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DEC 23 2019
Clerk, U.S. Courts
District of Montana
Missoula Division

5
6 UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF MONTANA
8

9 THOMAS TOSDAL,
10
11 Plaintiff,

12 v.

13 NORTHWESTERN CORPORATION
AND DOES 1-5,
14 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

15
16 Plaintiff alleges:

17 **NATURE OF ACTION**

18 1. This action seeks a declaratory judgment that Plaintiff's shareholder proposal,
19 attached as Exhibit 1, complies with the requirements of 17 C.F.R. §240.14a-8 so
20 as to require NorthWestern Corporation to include the proposal in its
21 forthcoming proxy statement for review and vote by shareholders at its annual
22 meeting to be held in April 2020. This action also seeks preliminary and
23 permanent injunctive relief enjoining NorthWestern Corporation from excluding
24 the proposal from these proceedings.
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JURISDICTION

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this civil action arises under the laws of the United States, in particular the Securities and Exchange Act, 15 U.S.C. §78n(a), and 17 C.F.R. § 240.14a-8.

3. This Court has personal jurisdiction over Defendant NorthWestern Corporation because NorthWestern Corporation has substantial contacts within the state of Montana, including having seven offices and operating electricity generation plants and transmission lines throughout much of the state.

VENUE

4. Venue is proper in the United States District Court for the District of Montana under 28 U.S.C. §§ 1391(b)(1) and (c)(2), because NorthWestern Corporation is deemed to reside within the District of Montana.

PARTIES

5. Plaintiff Thomas Tosdal is an individual, residing near Ovando, Montana. Plaintiff is a shareholder of NorthWestern Corporation, who has satisfied the legal requirements to bring the shareholder proposal. Plaintiff is an attorney licensed to practice law in another state but not in Montana, and who as a result appears *pro se* in this action.

6. Defendant NorthWestern Corporation is a Delaware corporation, with its principal executive offices in Sioux Falls, South Dakota. NorthWestern Corporation owns and operates the NorthWestern Energy Company, which generates and transmits electricity to parts of Montana, South Dakota, and Nebraska.

1 NorthWestern Corporation is a publicly held company, trading in the New York
2 Stock Exchange under "NWE."
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4 7. The true names and capacities of DOES 1-5 are presently unknown to Plaintiff. It
5 is alleged DOES 1-5, and each of them, are in some manner responsible for the acts
6 and omissions alleged in this complaint.
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8 GENERAL ALLEGATIONS

9 8. On September 20, 2019, Plaintiff caused to be mailed to NorthWestern
10 Corporation a cover letter, a shareholder proposal, and proof of holding the
11 requisite number of NWE shares for over a year, requesting the proposal be
12 included in the corporation's next proxy statement and annual meeting. The gist of
13 the proposal is to request the corporation develop a plan to cease coal fired
14 generation of electricity from the Colstrip coal fired plant, located in Montana, and
15 replace that electricity with non-carbon renewable energy no later than the end of
16 the year 2025.
17

18 9. The proposal was timely and complied with the requirements of 17 C.F.R. §
19 240.14a-8.
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21 10. NorthWestern Corporation first responded by letter dated October 4, 2019,
22 received on October 10, 2019, alleging two technical defects regarding proof of
23 Plaintiff's holding of NWE shares: (1) that the letter from the broker proving the
24 holding of shares was dated the day before the proposal was mailed, and (2) the
25 letter from the broker was insufficient because the broker is not a participant or
26 affiliate of a participant in the Depository Trust Corporation (DTC). The
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1 corporation's letter gave Plaintiff two weeks from receipt of the letter to cure the
2 alleged defects.

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4 11. On or about October 17, 2019, Plaintiff sent a letter to NorthWestern Corporation
5 disputing the corporation's allegations of defects but nonetheless providing a letter
6 from the broker establishing Plaintiff held the requisite NWE shares as of October
7 18, 2019, to qualify the proposal for the proxy statement and annual meeting,
8 thereby curing the first alleged defect.

