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12 MONTANA SEVENTH JUDICIAL DISTRICT COURT, PRAIRIE COUNTY

13 RENEE PIRTZ,

14 Plaintiff,

15 v.

16 SHARI ROBERTSON, Clerk and Recorder of
17 Prairie County in her official capacity; DANIEL
18 RICE; PRAIRIE COUNTY,

19 Defendants.

20 Case No.

21 **PLAINTIFF'S MOTION FOR
22 PRELIMINARY INJUNCTION**

23 COMES NOW Plaintiff, Renee Pirtz ("Pirtz"), and, pursuant to MCA 27-19-102, 27-19-
24 201(1), and 27-19-201 (2), moves the Court for a preliminary injunction against Defendant Shari
25 Robertson ("Election Administrator") to enjoin her from adding Defendant Daniel Rice's ("Rice")
26 name to the 2026 primary and general election ballots for the office of County Attorney because
27 he is not a resident of Prairie County.

Opposing counsel has been apprised of the motion and opposes it. Oral argument is
requested.

I. INTRODUCTION

This case involves whether or not Rice is a resident of Prairie County and therefore is
eligible to run for Prairie County Attorney. As demonstrated in the declarations in support of this
motion:

- 1 • Rice lives in Miles City, Custer County, Montana;
- 2 • A vehicle shown on a Google Earth image of his Miles City home is registered to
- 3 him;
- 4 • While he owns a house in Terry, Prairie County, Montana, he does not live there;
- 5 • A vehicle at the Terry house is owned by a county employee, Laney Smith; and
- 6 • A resident living a block from the Terry house has not seen Rice’s distinctive blue
- 7 Ram truck at the Terry house in approximately six years

8 Time is of the essence in this case. Rice declared his candidacy on February 19, 2026. The
9 Election Administrator must certify the names for the 2026 primary election ballot by March 19,
10 2026. Therefore, Plaintiff (“Pirtz”) sought a hearing on a preliminary injunction to present her
11 evidence in the most expeditious manner.

12 There is a “safety valve” built into the law in this matter. If Rice is enjoined from appearing
13 on the ballot, Prairie County will not be without a county attorney. MCA 7-4-2705 allows Rice to
14 be employed as a special deputy county attorney. He just cannot be elected because he is ineligible
15 for county office.

16 **II. RELIEF REQUESTED**

17 Pirtz moves the Court for a preliminary injunction enjoining the Election Administrator
18 from putting Rice’s name on the 2026 primary and general election ballots. Pirtz further moves for
19 the injunction to issue without bond.

20 **III. EVIDENCE RELIED UPON**

21 Pirtz relies upon the (1) Declaration of Aaron Martinson in Support of Plaintiff’s Motion
22 for Preliminary Injunction; (2) Declaration of Kayla Brewer in Support of Plaintiff’s Motion for
23 Preliminary Injunction; (3) Declaration of Renee Pirtz in Support of Plaintiff’s Motion for
24 Preliminary Injunction, and (4) the pleadings on file.

25 **IV. STATEMENT OF FACTS**

26 Rice declared his candidacy for Prairie County Attorney on February 19, 2026. Declaration
27 of Renee Pirtz in Support of Plaintiff’s Motion for Preliminary Injunction ¶ 6. The Election

1 Administrator must certify the names for the 2026 primary election ballot by March 19,
2 2026.

3 Rice lives in Miles City, Custer County, Montana. A Cadastral property records search
4 shows he co-owns a home at 162 Balsam Drive, Miles City. Declaration of Aaron Martinson in
5 Support of Plaintiff’s Motion for Preliminary Injunction ¶ 5. A database search from a credit
6 reporting agency that includes up to 10,000 other data sources associates Rice with the Miles City
7 home. Declaration of Kayla Brewer in Support of Plaintiff’s Motion for Summary Judgment ¶ 8
8 & Ex. 1. His private-practice law firm is in Miles City. Decl. Martinson ¶ 7.

9 A Google Earth image of his Miles City home shows a distinctive blue Ram truck in the
10 driveway. *Id.* ¶ 6. This vehicle is registered to Rice. Decl. Brewer ¶ 14 & Ex. 3. The blue Ram
11 parks at the Prairie County office building. Decl. Martinson ¶ 12.

12 Rice owns a house in Terry, which is in Prairie County, with the address 203 Garfield
13 Avenue. Decl. Martinson ¶ 13. The property tax bills for the Terry house go to Rice at his Miles
14 City house. *Id.* ¶ 14.

