IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 26-0098

ELIZABETH KRAGH,

Plaintiff/Petitioner and Appellant,

vs.

MONTANA ASSOCIATION OF THE DEAF,

Defendant/Respondent and Appellee.

On Appeal from the Montana Fourth Judicial District Court
Missoula County, Cause No. DV-32-2025-0000418
Before Hon. Tara Elliott

ANSWER BRIEF TO APPELLANT'S OPENING BRIEF

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I. STATEMENT OF THE ISSUES

Whether the district court properly granted summary judgment to MAD on all of Kragh's claims.

II. STATEMENT OF THE CASE

Before turning to the procedural history, a brief clarification is warranted. Appellant Elizabeth Kragh (hereinafter "Kragh") attempts to frame this case as a broader indictment of the judicial system, suggesting bias against or suppression of the deaf community. That framing is not supported by the record and is not the issue before this Court. This appeal concerns the application of settled law to an undisputed factual record. The district court's decision turned on Rule 56 principles as opposed to the identity of the parties or any extraneous considerations. The law applies equally to all litigants, and it was correctly applied here.

This appeal arises from a nonprofit governance dispute in which Kragh sought declaratory and injunctive relief against Respondent Montana Association of the Deaf, Inc. (hereinafter "MAD") based on three (3) theories: (1) alleged denial of access to corporate records, (2) alleged procedural irregularities in the election of officers, and (3) alleged deficiencies in financial oversight. (Dkt. 1). MAD filed an Answer and Counterclaim seeking declaratory and injunctive relief. (Dkt. 18).

Following the exchange of written discovery (Dkt. 22, 23, 32, 33, and 35), MAD moved for summary judgment under M. R. Civ. P. 56. (Dkt. 37-39). On

October 9, 2025, Kragh filed a motion under M. R. Civ. P. 56(f), seeking a continuance of MAD's summary judgment motion to enable other discovery to be undertaken. (Dkt. 42-43). MAD filed its answer brief on October 24, 2025. On December 18, 2025, the district court entered an Order properly denying Kragh's Rule 56(f) motion for failure to establish how the proposed discovery would preclude summary judgment. (Dkt. 57). "Here, Plaintiff identifies categories of materials she seeks but she does not explain with sufficient specificity what specific facts within those materials are essential to opposing MAD's motion or how they would preclude summary judgment." (*Id.*).

On January 8, 2026, Kragh filed her opposition to MAD's summary judgment motion. (Dkt. 58). MAD filed its reply on January 22, 2026. (Dkt. 59-60). On January 29, 2026, the district court entered an order properly granting summary judgment in favor of MAD on all of Kragh's claims. (Dkt. 61). The district court correctly concluded that no genuine issue of material fact existed as to any claim and that MAD was entitled to judgment as a matter of law, including because Count I was moot, Count II was barred by lack of injury, waiver, and mootness, and Count III lacked any evidentiary basis of financial impropriety or basis for relief. (*Id.*). The district court's ruling reflects a faithful application of Rule 56 to the undisputed record. Kragh identifies no reversible error in that analysis.

In addition to the Rule 56(f) motion, Kragh filed several other motions that were denied by the district court, including, without limitation, a motion for protective order (Dkt. 21) and a motion to dismiss counterclaims and strike affirmative defenses (Dkt. 20), which were properly denied by order dated September 22, 2025 (Dkt. 34). She also filed a motion to compel discovery and a motion to modify scheduling order (Dkt. 45) and extend deadline to amend pleadings, both of which were denied by the district court on December 18, 2025 (Dkt. 57). These rulings further reflect the court's consistent application of the Montana Rules of Civil Procedure and its proper exercise of discretion in managing the scope and timing of the case.

On appeal, Kragh again does not identify any genuine dispute of material fact overlooked by the district court or any misapplication of Rule 56. Instead, she attempts to reframe the case by rearguing previously rejected positions, expanding her claims beyond the scope of her Complaint, and relying on allegations and materials that were not part of the Rule 56 record.

Appellate review is confined to the record before the district court and does not permit a party to supplement the case with new theories or evidence. Because Kragh's arguments do not demonstrate reversible error in the district court's analysis, they provide no basis to disturb the judgment.

III. STATEMENT OF THE FACTS

MAD is a Montana nonprofit organization incorporated in 1966, with a mission to promote, protect, and preserve the rights and quality of life of deaf and hard of hearing individuals in the state of Montana. (Dkt. 1, pp. 2-3, ¶ 3; Dkt. 18, p. 2, ¶ 3). Kragh became a member of MAD in June 2023, and she served as a board member from January to August 2024. (Dkt. 18, p. 2, ¶ 2).

MAD adopted bylaws containing provisions for regulating and managing the affairs of the organization consistent with law and the articles of incorporation. (Dkt. 2, Exhibit A). The bylaws establish a structured, member-driven election process for the organization's leadership. Officers are elected separately by a majority vote of qualified members present at the biennial conference, using written ballots. The President oversees the election as the presiding judge, resolves any voting-related issues, and appoints tellers to collect and count ballots. Eligibility to run for office is limited to individuals who are Montana residents, have maintained at least two consecutive years of membership, and are capable of using and understanding sign language. The bylaws specify which positions are subject to election at each biennial cycle and distinguish between two-year terms for most officers and four-year staggered terms for trustees. Newly elected officers take office immediately following adjournment of the biennial conference, ensuring continuity in governance. (*Id.*, p. 15).

MAD's 52nd biennial conference was held on June 16-17, 2023. (Dkt. 39, p. 2, ¶ 4, Exhibit 2). Kragh was personally present and participated at the conference. (Dkt. 38, pp. 7-12; Dkt. 39, Exhibits 2 and 2(A)). MAD elected officers by acclamation rather than by written ballot as contemplated by the bylaws.[1] MAD did so not with any ill or nefarious intent, but for efficiency because only one person ran unopposed for each seat that year. (Dkt. 38, p. 3; Dkt. 39, Exhibit 4). Thus, a competitive election was unnecessary. There was no discussion among board members or officers regarding the use of the acclamation procedure. Additionally, Kragh did not object to the manner in which the 2023 election was conducted at the time of the conference. (*Id.*). She first challenged the 2023 election in May 2025 when she sued MAD, nearly two years after it occurred. (Dkt. 1). Kragh does not claim damages arising from the 2023 election. (Dkt. 38, pp. 3-4; Dkt. 39, Exhibit 3). Kragh admits she seeks "primarily declaratory and injunctive relief to remedy statutory violations and restore proper governance" and that "any monetary damages are incidental to the primary statutory violations." She is "not seeking reimbursement for any personal costs incurred in pursuing her statutory rights." (Dkt. 38, pp. 3-4; Dkt. 39, Exhibit 3).

