

**IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT
LARAMIE COUNTY, WYOMING**

**MIKE HUNZIE, TOM DUNLAP, ROBIN RHODES,
NEIL SCHLENKER, TAYLOR HAYNES, LANA CLARK,
and TRACY HUNT,**

Plaintiffs,

vs.

Civil Action No. _____

MAX MAXFIELD, Wyoming Secretary of State, in his individual official capacity as Chief Elections Officer; **MATT MEAD**, Governor of the State of Wyoming, in his individual official capacity and as a member of the State Canvassing Board; **MAX MAXFIELD**, Wyoming Secretary of State, in his individual official capacity and as a member of the State Canvassing Board; **JOE MEYER**, Wyoming State Treasurer in his individual official capacity and as a member of the State Canvassing Board; and **CYNTHIA CLOUD**, Wyoming State Auditor in her individual official capacity and as a member of the State Canvassing Board,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF

COME NOW the Plaintiffs in the above-entitled matter, by and through their attorney, Nicholas H. Carter, The Nick Carter Law Firm, P.C., Gillette, Wyoming, and for the several causes of action set forth against the Defendants named above, state and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the Court arises pursuant to the Uniform Declaratory Judgments Act, W.S. § 1-37-101 *et seq.*

2. Venue is proper pursuant to W.S. § 1-5-104 in Laramie County where all or part of the causes of action set forth arose.

PARTIES

3. Plaintiffs are citizens, taxpayers, and qualified voters of Wyoming.

4. Pursuant to Rule 23 of the Wyoming Rules of Civil Procedure, Plaintiffs herein bring the claims set forth below in their own names and on behalf of a class composed of other citizens, taxpayers, and qualified voters of Wyoming.

5. This action involves questions of fact and law that are common to and between Plaintiffs and the class of other citizens, taxpayers, and qualified voters of Wyoming.

6. The claims of Plaintiffs are typical of the claims of the class and the Plaintiffs now before the Court will fairly and adequately protect the interests of that class.

7. Each Plaintiff and each member of the class they represent has a personal, tangible stake in the outcome of the controversies of the instant case.

8. Original House Bill 0032, Enrolled Act No. 8, House of Representatives of the Sixty-First Legislature of the State of Wyoming (2012 Budget Session), was adopted by the Wyoming House of Representatives and Wyoming Senate and signed by the Governor on March 6, 2012 (hereinafter, this item of legislation is referred to as the “2012 Reapportionment Act”).

9. Without immediate judicial action, each Plaintiff and each member of the class they represent will be impacted negatively and suffer irreparable harm by the terms of the 2012 Reapportionment Act.

10. Defendants are duty-bound to carry out the requirements of their respective offices, including the duty to effectuate the terms of the 2012 Reapportionment Act which does, and will in the future, require Defendants to act in ways that will negatively impact Plaintiffs.

11. Defendants Matt Mead, Max Maxfield, Joe Meyer, and Cynthia Cloud are Wyoming's Governor, Secretary of State, State Auditor and State Treasurer, respectively. Collectively, they constitute the State Canvassing Board. Pursuant to W.S. § 22-1-101 *et seq.*, Defendants are vested with the authority, duty, and obligation to certify the official state canvass.

12. Defendant Max Maxfield is the Secretary of State of the State of Wyoming and as that officeholder, he is the Chief Election Officer for the State of Wyoming, pursuant to W.S. § 22-2-103.

13. Defendants are sued in their individual official capacities and as members of the State Canvassing Board. Defendants are acting in the capacities in which they are sued under color of state law.

FACTS COMMON TO ALL CAUSES OF ACTION

14. According to the terms of the Wyoming Constitution, Article 3, § 48, the Wyoming Legislature is required to conduct a reapportionment of its membership following the decennial federal census.

15. The reapportionment must comply with all federal reapportionment requirements, notably that all districts must be drawn in conformity with "One-person, One-vote" and the Voting Rights Act.

16. The reapportionment must also comply with all requirements of the Wyoming Constitution, notably that the membership of both houses of the legislature be apportioned among the counties as nearly as may be according to the number of their inhabitants.

17. A subset of the Wyoming legislature, the Joint Corporations, Elections and Political Subdivision Interim Committee (hereinafter, "the Committee"), was tasked with sponsoring a redistricting bill for introduction during the 2012 legislative budget session.

