

FILED

07/07/2025

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 25-0163

**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**Supreme Court Cause No. DA 25-0163**

MARY K. EMBLETON,

Petitioner/Appellant Pro Se,

v.

**FILED**

JUL 07 2025

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

JAMES L. LARSON and JOE BRIGGS, in their respective official capacities as  
CASCADE COUNTY COMMISSIONERS; and CASCADE COUNTY, a Political  
Subdivision of the State of Montana,

Respondents/Appellees.

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**APPELLANT'S OPENING BRIEF**

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On Appeal from the Montana Eighth Judicial District Court  
Cascade County, Cause No. DV-24-0548  
Honorable Elizabeth A. Best

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## **STATEMENT OF THE ISSUE**

Whether the district court's sua sponte denial of Appellant's petition by including its judgment of the petition in its order denying Appellant's motion requesting an expedited hearing on the petition, without notice or any opportunity to be heard, violated Appellant's procedural due process rights under the Montana Constitution.

## **STATEMENT OF THE CASE**

On November 4, 2024, Appellant Mary K. Embleton ("Embleton"), acting pro se, filed a "Petition to Set Aside and Void Cascade County Resolutions 24-39 and 24-43 and Other Injunctive Relief" ("Petition") under Sections 2-3-114 and 2-3-213, MCA; and Article II, Section 8 of the Montana Constitution. Respondents named in the Petition were James L. Larson and Joe Briggs, in their official capacities as Cascade County Commissioners, and Cascade County, a Political Subdivision of the State of Montana ("Cascade County" or the "County").

Doc. 1, p. 1.

On November 4, 2024, Embleton also filed the following documents with her Petition: (1) "Motion to Set Hearing and to Set Aside and Void Resolutions 24-39 and 24-43 and Other Injunctive Relief" ("Motion to Expedite Hearing" or "Motion") [Doc. 6]; and (2) "Brief in Support of Motion to Set Hearing and to Set

Aside and Void Resolutions 24-39 and 24-43 and Other Injunctive Relief” (“Brief”). Doc. 7.<sup>1</sup>

On November 27, 2024, the County filed “Respondents’ Answer to Petition Set Aside and Void Cascade County Resolutions 24-39 and 24-43 and Other Injunctive Relief (“Answer”).” Doc. 13.

On December 13, 2024, the County filed “Respondents’ Response in Opposition to Petitioner’s Motion to Set Hearing and to Set Aside and Void Resolutions 24-39 and 24-43 and Other Injunctive Relief (“Response”).” Doc. 17.

On December 30, 2024, Embleton filed “Petitioner’s Reply Brief in Support of Motion to Set [Expedited] Hearing (“Reply Brief”). Doc. 18.

On December 31, 2024, the district court issued its “Order Denying Petition to Set Aside and Void Resolutions 24-39 and 24-43 and Other Injunctive Relief and Motion to Set Expedited Hearing” [emphasis added]. Doc. 19 (see Appendix A attached hereto; referred to herein as the “Order”). The Order included two (2) final judgments, the first of which denied the Embleton’s Motion and the second of which denied Embleton’s Petition as follows: “IT IS HEREBY

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<sup>1</sup> After Embleton filed her Motion and Brief requesting an expedited hearing on her Petition, she realized that these two documents would have been more aptly named “Motion to Set Expedited Hearing on Petition to Set Aside and Void Cascade County Resolutions 24-39 and 24-43 and Other Injunctive Relief” and “Brief in Support of Motion to Set Expedited Hearing on Petition to Set Aside and Void Cascade County Resolutions 24-39 and 24-43 and Other Injunctive Relief,” respectively, to avoid confusion.

Under Section 25-4-112, MCA, “An “affidavit, notice or other paper without the title of the action or proceeding in which it is made or with a defective title is as valid and effectual for any purpose as if duly entitled if it intelligibly refers to such action or proceeding [emphasis added].”