[1] Election by acclamation refers to a process where candidates are declared elected without the need for a formal vote or balloting process. This typically occurs when the number of candidates is equal to or fewer than the number of available positions, rendering a competitive election unnecessary. Montana recognizes acclamation as a valid election process in various contexts. *See*, *e.g.*, Mont. Code Ann. § 20-3-313 (Election by acclamation of school district trustees).

Regardless, MAD conducted its next biennial election in June 2025 in accordance with its bylaws, including use of written ballots as contemplated therein. (Dkt. 38, p. 4; Dkt. 39, Exhibit 4). This fact is undisputed in the record.

The district court properly entered summary judgment in favor of MAD on Count II based on these facts. (Dkt. 61). In doing so, the court correctly noted that Kragh did not assert monetary damages arising from the 2023 election, that she attended and participated in the biennial conference without objection, and that MAD subsequently conducted its June 2025 election in accordance with its bylaws. (Dkt. 61, pp. 6-8).

At a meeting on March 10, 2024, MAD's President reported a general fund balance of $20,984.74 in the First Interstate Bank checking and Charles Schwab brokerage accounts, while also displaying a screenshot of a document showing a total of $21,873.28 in the general fund as of January 15, 2024, a difference of $888.54. (Dkt. 38, p. 13; Dkt. 39, Exhibit 6). This was referenced in draft minutes from the March 10, 2024, meeting. (Dkt. 38, p. 13; Dkt. 2, Exhibit C). This minor discrepancy was a result of the President mistakenly and with no ill intent reporting the general fund balance from May 1, 2023, instead of December 2023. (Dkt. 38, p. 13; Dkt. 39, Exhibit 6). MAD added $888.54 to the general fund throughout 2023 via income. (*Id.*). Thus, the general fund balance as of December 29, 2023, was $21,873.25. (*Id.*). Kragh did not object or ask for any clarification about this

discrepancy at the time of the meeting or any time thereafter. (*Id.*). MAD first learned about the alleged issue when Kragh sued. (*Id.*). In May 2024, the March 2024 minutes were corrected to clarify this issue. The minutes were then ratified with these corrections by the members of MAD's board. (*Id.*). The district court correctly granted summary judgment on any claim arising from the alleged financial discrepancy. The discrepancy was the result of an inadvertent reporting error that was promptly corrected in the minutes. It resulted in no loss or harm to MAD or its members. Kragh articulates no damages or ongoing issue stemming from the corrected report. (Dkt. 61, pp. 8-10).

In late 2024 and early 2025, Kragh gave the corporation written notice and demand to inspect and copy certain minutes of meetings pursuant to Mont. Code Ann. § 35-2-907. (Dkt. 1, p. 14, ¶ 42). MAD lawfully declined to make the minutes available for inspection and copying because Kragh failed to demonstrate good faith, proper purpose, or a direct connection between the requested minutes and such purpose as required by the statute. (Dkt. 18, p. 7, ¶ 42; Dkt. 2, Exhibit B). For example, and without limitation, Kragh's October 11, 2024, email request stated in relevant part,

> Greetings MAD Secretary,
>
> This is my official request as a member for a copy of all the meeting minutes for the past 5 years and the current bylaws of MAD. Please email me a copy of everything by October 25, 2024.

(Dkt. 2, Exhibit B-1).

Regardless, on September 15, 2025, and September 26, 2025, MAD produced all of the requested minutes of meetings to Kragh in discovery. (Dkt. 38, pp. 2-3; Dkt. 39, Exhibit 1). Kragh's requests sought access to minutes of meetings spanning multiple years, and MAD produced these records in their entirety. (Dkt. 38, pp. 6-7).

The district court likewise properly entered summary judgment in favor of MAD on Kragh's claim regarding inspection of corporate records. (Dkt. 61, pp. 4-6). The court found that Kragh sought access to minutes of meetings, and that MAD produced all requested minutes during discovery, which Kragh does not dispute receiving. "However, Plaintiff does not allege that MAD is currently denying her access to any records. She identifies no pending request that MAD has refused." (Dkt. 61, p. 5). Based on these facts, the court correctly concluded that no live controversy remained because the requested records had already been produced and no additional effective relief could be granted.

IV. STANDARD OF REVIEW

The purpose of summary judgment is to facilitate judicial economy through the elimination of unnecessary trials where no genuine factual controversy exists. *Singleton v. L.P. Anderson Supply Co.*, 284 Mont. 40, 43, 943 P.2d 968 (1997) (citing *Reaves v. Reinbold*, 189 Mont. 284, 288, 615 P.2d 896, 898 (1980)).

This Court reviews a district court's ruling on summary judgment de novo. *Montanans Against Irresponsible Densification (MAID), LLC v. State*, 2026 MT 53, ¶ 10, 2026 Mont. LEXIS 345 (citing *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 18, 365 Mont. 92, 278 P.3d 455). Summary judgment is appropriate when the moving party shows that there exists no genuine issue of material fact and that they are entitled to judgment as a matter of law. *MAID*, ¶ 10 (citing M. R. Civ. P. 56(c)(3); *Reichert*, ¶ 20). "A genuine issue of material fact is a fact materially inconsistent with proof of an essential element of a claim or defense at issue." *Fowler v. DOJ*, 2024 MT 24, ¶ 14, 415 Mont. 140, 543 P.3d 575 (quoting *Lawrence v. Pasha*, 2023 MT 150, ¶ 8, 413 Mont. 149, 533 P.3d 1029).

Where the movant has met its burden of showing that no genuine issues of material fact exist, the opposing party bears the burden of establishing an issue of material fact. The opposing party's facts must be material and of a substantial nature, and not fanciful, frivolous, or conjectural. *Rosenthal v. County of Madison*, 2007 MT 277, ¶ 22, 339 Mont. 419, 170 P.3d 493 (citing *Fleming v. Fleming Farms, Inc.*, 221 Mont. 237, 241, 717 P.2d 1103, 1105-06 (1986)). "The party opposing the motion for summary judgment cannot rely on mere allegations in the pleadings, but must present evidence raising a genuine issue of material fact in the form of affidavits or other sworn testimony." *Fowler*, ¶ 14 (quoting *Putnam v. Cent. Mont. Med. Ctr.*, 2020 MT 65, ¶ 12, 399 Mont. 241, 460 P.3d 419).

The district court has discretion to decide whether to continue a motion for summary judgment pursuant to M. R. Civ. P. 56(f), on the basis that the party opposing the motion needs further discovery. This Court reviews the denial of a M. R. Civ. P. 56(f) motion for an abuse of discretion. *Rosenthal*, ¶ 23 (citing *Stanley v. Holms*, 1999 MT 41, ¶ 19, 293 Mont. 343, 975 P.2d 1242). The test for abuse of discretion is whether the trial court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. *Jarvenpaa v. Glacier Elec. Coop.*, 1998 MT 306, ¶ 13, 292 Mont. 118, 970 P.2d 84.

