IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 25-_____

CITIZENS FOR A BETTER FLATHEAD & BRUCE YOUNG,

Petitioners,

v.

ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY, HON. PAUL SULLIVAN

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

APPEARANCES:

Guy Alsentzer, Esq.

Attorney for Petitioners

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INTRODUCTION

This Court must take supervisory control to correct an injustice caused by the district court's failure to timely act on the fully briefed application for writs of mandamus.[1] (Docs. 4-8, 16, attached as Exhibit A) ("Application for Mandamus") (Doc. 18, attached as Exhibit B) (Defendant's Response). This case turns on whether Plaintiffs are entitled to a speedy remedy where a county sewer district has diluted Plaintiffs' Right to Know to such a degree that Plaintiffs' attendance at public meetings became an empty vessel for satisfying their Right to Participate.

Despite properly seeking to vindicate their Rights to Know and to Participate in local government decision-making on issues of undisputedly significant public interest through mandamus, the district court's failure to timely act has unnecessarily undermined the speedy and meaningful resolution of the demonstrated harms to Petitioners' constitutional rights.

Whereas Petitioners have filed an appeal of the Order denying injunctive relief contemporaneously with this Writ, and because the district court's delay has effectively resulted in justice denied with both constitutional and pragmatic harms, this Court should take supervisory control and consider this writ of supervisory control in conjunction with its review of the appealed Order.

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[1] In a related matter, the district court erroneously denied injunctive relief. (Doc. 34, attached hereto as Exhibit C) ("Order").

By incorrectly concluding that, "[t]he central question is not whether Plaintiffs were [uninformed], but whether the District engaged in deliberate obfuscation akin to the false denials in *Bryan*," the district court's injunction Order not only misstates the law and thereby deprives Petitioners of their constitutional rights, but also vitiates Petitions' long delayed application for writ of mandamus, dooming timely resolution of a matter of statewide importance. Order at 14. As in the seminal case of *Bryan v. Yellowstone County Elem. Sch. Dist. No. 2,* 2002 MT 264, 312 Mont. 257, 60 P.3d 381, this matter requires the Court's affirmation that, "at a minimum, the "reasonable opportunity" standard articulated in Article II, Section 8, and § 2-3-111, MCA, demands compliance with the right to know contained in Article II, Section 9." *Bryan*, ¶ 44.

Without this Court's instruction, the district court's misapplication of mandamus procedures pursuant to § 27-26-101, MCA *et seq*., will continue to cause arbitrary delay, and the erosion of the Right to Know and Right to Participate will stand. Further, county water & sewer districts will be empowered to render decisions on matters of significant public interest absent meaningful public participation, and Petitioners will continue grasping in the dark for basic knowledge of government decision-making contrary to unambiguous constitutional imperatives. Justice delayed is justice denied.

PROCEDURAL HISTORY

On April 16, 2025, Petitioners filed a Complaint, and then on April 23, 2025 a First Amended Complaint, alleging the Lakeside County Water & Sewer District's ("District") decision-making on March 18 and April 9, 2025, and its informal public participation procedures, violated their constitutional rights to know and participate and the Public Participation in Governments Act. (Doc. 3, attached as Exhibit D). On April 24, 2025, Petitioners filed an Application for Writs of Mandamus, brief and affidavits in support. (Exhibit A). Personal service was made on the District on April 29, 2025.

The first basis for Petitioner's mandamus action was that despite a December 2024 request for a proposed sewer service agreement entitled "Discovery Lands Agreement", and public comment expressing concern about authorizing a new extra-district sewage connection commitment without demonstrated capacity or a capital improvements plan, the District subsequently approved the "Discovery Lands Agreement" during its March 18, 2025 business meeting under a different name of "Territory 1889", without first alerting the interested public that the two matters were the same or disclosing the Agreement before decision-making. Similarly, the District approved a Phase I bid award despite failing to provide any documentation on this proposed action to the public, including a failure to provide any documentation upon request by Petitioners, leaving the public a meaningless

public comment opportunity.

