

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

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**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

**WYWATCH FAMILY ACTION, INC., a
Wyoming non-profit corporation,**

Plaintiff,

v.

**RICH CATHCART, individually, and in his
official capacity as Executive Secretary of
State Building Commission of Wyoming,
MATTHEW H. MEAD, in his official capacity
as a member of the State Building Commission
of Wyoming, MAX MAXFIELD, in his official
capacity as a member of the State Building
Commission of Wyoming, CYNTHIA I.
CLOUD, in her official capacity as a member
of the State Building Commission of Wyoming,**

CIVIL ACTION NO.: 12-CV-001-F

**VERIFIED COMPLAINT
FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF
AND NOMINAL DAMAGES
PURSUANT TO
42 U.S.C. § 1983**

**JOSEPH B. MEYER, in his official capacity as
a member of the State Building Commission of
Wyoming, and CINDY HILL, in her official
capacity as a member of the State Building
Commission of Wyoming,**

Defendants.

Plaintiff WyWatch Family Action, Inc. comes and avers the following:

INTRODUCTION

1. Pursuant to 42 U.S.C. §§ 1983 and 1988, WYWATCH FAMILY ACTION , INC. seeks injunctive relief, declaratory relief, and nominal damages against Defendants RICH CATHCART, individually, and in his official capacity as Executive Secretary of State Building Commission of Wyoming, MATTHEW H. MEAD, in his official capacity as Governor of Wyoming and as a member of the State Building Commission of Wyoming, MAX MAXFIELD, in his official capacity as a member of the State Building Commission of Wyoming, CYNTHIA I. CLOUD, in her official capacity as a member of the State Building Commission of Wyoming, JOSEPH B. MEYER, in his official capacity as a member of the State Building Commission of Wyoming, and CINDY HILL, in her official capacity as a member of the State Building Commission of Wyoming.

2. This action is premised on the United States Constitution concerning the denial of Plaintiff's fundamental rights of free speech, due process, and equal protection.

3. Defendants' actions have deprived - and will continue to deprive - Plaintiff of its paramount rights and guarantees supplied in the United States Constitution.

4. Each and every act of Defendants alleged herein was committed by Defendants,

each and every one of them, under the color of state law.

JURISDICTION AND VENUE

5. This action pertains to federal questions under the United States Constitution, First and Fourteenth Amendments, and under federal law, 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988.

6. This Court has original jurisdiction over the federal claims via 28 U.S.C. §§ 1331 and 1343.

7. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3), the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and requested costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988.

8. Venue is proper in the District Court of the District of Wyoming because the claims arise in this district and all Defendants reside in this district.

PLAINTIFF

9. WyWatch Family Action, Inc. ("WyFA") is an independent non-profit family policy corporation incorporated in Wyoming and registered in the State of Wyoming and with the Internal Revenue Service as a 501(c)4 entity. The mailing address for WyFA is located in Cheyenne, Wyoming.

DEFENDANTS

10. Rich Cathcart ("Cathcart") is current Construction Management Director and is sued individually and in his official capacity as Executive Secretary of State Building Commission of Wyoming.

11. Matthew H. Mead (“Governor Mead”) is current Governor of the State of Wyoming and is sued in his official capacity as Governor and as member of State Building Commission of Wyoming.

12. Max Maxfield is current Secretary of State of the State of Wyoming and is sued in his official capacity as member of the State Building Commission of Wyoming.

13. Cynthia I. Cloud is current Auditor of the State of Wyoming and is sued in her official capacity as member of State Building Commission of Wyoming.

14. Joseph B. Meyer is current Treasurer of the State of Wyoming and is sued in his official capacity as member of State Building Commission of Wyoming.

15. Cindy Hill is current State Superintendent of Public Instruction for the State of Wyoming is sued in her official capacity as member of State Building Commission of Wyoming.