V. SUMMARY OF THE ARGUMENT

The district court properly granted summary judgment. Kragh cannot establish a live controversy, a cognizable injury, or any genuine issue of material fact. Her records claim is moot because MAD produced all requested minutes of meetings. Her election challenge fails independently under judicial restraint, waiver, laches, and mootness, and her financial oversight claim fails because the alleged discrepancy was an inadvertent, corrected error causing no harm. The district court also correctly denied Rule 56(f) relief because Kragh identified no specific facts that further discovery would uncover to preclude summary judgment. Because each claim fails as a matter of law, the judgment should be affirmed.

VI. ARGUMENT

A. The district court properly granted summary judgment on Count I.

Count I of Kragh's Complaint alleged MAD violated Mont. Code Ann. § 35-2-907 by failing to allow her to inspect and copy minutes of meetings spanning multiple years. (Dkt. 1, pp. 13-16).

"The judicial power of Montana's courts is limited to justiciable controversies." *Arnone v. City of Bozeman*, 2016 MT 184, ¶ 7, 384 Mont. 250, 376 P.3d 786 (quoting *Chipman v. Nw. Healthcare Corp.*, 2012 MT 242, ¶ 19, 366 Mont. 450, 288 P.3d 193). This Court has consistently held that it will not render advisory opinions. *Arnone*, ¶ 7 (citing *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 9, 355 Mont. 142, 226 P.3d 567). To fall within a court's adjudicatory power, a controversy must be "real and substantial…, admitting of specific relief through decree of conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts, or upon an abstract proposition." *Plan Helena*, ¶ 9 (quoting *Chovanak v. Matthews*, 120 Mont. 520, 526, 188 P.2d 582, 585 (1948)).

Mootness is a threshold issue which must be resolved before a court can address the substantive merits of a dispute. *Havre Daily News, LLC v. City of Havre*, 2006 MT 215, ¶ 31, 333 Mont. 331, 142 P.3d 864 (citing *Grabow v. Montana High School Ass'n*, 2000 MT 159, ¶ 14, 300 Mont. 227, 3 P.3d 650). The mootness doctrine is designed to limit the judicial power of this Court to justiciable controversies – that is, controversies "upon which a court's judgment will effectively

operate, as distinguished from…dispute[s] invoking a purely political, administrative, philosophical, or academic conclusion." *Briese v. Mont. Pub. Emples. Ret. Bd.*, 2012 MT 192, ¶ 14, 366 Mont. 148, 285 P.3d 550 (quoting *Progressive Direct Ins. Co. v. Stuivenga*, 2012 MT 75, ¶ 16, 364 Mont. 390, 276 P.3d 867).

"A matter is moot when, due to an event or happening, the issue has ceased to exist and no longer presents an actual controversy…A question is moot when the court cannot grant effective relief." *Havre Daily News*, ¶ 31 (quoting *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, ¶ 19, 293 Mont. 188, 974 P.2d 1150). Commentators have described mootness as the "doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Havre Daily News*, ¶ 31 (quoting Henry Monaghan, *Constitutional Adjudication: The Who and When*, 82 Yale L.J. 1363 (1973)). Thus, a justiciable controversy in which the parties have a personal stake must exist at the beginning of the litigation, and at every point thereafter, unless an exception to the doctrine of mootness applies. *Havre Daily News*, ¶ 31.

Montana courts have consistently applied the mootness doctrine, holding that an issue or claim is moot when it no longer presents an actual controversy or when the court cannot grant effective relief due to a change in circumstances. *See*, *e.g.*,

Serena Vista, L.L.C. v. State Dep't of Natural Res. & Conservation, 2008 MT 65, ¶ 14, 342 Mont. 73, 179 P.3d 510 ("Moreover, a case will become moot for the purposes of an appeal 'where by a change of circumstances prior to the appellate decision the case has lost any practical purpose for the parties, for instance where the grievance that gave rise to the case has been eliminated…'"); *Skinner Enters. v. Lewis & Clark City-County Health Dep't*, 1999 MT 106, 294 Mont. 310, 980 P.2d 1049 (affirming dismissal of petitioner's complaint as moot); *Heringer v. Barnegat Dev. Grp., LLC*, 2021 MT 100, 404 Mont. 89, 485 P.3d 731 (affirming trial court's dismissal of owners' action against developer as moot).

Here, Kragh's primary contention is that MAD violated Mont. Code Ann. § 35-2-907 by refusing to produce meeting minutes unless she complied with additional conditions. But even accepting her characterization of the initial dispute as true, the undisputed record establishes that this claim is moot and no longer justiciable. MAD produced all requested minutes of meetings in full during discovery. Kragh does not dispute that she received them. Once the requested records were produced, the only relief sought in Count I - access to those minutes - was satisfied.

Courts may only decide actual, live controversies capable of effective relief. When the requested relief has already been provided, the claim is moot. The district court correctly applied this principle, concluding that "no live controversy remains"

because Kragh already possesses the records she sought and "identifies no pending request that MAD has refused." (Dkt. 61, pp. 4-6). On this record, there is nothing left for this Court to order.

Kragh attempts to avoid mootness by reframing her claim as one for declaratory relief regarding her "ongoing" statutory rights. (Dkt. 58, pp. 10-11).[2] That argument fails for two separate and independently dispositive reasons. First, Kragh has not identified any current request for records that has been denied. Her claim is therefore not tied to any present dispute but instead asks the Court to opine on how MAD should respond to hypothetical future requests. Montana courts consistently refuse to issue such advisory opinions. Second, a generalized declaration about statutory rights untethered to a concrete dispute would not provide any effectual relief to Kragh. Without an actual denial of access, there is no controversy for this Court to resolve.

Kragh's "catalyst" theory that the lawsuit prompted MAD to produce the records does not alter this conclusion. Regardless of timing, the dispositive question is whether a live controversy remains at the time of judgment. Once the records were produced, the district court could no longer grant any meaningful relief. Montana

[2] This Court has recognized three circumstances as exceptions to the mootness doctrine: (1) voluntary cessation, (2) capable of repetition, yet evading review, and (3) public interest. *In re Big Foot Dumpsters & Containers, LLC*, 2022 MT 67, ¶ 15, 408 Mont. 187, 507 P.3d 169. Kragh fails to argue or show that any of these narrow exceptions apply, as there is no evidence of ongoing or likely repeated denial of records, no inherently time-limited conduct evading review, and no issue of sufficient public importance to warrant departure from the mootness doctrine. This Court does not locate authorities or formulate arguments for a party in support of positions taken on appeal." *Gudmundsen v. State ex rel. Mont. State Hosp.*, 2009 MT 56, ¶ 26, 349 Mont. 297, 203 P.3d 813.

law does not recognize an exception to mootness based on a party's litigation conduct where no ongoing violation exists.

