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Kathleen Rakela and other members of the
Glastonbury Landowners Association
109 S B St.
Livingston, MT 59047
406-222-0430
PETITIONER(S) PRO SE

PARK COUNTY CLERK
OF DISTRICT COURT
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LEBUIY

MONTANA SIXTH JUDICIAL DISTRICT COURT PARK COUNTY

KATHLEEN RAKELA and other)
members of the Glastonbury Landowners)
Association)

Plaintiff(s),)

vs.)

Board of Directors for Glastonbury)
Landowners Association, Inc. (GLA),)
Dennis Riley, Daniel Kehoe, Charlene)
Murphy, Richard Johnson, Kevin Newby)
Mark Seaver, Leo Keeler & other Does)

Defendants.)

Cause No.: DV -17-150

**COMPLAINT and Petition for
Declaratory and Injunctive Relief**

COMES NOW, Plaintiff(s) Kathleen Rakela and other members of the
Glastonbury Landowners Association, pro se, for their Complaint against Defendants,
and allege and state as follows:

PARTIES

1. At all times relevant hereto, Plaintiff(s) Kathleen Rakela and other members of
the Glastonbury Landowners Association have resided in Park County, Montana.

2. Defendants Glastonbury Landowners Association (GLA) is a Montana non-profit corporation in Park County, Montana.

FACTS COMMON TO ALL COUNTS

1. In 2016 Rakela was the legal owner of property in Park County, including: Parcel 53 North Glastonbury and Parcel 51 South Glastonbury. Her GLA property assessments for these properties were paid in full by March 2016.
2. In late May of 2016 Rakela filed a subdivision plat with the Park County Clerk and Recorder creating four parcels: 51A, 51B, 51C, and 51D from Parcel 51 South Glastonbury. This subdivision had previous approval from the GLA.
3. On 7/1/16 assessment invoices of \$122.50 for each new parcel, 51B, 51C, and 51A were sent to Rakela.
4. On 7/29/16 Rakela paid the \$122.50 assessments for South Glastonbury Parcels 51B and 51C, paid \$70 for Parcel 51A through the third quarter as there was a buy/sell agreement for that property, and requested that her full assessment for Parcel 51 SG paid 3/11/16 be applied to lot 51D. The checks were deposited by the GLA on 8-16-16.
5. On 10/1/16 a new invoice was sent, which showed that the GLA accountant had not credited Rakela's payments as she had asked.
6. On 10/5/16, Rakela emailed GLA apprising them that the accountant incorrectly distributed a portion of her full payment for South Glastonbury Parcels 51B and 51C to Parcel 51D – making it look as if the assessments for Parcels 51B and 51C

were not paid in full, resulting in finance charges. Rakela requested the GLA to:
“Please correct my property assessment statements.”

7. On 10/31/16, Rakela mailed her separate ballots for North and South Glastonbury and also mailed the remaining assessment for the last quarter of 2016 for South Glastonbury Parcel 51A as the buy-sell for that lot fell through.
8. On 11/6/16 Rakela received more GLA statements showing that her assessment payments STILL had not been properly accounted.
9. On 11/12/16 the annual election for new Board Members was held but the GLA accountant STILL had not properly credited Rakela’s assessment payments nor had her check for parcel 51A, mailed twelve days earlier along with her ballot, been given to the secretary or treasurer although her ballots were turned over to the ballot counters. Only two of Rakela’s votes were tallied instead of the five she should have had. The treasurer, Rudy Parker found Rakela’s check mysteriously placed at the bottom of his treasurer’s box. He informed the ballot counters and GLA Secretary and Election Committee Chair, Charlene Murphy, that Rakela’s payment had come in, but nothing was done about it. Instead they announced Leo Keeler as the winner of the election by one vote.
10. On 11/16/16 an Election Committee Meeting was held and there was discussion about allowing the untallied votes. Also, the GLA continued to parrot “the records showed that her (Rakela’s) other 3 properties in SG had an outstanding balance” even though Rakela reminded the GLA several times that they were paid in full.
11. On 11/17/16, Rakela, again, emailed the GLA, pleading that they correct their

record on her payments. However, the record has never been corrected. The members have not been given the truth on the matter resulting in mudslinging upon Rakela and her character.