A second basis for mandamus is Petitioners' allegation that informal public participation procedures of the District, regularly entailing Friday notice of business meetings set for the following Tuesday, with no supporting documentation of any proposed action item, is inadequate to provide constitutionally-guaranteed adequate notice or meaningful public participation opportunities.

Petitioners sought writs of mandamus instructing the District to reconsider its March and April 2024 decisions in manners compliant with the constitutional Right to Know and Right to Participate, and a writ directing the District to promulgate a compliant public participation policy.

On May 13, 2025, twenty days after filing writs of mandamus and contrary to the ten-day limitation provided under § 27-26-202, MCA, the district court issued an order denying an alternative writ, stating without any analysis, "[t]he Court is unpersuaded that it should act without giving Defendant an opportunity to respond." (Doc. 11, attached as Exhibit E). Separate and on the same day the district court issued an order setting a mandamus show cause hearing for June 11, 2025. (Doc. 12, attached as Exhibit F). The district court held a show-cause hearing on June 11, 2025, but did not issue an order on mandamus at or after that hearing.

On the afternoon of Friday, June 13, 2025, the District published an Agenda

for its Tuesday, June 17, 2025, business meeting. (Doc. 24, Exhibit A to Plaintiff's Application for Preliminary Injunction, attached as Ex. G). Notably, for the first time a District agenda now stated that documentation supporting agenda items could be requested by e-mail. On Monday morning, June 16, 2025, Petitioners requested by e-mail "the entire board packet for your June 17th Board meeting including all items and related documents." *Id*. Later that morning Defendant's representative replied by e-mail, providing some agenda documents while not disclosing others, stating "[t]he financial report and bill approval documents are not available [.t]hose documents will be available at the Board meeting." *Id*.

Petitioners attended the June 17th, 2025, District meeting and, based on stilted and delayed disclosure of substantive information regarding agenda items, was unable to meaningfully participate in that meeting. (*See* Doc. 29, Flowers Affidavit to Reply in Support of Injunction, attached as Ex. H). On or about mid-June 2025, Petitioners also became aware that Flathead County had published notice of its intent to consider issuance of a preliminary plat for a new proposed subdivision; this subdivision was the same to whom the District had issued a sewer service agreement in March 2025, and which Petitioners had filed suit alleging that decision violated their rights to know and participate.

Because the district court had still not acted on the pending mandamus action, on July 1, 2025, Plaintiffs filed an Application for a Temporary Restraining

Order, Preliminary Injunction, and Show Cause Order. (*Supra*, Ex. G). On July 15, 2025, Defendant filed a Response. (Doc. 27, attached as Ex. I). Twenty-three days later, on July 24, 2025, the district court issued an order setting a show-cause hearing on Plaintiffs' Applications for August 18, 2025. The district court held a show-cause hearing on Plaintiffs' Application for Injunctive Relief on August 18, 2025, and issued an Order Denying Temporary Restraining Order and Preliminary Injunction on August 20, 2025. (*Supra*, Ex. C).

In denying Plaintiffs' request for injunctive relief, and as regards the challenged March 18, 2025 District decision approving the Territory 1889 service agreement, the district court reasoned that

> The critical question is not whether Citizens were confused by the nomenclature, but whether the District engaged in deliberate obfuscation akin to the false denials in Bryan. Here, Citizens, a sophisticated organization experienced in public records requests and government proceedings, had the opportunity to inquire about "Territory 1889" when it appeared on the agenda but chose not to do so until after the March 18 meeting.

Order at 14-15. The Court further reasoned that

> *Bryan* should be read to prohibit hiding the ball or playing word games to frustrate an obvious request. The District's conduct here, while imperfect, does not demonstrate the same pattern of deliberate concealment that characterized *Bryan*.

Order at 16.

Based on this and similar rationales, the district court determined the District's March 18, 2025, decision-making did not violate Petitioners'

constitutional rights and therefore Petitioners did not qualify for injunctive relief. Further, the district court determined that the District's informal procedures satisfy statutory requirements, despite finding "[t]he District's practices here of posting brief agendas without attachments, approving a major project under a name different from prior discussions, and providing narrow responses to records requests may well have made meaningful public participation more difficult." Order at 22.