Nor do Kragh's arguments about the alleged "zero-tolerance policy" create a genuine issue of material fact. Even assuming, *arguendo*, that MAD initially imposed an improper condition, that issue became academic once MAD produced the records without requiring compliance with that policy. The statute governs access to records. It does not authorize courts to issue retrospective declarations about past conduct where no ongoing denial exists. The district court properly focused on the present posture of the case where Kragh had already obtained the documents and declined to adjudicate a resolved dispute.

Kragh cannot defeat summary judgment by expanding her claim beyond what was pled. Count I sought access to specific meeting minutes, not broad prospective relief governing all future interactions between the parties. Having received those minutes, she cannot transform this case into a vehicle for generalized statutory interpretation. The absence of any current denial of records is fatal to her claim.

Kragh's reliance on *Mont. Democratic Party v. Mont. First Jud. Dist. Ct.*, 2024 MT 207, 418 Mont. 100, 556 P.3d 540, is misplaced. That case involved an active, time-sensitive election dispute requiring immediate judicial intervention as opposed to a claim rendered moot after the requested relief has already been provided. *Mont. Democratic Party* did not address mootness or authorize courts to

issue declaratory relief in the absence of a live controversy. It does not support Kragh's position that her claim survives where she already received the requested records and no present dispute exists.

Mont. Env't Info. Ctr. v. Off. of the Governor for State, 2025 MT 112, 422 Mont. 136, 569 P.3d 555 (Opening Brief, pp. 25-26), likewise does not assist Kragh. That case involved a constitutional right-to-know violation by a governmental entity that refused to produce records, requiring mandamus to compel disclosure. Here, there is no ongoing denial and no need for judicial enforcement. MAD produced the requested records, and the controversy ended.

Kragh also cites *Beebe v. Bd. of Dirs. of the Bridger Creek Subdivision Cmty. Ass'n*, 2015 MT 183, 379 Mont. 484, 352 P.3d 1094 (Opening Brief, pp. 27-28), but that case does not support her position. *Beebe* involved a live dispute over the interpretation and enforcement of governing covenants affecting substantive property and assessment rights, where the plaintiff demonstrated a concrete legal injury and obtained declaratory relief on that basis. *Beebe* is inapposite.

The district court correctly concluded that Count I is moot because the requested records were produced, no ongoing controversy exists, and no effective relief can be granted. Kragh's arguments to the contrary rely on hypothetical future disputes and retrospective grievances, neither of which confer jurisdiction.

B. The district court properly granted summary judgment on Count II.

Each of the following doctrines independently supports the district court's ruling. The existence of any one is sufficient to affirm summary judgment.

i. Judicial Restraint

Count II of Kragh's Complaint alleged an improper election of officers by acclamation at MAD's biennial conference in 2023. (Dkt. 1, pp. 16-20).

Courts exercise restraint in entering and micromanaging an organization's affairs because those matters are primarily governed by the organization's own bylaws, agreements, and governing structure, not the judiciary. Judicial intervention is therefore limited to situations involving clear legal violations or actual injury to avoid substituting the court's judgment for that of the organization's members or leadership and to prevent courts from becoming entangled in routine governance decisions better left to private ordering.[3] *California Dental Assn. v. American Dental Assn.*, 23 Cal. 3d 346, 353, 590 P.2d 401, 151 Cal. Rptr. 546 (1979) (citing Chafee, *The Internal Affairs of Associations Not for Profit*, 43 Harv. L. Rev. 993, 1023-1026 (1930); Note, *Developments in the Law – Judicial Control of Actions of Private Associations*, 76 Harv. L. Rev. 983, 990-991 (1963)).

Judicial intervention into private organizations is appropriate only when the plaintiff can demonstrate "an abuse of discretion, and a clear, unreasonable and

[3] This restraint is similar to the business judgment rule in that it reflects judicial deference to internal decision-making. Courts do not exist to run organizations. *See Warren v. Campbell Farming Corp.*, 2011 MT 324, ¶ 22, 363 Mont. 190, 271 P.3d 36 (discussing the business judgment rule).

arbitrary invasion of [her] private rights." *California Dental Assn.*, 23 Cal. 3d at 354. (citation omitted).

This standard, also outlined in *Scheire v. Int'l Show Car Assoc.*, 717 F.2d 464, (9th Cir. 1983), requires plaintiffs to demonstrate both (1) willful improper conduct and (2) actual injury before courts will grant relief for alleged bylaw violations in organizational affairs.

In *Scheire*, the plaintiff race car contestant sued a car show association (ISCA), claiming ISCA violated its own bylaws by allowing two cars of a certain specification to enter a race. *Id.* at 465. The trial court granted summary judgment to ISCA because even if the plaintiff could have shown ISCA violated its bylaws, he suffered no damages as his overall standings in the race would not have changed. *Id.* at 466. The Ninth Circuit affirmed that ruling, writing that "we find no error in the award of summary judgment because Scheire cannot show he suffered injury attributable to the alleged improper conduct." *See also Spirit Lake Tribe of Indians v. NCAA*, 715 F.3d 1089 (2013) (explaining that courts generally adhere to the principle of judicial noninterference in decisions of voluntary associations); *Oakland Raiders v. NFL*, 93 Cal. App. 4th 572, 113 Cal. Rptr. 2d 255 (2001) (held in part: because operation of the European league did not plainly contravene the league's cited general bylaw, the courts had to abstain from interfering in the intra-association dispute).

Kragh is critical of the district court for relying on persuasive cases from other jurisdictions (Opening Brief, pp. 1, 16-17), but the result is the same under Montana law. "We have recognized the general rule that courts should not engage in the internal affairs of a voluntary organization." *D.A. Davidson & Co. v. Slaybaugh*, 2024 MT 264, ¶ 13, 418 Mont. 531, 558 P.3d 1100 (citing *State v. Hovland*, 118 Mont. 454, 459, 169 P.2d 341, 344 (1946)). "As a general rule, courts refrain from interfering in the internal affairs of voluntary associations." *D.A. Davidson*, ¶ 13 (quoting *Anderson v. Enterpr. Lodge No. 2*, 80 Wn. App. 41, 906 P.2d 962, 966 (Wash. Ct. App. 1995) (additional citation omitted)). Courts will only interfere with the internal affairs of voluntary organizations if a dispute involves property rights or is otherwise judicially cognizable. *D.A. Davidson*, ¶ 13 (citing, *inter alia*, *Blackshire v. NAACP*, 285 Ill. App. 3d 561, 673 N.E. 2d 1059, 1061, 220 Ill. Dec. 638 (Ill. Ct. App. 1996) ("The decisions of the tribunals of an association with respect to its internal affairs will, in the absence of mistake, fraud, collusion or arbitrariness, be accepted by the courts as conclusive.").