18. The membership of the Committee was composed entirely of Senators and representatives from the largest, most populous counties.

19. The Committee was composed of fourteen (14) members, but due to the resignation of (1) member, a total of fifteen (15) different Legislators actually served on the Committee.

20. The resigning member was from Natrona County and her replacement was from Laramie County.

21. Of the fifteen (15) members who served, ten (10) were residents of Laramie, Natrona, or Campbell Counties; the three (3) most heavily populated counties in the state.

22. Further, the Committee's co-chairmen were from the largest and fifth (5th) largest counties, respectively. Wyoming's thirteen (13) smallest, least-populous counties had no Committee representation of any kind.

23. The three (3) counties with the largest populations represented only thirty-eight percent (38%) of the state's population, but those counties controlled an overwhelming sixty-four percent (64%) of the votes on the Committee.

24. On or about April 12, 2011, the Committee announced that it had adopted seven (7) “Redistricting Principles” that it would follow to accomplish its task and assured the public that any plan developed by the Committee was required to adhere to these following Redistricting Principles:

- i. Election districts should be contiguous, compact, and reflect a community of interest;
- ii. Population of election districts should be substantially equal, with the range of deviation not to exceed 10%;
- iii. To the greatest extent possible, in establishing election districts: County boundaries should be followed; The majority of the population of each county should be in one district; and Census blocks should be followed.
- iv. The plan should avoid diluting voting power of minorities in violation of the Voting Rights Act;
- v. The House shall have 60 seats and the Senate shall have 30 seats;
- vi. Consideration should be given to two (2) contiguous House districts in each Senate district; and
- vii. Significant geographical features should be considered in establishing districts.

25. The Committee held numerous meetings around Wyoming while developing its redistricting plan. At the beginning of every meeting of the Committee, the Redistricting Principles were read and/or explained to the attendees.

26. Just as the Committee had committed itself to follow the Redistricting Principles set forth above, it forswore certain other criteria in reapportioning the legislative districts in Wyoming. It announced repeatedly and publicly that the place of residence of individual incumbent Legislators would specifically **not** be considered as criteria in drawing its redistricting plan.

27. Committee members repeatedly and publicly renounced as illegitimate any form of gerrymandering aimed at retaining incumbents.

28. Committee members repeatedly and publicly denied that the Committee was engaging in any form of gerrymandering aimed at retaining incumbent Legislators.

29. As early as June 28, 2011, Committee members were reminded by public meeting attendees that Article 3, § 3 of the Wyoming Constitution required redistricting be done such that members of both the House of Representatives and Senate be apportioned among the counties as nearly as may be according to the number of their inhabitants.

30. During the time the Committee was developing a plan, the Committee had before it workable redistricting alternatives that satisfied the Restricting Requirements and the Wyoming State Constitution with respect to its requirement of apportionment to the counties. Despite these more favorable and constitutionally-permitted plans, the Committee failed and refused to incorporate those alternatives into what was ultimately adopted as the 2012 Reapportionment Act.

31. In the closing months of 2011, the Committee began to finalize a redistricting plan.

32. As the final plan emerged, it became apparent that the Committee was ignoring its own Redistricting Principles.

33. As the final plan emerged, it became apparent that the Committee was ignoring important requirements of Article 3, § 3 of the Wyoming Constitution.

34. As the final plan emerged, it became apparent that the Committee was willing to unnecessarily separate, isolate, and remove certain populations from their home counties, thereby diluting, and submerging the voting rights of these citizens and exalting the rights of others in the same district, giving them inordinate voting power.

35. As the final plan emerged, it became apparent that one (1) net effect of the plan was to misappropriate representation to some counties at the expense of others.

36. As the final plan began to emerge, it became apparent that in some instances, using wildly- gyrating district boundaries that otherwise defied the Redistricting Principles, districts were configured such that all, or nearly all, incumbents would not have to run against each other in the next election cycle.

37. Members, however, still lamented publicly their consternation over the apparent unavailability of having to draw two (2) sitting Senators into the same Senate District.

38. Under the developing plan, Senator Curt Meier (R-Goshen) of LaGrange and Senator Wayne Johnson (R-Laramie) of Cheyenne were both drawn into the same district.

