

IN THE DISTRICT COURT OF IOWA IN AND FOR SCOTT COUNTY

<p>TRACEY RIVERA, in her capacity as a candidate for Pleasant Valley School Board located in Scott County, Iowa,</p> <p>Plaintiff,</p> <p>vs.</p> <p>SCOTT COUNTY BOARD OF SUPERVISORS (comprised of KEN BECK, JOHN MAXWELL, JEAN DICKSON, ROSS PAUSTIAN, and RITA RAWSON in their official capacity),</p> <p>Defendant(s).</p>	<p>CASE NO.</p> <p><b>PETITION FOR WRIT OF MANDAMUS</b></p>
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Plaintiff Tracey Rivera for her Petition states upon information and belief:

**PARTIES AND JURISDICTION**

1. Plaintiff Tracey Rivera, is a candidate for the Pleasant Valley School Board located in Scott County, Iowa.
2. Defendant Board of Supervisors of Scott County, comprised of Ken Beck, John Maxwell, Jean Dickson, Ross Paustian, and Rita Rawson in their official capacity, is responsible for administration of Scott County’s elections and for accepting and certifying the findings from election recounts pursuant to Iowa Code § 50.48.
3. Jurisdiction and venue are proper with this Court because the parties are located, reside or are government entities operating in Scott County, Iowa.

**BACKGROUND**

*November 7, 2023 Pleasant Valley School Board Election*

4. This action concerns certification of the recount of the November 2023 general election for the Pleasant Valley School Board.

5. Candidate Rivera alleges that the Scott County Board of Supervisors violated Iowa law.

6. The candidates for the Pleasant Valley School Board District 6 were Tracey Rivera and Jameson Smith.

7. The election concluded on November 7, 2023. On November 14th, the initial results became available. The results of the Pleasant Valley School Board Election showed that Candidate Smith had a 6-vote lead over Candidate Rivera.

*Recount of Pleasant Valley School Board Election*

8. On November 17, 2023, Candidate Rivera timely requested a recount pursuant to Iowa Code § 50.48.

9. Iowa recounts are conducted by a single three-person recount board, regardless of the number of ballots being recounted. The board consists of a designee of each candidate, and a third member chosen jointly by the candidates' designees. IOWA CODE § 50.48(3).

10. Candidate Rivera designated Arun Pillutla for the recount board. Candidate Smith designated Cyndi Diercks for the recount board. Since the nominees could not agree on the third board member, the Chief Judge Henry Latham of the Judicial District appointed the third board member, retired Judge Mark Smith. *See* IOWA CODE § 50.48(3)(b).

11. On November 27 and 28, 2023, a three-person panel conducted the recount of the Pleasant Valley School Board Election. See Attachment 1, Recount Board Report; see Attachment 2, Affidavit of Arun Pillutla.

12. The recount board was advised by Assistant County Attorney Kristina Lyon and given the recount guides prepared by the Iowa Secretary of State. See Attachment 6.

13. A member of the County Auditor's Office was present the entire time to supervise

the handling of ballots and a representative of the County Attorney's Office was present for a significant portion of the recount. Attachment 6.

14. The recount board had discretion to count the ballots by hand or count the ballots by voting equipment. IOWA CODE § 50.48(4)(a). The recount board chose to count the ballots by hand. Attachment 2.

15. The recount was completed at 11:00 am on November 28, 2023. Attachment 2.

16. The recount board is required to submit a report that is finalized with at least two of the three members' signatures. IOWA CODE § 50.48(4)(c).

17. Ms. Diercks kept the records and tally sheets, and entered the numbers on the final report. Attachment 2.

18. The recount board agreed to use the tally sheet as the final report as instructed by the Auditor's staff.

19. Ms. Diercks announced the tie at 255 to 255 to all present. Attachment 2.

20. All three members of the recount board signed the two-page written report indicating the election resulted in a tie of 255 to 255 votes. See Attachment 1; see Attachment 3, Emails confirming tie.

21. Judge Smith turned in the signed report to County Auditor Kerri Tompkins consisting of two pages of tally sheet with the totals and announced tie. See Attachment 2.

22. After Judge Smith turned the report over to Auditor Tompkins, Ms. Diercks took the report, made unilateral changes, which affected the outcome of the recount, added unsigned pages and then submitted them to the County Auditor. Attachment 2.

23. Despite Ms. Diercks actions, it was clear to the County Auditor that the Recount Board recounted the ballots and determined the election was a tie. Attachment 5, Video of

Supervisors' Meeting with statements from County Auditor.

24. Auditor Tompkins submitted documents to the Board of Supervisors after consultation with the County Attorney's Office and the Iowa Secretary of State. See Attachment 5, Statements from Auditor Tompkins.

25. On December 4, 2023, the Scott County Board of Supervisors met to certify the recount report as required by Iowa Code § 50.48(5). Attachment 4, Agenda of Meeting; Attachment 5; Attachment 6, County's Unofficial Notes of Supervisors' Meeting.