D.A. Davidson held that Slaybaugh lacked standing because the record was devoid of evidence establishing a prima facie case of fraud to support an exception to the general rule that courts do not interfere in a membership organization's internal affairs. That case reinforces the principle that "it is not enough for a plaintiff merely to allege that a voluntary association acted arbitrarily or in bad faith or did

not follow its rules or procedures; rather, the action complained of must have allegedly injured or threatened to injure a legally recognized right of the plaintiff's." *D.A. Davidson*, ¶ 14.

Similarly, in *Fox v. Stock Farm Club*, 2005 ML 881, 2005 Mont. Dist. LEXIS 1110, the court reaffirmed that judicial review of a private association's internal decisions is limited and that courts will not interfere with those decisions, absent a clear showing of bad faith, fraud, or violation of a legally protected right. *Id.*, at 52 (citation omitted). Even in the context of membership termination, the judiciary's role is not to second-guess the substance of internal governance decisions.

Here, the district court properly granted summary judgment on Count II based in part on the principle of judicial restraint in organizational affairs. Judicial intervention is appropriate only where a plaintiff can demonstrate willful improper conduct and actual injury. Kragh can establish neither.

MAD's use of acclamation was not willful misconduct, but a practical procedure for an uncontested election. Only one candidate ran for each position. There is no evidence of bad faith, arbitrariness, or attempt to influence the outcome. Kragh admits she suffered no injury. The election result would not have differed if written ballots were used. Like *Scheire*, this is a situation where the alleged procedural violation caused no harm and could not have altered the ultimate outcome. *See Scheire*, *supra*.

Kragh's claim does not meet the applicable threshold. At most, she alleges a technical deviation from MAD's bylaws, but "[i]t is not enough… merely to allege that a voluntary association… did not follow its rules." There must be a resulting injury to a protected right. *D.A. Davidson*, ¶ 14.

Kragh's reliance on *Myers v. Kleinhans*, 2024 MT 208, 418 Mont. 113, 556 P.3d 529, misses the mark. That case involved enforcement of restrictive covenants affecting real property rights and ongoing conduct, not a harmless procedural irregularity in an internal election. Here, by contrast, Kragh alleges only a technical bylaw deviation in an uncontested election, with no impact on the outcome and no injury. Because *Myers* does not involves whether courts should intervene absent harm, it has no application here.

Kragh's cite to *Charlie's Win, LLC v. Gallatin W. Ranch Homeowners' Ass'n, Inc.*, 2025 MT 47, 421 Mont. 59, 565 P.3d 299, is similarly unavailing. That case involved enforcement of restrictive covenants affecting real property rights and turned on the plain language of a governing document requiring a specific voting threshold. This case does not involve enforcement of property rights or an ambiguous governing provision, but a harmless procedural irregularity in an uncontested internal election that caused no injury.

The district court correctly applied these principles. Rather than second-guessing a routine internal governance decision that caused no harm, the court

properly declined to insert the judiciary into the internal affairs of a nonprofit organization. To hold otherwise would invite courts to police every alleged procedural irregularity in private associations, even where the outcome is unchanged and no member is injured, the exact type of "micromanagement" the doctrine of judicial restraint is designed to prevent.

Kragh's appellate position notably relies on *Robert's Rules of Order*. (Opening Brief, pp. 10, 34-35). But alleged violations of *Robert's Rules* do not create a justiciable controversy or afford Kragh any relief. "…[W]ith regard to the implementation of parliamentary procedures, such as contained within *Robert's Rules of Order*, [the court] has established that parliamentary rules are intended merely to assist in the orderly conduct of business and the failure to follow such parliamentary rules cannot be employed to invalidate otherwise lawful actions." *Stevenson v. City of E. Cleveland Council President*, 2022-Ohio-4521, ¶ 14, 204 N.E. 3d 96 (citing, *inter alia*, 59 *American Jurisprudence* 2d, *Parliamentary Law*, § 15) ("Since parliamentary rules are merely procedural and not substantive, the courts have no concern with their observance…no appeal lies to the court for alleged errors of a presiding officer in administering parliamentary Law."). This principle applies even when the rules are formally adopted by an organization. *Id. Robert's Rules* are procedural tools rather than enforceable legal mandates. Courts defer to the discretion of organizations in applying or disregarding such rules. Kragh's reliance

on *Robert's Rules* does not overcome the doctrine of judicial restraint. Alleged procedural deviations without injury, bad faith, or violation of a legally protected right do not justify judicial intervention in organizational affairs.[4]

ii. Waiver

Mont. Code Ann. § 35-2-531(2)(b), provides that a nonprofit member's attendance at a meeting waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.

Waiver is a voluntary and intentional relinquishment of a known right or claim. It may be proven by express declarations or by a course of conduct which induces the belief that the intent and purpose was waiver. To establish a waiver, the party asserting waiver must demonstrate that the other party knew of the existing right, acted inconsistent with that right, and prejudice resulted to the party asserting waiver. *Edwards v. Cascade County*, 2009 MT 229, ¶ 30, 351 Mont. 360, 212 P.3d 289.

Here, the undisputed facts establish waiver under both the statute and common law. Kragh attended the June 2023 biennial meeting, observed the election by acclamation, and raised no objection at the time the procedure was used. Under § 35-2-531(2)(b), that conduct constitutes waiver as a matter of law. The statute

[4] This reasoning applies with equal force to Count III.

requires a contemporaneous objection. Silence at the meeting forfeits the right to later challenge the procedure.

Additionally, as a member and a former board member, Kragh possessed, or at minimum had the right to possess, MAD's bylaws and was aware of the governing procedures. Her failure to object when the election method was used is inconsistent with any claim that the procedure was improper. She then waited nearly two years before asserting a challenge, during which MAD relied on the validity of the election. That delay and acquiescence establish both intentional relinquishment and resulting prejudice.