FACTS

WyFA

16. WyFA was incorporated in 2008 to preserve traditional family values in the great State of Wyoming. Guarding faith, family, and freedom, WyFA seeks to educate state legislators and Wyoming citizens of the importance of maintaining and preserving Judeo-Christian principles within the State of Wyoming.

17. Becky Vandenberghe (Vandenberghe) is the Chairman of WyFA and has served in that capacity since its formation.

18. Leaders and members of WyFA firmly believe that innocent human life - from the moment of conception to natural death - is of inestimable worth in all of its dimensions, and must

be protected. They are particularly concerned about the harm associated with abortion – to the mother as well as the child.

19. One of the founding principles upon which WyFA was formed concerns the dignity of human life.

20. Part of WyFA's mission is to promote and support legislation that sustains constitutional rights, uphold Judeo-Christian values, and protect innocent life from conception to natural death.

21. Part of WyFA's vision is to see the State of Wyoming become a State that firmly respects innocent life from conception to natural death.

22. Being a 501(c)4 organization, WyFA is actively involved in lobbying activities, and through which, encourage state legislators to promote and advocate the sanctity of life for the unborn.

23. As a means to meet its mission, vision, and goals, WyFA vigilantly seeks out opportunities to share its message about the sanctity of human life and impropriety of abortion, particularly, in public spaces where its message regarding the intrinsic value of life can be communicated to state legislators as well as citizens.

WyFA's Desired Speech in Herschler Gallery

24. Herschler Gallery is a long and wide enclosed tunnel situated between the State Capitol Building and the Herschler State Office Building. The area is frequented and used as a thoroughfare by legislators, state employees, lobbyists, and citizens. The Capitol Club, a group of select legislative lobbyists, has a room designated for it off of the tunnel.

25. Herschler Gallery has historically been utilized as a place for nonprofit organizations and state agencies to put up displays and advocate views regarding their respective missions.

26. The presence of these groups and their displays frequently pertain to legislation being considered in a given legislative session.

27. During the 2011 Session, two different bills pertaining to the sanctity of life of unborn children came under consideration, specifically, house bills HBO118 and HBO251. Both bills would require an abortion provider to supply information to a pregnant woman about her right to view an ultrasound and hear the heartbeat of her unborn child.

28. WyFA supports the passage of this type of legislation and wanted to put up a pro-life display in Herschler Gallery during the session that would demonstrate the value of unborn children and the benefits of ultrasound technology to pregnant women making abortion decisions. WyFA also wanted to hand out brochures setting out the organizational views on abortion.

State Building Commission's Policy on Expression in Herschler Gallery

29. State Building Commission (SBC) controls the use of Herschler Gallery, along with all other state buildings. The SBC is comprised of five elected state positions, namely, Governor (who serves as Chairman), Secretary of State, State Auditor, State Treasurer, and the Superintendent of Public Instruction.

30. SBC employs an Executive Secretary who implements and administers the rules of the commission. At all pertinent times, Cathcart, Construction Management Director, has served as Executive Secretary for SBC.

31. SBC has adopted a policy for regulating displays in Herschler Gallery (hereafter referred to as “SBC Display Policy”), which reads as follows: “Approval by SBC Secretary. SBC Advised of All Displays. Controversial Displays – Secretary Will Flag or Personally Discuss Requests with Governor’s Office.”

32. In accordance with the SBC Display Policy, on February 2, 2011, Vandenberghe, on behalf of WyFA, submitted an application to Cathcart’s office for permission to put up a booth and display in the Herschler Gallery from February 4 to February 10 of 2011. She identified WyFA as the requesting organization and described the prospective audience as “walk-by.” Neither the content nor the manner of speech was sought in the application form.

Approval of WyFA’s Display

33. On that same day, February 2, 2011, Cathcart, acting as Executive Secretary of SBC, approved WyFA’s request for space. Along with the notification of the approval, Cathcart supplied a floor plan of Herschler Gallery showing where WyFA and all other approved organizations were allowed to set up.