12. On 11/26/16 another Election Committee meeting was held, Rakela's votes were reinstated and "all landowners were able to view and read Rakela's 'secret ballot'." Rakela's votes made the previously announced winner, Leo Keeler, lose the election.
13. On 8/1/17 the GLA sent out Nomination & Candidate Forms for the 2017 board of directors election to members.
14. On 9/12/17 Rakela sent in her nomination form to run for one of three open South Glastonbury Board of Directors positions. The form stated that she was a member in good standing for South Glastonbury.
15. On or about 9/27/17 Rakela received her voter packet for the 2017 election. However the small envelope that states her name and the number of her votes (4) for South Glastonbury was missing. She subsequently emailed the GLA apprising them of her missing voting envelope and stated her concern that someone had her envelope and could switch her votes.
16. In August or September of 2017 the GLA Board informed landowners that the Board of Directors had voted on April 10, 2017 to create a new policy/rule for the 2017 election requiring full payment of assessments by October 31, 2017 for landowners to be eligible to vote at the Annual Election meeting of 11/11/17 (later rescheduled for 12/2/17).

17. No notice was sent to members prior to this policy/rule change and no time was allotted for members to give feedback or respond contrary to Bylaw Article XI C.
18. This new policy/rule also appears to be in conflict with the voting rights guaranteed to landowners in the Covenants, Section 3. Definitions and Short Name Referrals 3.19. Member of the Association in Good Standing. “A member of the Association that is current in the payment of all assessments to the Association and is not in violation of these covenants. A member in good standing is qualified to vote ...” With this new GLA policy, if a landowner qualifies after Oct 31st (s)he will not be allowed to vote.
19. Bylaw Article VI B. 10, states: Such powers and duties of the Board shall include... Adopt Rules and Regulations ... for the conduct of the affairs of the Association and the enjoyment of the Members, provided that no Rule or Regulation so adopted shall be in conflict with ...the Covenants.” (*Emphasis added.*)
20. Covenant 2.05 states that to alter, amend, modify or terminate a covenant in whole or in part, there must be the affirmative vote of at least 51% of the membership interests. A vote has not been held to alter Covenant 3.19, nor to remove or reduce landowners’ voting rights.
21. Another “taking” of Membership Interest voting rights occurred on 11/6/17 when the Board voted to disqualify multiple landowner Membership Interests if one of the landowner’s parcels is in arrears of an assessment payment.
22. On 11/13/17 the Election Committee removed the voting right of another South

Glastonbury candidate, Marshall Haley for not making the Oct 31st deadline for the fourth installment of his assessment. Haley paid the fee a week after and is now a Member in Good Standing and should be entitled to vote. The election committee also made plans to prohibit all landowners who pay up their assessments between 10/31/17 and the annual meeting/election from voting even if what they owed was a finance charge of a few cents.

23. According to the GLA 10/31/17 financial report posted on the Internet, there are ninety-one Association Members (almost ¼ of landowners) who are late in paying their assessment or finance charge. Landowner 40D of South Glastonbury only owes \$.10.

24. Bylaw Article XI C. Due Process. states, "Prior to making any new Rules and Regulations...the Association, acting through the Board of Directors and officers, shall provide reasonable written notice in accordance with Article V, Paragraph D, to all of the Members." Bylaw Article I B. 10, states: Such powers and duties of the Board shall include... Adopt Rues and Regulations from time to time for the conduct of the affairs of the Association and the enjoyment of the Members, provided that no Rule or Regulation so adopted shall be in conflict with Montana law, the Covenants, the Articles of Incorporation or these Bylaws... (*emphasis added.*)

25. On 9/25/17 ballots that included Rakela's name and bio were sent to South Glastonbury association members.

26. On 9/30/17 the GLA secretary emailed Rakela, "The GLA board discovered a

division of your property NG 53.”

27. A Family Conveyance had been approved by the GLA. The Certificate of Exemption was filed at the Clerk and Records office 9/8/16 creating two North Glastonbury parcels, 53B and 53C.
28. On 10/2/17 Rakela emailed notification to the GLA and informed them that a notification had been mailed to the address listed on the website.
29. The GLA secretary emailed Rakela that, the "Realty Transfer" form on the GLA website was outdated with the address for Minnick Management in Bozeman. “So the information you sent went to an old address.” The GLA by neglecting to update their website and keeping a defunct address on it made it impossible for anyone relying on that information to perform.
30. On 10/9/17 Leo Keeler, the candidate whom Rakela’s reinstated votes made lose the 2016 election, motioned to “disqualify and remove Kathleen Rakela from the (South Glastonbury) ballot for being in violation of (GLA) Covenant 10.04 for failing to notify the Association of the transfer of her property to her son last year.” Covenant 10.04 states that is the responsibility of the one “receiving title ...to register with the Association by providing the owners’ name mailing address and property description.” (*Emphasis added.*) Rakela’s supposed violation was trivial and immaterial. Her assessments for parcel 53 for 2016 and 2017 were paid in full so there was no monetary harm done to the GLA on Rakela’s part
31. A member with “personal interest,” competing candidate, Kevin Newby, seconded the motion.