Kragh's arguments to avoid waiver are unpersuasive. Her assertion that she did not appreciate the procedural issue at the time does not defeat waiver where she had access to the bylaws and participated without objection. Nor can she reconcile her position with her own reliance on procedural rules. Those rules likewise make clear that failure to timely object forfeits the issue. The district court correctly concluded that a member cannot attend, remain silent, and later challenge a procedure that was apparent at the time.

iii. Laches

The doctrine of laches is an equitable remedy "by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting a claim, when the delay or negligence has prejudiced the party against whom relief is

sought." *Algee v. Hren*, 2016 MT 166, ¶ 8, 384 Mont. 93, 375 P.3d 386. To determine whether laches applies, a court must find: (1) the party against whom the defense is asserted lacked diligence in asserting a claim; and (2) that lack of diligence resulted in prejudice to the party asserting the defense. *Id.* The doctrine of laches' purpose is to "discourage stale demands by the court refusing to interfere where there has been gross laches in prosecuting rights, or where long acquiescence in assertion of adverse rights has occurred." *Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, ¶ 25, 334 Mont. 237, 146 P.3d 759. Although time is a factor when determining laches' elements, "[l]aches is not a mere matter of elapsed time, but rather, it is principally a question of the inequity of permitting a claim to be enforced." *Algee*, ¶ 8 (citation omitted). *See Cole v. State ex rel. Brown*, 2002 MT 32, 308 Mont. 265, 42 P.3d 760 (laches barred plaintiffs from challenging the process by which voters approved an initiative that imposed term limits on state and federal offices); *Wagner v. Woodward*, 2012 MT 19, 363 Mont. 403, 270 P.3d 21 (laches applied when plaintiffs failed to raise their claim before or during defendant's construction of a deck and fences on a lot adjacent to plaintiffs' land because plaintiffs knew, or should have known, during construction that defendant was violating the lot's restrictive covenants).

Here, the undisputed facts establish Kragh's lack of diligence and resulting prejudice to MAD. Kragh was present at the June 2023 biennial meeting when the

officers were elected by acclamation but raised no objection. She then waited nearly two years to file suit challenging that same election. This is the type of "unexplainable delay" and acquiescence that satisfies the lack-of-diligence prong, where a claimant contemporaneously knows of the alleged violation but allows it to stand without objection. As in *Algee* and *Wagner*, Kragh's silence while the election results took effect and while officers assumed their roles renders her later challenge inequitable. Kragh's delay prejudiced MAD by allowing the organization to rely on the validity of its 2023 elections, conduct governance, and proceed through nearly an entire officer term before being hauled into court. MAD was forced to defend a stale challenge to completed corporate acts and subsequently conduct new elections in 2025.

Kragh's reliance on *Sloway Cabin v. Extreme*, 2025 MT 161, 423 Mont. 161, 573 P.3d 290, is misplaced. *Sloway* rejected laches because the plaintiff acted promptly by providing notice within months and filing suit shortly thereafter without meaningful delay. *Id.*, ¶¶ 22-25. This case presents the opposite scenario. Kragh had contemporaneous knowledge of the alleged defect in the 2023 election, remained silent at the meeting, and then sat on her rights for nearly two years before filing suit. *Sloway* emphasizes that laches turns on whether delay renders enforcement inequitable, not merely whether a claim is timely. Unlike *Sloway*, Kragh's delay here is both substantial and unexplained. It allowed MAD to rely on the election, operate

under it, and complete nearly an entire governance cycle. *Sloway* highlights the dispositive distinction that prompt enforcement defeats laches whereas prolonged acquiescence, as here, compels it.

Under these circumstances, equity aids only the vigilant. The district court properly concluded that Kragh's claim is barred by laches.

iv. Mootness

As discussed more extensively above, mootness is a threshold issue. A claim becomes moot when, due to a change in circumstances, the court can no longer grant effective relief. *Havre Daily News*, ¶ 31. That is what occurred here. MAD conducted its next biennial election in June 2025 in full compliance with its bylaws. The officers elected in 2023 completed their terms and have been replaced. There is no longer any operative election to challenge, no officer to remove, and no prospective relief this Court could grant that would have any practical effect on the parties' rights. Any ruling regarding the 2023 election would be retrospective and advisory.

The district court properly recognized that no live controversy remains. Kragh's claim seeks a declaration that a past election procedure was improper. Montana courts do not issue opinions on abstract disputes where "the court cannot grant effective relief." Kragh's attempt to avoid mootness by reframing her claim as one for declaratory relief regarding "ongoing" bylaw compliance is unavailing. She

identifies no current violation and no impending election conducted in the same manner. Instead, she asks the Court to opine on hypothetical future conduct. Because the challenged election has been superseded and no effective relief remains available, Count II no longer presents a justiciable controversy.

C. The district court properly granted summary judgment on Count III.

Count III of Kragh's Complaint alleged a financial oversight by MAD. (Dkt. 1, pp. 20-24). But the variance in reported figures was the result of an inadvertent reporting error, which was later corrected in the minutes and ratified by the board. There is no evidence of bad faith, misconduct, or misuse of funds. Kragh does not claim damages or actual injury arising from the issue.

Kragh's position is flawed. It elevates a minor, corrected accounting inconsistency into a justiciable claim without a showing of harm. The law requires more. *See Fox*, at 52 ("In the absence of a clear allegation and convincing proof, if the case reaches that state, of fraud or bad faith, the action of the members or duly delegated board shall not be reviewed by the courts."); *Scheire*, *supra*.

Here, there is no such injury. Even if the district court did not expressly rely on it, the principle of judicial restraint provides an independent basis to affirm. *See State v. Veis*, 1998 MT 162, ¶ 16, 289 Mont. 450, 962 P.2d 1153 (we will not reverse the district court when it reaches the right result, even if for the wrong reason). The internal reporting and correction of account balances is the type of routine

governance matter courts routinely decline to second-guess, particularly where there is no evidence of arbitrariness or improper conduct.

A genuine issue of material fact is an issue of inconsistent fact, material to the elements of a claim or defense at issue, and not amenable to judgment as a matter of law. *Davis v. Westphal*, 2017 MT 276, ¶ 12, 389 Mont. 251, 405 P.3d 73.

None of the additional facts Kragh points to create a genuine issue of material fact. Her reliance on the President's alleged statement that the bylaws were "recommendations" is immaterial. Even if accepted as true, that statement does not relate to the financial discrepancy at issue, does not show misuse of funds, and does not establish fraud, bad faith, or injury. It is irrelevant to the elements of her claim. Kragh's speculation about motive does not create a triable issue. *See Ternes v. State Farm*, 2011 MT 156, ¶ 18, 361 Mont. 129, 257 P.3d 352 (mere speculation is insufficient to raise a genuine issue of material fact).

Finally, Kragh's focus on the timing of the meeting, the drafting of minutes, or the sequence of events does not raise a material factual dispute. Even viewed in the light most favorable to her, those facts do not change the dispositive points. The error was inadvertent, it was corrected, and it caused no injury. Because none of Kragh's asserted facts are material to a legally cognizable claim, they do not create a genuine issue for trial.

Brandt v. R&R Mt. Escapes, LLC, 2025 MT 155, 423 Mont. 100, 572 P.3d 809 (Opening Brief, pp. 26-27), is inapplicable. That case involved interpretation and enforcement of restrictive covenants affecting real property rights and whether a commercial use violated those covenants. *Brandt* in no way requires or militates in favor of reversing the district court's ruling.