39. Because the proposed district was split between Laramie and Goshen Counties and populated predominately with persons from Laramie County, it was widely held that Senator Meier rather than Senator Johnson would lose his seat if the Senate contest were held between those two (2) candidates.

40. In spite of the conflict detailed in the preceding paragraphs, the Committee finalized its plan and sponsored it as redistricting legislation in the form of HB 0032.

41. In 2012 the legislature convened for its Budget Session and during the course of that session, the Joint Corporations, Elections and Political Subdivision Committee considered an amendment to HB 0032 offered by Senator Meier that would save his Senate seat.

42. Senator Meier's amendment excluded Senator Meier's residence from the district where Senator Johnson resides.

43. The Meier Amendment redrew the Goshen County portion of House District 10/Senate District 3 to include a narrow strip along the Nebraska border that captured the prison

north of Highway 26 and east of Torrington, putting the prison and the citizens caught in that narrow strip in the same district as Senator Johnson's Cheyenne residence.

44. The Meier Amendment caused no less than five (5) Goshen County voting precincts to be split and fractured.

45. The Meier Amendment violated nearly every applicable Redistricting Principle as set forth above.

46. Although the Meier Amendment attracted much attention and created a district that was visually and obviously repugnant to the United States Constitution, the Wyoming Constitution, and the Redistricting Principles, it is merely representative of other illegal and unconstitutional legislative districts created by the 2012 Reapportionment Act.

47. With the exception of the Meier Amendment and some other minor adjustments, HB 0032 passed both chambers of the legislature substantially unchanged.

48. According to the terms of the 2012 Reapportionment Act, the changes in legislative districts will become effective with the 2012 general election cycle.

49. The 2012 Reapportionment Act did not comply with the Redistricting Principles to which the Committee had committed, in that some election districts drawn unnecessarily failed to follow county boundaries to the greatest extent possible.

50. The 2012 Reapportionment Act did not comply with the Redistricting Principles to which the Committee had committed, in that some districts were not drawn to reflect a community of interest between residents of those election districts.

51. The 2012 Reapportionment Act did not comply with the Redistricting Principles to which the Committee had committed in that some districts were not compact.

52. The 2012 Reapportionment Act did not comply with the Redistricting Principles to which the Committee had committed in that some districts were not drawn from contiguous territories.

53. The 2012 Reapportionment Act did not comply with the Redistricting Principles to which the Committee had committed in that some districts were drawn without consideration to significant geographic features.

COUNT I

Declaratory Judgment

Wyoming Constitution, Article 3, § 3

54. Plaintiffs restate and re-allege each and every allegation contained in this Complaint and incorporate them into this cause of action.

55. This cause of action is brought pursuant to The Uniform Declaratory Judgments Act, W.S. § 1-37-101 *et seq.*, to settle and to afford relief from uncertainty with respect to the applicability of Wyoming Constitution, Article 3, § 3 to the facts of this case. The text of the Wyoming Constitution, Article 3, § 3 reads as follows:

Each county shall constitute a senatorial and representative district; the senate and house of representatives shall be composed of members elected by the legal voters of the counties respectively, every two (2) years. They shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. Each county shall have at least one senator and one representative; but at no time shall the number of members of the house of representatives be less than twice nor greater than three times the number of members of the senate. The senate and house of representatives first elected in pursuance of this constitution shall consist of sixteen and thirty-three members respectively.

56. Plaintiffs on their own behalf and on behalf of all Wyoming citizens, taxpayers, and qualified electors, are persons whose rights, status or other legal relations are affected by the Wyoming Constitution. Plaintiffs wish to have questions of construction or validity arising under Wyoming Constitution, Article 3, § 3 determined, and to obtain a declaration of rights, status or other legal relations.

57. Specifically, Plaintiffs seek a declaration that, in addition to the requirements of “One-person, One-vote” and other federal redistricting criteria, Wyoming Constitution, Article 3, § 3 imposes an obligation on the legislature to apportion legislative representation to counties as political subdivisions of the state as nearly as may be done according to the number of inhabitants.

COUNT II

Declaratory Judgment

2012 Reapportionment Act Unconstitutional

Malapportionment

58. Plaintiffs restate and re-allege each and every allegation contained in this Complaint and incorporate them into this cause of action.

