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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

FILED  
BY *Molly MacLennan*  
CLERK

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Kathleen Rakela and other members of the )  
Glastonbury Landowners Association )  
 )  
Petitioner(s), )  
 )  
v. )  
 )  
Board of Directors for Glastonbury )  
Landowners Association, Inc. (GLA), )  
Dennie Riley, Daniel Kehoe, Mark Seaver, )  
Richard Johnson, Charlene Murphy, )  
Kevin Newby, Leo Keeler, And other Does )  
Respondent(s). )

Cause No. DV-17-150

Petitioner(s) Motion for  
Temporary Restraining Order  
and Motion to Show Cause Why  
a Preliminary Injunction Should  
Not Issue and Declaratory  
Judgement Hearing Motion

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Pursuant to Montana Rules of Civil Procedure 65 and M.C.A. §27-19-314,  
Petitioner Kathleen Rakela et all, Pro Se, hereby respectfully move this court for a  
temporary restraining order (“TRO”) and an order to show cause why a preliminary  
injunction should not issue within 10 days from the date of this Court’s issuance of the  
TRO, preventing the South Glastonbury Board of Directors election from taking place on  
December 2, 2017 without allowing all members of the association who are “Members in  
Good Standing” at the time of the Annual Meeting and Election to vote.

Petitioner also moves this court for this TRO to prevent the 2017 Annual Election  
from taking place without the inclusion of Kathleen Rakela’s name on the ballot, which

has been unfairly removed, and without the disqualification of Marshall Haley's votes that the board has announced will not be counted.

Petitioner also seeks 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.

### **BACKGROUND & FACTUAL EVIDENCE**

The Background and Facts are laid out in the three attached Affidavits of Kathleen Rakela. The first Affidavit deals with the removal of voting rights of "Members of the Association in Good Standing." The second deals with the removal of Rakela from the 2017 South Glastonbury Ballot and the disqualification of Haley as a candidate. The third deals with a mishap in the 2016 election. The following is a summary:

Land Association (GLA) Respondents are all current GLA Board of Directors; including Dennis Riley, Mark Seaver and Kevin Newby who are also competing candidates running for the same seat(s) against Rakela and Haley.

The GLA Board created 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 now rescheduled for 12/2/17.

No notice was sent to members prior to this policy/rule change and no time was allotted for members to give feedback/response as required in the Bylaws **Article XI C.**

This new policy/rule is unreasonable and 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, landowners qualifies after Oct 31<sup>st</sup> will not be allowed to vote on December 2 even if what they owed was a finance charge of a few cents. There are ninety-one Association Members (almost ¼ of landowners) on the list of disqualified voters. An example of the unreasonableness of the rule is Landowner 40D of South Glastonbury owed \$ .10 on October 31<sup>st</sup> and is disqualified to vote.

**Bylaw Article VI B. 10**, states: Such powers and duties of the Board shall include... Adopt Rules 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 ...the Covenants ...” *Exhibit 2 page 15*.

**Bylaw Article VI B. B. 16**. states that the board may “Adopt Rules from time to time for the conduct of any meeting election or vote in a manner that is not inconsistent with any provisions of the Covenants...” *Exhibit 2 page 15*.

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.

The Board has also voted to hold hostage landowner’s with multiple properties in Glastonbury if they are late in paying an assessment on one single property. They are in effect saying if one parcel has a violation of the covenants then all the parcels of that landowner are also in violation and all of their votes are disqualified.

This Board “taking” of Membership Interest rights appears to be an attempt to keep incumbent candidates on the board.

The Board did not notify landowners *prior* to them making these surprise rules: disqualifying landowners from voting who have always in the past, paid their assessments on the day of the election, and creating a voting lien on owners with multiple properties who are late in paying an assessment on one property. The landowners have had no say. These rules are an attempt to gut **Covenant 3.20**, through rule making and are not made “in good faith” or “for the enjoyment of the Members.” They are unreasonable and unfair.