D. The district court properly denied Rule 56(f) relief.

District courts have inherent discretionary power to control discovery. *Rosenthal*, ¶ 37 (citing *Environmental Contractors, LLC v. Moon*, 1999 MT 178, ¶ 19, 295 Mont. 268, 983 P.2d 390). "This discretionary power extends to deciding whether to deny or to continue a motion for summary judgment pursuant to Rule 56(f), M. R. Civ. P., on the basis that the party opposing the motion needs further discovery." *Rosenthal*, ¶ 37 (citing *Stanley*, ¶ 19). Rule 56(f) states:

> If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) deny the motion; (2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or (3) issue any other just order.

A district court does not abuse its discretion in denying a Rule 56(f) motion where the party opposing a motion for summary judgment does not establish how the proposed discovery would preclude summary judgment. *Rosenthal*, ¶ 37 (citing *J.L. v. Kienenberger*, 257 Mont. 113, 120, 848 P.2d 472, 477 (1993, *rev'd in part on*

other grounds); *Howell v. Glacier General Assur. Co.*, 240 Mont. 383, 386, 785 P.2d 1019, 1020 (1989, *rev'd in part on other grounds*)).

A court need not force a party to undergo more discovery when "[t]he only reason to believe that additional, relevant evidence would materialize…is the [plaintiff's] apparent hope of finding a proverbial 'smoking gun.'" *Rosenthal*, ¶ 37 (quoting *Davis v. G.N. Mortg. Corp.*, 396 F.3d 869, 885 (7th Cir. 2005)). *See also Hinderman v. Krivor*, 2010 MT 230, 358 Mont. 111, 244 P.3d 306 (held: because plaintiffs failed to establish how additional discovery could prevent summary judgment, the district court did not abuse its discretion in denying plaintiffs' Rule 56(f) motion); *Richards v. County of Missoula*, 2009 MT 453, 354 Mont. 334, 223 P.3d 878 ("The District Court…properly reviewed the record and concluded that the new discovery proposed by Richards could not defeat summary judgment); *In re Estate of Harmon*, 2011 MT 84A, 360 Mont. 150 ("We conclude that the District Court did not abuse its discretion in denying Waitt's [Rule 56(f)] motion."); *Farmers Ins. Exch. v. Wessel*, 2020 MT 319, 402 Mont. 348, 477 P.3d 1101 ("If Rule 56(f) is not met, then the party opposing summary judgment is not entitled to discovery.").

Here, the district court acted well within its discretion in denying Kragh's Rule 56(f) motion because she failed to meet the threshold requirement of identifying specific facts that would preclude summary judgment. Instead, she merely identified broad categories of hoped-for evidence. Kragh's affidavit (Dkt.

43) and motion (Dkt. 42) repeatedly speculate that additional discovery "may" reveal intent, knowledge, or other unspecified wrongdoing. "These video recordings may contain smoking gun evidence…" "These communications may reveal…" (Dkt. 42, p. 6). That is the type of conjecture Montana courts have rejected.

Rule 56(f) requires more than a belief or suspicion that helpful evidence might exist. It requires a concrete showing of how specific facts would create a genuine issue of material fact for trial. "A material fact is one that concerns the elements of the cause of action or defenses at issue to an extent that requires resolution of the issue by a trier of fact." *Krajacich v. Great Falls Clinic, LLP*, 2012 MT 82, ¶ 8, 364 Mont. 455, 276 P.3d 922 (citing *Corporate Air v. Edwards Jet Ctr. Mont., Inc.*, 2008 MT 283, ¶ 24, 345 Mont. 336, 190 P.3d 1111). The district court correctly recognized this deficiency. As it explained, Kragh "identifies categories of materials she seeks but does not explain with sufficient specificity what specific facts within those materials are essential to opposing MAD's motion or how they would preclude summary judgment on any of the three claims pled." (Dkt. 57). This finding tracks with Montana authority and supports denial of her motion.

The record further confirms that Kragh's request was not tied to the claims at issue but instead sought to expand the scope of the case. Kragh's motion sought broad categories of materials including video recordings of board meetings, internal communications across multiple platforms, and a ten-year history of bylaw

amendments based on a generalized theory that such materials "may" reveal additional wrongdoing. That is not targeted discovery necessary to oppose summary judgment, but a proposed fishing expedition to search for new claims. "While discovery is meant to be a broad tool in facilitating the resolution of lawsuits, it is not without restraint." *State v. Burns*, 253 Mont. 37, 39, 830 P.2d 1318 (1992). The district court properly rejected Kragh's approach, concluding that the requested discovery was not proportional to the needs of the case as pleaded and was not necessary to resolve the narrow legal issues before it. *See* M. R. Civ. P. 26(b)(2)(C)(iii).

Kragh's own filings underscore the speculative nature of her request. She repeatedly framed her need for discovery in terms of locating "smoking gun" evidence and uncovering broader patterns of conduct beyond the claims in her Complaint. A district court is not required to delay resolution of a case so that a party can search for evidence that might support unpled or undeveloped theories.

This is not a situation where discovery was unavailable or unfairly curtailed. The parties engaged in written discovery and rounds of document production before summary judgment was filed. Kragh had access to the operative facts underlying her claims, including the minutes of meetings, election procedures, and financial information that formed the basis of the district court's ruling. Her motion failed to identify any missing evidence necessary to establish an element of her claims. It

instead sought additional materials to challenge intent or expand the case beyond its pleaded scope.

Kragh's arguments on appeal do not cure these defects. She again asserts that additional discovery might reveal intent, knowledge, or broader governance issues, and characterizes MAD's summary judgment motion as "premature." However, Rule 56 permits a party to move for summary judgment "at any time," and the proper inquiry is not whether discovery is complete in the abstract, but whether the nonmovant has identified specific facts that further discovery would uncover to defeat the motion. Kragh failed to make that showing.

Kragh's *pro se* status does not excuse her failure to meet the Rule 56(f) standard. While *pro se* litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect *pro se* litigants to adhere to procedural rules. *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124.[5]

The district court applied the correct legal standard, carefully evaluated the scope of the requested discovery against the claims at issue, and reasonably concluded that Kragh's motion was speculative and insufficient under Rule 56(f).

[5] This principle applies equally to all issues raised on appeal. Although courts may afford some leniency to *pro se* litigants, they are nonetheless required to comply with applicable procedural and substantive rules, and their status does not relieve them of the obligation to properly preserve issues, support arguments with authority, or meet governing legal standards.

That determination was neither arbitrary nor beyond the bounds of reason. The denial of Rule 56(f) relief should be affirmed.