59. This cause of action is brought pursuant to The Uniform Declaratory Judgments Act, W.S. § 1-37-101 *et seq.*

60. Plaintiffs on their own behalf and on behalf of all Wyoming citizens, taxpayers, and qualified electors are persons whose rights, status or other legal relations are affected by the Wyoming Constitution, and hereby seek to obtain a declaration that according to the terms of

Wyoming Constitution, Article 3, § 3, the 2012 Reapportionment Act is unconstitutional in that it fails to apportion representation to the counties as nearly as may be according to their number of inhabitants.

COUNT III

Declaratory Judgment

2012 Reapportionment Act Violates Wyoming Constitution

Equal Protection

61. Plaintiffs restate and re-allege each and every allegation contained in this Complaint and incorporate them into this cause of action.

62. This cause of action is brought pursuant to The Uniform Declaratory Judgments Act, W.S. § 1-37-101 *et seq.*

63. Using “One-Person, One-Vote,” the Committee caused the State of Wyoming to be indiscriminately carved into legislative districts, with a primary scheme and interest more in reseating incumbent Legislators than apportioning legislative members among the counties of Wyoming according to the number of inhabitants.

64. The right to vote is a fundamental one and is entitled to the strict protections of the court.

65. The flip side of the right to vote is the right to run for office.

66. County of residence is an important factor in the day-to-day operation of an acceptable representation and apportionment arrangement.

67. The 2012 Reapportionment Act is unconstitutional in that constituents of some Senatorial election districts are provided electoral rights in those districts that are substantially different than the electoral rights of constituents living in other Senatorial districts.

68. Plaintiffs seek a declaration that the 2012 Reapportionment Act is unconstitutional in that it violates the following Wyoming constitutional provisions:

(a) **Wyoming Constitution, Article 1**

§ 2. Equality of all

In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal.

(b) **Wyoming Constitution, Article 1**

§ 3. Equal political rights

Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of the state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.

(c) **Wyoming Constitution, Article 1**

§ 7. No absolute, arbitrary power

Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.

(d) **Wyoming Constitution, Article 6**

§ 13. Purity of Elections to be provided for

The legislature shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.

(e) **Wyoming Constitution, Article 21**

§ 18. How legislature chosen

Senators and member of the house of representatives shall be chosen by the qualified electors of the several senatorial and representative districts as established in this constitution, until such districts shall be changed by law, and thereafter by the qualified electors of the several districts as the same shall be established by law.

COUNT IV

2012 Reapportionment Act Violates United States Constitution

69. Plaintiffs seek a declaration that the 2012 Reapportionment Act is unconstitutional in that it violates the following provision of the United States Constitution and denies certain citizens of due process and equal protection under the law:

Fourteenth Amendment to the United States Constitution, § 1:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; to any person within its jurisdiction the equal protections of the law.

70. The 2012 Reapportionment Act was drawn in a manner or manners that unnecessarily separate and isolate some populations from their home counties and thereby places them into districts dominated by neighboring counties and as a result their votes are impermissibly diluted and submerged.

71. The 2012 Reapportionment Act was drawn in a manner that unnecessarily separates, isolates, and removes persons from their home counties and deprives them individually and in the aggregate of a voice in the political process, wherein their vote counts for little or naught and their ability to run for office is negated in whole or in part.

72. The 2012 Reapportionment Act is unconstitutional in that constituents of some Senatorial election districts are provided electoral rights in those districts that are substantially different than the electoral rights of constituents living in other Senatorial districts.

COUNT V

Declaratory Judgment

2012 Reapportionment Act Unconstitutional

Hold-Over Senators

73. Plaintiffs restate and re-allege each and every allegation contained in this Complaint and incorporate them into this cause of action.

74. This cause of action is brought pursuant to The Uniform Declaratory Judgments Act, W.S. § 1-37-101 *et seq.*

75. The 2012 Reapportionment Act, in redrawing Wyoming's thirty (30) Senatorial districts, changed the constituent makeup of many, if not all, of those districts.

76. The 2012 Reapportionment Act, represents a total overhaul of the constituent makeup of several districts.

(a) **Wyoming Constitution, Article 21**

§ 18. How legislature chosen

Senators and member of the house of representatives shall be chosen by the qualified electors of the several senatorial and representative districts as established in this constitution, until such districts shall be changed by law, and thereafter by the qualified electors of the several districts as the same shall be established by law.