At the time of filing this writ of supervisory control and corollary appeal of denied injunctive relief, the district court has still not acted on Petitioners' long-stalled application for writs of mandamus.

STANDARD OF REVIEW

This Court exercises supervisory control "when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate." *Mont. Democratic Party v. Mont. First Jud. Dist. Ct.*, 2024 MT 207, ¶ 9, 418 Mont. 100, 556 P.3d 540 (citing M. R. App. P. 14(3)). "The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case." *Id*.

ARGUMENT

The district court's failure to timely adjudicate a mandamus action involving Petitioners' Right to Know and Right to Participate is itself constitutional in nature, a mistake of law, and urgent based on the prospect of irretrievable commitments of resources, all of which complicate the availability of adequate remedies. And when combined with the district court's denial of injunctive relief based on fundamental legal errors relating to meaningful public participation opportunities in county sewer district decision-making, this writ also presents issues of state-wide importance.

Should this Court only address Petitioners' related appeal of the denied injunction - as opposed to combining its review of the entire case though accepting this writ - reversal of the injunction action alone is unlikely to cure the constitutional injuries inflicted on Petitioners. As a practical matter, the District's flawed and informal public participation procedures remain the status quo, and Petitioners remain unable to meaningfully participate in government decision-making. Further, ongoing reliance on contested District decisions infringing on constitutional rights to public participation present classic circumstances demanding speedy resolution through mandamus. The Court should therefore grant this writ and combine review of the corollary injunction order appeal to correct reversible legal error and redress harms to Petitioners' constitutional rights.

I. The district court's failure to act on writs of mandamus and denial of injunctive relief implicate statewide constitutional concerns.

Article II, Section 8 of the Montana Constitution provides that "the 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[.]" The Legislature has codified guidelines to protect these guarantees at § 2-3-101, et seq., MCA. Article II, Section 9 of the Montana Constitution provides that "[n]o person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure." This Court previously determined that, "at a minimum, the "reasonable opportunity" standards articulated in Article II, Section 8, and § 2-3-111, MCA, demands compliance with the right to know contained in Article II, Section 9." *Bryan v. Yellowstone*, ¶44.

§ 27-26-102(1), MCA, allows district courts to issue a writ of mandamus "to compel the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded[.]" "The writ must be issued in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law." § 27-26-102(2); *MEIC et al v. Office of the Governor for the State of*

Montana, 2025 MT 112, ¶22 (internal citations omitted) ("writ is available where the party applying for it is entitled to performance of a clear legal duty by the party against whom the writ is sought and there is no speedy and adequate remedy in the ordinary course of law."); *Smith v. County of Missoula*, 1999 MT 330, ¶28, 56 St. Rep. 1318, 992 P.2d 834. "The writ must be issued upon affidavit, on the application of the party beneficially interested," and the "notice of the application, when given, must be at least 10 days or a shorter time." §§ 27-26-201, 27-26-202, MCA. Thus, the very essence of mandamus is the necessity of a speedy remedy if Petitioners' constitutional rights to know and participate are to be protected.

Here, Petitioners timely filed a civil action alleging violations of their right to know and to participate in March 18 and April 9, 2025, decision-making of the District and its inadequate public participation procedures and then sought writs of mandamus on April 24, 2025. The district court, however, waited weeks until May 13, 2025, to summarily deny an alternative writ, then set a show-cause hearing on whether to issue a peremptory writ for June 11, 2025, nearly another four-weeks in the future. Since June 11, 2025, the district court has failed to issue any order on the fully-briefed application for mandamus. Such unnatural delay precipitated an application for injunctive relief which, with the district court's denial on August 20, 2025, has created an untenable circumstance whereby the district court has all but adjudged the mandamus action denied, yet without finality Petitioners lack an

adequate procedure at law to vindicate their constitutionally protected rights to meaningful public participation.