E. The district court did not violate the scheduling order.

Kragh's argument that the district court violated its own scheduling order (Opening Brief, pp. 49-51) is unavailing. Motions and discovery deadlines serve different purposes and are routinely staggered. Discovery deadlines govern the completion of fact development, while motion deadlines regulate the filing and resolution of dispositive issues. Nothing in the scheduling order (Dkt. 28) prohibited MAD from filing its motion when it did. Additionally, Rule 56 provides that "a party may move for summary judgment at any time." M. R. Civ. P. 56(c)(1)(A); *see also Silvestrone v. Park County*, 2007 MT 261, ¶ 9, 339 Mont. 299, 170 P.3d 950 ("The defendant may move for summary judgment at any time after a party files a complaint."). The fact that discovery remained open does not render MAD's motion improper, nor does it establish a violation of the scheduling order. *See Henricksen v. State*, 2004 MT 20, ¶ 35, 319 Mont. 307, 84 P.3d 38 (district court has inherent discretionary power to control discovery based on its authority to control trial administration). Kragh moved for and was properly denied additional time to conduct discovery under Rule 56(f) as discussed above. The district court acted within its authority.

F. The district court did not abuse its discretion in denying Kragh's motion to compel discovery (Dkt. 42).

This Court reviews a district court's order denying a motion to compel discovery for an abuse of discretion. *Lynes v. Helm*, 2007 MT 226, ¶ 17, 339 Mont. 120, 168 P.3d 651.

The district court correctly applied the Rule 26(b) standard and determined that the requested discovery was not proportional to the needs of the case as pled. The court found Kragh sought broad categories of internal materials without a focused showing that such materials were necessary to prove any element of her three narrow claims. (Dkt. 57, p. 4). On that basis alone, denial was proper.

Additionally, Kragh's requested discovery had no bearing on the issues raised in MAD's summary judgment motion. The court found Kragh failed to explain how the materials she sought would affect the mootness of her records claim, the legal defenses to her election claim, or the undisputed accounting of funds underlying her financial claim. (Dkt. 57, pp. 6-11). Because the additional discovery would not preclude summary judgment, the motion to compel was properly denied.

G. This Court should not address Kragh's new arguments or changes of legal theories on appeal.

This Court has repeatedly stated that "we will not address a party's new argument or a party's change of legal theory on appeal, as it would be 'fundamentally unfair' to fault the District Court in not ruling on an issue never before presented." *K&R P'ship v. City of Whitefish*, 2008 MT 228, ¶ 62, 344 Mont. 336, 189 P.3d 593

(quoting *Dayberry v. City of E. Helena*, 2003 MT 321, ¶ 24, 318 Mont. 301, 80 P.3d 1218); *see also Ryffel Family P'ship v. Alpine Country Constr., Inc.*, 2016 MT 350, ¶ 24, 386 Mont. 165, 386 P.3d 971 (explaining that to address an issue or new legal theory for the first time on appeal would be to "unfairly fault a trial court for failing to rule correctly on an issue that it was not asked to consider."); *State v. Adgerson*, 2003 MT 284, ¶ 14, 318 Mont. 22, 78 P.3d 850 ("Therefore, we cannot address this issue on direct appeal because it has not been properly preserved for our consideration.").

This preservation rule ensures fairness to both the district court and the opposing party by requiring that issues be fully developed in the trial court, where a factual record can be made and the court has an opportunity to address and rule on the specific arguments presented.

Here, Kragh's Opening Brief departs in material ways from both the scope of her pleadings and how her arguments were presented in opposition to summary judgment. Although Kragh referenced bylaws, parliamentary authority, and broader governance concerns below, her appellate briefing elevates and reframes those points into expanded and more categorical theories that were neither pled nor presented to the district court in that form.

Kragh now relies on a sweeping "systematic" multi-year theory of liability extending from 2021 through 2025 as a basis for reversal. While the Complaint

references broader governance concerns, Count II itself is pled as a discrete ultra vires challenge to the June 2023 election conducted by acclamation in violation of the bylaws' written ballot requirement. (Dkt. 1, pp. 16-20). It does not plead a free-standing claim for relief based on a multi-year pattern of elections, nor does it seek relief tied to separate election cycles or generalized governance practices. On appeal, however, Kragh attempts to expand Count II into a broader, pattern-based theory that materially exceeds the claim as pled, and the issues presented for summary judgment.

Kragh also reframes her discovery-related arguments into asserted disputes of material fact sufficient to defeat summary judgment. In the district court, these issues were raised in the context of Rule 56(f) and requests for additional discovery, not as fully developed factual disputes on the existing record. On appeal, however, Kragh relies on those same concepts of intent, internal communications, and alleged withheld materials as substantive grounds for reversal, effectively transforming undeveloped or speculative issues into purported material fact disputes.

Taken together, these shifts reflect not merely different emphasis, but a material expansion of both the factual and legal theories beyond the claims pled and the summary judgment arguments presented to the district court. Appellate review is confined to the record and issues as they were actually framed and decided below. To the extent Kragh's briefing relies on expanded pattern-based theories or reframed

factual disputes that exceed the Rule 56 record and the operative pleadings, the Court should decline to consider them.

VII. CONCLUSION

For the foregoing reasons, MAD respectfully requests that this Court affirm the district court's Order granting summary judgment in its entirety, together with such other and further relief as the Court deems just and proper.

DATED this 30th day of April 2026.

ORR McDONNELL LAW, PLLC

/s/ J.R. Casillas
By: _____
J.R. Casillas
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Certificate of Compliance

Pursuant to M.R. App. P. 11(4)(e) and 12(4), I certify that the foregoing APPELLEES' ANSWER BRIEF is printed with a proportionately spaced Times New Roman text typeface of 14 points and is double-spaced, except for footnotes which are single-spaced in 12-point type. The word count, calculated by Microsoft Word for Office 365, is fewer than 10,000 words, exclusive of the tables of contents and authorities.

DATED this 30th day of April 2026.

ORR MCDONNELL LAW, PLLC

/s/ J.R. Casillas
By: _____
J.R. Casillas
Attorney for Defendant/Appellee

Certificate of Service

I, the undersigned, hereby certify and affirm that a true and correct copy of the foregoing was provided at Missoula, Montana this 30th day of April 2026 to all parties by electronic service. Each attorney of record is registered for electronic service through the Court's eService system.

ORR MCDONNELL LAW, PLLC

/s/ J.R. Casillas
By: _____
J.R. Casillas
Attorney for Defendant/Appellee

CERTIFICATE OF SERVICE

I, Joseph Ray Casillas, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 04-30-2026:

Elizabeth Kragh (Appellant)
6590 Danielle Lou Ct.
Missoula MT 59803
Service Method: Conventional

Electronically signed by Katie Lilje on behalf of Joseph Ray Casillas
Dated: 04-30-2026