77. The 2012 Reapportionment Act purports to operate pursuant to law to change Senatorial districts, thereby establishing new districts effective for the 2012 election cycle.

78. Plaintiffs seek a declaration that under the Wyoming Constitution, Article 21, § 18 and other Wyoming constitutional provisions previously alleged that the 2012 Reapportionment Act is unconstitutional in that it purports to allow certain individual Senators to avoid their obligation to seek election in the 2012 election cycle notwithstanding that those Senators were chosen by the qualified electors of a Senatorial district that has changed.

COUNT VI

Injunctive Relief

79. Plaintiffs restate and re-allege each and every allegation contained in this Complaint and incorporate them into this Cause of Action.

80. Plaintiffs' elective rights as set forth in this Complaint have been debased by the 2012 Reapportionment Act and that debasement will begin to inflict injury upon Plaintiffs as of the commencement of the 2012 election cycle. Defendants will be bound thereby and are not free to exercise any discretion to eliminate the harm suffered by Plaintiffs absent judicial decree.

81. Plaintiffs have no adequate remedy at law or otherwise other than the judicial relief sought herein. Plaintiffs will suffer irreparable injury if injunctive relief is not granted and enforced against Defendants.

82. The rights of Plaintiffs and other similarly situated can only be protected by a decree of this Court declaring the 2012 Reapportionment Act unconstitutional and invalid and by further enjoining Defendants from performing any acts or duties in the furtherance of the 2012 election cycle as it affects the elections of the members of the next Wyoming Legislature.

WHEREFORE, Plaintiffs pray that:

(1) The Court enter an order enjoining and restraining the Defendants from acting together in any official capacity as the State Cavassing Board and/or from performing any duties in their individual official capacities that would normally be expected or required to facilitate or enable the 2012 election cycle for any and all Wyoming State Senators and members of the Wyoming House of Representatives.

(2) The Court retain jurisdiction of this case and continue the effectiveness of the injunction prayed for herein until such time as the Court has time to hear and rule on all matters associated with this action and oversee the final implementation of a constitutional reapportionment plan, drawn by the Court if need be.

(3) The Court declare that in addition to “One-person, One-vote” and all other federal reapportionment requirements, Wyoming Constitution Article 3, § 3 imposes on the Wyoming Legislature the obligation to apportion legislative representation to counties, as nearly as may be done, according to their number of inhabitants.

(4) That the Court declare the 2012 Reapportionment Act to be unconstitutional, in that it fails to apportion representation to the counties as nearly as may be according to their number of inhabitants as required by Wyoming Constitution Article 3, § 3.

(5) That the Court declare the 2012 Reapportionment Act to be unconstitutional in that it deprives Plaintiffs and others similarly situated of due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution

(6) That the Court declare the 2012 Reapportionment Act to be unconstitutional in that it violates Plaintiff's political and elective rights as guaranteed by the Wyoming State Constitution.

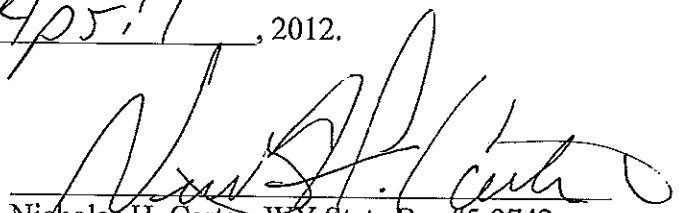
(7) That the Court declare that Wyoming Constitution Article 21, § 18 requires Senators to stand for the next election and not be allowed to hold over to finish their regular four year term in the event the district from which they were qualified and chosen from is changed by law.

(8) That the Court declare the 2012 Reapportionment Act to be unconstitutional in violation of Wyoming Constitution Article 21, § 18, as it allows Senators from districts that have been changed by law to hold over even after the district from which they were chosen has been changed.

(9) That the Court award reasonable attorneys' fees and costs of suit pursuant to law.

(10) That the Court grant such other and further relief as it may deem just and proper.

DATED this 5th day of April, 2012.


Nicholas H. Carter, WY State Bar #5-2742

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