ORDERED that Embleton's Motion to Set Expedited Hearing and Petition to Set Aside and Void Resolutions 24-39 and 24-43 and Other Injunctive Relief are **DENIED.**" Doc. 19, p. 4.

On December 31, 2024, Embleton's case was closed. Page 2, Appendix B: "Civil ROA Summary."

On February 25, 2025, Embleton filed a "Notice of Appeal" in the Supreme Court of the State of Montana. Doc. 20. Embleton is appealing **only** the second judgment in the Order that denied Embleton's Petition. She is **not** appealing the first judgment in the Order that denied her Motion to Set Expedited Hearing.

#### **STATEMENT OF THE FACTS**

On September 19, 2024, Cascade County passed Resolution 24-39, which increased solid waste special assessments for rural property taxpayers. Doc. 1, pp. 5-6. On October 3, 2024, the County passed Resolution 24-43, which amended Resolution 24-39 (Resolutions 24-39 and 24-43 referred to herein as the "Resolutions"). Doc. 1, pp. 6-7.

Embleton filed "Petition to Set Aside and Void Resolutions 24-39 and 24-43 and Other Injunction Relief," under Article II, Section 8 of the Montana Constitution, and Sections 2-3-114 and 2-3-213, MCA [Doc. 1, p. 1], the provisions of which are as follows:

Article II, Section 8 of the Montana Constitution provides that "[t]he public has the right to expect governmental agencies to

afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.”

Section 2-3-114, MCA, provides, in part, that “[t]he district courts of the state have jurisdiction to set aside an agency decision ... upon petition of any person whose rights have been prejudiced.”

Section 2-3-213(1), MCA, provides that “[a]ny decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void a decision must be commenced within 30 days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.”

In her Petition, Embleton alleged that the Cascade County Commission (the “Commission”) passed the Resolutions in violation of Montana law relating to public participation in governmental operations. Doc. 1, pp. 4-10.

Additionally, Embleton alleged that the Resolutions were enacted in violation of Montana statutes that pertain to Special Assessments, including especially the public notice, publication, and public hearing requirements of Section 7-11-1025, MCA [Doc 1, pp 3-7], which provides, in part, as follows:

[...]

(2) (a) The governing body **shall** pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements as provided in 7-6-4012 and 7-6-4013 [emphasis added].

[...]

(3) The resolution levying the assessment to defray the cost of the special district **must** contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed [emphasis added].

(4) The resolution **must** be kept on file in the office of the clerk of the governing body [emphasis added].

(5) A notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's office and subject to inspection **must** be published as provided in 7-1-2121 or 7-1-4127. The notice **must** state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and **must** contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice [emphasis added].

[...]

(7) At the time set, the governing body **shall** meet and hear all objections that may be made to the assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution modify the assessment [emphasis added].

[...]

In her Petition, Embleton alleged that Resolution 24-39 was passed at a Special Commission Meeting on September 19, 2024, without notice or publication of any information regarding proposed increases as required by Section 7-11-1025, MCA. Doc. 1, pp. 5-6.

Embleton also alleged that Resolution 24-43 was passed at a Special Commission Meeting on October 3, 2024, also without notice or publication of any information regarding proposed increases, and without a public hearing as required by Section 7-11-1025, MCA. Doc. 1, pp. 6-7.

In her Petition, Embleton alleged that prior to the Special Commission Meetings held on September 19, 2024, and October 3, 2024, the Commission held two meetings in July, 2024, that were not properly noticed with an agenda, not recorded, and for which no minutes were taken as required by Sections 2-3-103, 2-3-202, 2-3-203, and 2-3-212, MCA. Doc. 1, pp. 2, 4, and 9. Embleton filed her Petition to ask the district court to:

1. Set aside Resolutions 24-39 and 24-43 as allowed by MCA Section 2-3-114, MCA, which provides, in part, “[t]he district courts of the state have jurisdiction to set aside an agency decision under this part upon petition of any person whose rights have been prejudiced.”

