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2  
3 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
4 FOR COOS COUNTY  
5

6 PAMELA ELAINE LEWIS, and DIANE ) Case No. 22CV24082  
7 ELAINE RICH, )  
8 Plaintiffs, )  
9 v. ) **SECOND AMENDED COMPLAINT**  
10 COOS COUNTY, an Oregon municipal ) (Election Contest; Declaratory Judgment;  
11 corporation, MELISSA CRIBBINS, JOHN ) Injunction; ORS 254.482; Appeal of County  
12 SWEET, and DIRIS D. MURPHY, ) Clerk; 42 USC § 1983)  
13 Defendants. ) CLAIM NOT SUBJECT TO MANDATORY  
14 ) ARBITRATION  
15 )  
16 ) ATTORNEYS FEES REQUESTED

17 Plaintiffs allege:

18 **General Allegations:**

19 1.

20 Plaintiff Pamela Elaine Lewis, “Plaintiff Lewis” hereafter, is a resident of Coos County  
21 Oregon, a citizen of the United States of America, is a registered voter in the State of Oregon and  
22 was a candidate for Coos County public office in the May 2022 primary election. Plaintiff Lewis  
23 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 Coos County public office in the May 2022 primary election. Plaintiff Rich  
2 has associated herself with the Oregon Republican Party and registered as a member of that  
3 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.

7 4.

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

10 5.

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

13 6.

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

22 7. On March 5th, in Charleston, Oregon – Defendant Murphy stated on video that “they”  
23 asked her to run; “they” referring to the Commissioners and/or former County Clerk

1 Debbie Heller. The officials who are obligated to follow public meetings laws, intentionally and  
2 knowingly asked Defendant Murphy to apply for the position of Interim County Clerk so that  
3 they could appoint her. Defendant Murphy's companion who attended the Listening Session with  
4 Mrs. Murphy confirmed on video that they asked Defendant Murphy to apply for the position.  
5 Further the Commissioners asked and convinced Diris D. Murphy to run for the position. Mrs.  
6 Murphy did not apply for the position the first time it was advertised, so at the Commissioners  
7 request, the timeline to apply for Interim Clerk was extended, and the position was reopened, and  
8 republished, to allow for Diris D. Murphy's application for the position to be submitted.

9 8.

10 The decision to appoint and hire Defendant Murphy was a violation of Oregon Public  
11 Meetings laws. Defendant Murphy was in fact appointed and began serving as Interim Coos  
12 County Clerk. That decision was null and should have been voided.

13 9.

14 On March 15, 2022 Plaintiff Pam Lewis was approved by Defendant Murphy as an  
15 authorized observer pursuant to ORS 254.482 to watch the receiving and counting of votes.  
16 Defendants, including Defendant Murphy did not publicly announce all of the times and dates  
17 that they would be receiving and counting ballots. As of April 12, 2022 Defendants announced  
18 that they would only allow observers to watch the receiving and counting of votes on May 17,  
19 2022. Defendant Murphy announced that she would begin receiving and counting votes on  
20 either the 2<sup>nd</sup> or 5<sup>th</sup> of May, 2022 and not allow observers. During the May, 2022 primary election  
21 Defendant Murphy did receive and count ballots without giving notice to, or allow approved  
22 observers to watch the receiving and counting of ballots.

23 10.

1 Plaintiffs associated with other individuals to take turn observing all of the receiving and  
2 counting of ballots in the May, 2022 Coos County primary election. Plaintiffs and their  
3 associated observers were denied the opportunity to observe. Plaintiffs and their associated  
4 observers were denied the opportunity to challenge ballots as observers are allowed to do under  
5 Oregon law.

6 11.

7 During the entire May, 2022 primary election Defendants denied persons, and authorized  
8 observers to observe the signature verification process and challenge ballots pursuant to ORS  
9 254.415 and ORS 254.431. This violation of Plaintiffs rights is a violation of state law and  
10 Plaintiffs due process of law rights under the Oregon and United States Constitutions. Observers  
11 were denied access to the Coos County elections office while vote counting and processing was  
12 taking place. Observers were denied access to the vote counting room. Observers were denied  
13 sufficient proximity to even see the computer screens for signature verification, and the ballot  
14 counting tables for tabulation and challenges. Defendants acts of excluding observers violates  
15 State laws, rules and elections manuals on processing ballots, and was done with restraint and  
16 threats of restraints that directly and indirectly unduly influenced persons desiring to be  
17 observers from challenging and being able to challenge persons who offered to vote. Observers  
18 were threatened by Defendant Murphy, including by threat of arrest and removal, so they could  
19 not observe or gather evidence of legal violations. Observers were told false information about  
20 when ballot receiving, signature verification, and vote counting would be taking place.  
21 Observers were physically locked out of the elections office. Observers were not allowed to  
22 observe during the public certification required by ORS 254.485. Defendants committed these  
23 acts in their roles as the County and the County's head elections official. Defendants did not

1 repeat the public certification test prior to processing ballots, or after each lapse of time between  
2 certification and counting. Denesa Rains witnessed election workers sorting ballots without any  
3 observers there, even though Denesa had signed up over 67 persons to be observers so at least  
4 one would be available at all times. Defendant Murphy crossed out observer time slots on the  
5 sign-up sheet so that observers could not be slotted into those time slots to observe, but then  
6 proceeded to allow her peer another former Democrat party chairperson to be in the verification  
7 election worker room. One event on election day took place immediately after Defendant  
8 Murphy had stated that the janitor was going to lock everyone out at 9:00, even though they  
9 planned to keep processing ballots. Another individual Ladonna Jenkins showed up to work as  
10 an observer and was threatened with arrest for recording the denial of access to observers.