In Montana “if you have missed the voter registration deadline, you can still register to vote and cast a ballot on Election Day. Every Montanan has a right to an elections process that is open, honest, fair, and accurate. Montanans expect that any eligible citizen in the state who wants to vote should be able to vote.” (See Montana Secretary of State website). But the GLA Board has removed this right to qualify and vote on Election Day from its members.

Members of the Community of Glastonbury and Rakela believe they have been disenfranchised from their property rights, voting rights and right to have a fair and honest election.

Also at issue are the removal of Rakela from the ballot, and the disqualification of membership votes for Haley without informing the membership.

Rakela was initially approved by the GLA Board to be a member in good standing and eligible to run as a candidate for an open seat for the South Glastonbury Board of

Directors. However, on 10/9/17 the GLA Board, including the three competing candidate members with “personal interest” in the matter, disqualified Kathleen Rakela from the South Glastonbury ballot.

Rakela was told by the GLA that it was a supposed covenant violation on a North Glastonbury parcel at the time they received her nomination form that caused her to be removed from the South Glastonbury election ballot. Rakela’s alleged violation did not relate to any of her South Glastonbury properties. This means that the particulars of GLA Bylaw VI applies here:

**Glastonbury Landowners Association Bylaw VI. A.** requires that the “North Glastonbury Community and South Glastonbury Community elect candidates, “respectively, on separate ballots from among two separate groups of qualifying candidates.” (*Emphasis added.*) *Exhibit 2, page 5.*

**GLA Bylaw VI. D.** requires that “only membership interests arising from ownership in Glastonbury North may vote for directors representing Glastonbury North and only membership interests arising from ownership in Glastonbury South may vote for directors representing Glastonbury South. *Exhibit 2, page 6.*

GLA Bylaw VI.A. requires Rakela be made eligible as a South Glastonbury Board candidate as a separate group or separate qualifying candidate; so that she qualify separately from North candidates “on separate ballots from among two separate groups of qualifying candidates.” There is no dispute that Rakela was in good standing for all her South Glastonbury properties and met the “separate group” for qualifying candidate” criteria as a South Glastonbury candidate. Therefore, GLA Bylaw VI.A. requires the GLA Board Respondents to qualify Rakela as a South Glastonbury candidate based on this “two separate groups of qualifying candidates” criteria for which her North property

has no bearing on this “separate” group of South Glastonbury property owners qualifications. As definitive proof, North Glastonbury parcel owners are never allowed to qualify for a South Glastonbury Board position. In fact, only South Glastonbury parcel owners can qualify for the South Glastonbury Board ballot. This fact shows that the Board cannot use parcels in North Glastonbury to qualify or disqualify a South Glastonbury candidate; which is what the GLA Respondents did wrong and GLA Respondents failed to apply this Bylaw rule in Rakela’s case.

By continuing the election without Rakela’s name on the South Glastonbury ballot, throwing out votes for Haley without informing the membership, and not allowing members to vote who become Members in Good Standing by paying their assessments between 10/31/17 and the Annual Meeting/Election, the Board is infringing on the Membership Interest “rights” guaranteed to Rakela, Haley and other Glastonbury members’ in GLA Covenants 3:16 and 3.20 and GLA Bylaws VI.D and VI.A.

One last issue of GLA liability involves Rakela trying to resolve this matter out of court. Rakela requested that the GLA Board Respondents at least notify the GLA members from South Glastonbury of the fact that Rakela is now in good standing and eligible as a “write-in candidate” whom the Respondents had agreed she was. However, they refused to notify members of this fact. Instead, the GLA mailed out a statement to voting members that made it appear that Rakela is not eligible at all, seemingly as part of their effort to keep Rakela from competing with the incumbent board members. Thus the GLA Respondents actions appear to be collusion to keep incumbent members on the

board. Absentee voting has already taken place and the election is imminent.