34. Following this approval, WyFA arranged for two pro-life signs to be erected on stand-alone wooden platforms. One sign showed a picture of unborn baby in the womb with a Bible verse. The other sign showed a picture of a group of individuals with the caption “We Regret Our Abortions,” giving the website for the silent no more awareness campaign. Both

signs communicate WyFA's message about the harm abortions cause to unborn children and to the women carrying those children.

35. Vandeberghe arranged to have these two signs placed in the designated spot so as to be viewed that whole week, starting on the morning of February 4th. She received permission from Cathcart's office to bring the signs the night before. She also intended to bring a table and some written information on abortion for the booth the following morning.

Subsequent Rejection and Removal of WyFA's Display

36. Before Vandeberghe could arrive with the additional items for the display that next morning, she was notified by Cathcart's office that the signs were deemed unacceptable, had been removed, and had been taken to the loading dock for her to pick up.

37. Vandeberghe immediately called Cathcart to get an explanation for the rejection and removal of the signs. Being unable to reach him, she left a message for him to call her back.

38. Later that day, on February 4, 2011, Cathcart returned the call. Vandeberghe inquired as to why WyFA's display was removed.

39. Relying on SBC Display Policy, Cathcart indicated that WyFA had authority for "generic stuff" and that his "phone has been ringing off the hook all morning." He also mentioned that he had never encountered a display "that's created the amount of concern and inflamed calls." Cathcart advised that the decision to reject the display had been made.

40. Subsequently, Vandeberghe came and picked up the signs left on the loading dock. And WyFA missed out on this unique opportunity to communicate its message about the issue of abortion.

41. While WyFA's message was being censored, other organizations were free to advocate messages in Herschler Gallery via displays during the 2011 Session, including Wyoming Seat Belt Coalition (in conjunction with Wyoming Department of Transportation), Wyoming Outdoor Council, Wyoming Arts Alliance, Raising Readers, Wyoming Humanities Council, University of Wyoming College of Engineering and Applied Science, Wyoming Engineering Society, and Wyoming Center for Nursing and Health Care.

42. Wyoming Seat Belt Coalition (WYSBC) seeks to increase seatbelt usage in Wyoming to prevent fatalities and to decrease the number and severity of injuries in traffic crashes. During the 2011 Session, the Wyoming legislature was considering a seat belt bill that would make failure to fasten seat belt a primary – instead of secondary – crime. This would allow police officers to issue a citation to someone for failing to wear a seat belt without finding violation of any other crime. A later version of this bill increased the fine for failing use a seat belt. In support of the passage of this legislation, WYSBC put up a display in Herschler Gallery consisting of a large number of hats and boots, all representing lives that have been lost due to vehicle crashes on Wyoming's roadways. WYBSC also put up signs demonstrating how increased seat belt use in Wyoming would save lives.

43. Wyoming Outdoor Council (WOC) is Wyoming's oldest independent conservation organization and claims that it has been “[w]orking to protect public lands and wildlife since 1967.” WOC is committed to following Wyoming legislative activity and retains a full-time lobbyist for this purpose. During the 2011 Session, WOC's lobbyist advocated positions of WOC on a variety of bills relating to conservation and the environment. And in

conjunction with these efforts, WOC set up a display in the Herschler Gallery exhibiting the beauty of public lands in Wyoming in their natural, undefiled state.

44. Wyoming Arts Alliance (WyAA) is a non-profit network of artists who seek to develop art programming and arts education. As part of its advocacy efforts, WyAA worked to amend the Hathaway Success Curriculum and Scholarship to include a Fine and Performing Arts requirement. When a bill setting forth this amendment came before the state legislature during 2011 Session, WyAA maintained a display in Herschler Gallery.