32. Two other members with “personal interest,” competing candidates Mark Seaver and Dennis Riley also voted to “disqualify and remove” Rakela from the ballot.
33. The GLA “Conflict of Interest Policy” defines “Interested Person” as “Any director, officer, or member of a Committee of the Board, who has a direct or indirect ... personal interest is an interested person.” Personal Interest means “a person has a personal interest if the situation the Board or committee is dealing with affects that person ... in a way other than financial.” Further, “An interested person...must abstain from the vote on the transaction or arrangement involving the possible conflict of interest. The Board or committee member should not be counted toward the quorum of the meeting for that vote.” Also the minutes did not go “above and beyond what the normal minutes contain” and there was no “action taken to determine whether a conflict of interest existed...” as required in the GLA “Conflict of Interest Policy.”
34. On 10/10/17 Rakela emailed the GLA Board that she disagreed with the GLA’s interpretation of Covenant 10.04. The covenant merely says that the “Landowner agrees to notify the Association in the event of the sale or transfer of any of the landowner’s property in the Community qualifying as a Membership Interest.” Montana Code 45-2-101 General Definitions (18) (e) holds that “Failure to perform, standing alone, is not evidence that the offender did not intend to perform.” There is no time limit imposed in Covenant 10.04. And although “shall” is used over one hundred times in other covenants, Covenant 10.04 fails to state the imperative “*shall notify.*”

35. Even if there were perchance a covenant violation in North Glastonbury it should not affect eligibility to run as a candidate in South Glastonbury since they are considered as separate jurisdictions for the purpose of the annual election. See GLA Bylaw VI. A. and GLA bylaw VI. D. *Exhibit 2, page 6.*

36. North and South candidates are qualified separately according to GLA Bylaw VI. A. "North Glastonbury and South Glastonbury elect candidates, respectively, on separate ballots from among two separate groups of qualifying candidates." *(Emphasis added).*

37. There was no harm done to the South Glastonbury election, as the supposed violation was in the North Glastonbury jurisdiction and not in the South Glastonbury jurisdiction. And there was no harm done since, from information and belief, no ballots were cast between the time the ballots were sent out and the GLA received notification of the family conveyance.

38. Rakela's 10/10/17 email also requested a "preservation of evidence" to preserve documentation that has anything to do with this matter. However the GLA has refused to turn over tape recordings of meetings, signed conflict of interest forms signed by the competing candidates/board members and other requested documents in violation of her right to know guaranteed in the *Constitution of Montana – Article II - Declaration of Rights. Section 9.*

39. On 10/13/17 Rakela sent a memo to GLA Board members apprising them that there was possible legal liability regarding the manner the vote was taken as "material facts and the directors' interest were not disclosed per 35-2-418 section

(3)(b) when the vote to remove Rakela from the South Glastonbury Ballot took place.”

40. Rakela offered the GLA a simple resolution to avoid legal action— inform members that she is still eligible as a write-in candidate.
41. On 10/13/17 Rakela received a threatening and intimidating email from competing candidate/board member Seaver stating, “I consider someone sending GLA related emails to my personal email rather than my GLA email address to be stalking and harassment. If you continue, I will be filing a harassment and stalking lawsuit against you in my home jurisdiction of Maryland.”
42. On 10/21/17 the GLA emailed Rakela stating they would not accept Rakela’s simple compromise to avoid legal action.
43. On 10/30/17 a new ballot was mailed out to all South Glastonbury association members excluding Rakela’s name. The cover letter is confusing because it states “one of the candidates was not in good standing and eligible to be a candidate... The landowner has subsequently remedied their membership status and is in good standing, but is ineligible...” (*Emphasis added.*)
44. On 11/6/17 the GLA board, including the three competing candidates, Riley, Seaver and Newby, disqualified another South Glastonbury candidate Marshall Haley who was a Member in Good Standing at the time the ballot was mailed but became delinquent in paying his last quarter assessment when he was waiting for his wife’s pay day a week after October 31st. The board did not even immediately notify Haley that he was disqualified and the board did not notify the members of

South Glastonbury that they disqualified him from being on the ballot so that members can write his name in or vote for another candidate. This almost ensures that the incumbents who voted to remove Haley and Rakela are reelected, as votes that are checked on the ballot for them will be null and void.