11 12.

12 On April 29, 2022 and again during the process of inserting ballots into the vote tally  
13 machines, Defendants caused or allowed the intentional operation of the ClearBallot scanners by  
14 inserting unfolded papers into the scanner, while knowing, as explained in the operators manual  
15 is contradictory to the manufacturers recommendations. This was known and designed to give  
16 artificially and erroneous accuracy ratings when correct operation of the machines produces a  
17 different result. Defendant Murphy and Defendant Coos County intentionally prevented or  
18 attempted to prevent the correct operation of the voting machines and vote tally system which is  
19 a violation of ORS 260.645. Defendants intentionally caused information identifying Coos  
20 County voter's party affiliation to be printed on the outside of the voter envelop which  
21 unlawfully and discriminatorily enables disparate treatment of ballots of the Clerk's same party  
22 affiliation, and more stringent treatment of ballots of the Clerk's opposing political party.

23 13.

1 On information and belief Defendants failed to file a security plan with the Secretary of  
2 State pursuant to ORS 254.074 and Defendants failed to follow the County Elections Security  
3 plan. Defendants failed to follow state law procedures governing election observers and therefore  
4 also violated any county elections security plan and that plan (if any) procedures governing  
5 election observers. Defendant Murphy announced that the security plan was to only have one  
6 driver, who a long-time elections official who had already been deputized to deliver all of the  
7 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 an  
2 activist and ideological organization called the League of Women Voters which publicly  
3 supports climate change theory, immigration reform policies of family reunification and asylum,  
4 as well as publicly supporting affordable health care, including the Affordable Care Act, birth  
5 control and abortion. Oregon law prohibits this activity.

6 16.

7 On information and belief Defendants allowed uncertified and outdated voting machines  
8 from the Clear Ballot Group, Inc. to be used and Defendants are currently planning to continue to  
9 be used those same voting systems in Coos County elections even though the systems are not  
10 certified by the Elections Assistance Commission nor examined and approved by the Voting  
11 Systems Testing Laboratory, and therefore cannot have been approved under OAR 165-007-  
12 0350 or ORS Chapter 246 and specifically 246.550.

13 17.

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

19 **REMEDIES**

20 18.

21 Plaintiffs are entitled to a judgment setting aside the results of the Coos County primary  
22 election results from May, 2022 in their respective races, and are entitled to a permanent  
23 injunction prohibiting the Coos County Clerk and Coos County from violating state elections

1 laws and Plaintiff's civil rights in the aforementioned ways. Plaintiffs are entitled to recover  
2 their reasonable attorney fees, costs and disbursements from Defendants because Plaintiffs are  
3 seeking to vindicate important stator and constitutional rights applying to all citizens and not  
4 vindicating individualized and different interests or any pecuniary or other special interest of  
5 their own except those which are shared with the public at large, other residents, citizens or  
6 electors. *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975); *Armatta v. Kitzhaber*, 327 Or 250,  
7 959 P2d 49 (1998); *Lehman v. Bradbury*, 334 Or 579, 583, 54 P3d 591 (2002); *Swett v.*  
8 *Bradbury*, 335 Or 378, 67 P3d 391 (2003); and *Dennehy v. City of Gresham*, 314 Or 600, 602  
9 (1992); or *DeYoung v. Brown*, 368 Or 64. Prevailing plaintiffs are also entitled to reasonable  
10 attorney fees, costs and disbursements when a violation of the U.S. constitution and civil rights  
11 has occurred. 48 USC § 1988. Plaintiffs are entitled to reasonable attorney fees and as an  
12 equitable remedy as a allowed by law. *Deras v. Myers*, 272 Or 47.

### 13 **FIRST CLAIM FOR RELIEF**

14 (Election Contest - ORS 258.016; ORS 258.036)

15 19.

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

18 20.

19 Plaintiffs are electors who were entitled to vote for themselves, and in their respective  
20 races and for each other in the May, 2022 primary election in Coos County. Plaintiffs were  
21 candidates for office in the May 2022 primary election in Coos County against Defendants Sweet  
22 and McCribbins.

23 21.



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

4 Count 1

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

8 Count 2

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

11 Count 3

- 12 c) Permitting electioneering within a local government elections office (ORS  
13 260.695(3))

14 Count 4

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

17 Count 5

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

20 Count 6

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

22 Count 7

- 23 g) Failing to file an elections security plan or failing to follow said plan (ORS

1 254.074).

2 Count 8

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

5 Count 9

6 i) Altering voter registrations to disaffiliate Republicans from their chosen political  
7 party (ORS 247.125)

8 Count 10

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

10 Count 11

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

12 22.