45. The University of Wyoming College of Engineering and Applied Science and the Wyoming Engineering Society, an association of individuals dedicated to the promotion of prestige of the engineering profession and standardization of engineering practice, both sponsored displays in Herschler Gallery during the 2011 Session while the state legislature was contemplating a bill about licensure for professional engineers.

46. Wyoming Center for Nursing and Health Care Partnerships, a group that focuses on nurse retention, recruitment, and other nursing issues, had a prominent display in Herschler Gallery during the 2011 Session on the very day a legislative bill pertaining to nursing was assigned.

47. The 2011 Session concluded on March 4, 2011. Due to the SBC Display Policy, and Cathcart's conclusion that WyFA's display was objectionable, WyFA was deprived of the opportunity to share the organizational view on abortion through a pro-life display during the entirety of the 2011 Session.

Continuing Impact of SBC Policy

48. Aside from the 2011 Session, WyFA would like to put up displays in Herschler Gallery advocating its pro-life position on abortion during future legislative sessions. But WyFA is kept from engaging in this desired expression because of the continued enforcement of the SBC Display Policy.

49. In accordance with the SBC Display Policy, it was anticipated that Cathcart would advise the Governor and the rest of the SBC of WyFA's display and the action taken in removing that display during the next regularly scheduled meeting of SBC on April 20, 2011. So that the SBC could also consider WyFA's concerns about the constitutionality of the SBC Display Policy, and the action taken, counsel for WyFA submitted a letter shortly before that meeting.

50. This letter, dated April 20, 2011, was addressed to Wyoming Attorney General, Wyoming Deputy Attorney General, as well as Cathcart. In this letter, counsel for WyFA explained why the preclusion of WyFA's pro-life message violated the First Amendment, expounding on the viewpoint discrimination suffered by WyFA and the impermissibly vague nature of the SBC Display Policy. WyFA, through counsel, asked in this letter for assurance – no later than three weeks from the date of the letter – that the vague policy not be used against WyFA to preclude pro-life displays and signs in the future.

51. During this April 20, 2011 meeting of SBC, Cathcart reported about the objections to the WyFA display and the subsequent removal of that display.

52. Cathcart admitted that the SBC Display Policy is ambiguous. He acknowledged that he typically approves permits to reserve space in Herschler Gallery to nonprofit

organizations, charities, and state agencies upon meeting certain criteria, but blocks displays that may be deemed “offensive” under the policy.

53. Members of the SBC concurred that the guideline for approving displays is too vague. Following the meeting, Governor Mead observed in reference to the SBC Display Policy: “There are First Amendment issues that we need to be cognizant of.”

54. Because the SBC had publically acknowledged constitutional impropriety of the SBC Display Policy, WyFA was hopeful that the SBC would take action and repeal the policy.

55. SBC was expected to address the SBC Display Policy in a meeting in July but declined to do so.

56. Upon receiving media inquiries about the SBC Display Policy, Cathcart indicated that the SBC could consider changes to the policy during the next meeting in October. But, on October 19, 2011, the SBC met without making any changes to the SBC Display Policy. The issue never came up.

57. In its April letter, WyFA sought assurance of the freedom to put up pro-life display in Herschler Gallery and requested that the assurance be received by May 11, 2011. And yet, to date, WyFA has received no response to that plea.

58. In addition to the lost opportunity to share pro-life views during the 2011 Session, WyFA stands to lose other, future opportunities to share the same or similar message.

59. WyFA wants to put out a pro-life display during the 2012 legislative session, akin the display that was banned, but is fearful of having that display rejected in the application process or subsequently removed.

60. The fear of censorship and denial severely limits WyFA's constitutionally-protected expression in Herschler Gallery.

61. The impact of chilling and deterring WyFA from exercising constitutional right to free speech in Herschler Gallery constitutes irreparable harm to WyFA.