15 However, Rice does not live at the Terry house. A red car parks there and is registered to
16 a county employee named Laney Smith. *Id.* ¶ 15 (red car parked at Terry house); Decl. Brewer ¶¶
17 10-11 & Ex. 2 (red car registered to Laney Smith). A resident who lives a block from the Terry
18 house says he has not seen Rice’s distinctive Ram truck anywhere near the Terry house occupied
19 by Laney Smith in approximately six years. Decl. Martinson ¶¶ 19-20.

20 Rice is registered to vote in Prairie County. Decl. Pirtz ¶ 8. Pirtz believes Rice is registered
21 in Prairie County merely to run for County Attorney and that it is not his true residence. *Id.* ¶ 9.

22 **V. ISSUE PRESENTED**

23 When the evidence shows a candidate for Prairie County Attorney is not a resident of
24 Prairie County, should the Court enter a preliminary injunction enjoining the Election
25 Administrator from placing the candidate’s name on the primary and general election ballot?
26
27

1 **VI. LEGAL AUTHORITY**

2 **A. A County Officer Must Be a Resident of the County**

3 A county officer must be an “elector” in that county. *See* MCA 7-4-2201(3). An elector is
4 a qualified voter. *See* MCA 13-1-101(23).

5 A county attorney is obviously a county officer. *See* MCA Title 7, Ch. 4, Part 27. To be
6 eligible to vote in a county, a person must, among other qualifications, be a resident of that county
7 for at least 30 days. *See* MCA 13-1-111(1)(c). A person may only have one residency. *See* MCA
8 13-1-113.

9 Residency is defined in pertinent part in MCA 13-1-112(1) as “where the individual’s
10 habitation is fixed and to which, whenever the individual is absent, the individual has the intention
11 of returning.” “Habitation” is the key word.

12 The word habitation is commonly understood to mean, and is defined as, a dwelling-
13 house, a place of abode, a residence. *See, e.g.,* Black’s Law Dictionary 839 (Henry C.
14 Black ed., 4th ed. 1951). This definition is consistent with the plain meaning of habitation
15 as it appears elsewhere in the Code. *See, e.g.,* [MCA] 20-25-501(1)(a) (“‘Domicile’
16 means a person’s true, fixed, and permanent home and place of habitation.”)[.]
17 *Downs v. Piocos*, 2023 MT 173, ¶ 16, 413 Mont. 269, 537 P.3d 99 (holding county attorney
18 candidate was not a county resident and therefore ineligible for office).

19 “The word ‘resident’ is generally understood as referring to a person in connection with
20 the place where he lives.” *In re Shun T. Takahashi’s Estate*, 113 Mont. 490, 129 P.2d 217, 221
21 (1942). The essence of residency is, quite simply, where one lives.

22 There is no evidence Rice lives in Terry. Instead, there is a mountain of evidence that he
23 lives in Miles City. *See* Decl. Martinson ¶¶ 5-20; Decl. Brewer ¶¶ 4-14.

24 **B. Procedural Requirements for Preliminary Injunction**

25 Before addressing the substantive requirements for issuing a preliminary injunction, the
26 procedural requirements are described.
27

1 A motion for preliminary injunction can be decided on affidavits. MCA 27-19-307(2). Oral
2 testimony can also be considered. *Id.* A hearing is required. MCA 27-19-303(1). The applicant can
3 be required to provide a “written undertaking” to provide for any damages from an improperly
4 granted preliminary injunction. MCA 27-19-306(1). The written undertaking can be waived “in
5 the interests of justice.” MCA 27-19-306(1)(b)(ii).

6 Under Mont. Code Ann. § 27-19-105, an order issuing an injunction must:

7 (1) set forth the reasons for its issuance;

8 (2) be specific in its terms;

9 (3) describe in reasonable detail, and not by reference to the complaint or any other
10 document, the act or acts sought to be restrained; and

11 (4) be binding only upon the parties to the action; their officers, agents, employees, and
12 attorneys; and those persons in active concert or participation with them who receive
actual notice of the order by personal service or otherwise.

13 **C. Standard for Granting a Preliminary Injunction**

14 MCA 27-19-201 provides:

15 (1) A preliminary injunction order ... may be granted when the applicant establishes that:

16 (a) the applicant is likely to succeed on the merits;

17 (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief;

18 (c) the balance of equities tips in the applicant's favor; and

19 (d) the order is in the public interest.

20 ...

21 (3) The applicant for an injunction provided for in this section bears the burden of
22 demonstrating the need for an injunction order.

23 ...

24 (4)(b) When conducting the preliminary injunction analysis, the court shall examine the
25 four criteria in subsection (1) independently. The court may not use a sliding scale test, the
26 serious questions test, flexible interplay, or another federal circuit modification to the
27 criteria.

