEF**

11 (Appeal of County Clerks; ORS 246.910)

12 32.

13 Plaintiffs re-allege and hereby incorporate the allegations in paragraphs 1 through 31 as if
14 fully alleged herein.

15 33.

16 Plaintiffs have been adversely affected by the acts and failures to act by Defendant
17 Murphy the interim county clerk, and the other County officials, as well as Coos County.
18 Despite Plaintiffs many complaints, requests, demands and objections the Defendants persisted
19 in their violations and refused to correct the illegal activities alleged above including but not
20 limited to those itemized in paragraph 21.

21 34.

22 Plaintiffs are entitled to a declaratory ruling reversing the decisions of the Defendants to
23 conduct an illegal election in violation of state law, state administrative rules, and the County's

1 own security plan. Plaintiffs pray an order for the May 2022 election to be set-aside and the
2 County to hold a second primary election following state law, state rules, and the constitutional
3 guarantees of due process and equal protection under the law. In addition, Plaintiffs pray for and
4 order that Defendants must comply with the aforementioned election laws, administrative rules,
5 in the conduct of the November 2022 general elections.

6 **SIXTH CLAIM FOR RELIEF**

7 (42 USC§ 1983 – Violation of Due Process Rights)

8 35.

9 Plaintiffs re-allege and hereby incorporate the allegations in paragraphs 1 through 34 as if
10 fully alleged herein.

11 36.

12 Defendants’ denial of Plaintiffs voting rights, as well as statutory rights as described
13 above ensuring a free and fair election, deprived Plaintiffs of their civil rights guaranteed by the
14 14th Amendment to the United States Constitution.

15 37.

16 Plaintiffs are entitled to recover their reasonable attorney fees, costs and disbursements
17 pursuant to 42 U.S.C. § 1983 and § 1988.

18 **SEVENTH CLAIM FOR RELIEF**

19 (42 USC§ 1983 – Equal Protection)

20 38.

21 Plaintiffs re-allege and hereby incorporate the allegations in paragraphs 1 through 37 as if
22 fully alleged herein.

23 39.

1 Defendants' printing of party identifiable information on the outside of the election
2 envelopes subjected Republican voters to more intense and detailed scrutiny on signature
3 verification and other ballot challenge processes that Plaintiffs were excluded from observing,
4 prevented from making ballot challenges and blocked from personally participating as observers
5 and having their team of observers observe. Defendants' denial of Plaintiffs voting rights, as
6 well as statutory rights as described above ensuring a free and fair election, and treating Plaintiffs
7 as Republicans vastly different than Defendants' own political party members in observations
8 deprived Plaintiffs of equal protection and equal application of the law as guaranteed by the 14th
9 Amendment to the United States Constitution.

10 40.

11 Plaintiffs are entitled to recover their reasonable attorney fees, costs and disbursements
12 pursuant to 42 U.S.C. § 1983 and §1988.

13

14 **WHEREFORE**, plaintiffs pray for a judgment as follows:

15 1. On Plaintiffs first claim for relief:

16 a. A judgment setting aside the purported election results for the Coos County

17 Commissioner and Clerk races in the May 2022 primary election;

18 b. Ordering Defendant Coos County to hold a new election for those contests;

19 c. Enjoining Defendants Coos County, Cribbins, Brecke, and Sweet from taking

20 office or nomination under new terms of office until the results of a new properly

21 held election take place.

22 d. Any other such remedy, declaratory or otherwise this court determines necessary

23 to effectuate the free and fair elections in Coos County.