62. WyFA does not have an adequate remedy at law for the loss of this constitutional right.

FIRST CAUSE OF ACTION

Violation of Freedom of Speech

63. WyFA's speech on the issue of abortion is protected speech under the First Amendment.

64. The SBC Display Policy and Defendants' enforcement thereof:

- a. is vague, ambiguous and overbroad;
- b. allows certain views to be subject to discriminatory treatment;
- c. discriminates against speech because of content;
- d. discriminates against speech on the basis of the speaker's viewpoint;
- e. restrains constitutionally-protected speech in advance of expression, with virtually no guidelines or standards to guide the discretion of the official charged with enforcing the policies;
- f. chills the free speech of WyFA and of other citizens and organizations wishing to share views that others might consider offensive;
- g. allows for the exercise of unbridled discretion;

h. lacks narrow tailoring, fails to achieve any legitimate governmental purpose, and fails to leave open alternative avenues for expression;

i. creates a content-based heckler's veto that allows speakers to be silenced due to hostile audiences;

j. is unreasonable; and

k. allows the government to condition a discretionary benefit on a viewpoint-discriminatory basis.

65. Defendants have no justifiable reason justifying for their censorship of viewpoints sought to be expressed by WyFA.

66. The SBC Display Policy, and Defendants' enforcement thereof, thus violates the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

WHEREFORE, WyFA respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief.

SECOND CAUSE OF ACTION

Violation of the Due Process Clause

67. SBC Display Policy is ambiguous and vague, lacking in objective standards that could curb discretion of government officials. This unbridled discretion and vagueness permits Defendants to censor disfavored speech and enforce the SBC Display Policy in a discriminatory manner.

68. Defendants have no justifiable reason for maintaining the vague policy.

69. The SBC Display Policy, and Defendants' enforcement of this policy, therefore violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, WyFA respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief.

THIRD CAUSE OF ACTION

Violation of the Equal Protection Clause

70. In accordance with the SBC Display Policy, Defendants have allowed other organizations to present displays in Herschler Gallery while simultaneously preventing WyFA from presenting a display.

71. Defendants' application and enforcement of the SBC Display Policy intentionally treats WyFA differently from similarly-situated organizations based on the viewpoint of the respective displays.

72. Defendants have no justifiable reason for the disparate treatment of WyFA.

WHEREFORE, WyFA respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff WyFA respectfully requests the following relief:

A. That this Court issue Preliminary and Permanent Injunctions enjoining Defendants, Defendants' agents, employees, and all persons in active concert or participation with them from applying SBC Display Policy or any other policy or practice, so as to exclude WyFA's pro-life display in Herschler Gallery. WyFA specifically seeks a preliminary and

permanent injunction allowing it to put up a display during 2012 Wyoming legislative session and during future legislative sessions.

B. That this Court render a Declaratory Judgment declaring that the SBC Display Policy and Defendants' practice of prohibiting "offensive" displays in Herscler Gallery violates the First and Fourteenth Amendments to the United States Constitution;

C. That this Court render a Declaratory Judgment declaring that Defendants' decision, pursuant to SBC Display Policy, to prohibit WyFA from putting up a pro-life display in Herschler Gallery during 2011 Session – while freely permitting other views - violated WyFA's rights under the First and Fourteenth Amendments to the United States Constitution;

D. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;


E. That this Court award WyFA nominal damages for the violation of its rights caused by Defendants' actions in prohibiting WyFA from expressing viewpoints on the issue of abortion;

F. That this Court award WyFA costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

G. That this Court grant such other and further relief as this Court deems equitable and just.

VERIFICATION OF COMPLAINT

I, Becky Vandenberghe, Chairman of WyWatch Family Action, Inc., a citizen of the United States and a resident of Carpenter, Wyoming, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.

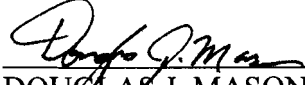

Becky Vandenberghe
Chairman of WyWatch Family Action, Inc.,

Respectfully submitted,

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*Motion for Admission *Pro Hac Vic*
forthcoming

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