45. On 11/13/17 the Election Committee meeting held to disqualify Haley. They also took away his voting right, even though he subsequently paid his assessment and is now a Member in Good Standing. Covenant 3.19 states that a “member in good standing is qualified to vote.”

46. Because of the 2016 negligence of the GLA in not adjusting Rakela’s paid landowner assessment as requested; the subsequent 2016 GLA mishandling of Rakela’s votes; the 2017 GLA failure of the board to separate Rakela’s supposed covenant violation of a North Glastonbury parcel from her “separate and distinct” membership interests i.e. “rights, privileges, duties and responsibilities” in South Glastonbury to run as a candidate in South Glastonbury; and the 2017 failure of the board to follow the GLA Bylaws and Montana state law in their vote to disqualify and remove Rakela from the ballot, she has been vilified in the community. Rakela is well know in the arts community of the state and has had dozens of newspaper articles written about her and her good work for the youth of Park County along with dozens of thank you cards and letters of praise from parents and students for her service.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and this action pursuant to the Montana Declaratory Judgments Act (Mont. Code Ann. §§ 27-8-101 *et seq.*).

2. Venue in this action is appropriate in Park County pursuant to Mont. Code Ann. § 25-2-126.

GENERAL ALLEGATIONS

1. Rakela has a valid and vested interest in her reputation in the Community.

2. Rakela and other members of the Glastonbury Landowners Association have a valid and vested property interest in the Community of Glastonbury and its management by the GLA Board of Directors.

3. Rakela and other members of the Glastonbury Landowners Association have a valid and vested property interest in the election of officers to the GLA board.

4. The GLA Board deprived members of the Glastonbury Landowners Association of their due process rights concerning their Membership Interests and right to vote as defined in Covenants 3.19 and 3.20.

5. The GLA Board deprived Rakela of her due process rights concerning her right to have her name on the South Glastonbury ballot.

6. The GLA's actions to limit voting rights of landowners who become "Members in Good Standing" on the day of the election or in preceding weeks; to remove Kathleen Rakela from the South Glastonbury ballot; and to disqualify all votes for Marshal Haley on the printed ballot do not substantially advance a legitimate public purpose. Instead they advance the interests of incumbent board members.

7. Rakela and other members of the Glastonbury Landowners Association have a constitutional right to be free from unreasonable, arbitrary, irrational, unfair and bad faith actions instigated by the GLA Board.

8. The GLA Board acted unreasonably, arbitrarily, irrationally, unfairly and in bad faith in processing, reviewing and adjudicating the voting right of Haley and other members of the Glastonbury Landowners Association; and in their processing, reviewing, adjudicating and voting to remove of Rakela from the South Glastonbury ballot and disqualifying votes for Haley.

9. Rakela and other members of the Glastonbury Landowners Association have a constitutional right to have their membership voting right and candidate rights adjudicated by a fair and impartial tribunal.

COUNT 1

(Ultra Vires and Contrary to Law Decision)

1. Plaintiff(s) re-alleges all paragraphs within this Complaint and incorporates the same by reference as if repeated in their entirety.

2. The GLA's seeming decision to disqualify Rakela from the South Glastonbury ballot is contrary to GLA Bylaws GLA Bylaw VI. A. and VI. D. Also it is not evident that Rakela is actually in violation of the covenant for which she was removed from the ballot.

3. The GLA's rulemaking to purposely deprive members of the Glastonbury Landowners Association of their due process rights concerning their Membership Interests and right to vote as defined in Covenants 3.19 and 3.20 is contrary to GLA

Bylaw Article VI B. 10, Bylaw Article XI C., and Covenant 2.0.5 The GLA is required by these Bylaws to notify members prior to making any new Rules and Regulation and allow opportunity for members to be heard and give written and oral comment. The GLA failed to notify members prior to their rulemaking and failed to give members an opportunity to be heard. The GLA is required to have the affirmative vote of at least 51% of the membership interests to modify, alter, amend or terminate a covenant in whole or in part. 76-3-620. The GLA does not have the affirmative vote of at least 51% of the membership interests to modify, alter, amend or terminate covenants guaranteeing members' voting rights.

4. The GLA's' unfair, unreasonable and illegal decisions have caused Plaintiff(s) to incur loss and damages in a sum to be proven at trial.

COUNT 2

(Arbitrary, Capricious or Unlawful Decision)

5. Plaintiff(s) re-alleges all paragraphs within this Complaint and incorporate the same by reference as if repeated in their entirety.

6. The GLA has failed to fairly and consistently apply the pertinent criteria Covenants, Articles of Incorporation and Bylaws when reviewing and deciding to remove Rakela from the South Glastonbury ballot.