13 Defendants committed multiple mistakes, fraud, and misrepresentations of the times the  
14 clerk would be receiving and counting the votes, and violations in the canvassing of the votes.  
15 Defendants conducted or permitted the altering of ballots to change the affiliation of republican  
16 party voters from their registered party to un-affiliated, denying registered republicans the ability  
17 to vote in their primary. Defendants facilitated the blocking of observers. Defendants organized  
18 the printing of party identifying information on the outside of the ballots. Pursuant to ORS  
19 258.016 these constitute sufficient grounds to overturn an election and issue a permanent  
20 injunction on the unlawful practices. Some of Defendants' violations are separate civil or  
21 criminal offenses and alleged below in separate causes of action, and are also sufficient grounds  
22 to set aside the primary election results.

23 23.

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

6 24.

7 Another election, the 2022 General Election will take place in November of 2022  
8 wherein ballots again will be cast, observers will be denied access, ballots will be handled in  
9 violation of state law, security plans will be ignored and failed to be implemented. Unless this  
10 court orders Defendants to comply with state law the Plaintiffs votes and voting rights will  
11 continue to be violated.

12 **SECOND CLAIM FOR RELIEF**

13 (Declaratory Judgment – 28.010)

14 25.

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

17 26.

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

21 **THIRD CLAIM FOR RELIEF**

22 (Violations of ORS 260.695)

23 27.

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

3 28.

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

7 **FOURTH CLAIM FOR RELIEF**

8 (Violation of ORS 254.482)

9 29.

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

12 30.

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

15 31.

16 Defendants should be enjoined from denying Plaintiffs and other voters from performing  
17 their lawful right to observe all phases of the receiving and counting of ballots, as stated in ORS  
18 254.482 except for the confidential processes that take place after a ballot has been challenged.

19 **FIFTH CLAIM FOR RELIEF**

20 (Appeal of County Clerks; ORS 246.910)

21 32.

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

1 33.

2 Plaintiffs have been adversely affected by the acts and failures to act by Defendant  
3 Murphy the county clerk, and the other County officials, as well as Coos County. Despite  
4 Plaintiffs many complaints, requests, demands and objections the Defendants persisted in their  
5 violations and refused to correct the illegal activities alleged above.

6 34.

7 Plaintiffs are entitled to a declaratory ruling reversing the decisions of the Defendants to  
8 conduct an illegal election in violation of state law, state administrative rules, and the County's  
9 own security plan. Plaintiffs pray an order for the May 2022 election to be set-aside and the  
10 County to hold a second primary election following state law, state rules, and the constitutional  
11 guarantees of due process and equal protection under the law. In addition, Plaintiffs pray for and  
12 order that Defendants must comply with the aforementioned election laws, administrative rules,  
13 in the conduct of the November 2022 general elections.

14 **SIXTH CLAIM FOR RELIEF**

15 (42 USC§ 1983 – Due Process)

16 35.

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

19 36.

20 Defendants' denial of Plaintiffs voting rights, as well as statutory rights as described  
21 above ensuring a free and fair election, deprived Plaintiffs of their civil rights guaranteed by the  
22 14<sup>th</sup> Amendment to the United States Constitution.

23 37.

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

3 **SEVENTH CLAIM FOR RELIEF**

4 (42 USC§ 1983 – Equal Protection)

5 38.

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

8 39.

9 Defendants printing of party identifiable information on the outside of the election  
10 envelopes subjected Republican voters to more intense and detailed scrutiny on signature  
11 verification and other ballot challenge processes that Plaintiffs were excluded from observing  
12 and participating in. Defendants’ denial of Plaintiffs voting rights, as well as statutory rights as  
13 described above ensuring a free and fair election, and treating Plaintiffs as Republicans vastly  
14 different than Defendants’ own political party members in observations deprived Plaintiffs of  
15 equal protection and equal application of the law as guaranteed by the 14<sup>th</sup> Amendment to the  
16 United States Constitution.

17 40.

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

20  
21 **WHEREFORE**, plaintiffs pray for a judgment as follows:

22 1. On Plaintiffs first claim for relief:

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

1 Commissioner's races in the May 2022 primary election;

2 b. Ordering Defendant Coos County to hold a new election;

3 c. Enjoining Defendants Coos County, McCribben and Sweet from taking office  
4 under new terms of office until the results of a new properly held election take  
5 place.

6 d. Any other such remedy, declaratory or otherwise this court determines necessary  
7 to effectuate the free and fair elections in Coos County.

8 2. On Plaintiffs Second through Seventh claims for relief, Declaratory judgment ruling upon  
9 and enjoining Defendants from each of the illegal practices:

10 3. On all of Plaintiffs claims for relief, a permanent injunction enjoining the practices of  
11 Defendants determined by this court to have been conducted in violation of law.

12 4. On all of Plaintiffs claims for relief, and award of Plaintiffs reasonable attorney fees and  
13 costs and disbursements incurred herein.

14 5. For such other or further relief as the court deems just and equitable.

15 DATED this 28th day of September, 2022.

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