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10 12. On October 22, 2019, and by overnight mail, Plaintiff sent to NorthWestern
11 Corporation a letter from National Financial Services LLC, a DTC participant,
12 verifying that Plaintiff held the requisite NWE shares for over a year to qualify the
13 proposal for the proxy statement and annual meeting, thereby curing the second
14 alleged defect.

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16 13. Nothing further was heard from NorthWestern Corporation until December 20,
17 2019, when Plaintiff received a copy of a letter dated December 17, 2019, from
18 NorthWestern's counsel to staff of the Division of Corporate Finance of the
19 Securities and Exchange Commission. The letter announces NorthWestern's
20 intention to omit the proposal from its proxy materials on different yet still invalid
21 alleged grounds from proof of share ownership and requests staff not recommend
22 an enforcement action against NorthWestern for that decision.

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25 14. On December 22, 2019, Plaintiff responded to NorthWestern's letter. A decision
26 by staff of the Division of Corporation Finance has not been received as of the date
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1 of filing this complaint. By law, a staff decision to grant or not grant such a “no
2 action” request is not a legally binding adjudication of rights.
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4 **FIRST CLAIM FOR RELIEF**

5 **(Declaratory Judgment)**

6 15. Plaintiff incorporates by reference paragraphs 1-14 of this complaint.

7 16. An actual controversy within the jurisdiction of this Court exists within the
8 meaning of 28 U.S.C. § 2201 with regard to the rights and legal relations between
9 Plaintiff and NorthWestern Corporation concerning the legal duty of Northwestern
10 Corporation under 17 C.F.R. § 240.14a-8 to include the proposal in its next annual
11 proxy statement for voting by the shareholders at the next annual meeting to be held
12 in April 2020.
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15 17. Plaintiff requests a judgment from this Court declaring Northwestern
16 Corporation has the legal duty to include the proposal in its next proxy statement
17 for voting by the shareholders at the next annual meeting.
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19 18. Time is of the essence for adjudication of this claim. NorthWestern Corporation
20 states in its letter to the Division of Corporation Finance it intends to file its 2020 proxy
21 materials for the 2020 annual meeting on or about March 6, 2020. Plaintiff requests a
22 speedy hearing of this claim under Rule 57 F.R.C.P.
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24 **SECOND CLAIM FOR RELIEF**
(Preliminary and Permanent Injunction)

25 19. Plaintiff incorporates by reference paragraphs 1-18 of this complaint.
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1 20. Plaintiff is likely to succeed on the merits or at the very least serious questions
2 going to the merits are raised in this action, and the balance of hardships tips
3 sharply in Plaintiff's favor. In the absence of preliminary and permanent injunctive
4 relief enjoining NorthWestern Corporation from excluding the proposal from the
5 2020 proxy statement and annual meeting Plaintiff will be denied his legal right to
6 present a proposal to his fellow shareholders on matters of company and public
7 concern while the corporation will suffer no hardship by having its shareholders
8 consider and vote - up or down - on the proposal.

9 21. Plaintiff will likely suffer irreparable injury unless preliminary and permanent
10 injunctive relief is granted, because Plaintiff's right to present a proposal to his
11 fellow shareholders through the established mechanism of shareholder proposals
12 will be denied, for which injury Plaintiff has no adequate remedy at law.

13 22. The public interests of compliance with law, lawful shareholder participation in
14 corporate governance, and addressing the causes of the existential threat of climate
15 change caused by carbon dioxide emissions favor the granting of a preliminary and
16 permanent injunction. At the very least, the public interest would not be disserved
17 by the granting of a preliminary and permanent injunction enjoining NorthWestern
18 Corporation from excluding the proposal from its 2020 proxy statement and annual
19 meeting.

20 23. Plaintiff requests the Court issue a preliminary and permanent injunction
21 enjoining Northwestern Corporation, its officers, directors, agents, and employees
22 from excluding the proposal from the 2020 proxy statement and annual meeting.
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