Accordingly, this Court should issue a temporary restraining order to: stop the GLA from removing member voting rights; prevent the removal of Rakela from the South Glastonbury ballot; and prevent the disqualification of Marshall Haley's votes as a candidate. The fact that the GLA Respondents are competing against Rakela and Haley for seats on the Board; and involved in obvious conflicts of interests contrary to state statute; who actively threatened fellow Board members to vote to remove Rakela from the GLA ballot under fear of retaliation; and then arbitrarily and capriciously violate the GLA Covenants and Articles of Incorporation; all show a likely pattern of collusion by GLA Respondents to fatally harm, abuse, and corrupt the GLA election and take away the rights of Glastonbury Members as voters and of Rakela and Haley as candidates to the GLA Board.

### **SCOPE OF REQUESTED TRO**

The TRO is necessary for the following reason:

- 1.) to stop the destruction of GLA 2017 absentee election ballots and envelopes;
- 2.) to stop the destruction of GLA 2017 vital corporate records of all GLA Board meeting and Election Committee meeting recordings from August—November 2017 (recording their intent to destroy such ballots and recordings vital to proving harm to Glastonbury Members, and Haley and Rakela, including the means in which the vote took place against Rakela and Haley);
- 3.) to prevent the harm that is currently being inflicted on confused and angry landowners who expect a system of honest and fair elections by the GLA;

- 4.) to prevent the harm that is currently being inflicted on Rakela and Haley through libelous emails and defamatory blogs and their rights to be candidates;
- 5.) to hold the existing state of affairs, allowing time for Rakela to obtain records and meeting recordings that have been requested weeks before but have not been turned over, allowing time to find a qualified attorney with time to take the case and until a hearing can be held and a legal opinion rendered regarding the voting rights of Glastonbury Members and the candidate rights of Rakela and Haley.
- 6.) to make certain that every member has the right to vote under the existing Covenants and Bylaws.

Without the issuance of the TRO, Rakela and the South Glastonbury community will be denied a fair and competitive election and suffer immediate irreparable harm caused by the election going forward without Members in Good Standing having a right to vote, and without a legal opinion on Rakela's right to be on the ballot and Haley's right to have his votes counted. Without a legal opinion, the electorate has become confused and angry, they don't know what to believe and there is continual vilification of Rakela and Haley by the competing candidates/board members and their significant others who are distorting the situation for their benefit.

The harm in this case is obvious. Candidates and their campaigns strategize and plan according to the rules established by law. In this case the covenants and bylaws, which each party is interpreting differently. The fairness of the imminent election would be put in question and the public interest would be irreparably harmed, and that harm vastly outweighs any minimal harm caused if the election is postponed further.



Rakela therefore also requests a postponement of the GLA annual election that was rescheduled for Dec. 2, 2017 until this matter is resolved and there is a Declaratory Judgment & Hearing (per MCA §27-8-202) to decide facts and rights cited herein.

The TRO would preserve the status quo until such time as this Court can make a determination of Rakela's motion for preliminary injunction, at which time Rakela will be able to demonstrate a substantial likelihood of prevailing on the merits of her claim.

### **JURISDICTION & AUTHORITY**

The Petitioner(s), Rakela, et al, live in Park County. The Respondents live in Park County. So jurisdiction is proper for this court. The court has authority under MCA §27-19-314 to issue a temporary restraining order to prevent irreparable injury to Petitioner(s).

**27-19-314. Temporary restraining order.** Where an application for a injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the adverse party, until the hearing and decision of decision of the application, by an order which is called a temporary restraining order.

The following section M.C.A. §27-19-315. Sets forth when a temporary restraining order can issue without notice to the opposing side:

**27-19-315. When restraining order may be granted without notice.** A temporary restraining order may be granted without written or oral notice to the adverse party or the party's attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or the party's attorney could be heard in opposition; and

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give notice and the reasons supporting the applicant's claim that notice should not be required.

Rakela, et al, meet the standard for issuing a temporary restraining order. As demonstrated in this memorandum and the attached affidavits in support of Rakela's motion for TRO, Rakela and the Glastonbury community will suffer irreparable harm, which can only be remedied by an immediate order of this Court to turn over requested evidence and hold the status quo until a hearing is held.