While "it is well established that a court does not decide the merits of a claim in a preliminary injunction proceeding," "[t]hat is a challenging task here, where [the district court's denial of injunctive relief] nearly takes the case to its final conclusion." *Mercer v. Mont. Dept. of Pub. Health & Human Services et al,* 2025 MT 9, ¶12, 562 P.3d 502 (internal citations omitted). Indeed, while Petitioners' mandamus action languishes unresolved, irreparable harm remains and continues with the District's past decisions and its defective decision-making procedures. At the same time the irretrievable commitments of resources reliant on challenged decision-making continues apace, inequitably allowing harms to multiply. The district court's failure to act as required by the mandamus statute reflects a mistake of law, and the fall-out of such inaction is causing gross injustice.

A. The district court erroneously severed the right to know from the right to participate

Petitioners request this Court take supervisory control and combine review of the corollary appeal of denied injunctive relief in this case. The undisputed facts revolve around the District's informal public participation processes, which do not include affirmative provision of any documentation supporting a Board action-item named on an agenda, which is published on Friday afternoons preceding Tuesday afternoon business meetings each month. Nor has the District historically made

any documentation supporting agenda action-items available in hard-copy at its meetings. The public is allowed a comment period at the beginning of a Board meeting, prior to any Board discussions, but not after.

In response to Petitioners' litigation the District now allows the public to request documentation supporting agenda action-items, yet the record of this case demonstrates even when requested, entire board packets are not provided until the exact time of the meeting, diminishing the public's ability to consider, review, and engage decision-makers on the substance of any proposed action as explicitly required by § 2-3-111, MCA. Notably, every other Montana local government provides full documentation supporting any agenda action-items, online, several days before business meetings.

The district court's failure to act on Petitioners' application for writs of mandamus, combined with its recent denial of injunctive relief, puts front and center a crux constitutional issue of statewide importance: that the right to speak at a sewer district meeting (or other local board) is meaningless if the speaker does not have access to the information necessary to make relevant and intelligent comments beforehand. By not timely adjudicating a writ of mandamus and providing final judgment, the district court leaves Petitioners in a procedural no-man's land.

Moreover, the district court's recent injunction Order reflects legal error

causing gross injustice to Petitioners' constitutional rights, including reflecting that court's opinion on the very merits languishing unresolved in the mandamus action. Among other items the Order erred in requiring deliberate obfuscation to prove violations of public participation, erred in determining no burden lies on agencies to develop procedures ensuring adequate notice and assisting public participation before a final agency action is taken that is of significant interest to the public, and erred in concluding that the right to participate was satisfied merely because Petitioners were able to attend a meeting.

B. Petitioners were denied the opportunity to meaningfully participate in the Territory 1889 Agreement or Phase 1 Bid Award Decisions

Petitioners had a constitutional and statutory right to a "reasonable opportunity" to participate in the District's March 18, 2025, decision to authorize sewer service under the Territory 1889 Agreement. Mont. Const. art. II, § 8; § 2-3-111(1), MCA. They also had the same right to participate in the District's April 9, 2025, decision awarding a Phase I bid. A reasonable opportunity to participate is dependent upon access to relevant documents underpinning a proposed decision.

Petitioners requested in writing the "Discovery Lands Agreement" in December 2024. Petitioners and the public also expressed concern about the Agreement and general proposals to expand infrastructure based on speculative sewer capacity, no adopted infrastructure plans, and no information about impacts

to rate-payers. The District responded to Petitioners in late December 2024 stating it did not have a copy of the agreement, which was in draft form.

Despite the Discovery Lands Agreement being of significant public interest, the District, behind closed doors, renamed the document as the "Territory 1889 Agreement" and listed it as an action item on its March 2025 agenda as an "old business item." The District did not provide disclosure of the Agreement with its March 2025 agenda or at its meeting, and Petitioners were unknowingly awaiting a Discovery Lands Agreement agenda item, already secretly renamed Territory 1889, when they attended the March 18, 2025, District meeting. Confused by the limited discussion about and quick approval of the Territory 1889 Agreement, Petitioners requested a copy of that agreement after the March 18, 2025, District meeting, only discovering the very action on which they had expressed concern and requested prior disclosure had just been summarily approved. (*See* affidavits, Ex. A, G).