2. To VOID Resolutions 24-39 and 24-43 as allowed by Section 2-3-213, MCA.

3. To restore the Solid Waste Assessments back to the level established by Resolution 12-60.<sup>2</sup>

4. To issue a decision prior to the issuance of the 2024 Property Tax bills being mailed to rural county property taxpayers.

5. To order the Cascade County Treasurer to issue refunds in the amounts of the increase only to any and all property

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<sup>2</sup> Resolution 12-60, enacted on August 31, 2012, was the last resolution by which the Commissioners lawfully increased the Solid Waste District Special Assessment. Doc. 1, p. 3.

owners who may have paid the increased Solid Waste District Special Assessment on their 2024 Property Tax bills.

6. To assess such reasonable costs as prescribed by Section 2-3-114(2), MCA, which provides “[a] person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person’s rights under Article II, Section 8 of the Montana constitution may be awarded costs...”

7. To provide for such other and further relief as the court deems just. Doc. 1, pp. 10-11.

### **STANDARD OF REVIEW**

The Montana Supreme Court’s review of questions of constitutional law, including procedural due process claims, is plenary. *State v. Racz*, 2007 MT 244, ¶ 13, 339 Mont. 218, 168 P.3d 685, *In re Estate of Boland*, 2019 MT 236, 397 Mont. 319, 450 P.3d 849 (citing *In re Marriage of Cini*, 2011 MT 295, ¶ 15, 363 Mont. 1, 266 P.3d 1257).

### **SUMMARY OF ARGUMENT**

The district court’s sua sponte denial of Embleton’s Petition, without notice or an opportunity to be heard, violated Embleton’s procedural due process rights under Article II, Section 17 of the Montana Constitution. Due process requires that a party be given notice and an opportunity to be heard before a court takes action that affects their rights. By denying the Petition in the same Order that denied the Motion to Expedite Hearing, the district court deprived Embleton of both notice and the

opportunity to present arguments or evidence in support of her Petition, and thus violated Embleton's constitutional right to due process.

## **ARGUMENT**

Embleton is a pro se litigant appealing part of a district court order in which the court denied, *sua sponte*, the Petition she had filed alleging that her rights of public participation under Montana law had been violated. Doc. 1. At the time Embleton filed the Petition, Embleton also filed a Motion and Brief requesting an expedited hearing on her Petition. Docs. 6 and 7, respectively. The Respondents filed an Answer to the Petition [Doc. 13] and served Embleton with a discovery request. No other action was taken regarding Embleton's Petition until the district court issued its Order denying Embleton's Motion to Expedite Hearing, but included in the same Order a judgment denying Embleton's Petition. Doc. 19. Embleton was not provided with notice that the court intended to rule on the merits of the Petition. Accordingly, Embleton was never allowed to present arguments or evidence in support of the Petition.

Article II, Section 17 of the Montana Constitution states that “[n]o person shall be deprived of life, liberty, or property without due process of law.” Mont. Const. art. II, § 17.

The Montana Supreme Court set forth in *In re Best*, 2010 MT 59, 355 Mont. 365, 229 P.3d 1201:

No absolute standard exists for what constitutes due process. *McDermott v. McDonald*, 2001 MT 89, ¶ 10, 305 Mont. 166, 24 P.3d 200. The process due in any given case varies according to the factual circumstances of the case, the nature of the interests at stake, and the risk of making an erroneous decision. *Sage v. Gamble*, 279 Mont. 459, 465, 929 P.2d 822, 825 (1966). ... [In re Engel, 2008 MT 215, ¶ 23, 344 Mont. 219, 194 P.3d 613, cert denied, \_\_\_\_ U.S. \_\_\_, 129 S. Ct. 619 (2008)].

In addition, due process requires a fair and impartial tribunal, *State v. Moore*, 268 Mont. 20, 51, 885 P.2d 457, 477 (1994), overruled on other grounds by *State v. Gollehon*, 274 Mont. 116, 906 P.2d 697 (1995), and a fair hearing, *Matter of Goldman*, 179 Mont. 526, 551, 588 P.2d 964, 978 (1978)." Best, ¶ 22.