1 The issuance of a preliminary injunction is within the discretion of the court. *Talley v.*
2 *Flathead Valley Community College*, 259 Mont. 479, 857 P.2d 701 (1993), *cert. denied*, 510
3 U.S. 1044 (1994). A court must base its decision “in furtherance of the limited purpose of [a]
4 preliminary injunction[:]) to preserve the status quo and minimize the harm to all parties pending
5 final resolution on the merits.” *Driscoll v. Stapleton*, 2020 MT 247, ¶ 14, 401 Mont. 405, 473
6 P.3d 386, *superseded by statute on other grounds*, *Planned Parenthood of Montana v. State*,
7 2024 MT 228, 418 Mont. 253, 557 P.3d 440.

8 As the Court knows, a decision on a preliminary injunction is not a determination of the
9 merits of the case. *Id.*, ¶ 12. Pirtz does not ask the Court to make a final determination on the
10 merits, but instead only asks the Court to issue a preliminary injunction enjoining placing Rice
11 on the primary ballot by the March 16, 2026 deadline, or, if that date cannot be met, enjoining
12 Rice’s placement on the general election ballot.

13 **1. Prima Facia Showing of “Likelihood on the Merits”**

14 An applicant for a preliminary injunction must show “the likelihood that the movant will
15 succeed on the merits of the action.” *Van Loan v. Van Loan*, 271 Mont. 176, 182, 895 P.2d 614,
16 617 (1995). This merely requires the movant to make a “prima facie” case that he or she is entitled
17 to relief. *See Planned Parenthood of Montana v. State by and through Knudsen*, 2022 MT 157, ¶
18 27, 409 Mont. 378, 515 P.3d 301; *Flying T Ranch, LLC v. Catlin Ranch, LP*, 2022 MT 162, ¶ 18,
19 409 Mont. 478, 515 P.3d 806.

20 “Prima facie means literally at first sight or on first appearance but subject to further
21 evidence or information.” *Cross by & through Cross v. State*, 2024 MT 303, ¶ 33, 419 Mont. 290,
22 560 P.3d 637 (citations and internal quotation marks omitted). A prima facie case does not require
23 ultimately proving one’s case; it means merely having enough evidence to win if that evidence is
24 not rebutted. *See State ex rel. Fitzgerald v. Dist. Court of Eighth Jud. Dist., Cascade County*, 217
25 Mont. 106, 118, 703 P.2d 148, 156 (1985) (citation omitted); *Flying T Ranch*, ¶ 18 (applicant for
26 a preliminary injunction “need not make out such a case as would entitle him to final judgment on
27

1 the merits.”) (citation omitted); *Driscoll*, ¶ 16 (prima facie standard can be met “even if such
2 evidence ultimately may not be sufficient to prevail at trial.”).

3 It is a very easy standard to meet.

4 As described below, Pirtz can easily make a prima facie showing that Rice is not a resident
5 of Prairie County. He lives in Miles City and the house in Terry is not inhabited by him but rather
6 by Laney Smith. *See* Decl. Martinson ¶¶ 5-20; Decl. Brewer ¶¶ 4-14 & Exs. 1-3.

7 **2. Irreparable Injury**

8 The second element for a preliminary injunction is “the likelihood that the movant will
9 suffer irreparable injury absent the issuance of a preliminary injunction.” *Van Loan*, 271 Mont. at
10 182, 895 P.2d at 617.

11 Pirtz easily meets this element: if Rice is allowed on the ballot despite his ineligibility for
12 office, he might win the election and hold an office from which he is barred from holding.

13 **3. Balancing of Equities**

14 The third element for a preliminary injunction is “the threatened injury to the movant
15 outweighs whatever damage the proposed injunction may cause the opposing party (a balancing
16 of the equities).” *Van Loan*, 271 Mont. at 182, 895 P.2d at 617.

17 Pirtz satisfies this element. The harm to her – and, more importantly, the voters of Prairie
18 County – is that an ineligible candidate would be on the ballot. This would undermine confidence
19 in the enforcement of eligibility laws. Pirtz, as Vice Chair of the Prairie County Republican Central
20 Committee, is concerned about election integrity and that Republicans on the ballot are eligible to
21 run for office. Decl. Pirtz ¶ 5.

22 There is no harm to the Election Administrator. She only processes names of eligible
23 candidates for the ballot; she has no stake in who is on – or off – the ballot. She is just doing her
24 job. There is no harm to Rice; he can represent Prairie County as a special deputy. *See* MCA 7-4-
25 2705. There is no harm to Prairie County for the same reason.