Petitioners also requested information concerning Phase I bids after the District's March 18, 2025, meeting, and were told no bids had been awarded. *Id*. When Petitioners discovered notice of a special meeting to award a Phase I bid approximately two-weeks later, they attended and expressed concern that they could not meaningfully participate in the decision because the District had not disclosed any information concerning that decision. The District still approved a Phase I bid award absent disclosing documentation about the proposed bids.

Petitioners submit they could not have a "reasonable opportunity" to participate in the District's Territory 1889 Agreement decision, or the Phase I bid award decision, when they were denied access to the documents on which those decisions were based. In other words, they could not effectively exercise their right to participate under Article II, § 8 until they had been afforded their right to examine documents under § 9.

An opportunity to participate while the right to know is unfulfilled is not the "reasonable opportunity" to participate required by Article II, § 8. When the district court's Order found otherwise, stating "[t]he critical question is not whether Plaintiffs were confused by nomenclature, but whether the District engaged in deliberate obfuscation akin to Bryan," Order at 14, it improperly stated the standard articulated by this Court and committed legal error.

C. The District's informal public participation procedures thwart meaningful public participation and are capable of repetition

The public is entitled to do more than merely listen and observe a public meeting.

> Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures taken shall assure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

§ 2-3-103(1), MCA. This mandate has two components: notice and participation. With respect to participation, however, the statute provides:

> Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant public interest to the public.

§ 2-3-111(1), MCA.

This case revolves around the public's request for documentation involving proposed sewer district decisions, including technical land use contracts, infrastructure documentation entailing budgets, spreadsheets and plans, all things which reasonably require disclosure sufficiently in advance of a decision to allow the submission of oral or written arguments. The district court, however, refused to find the District's lacking public processes "a constitutional violation [.] without deliberate deception, false statements, or complete foreclosure of public participation." Order at 23. Doing so deviated from unambiguous statutory requirements and this Court's clear direction in *Bryan*, and was therefore legal error of both a constitutional and grave tenor. It also possesses statewide importance given the practical effect of providing unfettered discretion to county water and sewer districts to dilute the public's right to know, or to participate, in their decisions.

II. The nature of the case makes the normal appeal process inadequate

The district court's inaction on Petitioners' application for writs of mandamus forecloses appellate review of substantive decisions, while its denial of

injunctive relief allows irreparable and consequential harms to continue based on reversible mistakes of law. Without correction now this Court will have a piecemeal opportunity to correct the erroneous denial of injunctive relief, yet the very urgency and constitutional issues underlying Petitioners' mandamus action would continue to improperly languish, indefinitely.

CONCLUSION

This Court should exercise supervisory control. Further, it should combine review of the improperly stalled mandamus action with its review of the denied injunction and allow full briefing on this urgent issue of statewide importance.

Dated this 18 day of September, 2025.

/s/ Guy Alsentzer, Esq.

Attorney for Plaintiffs

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this petition is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and quoted materials; and the word count is 3,764 words, excluding certificates and tables.

/s/ Guy Alsentzer
Guy Alsentzer, Esq.

INDEX OF EXHIBITS

CERTIFICATE OF SERVICE

I, Guy Alsentzer, certify that I have served a true and accurate copy of the foregoing Petition- Writ of Supervisory Control to the following on Sept. 18, 2025:

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Seth T. Bonilla
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P.O. Box 1746
Great Falls, MT 59403
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(Attorneys for Defendants)

Paul Sullivan (Respondant)
920 S. Main St., Ste. 310
Kalispell, MT 59901

Judge of Record, self-represented

Conventional Service

CERTIFICATE OF SERVICE

I, Guy Andrew Alsentzer, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 09-18-2025:

Paul Sullivan (Respondent)
920 S Main St, suite 310
Kalispell MT 59901
Representing: Self-Represented
Service Method: Conventional

Electronically Signed By: Guy Andrew Alsentzer
Dated: 09-18-2025