The Montana Supreme Court has also stated that "the constitutional right to due process requires notice and an opportunity to be heard 'at a meaningful time and in a meaningful manner,' *In re Marriage of Stevens*, 2011 MT 124, ¶ 18, 360 Mont. 494, 255 P.3d 154 (quoting *Mont. Power Co. v. Pub. Serv. Commn.*, 206 Mont. 359, 368, 671 P.2d 604, 609 (1983))." *Kananen v. South*, 2013 MT 232, ¶ 20, 371 Mont. 289, 307 P.3d 309.

As the Montana Supreme Court more recently expounded in *Tai Tam, LLC v. Missoula Cty.*, 2022 MT 229, 410 Mont. 465, 520 P.3d 312:

Under the Constitutions of both Montana and the United States, a person may not be deprived of life, liberty, or property without due process of law. Mont. Const. art. II, § 17; U.S. Const. amend. V; U.S. Const. amend. XIV. The guarantee of due process has both a procedural and a substantive component, and "the requirements for procedural due process are (1) notice, and (2) opportunity for a hearing appropriate to the nature of the case." *Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, ¶¶ 29-30, 334 Mont. 237, 146 P.3d 759. This Court has "previously stated that 'due process

generally requires notice of a proposed action which could result in depriving a person of a property interest and the opportunity to be heard regarding that action.”” *Geil v. Missoula Irrigation Dist.*, 2002 MT 269, ¶ 53, 312 Mont. 320, 59 P.3d 398 (quoting *Pickens v. Shelton-Thompson*, 2000 MT 131, ¶ 13, 300 Mont. 16, 3 P.3d 603). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”” *Smith v. Bd. of Horse Racing*, 1998 MT 91, ¶ 11, 288 Mont. 249, 956 P.2d 752 (quoting *Connell v. Dep’t of Soc. & Rehab. Servs., Child Support Enf’t Div.*, 280 Mont. 491, 496, 930 P.2d 88, 91 (1997)). *Tai Tam*, ¶ 25.

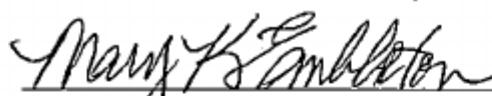
The Montana Supreme Court has emphasized that procedural due process requires courts to take precautions to ensure fairness, including providing notice and an opportunity to present arguments, **even when acting sua sponte** [emphasis added]. *BNSF Ry. Co. v. Cringle*, 2010 MT 290, ¶ 25, 359 Mont. 20, 247 P.3d 706.

Although this Court has not established an absolute standard for what constitutes due process, it is clear from the due-process principles as set forth above in Montana case law that the district court’s denial of Embleton’s Petition in the same Order that denied Embleton’s simple Motion to Expedite Hearing violated Embleton’s right to due process under the Montana Constitution.

## CONCLUSION

Based on the foregoing argument, Embleton respectfully requests that this Court reverse the part of the district court's order denying Embleton's Petition and remand the matter to the district court for further proceedings.

DATED this 7<sup>th</sup> day of July, 2025.

  
\_\_\_\_\_  
Mary K. Embleton  
Petitioner/Appellant Pro Se

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced, except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,403 words, excluding table of contents, table of authorities, certificate of service, certificate of compliance, and appendices.

DATED this 7<sup>th</sup> day of July, 2025.



Mary K. Embleton  
Petitioner/Appellant Pro Se

## CERTIFICATE OF SERVICE

I, Mary K. Embleton, hereby certify that on the 1<sup>st</sup> day of July, 2025, I served a true and accurate copy of the foregoing APPELLANT'S OPENING BRIEF with (1) the Clerk of the Montana Supreme Court, and (2) counsel of record for Respondents/Appellees, as set forth below, via the United States Postal Service, postage prepaid.

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