In order to obtain a TRO or a preliminary injunction, the applicant must provide the court a surety bond sufficient to cover payment of costs and damages that might be incurred by the party against whom the TRO or preliminary injunction is sought. MCA §27-19-306 (1). The bond requirement may be waived in the interests of justice. MCA §27-19-306 (1)(a). If the TRO or preliminary injunction is brought against an industrial operation or activity, the judge is obligated to require a surety bond sufficient to cover all wages, salaries, and benefits of the employees of the party enjoined during the amount of time that the TRO or preliminary injunction is in effect. M.C.A. 27-19-06(2)(1).

In this case, no employees will need to lose wages, salaries, or benefits as a result of the relief Rakela seeks and interests of justice dictate that a surety bond should not be required of Rakela.

The nature of the rights sought to be enforced –fair and competitive elections–is among the highest of public interests in a representative democracy, which have been recognized by Courts time and again. Accordingly, no bond should be required here.

Rakela was unsuccessful in resolving this matter outside the court, as her

Arjuna says

numerous emails to Respondents show; also fifty-three Membership Interests have signed a petition to postpone the election; therefore this TPO request is necessary. The enclosed sworn affidavits are factual evidence of irreparable injury to Petitioner(s) and the Glastonbury Community if a temporary restraining order is not issued immediately.

### CONCLUSION

Rakela, et al clearly meet all the requirements for granting a TRO. If the election takes place without a Declaratory Judgment to decide facts & rights the election will be thrown into chaos. The Glastonbury Community will suffer immediate and irreparable injury and have no plain, speedy and adequate remedy at law. Rakela et al seek to ensure fair and competitive elections that are not thrown into chaos. For this and for the reasons set forth above, Rakela's Motion for a Temporary Restraining Order should be granted and put in place until such time as a hearing on the merits can be had and a decision rendered on the Preliminary Injunction.

WHEREFORE, Rakela respectfully moves this Court for:

- a. An order granting Rakela's motion for TRO ;
- b. An order directing the Defendant to appear and show cause why this Court should not issue a preliminary injunction within ten days of the Court's signing of the order granting Rakela's motion for TRO;
- c. An order to postpone the GLA annual election until the matter is settled;
- d. An order for the GLA to preserve election ballots already cast for Rakela and Haley;
- e. An order to preserve recordings of GLA Board meetings and Election Committee meetings from August—November;

- f. For an appropriate declaration or decree that the GLA disqualification of Rakela from the South Glastonbury Ballot is invalid, as a matter of law;
- g. For an appropriate declaration or decree that the new GLA rule which forbids members to become "Members in Good Standing" by paying their assessments on or before the annual election is invalid, as a matter of law;
- h. For an appropriate declaration that votes cast for Marshall Haley shall not be void;
- i. For reasonable attorney's fees if an attorney for Petitioner(s) becomes involved;
- j. For cost of suite incurred herein, and
- k. This Court should order other protection as it deems just and proper.
- l. The Court should also issue a hearing for a Declaratory Judgment to decide facts & rights cited above involving all parties.
- m. I swear under oath or affirm that I have read this petition, and the facts herein are true and correct to the best of my knowledge; under penalty of law.

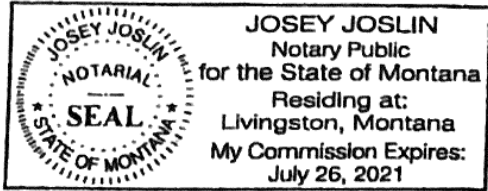
DATED this 27<sup>th</sup> day of November, 2017.

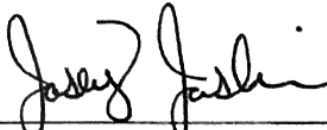
  
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 Petitioner—Kathleen Rakela

STATE OF MONTANA    )  
                                   :SS  
 County of Park         )

Subscribed and sworn to before me on this 27<sup>th</sup> day of November, 2017.

SEAL:



  
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 Notary Public for the State of Montana