7. No other South Glastonbury candidate has qualified to be on the ballot through a property in North Glastonbury. The Bylaws forbid such. The GLA's decision to remove Rakela from the South Glastonbury ballot because of a supposed violation in North

Glastonbury involving paperwork is unreasonable, arbitrary, capricious, unfair, and unlawful.

8. The GLA's unreasonable, arbitrary, capricious and unlawful decisions have caused Plaintiff(s) to incur loss and damages in a sum to be proven at trial.

COUNT 3

(Declaratory Judgment)

9. Plaintiff(s) re-alleges all paragraphs within this Complaint and incorporate the same by reference as if repeated in their entirety.

10. Plaintiff(s) seek to determine the rights, status, and other legal relations between the parties pursuant to the Uniform Declaratory Judgments Act, Montana Codes Annotated § 27-8-101, *et seq.* and § 76-3-*et seq.* and other applicable law.

11. Plaintiff(s) seeks a judgment declaring that GLA's decision to take away voting rights of Members in Good Standing is, unreasonable, arbitrary, capricious, and/or contrary to the GLA Covenants and/or Bylaws or ultra vires, exceeding the authority of the of the corporation and ordering that all members who become Members in Good Standing at or before the annual election may have their votes counted.

12. Plaintiff(s) seeks a judgment declaring that GLA's decision and vote to disqualify and remove Rakela from the South Glastonbury ballot was unlawful, unreasonable, arbitrary, capricious, and/or contrary to the GLA Covenants and/or Bylaws or ultra vires, exceeding the authority of the of the corporation and ordering the GLA to return Rakela's name to the South Glastonbury ballot.

COUNT 4

(Unreasonable Exercise of GLA Powers)

13. Plaintiff(s) re-alleges all paragraphs within this Complaint and incorporate the same by reference as if repeated in their entirety.

14. The GLA's actions are unreasonable on their face and as applied, and have an inadequate rational relationship to the health, safety, morals or welfare of the members of the Community of Glastonbury, and hence, are not a valid exercise of the general governing powers of the GLA Board.

15. The GLA's actions were not fairly executed and/or authorized by the Bylaws, Articles of Incorporation and/or Covenants.

COUNT 5

(Due Process Violations)

16. Plaintiff(s) re-alleges all paragraphs within this Complaint and incorporate the same by reference as if repeated in their entirety.

17. Rakela's application to be a candidate on the South Glastonbury ballot met all the requirements of her South Glastonbury property Membership Interests to be on the South Glastonbury ballot. As a landowner of eight Glastonbury properties, Rakela has reasonable investment and a vested right in her tracts of land, the management of the community and use thereof.

18. Also, members of the Glastonbury Community have a reasonable investment and a vested right in their tracts of land, the management of the community and use thereof.

19. The GLA's disqualification and removal of Rakela from the South Glastonbury ballot and the "taking" of membership voting rights violates Plaintiffs' due process of law as outlined in the Bylaws, Articles of Incorporation, and/or Covenants and their constitutional protections under both the Federal and Montana Constitutions.

COUNT 6

(Negligence)

20. Plaintiff(s) re-allege all paragraphs within this Complaint and incorporate the same by reference as if repeated in their entirety.

21. The GLA was negligent in their accounting practices by failing to properly record Rakela's full assessment payments in 2016 even though they were apprised of their error several times by Rakela. The GLA was negligent in that they continued to parrot an untruth repeatedly stating Rakela was delinquent in paying her assessments although they were apprised otherwise. The GLA was negligent in the handling of Rakela's 2016 ballot, not counting her qualified votes and displaying the ballot to the public.

22. The GLA's actions caused Rakela to be defamed and vilified in the community and have damaged her reputation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) demand judgment against the GLA as follows:

a. For an immediate Temporary Restraining Order to postpone the Annual Meeting and Election scheduled for December 2nd 2017.

b. For damages in an amount to be determined at trial;

- c. For an order restoring Plaintiffs' voting rights as defined in the covenants;
- d. For an order requiring the GLA to restore Rakela to the South Glastonbury ballot;
- e. For an order to count the votes cast for Marshall Haley;
- f. For actual damages resulting from the GLA's negligence and or unreasonable, arbitrary, unfair and capricious actions.
- g. For costs, interest, and attorney fees (if an attorney becomes involved) as allowed by law; and
- h. For any other further relief deemed just and proper by the Court.

RESPECTFULLY SUBMITTED this 29th day of November, 2017.

By: *K Rakela*

Kathleen Rakela