26. Auditor Tompkins made a statement to the Board of Supervisors and reported the recount resulted in a tie for the Pleasant Valley School Board Election District 6. Attachment 5. Specifically, she stated:

The Iowa SOS and the Scott County attorney's office have been consulted and provided guidance during this process. I appreciate the board's time and efforts for the recount process. At this time, please accept the results for the recanvass of Pleasant Valley District 6 as provided via Iowa law. Since there is a tie, a drawing must be held to determine the winner.

Attachment 6.

27. Both First Assistant County Attorney Steve Berger and Senior Assistant County Attorney Kristina Lyon advised and recommended the Board of Supervisors of their ministerial role to vote yes and that the law required them to affirm the recount board's report numerous times.

Attachment 6. The minutes of the meeting note:

Senior Assistant County Attorney Kristina Lyon reviewed that in consultation with the Secretary of State, the understanding is that if two of the recount board had signed the report, and it was clear what their intent was, then the Board of Supervisors "shall" accept the report. If resulting in a tie, then the Board of Supervisors would draw a winner.

Beck reviewed in the interpretation of the word "shall," there is very little room providing the Board of Supervisors the latitude to accept or reject the recanvass.

Lyon stated that is correct.

Supervisor John Maxwell reviews that they see the paper, mark received on it and push it along. He reviewed that it is not their place to judge whether lawfully correct, but to receive it and pass it along.

...

Lyon stated that between the report and emails with two of the members of the recount board that the intent was to declare a tie.

...

Lyon reviewed that it is Iowa law that they should pass the canvass.

...

First Assistant County Attorney Steven Berger reviewed that a no vote should return to the first canvass of the winning 256 votes. That may allow action in court against the board. He reviewed the attorney's office recommended a yes vote by the board.

See Attachment 6.

28. The Board of Supervisors voted 3-2 rejecting the election result and knowingly proceeded outside of its jurisdiction and the law. Attachments. 5 & 6.

29. Candidate Rivera was stripped of the ability to enter a tie pursuant to IOWA CODE § 50.44 and have an equal opportunity to serve on the Pleasant Valley School Board.

### **WRIT OF MANDAMUS**

30. Plaintiff incorporates herein the above allegations.

31. A writ of mandamus is appropriate for this District Court to order the Defendant Board of Supervisors to carry out their duties as imposed by Iowa law. IOWA CODE § 661.1; See also *Schwarz Farm Corp. v. Board of Sup'rs of Hamilton County*, 196 N.W.2d 571 (Iowa 1972) (holding the purpose of mandamus is to compel a person to perform acts where they are obligated to do so under the law).

32. This District Court has authority to order Defendant Board of Supervisors to perform their legal responsibilities. See *Bredt v. Franklin Cty.*, 227 Iowa 1230, 290 N.W. 669 (1940) (stating a district court had the authority to issue a writ to a county official); *Zellmer v. Smith*, 221 N.W. 220 (1928) (stating a district court has the authority to issue a writ to compel an

officer of the state to perform an official duty).

33. The Board of Supervisors' vote is contrary to Iowa law.

34. Iowa law also does not permit the Board of Supervisors to reject a recount board's report. The code provides if:

the recount board's report is that the abstracts prepared pursuant to the county board's canvass were incorrect as to the number of votes cast for the candidates for the office or nomination in question, in that county or district, the commissioner *shall* at once so notify the county board. The county board *shall* reconvene within three days after being so notified, and *shall* correct its previous proceedings.

IOWA CODE § 50.48(5) (emphasis added).

35. There is no support in the Code or the Administrative Code for the Board of Supervisors' position. The Board of Supervisors did not rely on any outside guidance in its interpretation of the code. At the recanvass meeting, the Board knowingly acknowledged they did not have the legal authority to reject the recount board's report and the duty to follow to code.

36. There is no compelling reason to reject the recount report because the Board was awarded no discretion in the legal authority mandated to it.

37. The law directs that the Board of Supervisors shall certify a signed recount report.

IOWA CODE § 50.48(5).

38. The duties imposed by Iowa Code § 50.48(5) are not discretionary.

39. The Board of Supervisors has no discretion when the law defines the duty with certainty and the duty imposed by the statute is simply ministerial. *Taylor Cnty. Farm Bureau v. Bd. of Sup'rs of Taylor Cnty.*, 252 N.W. 498 (Iowa 1934).

40. Plaintiff has no other plain, speedy, or adequate remedy.

WHEREFORE, Plaintiff prays for an emergency writ of mandamus to compel the Defendant Scott County Board of Supervisors to follow the law and accept the recanvass results as

reported by the recount board; for a judgment for Plaintiff's costs to be paid by Defendant and any other relief the Court deems just and equitable.

/s/ Shayla McCormally

Shayla L. McCormally AT0009611

McCormally & Cosgrove, PLLC

2501 Grand Ave, Suite B

Des Moines, IA 50312

Phone: 515-218-9878

Fax: 515-218-9879

[shayla@mciowalaw.com](mailto:shayla@mciowalaw.com)

ATTORNEY FOR PLAINTIFF

**VERIFICATION**

I, Tracey Rivera, after being first duly sworn, do state that I have read the foregoing Application and that the statements contained therein are true and correct as I verily believe.

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Tracey Rivera