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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

Daniel Brophy;)	
Carleen Brophy,)	
)	
PLAINTIFFS,)	
)	
v.)	Civil Case No.
)	
Max Maxfield, Secretary of State, in his)	
official capacity,)	
)	
DEFENDANT.)	
)	

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Daniel and Carleen Brophy bring this action for declaratory and injunctive relief, and complain as follows:

INTRODUCTION

1. On April 2, 2014, the Supreme Court decided *McCutcheon v. Fed. Election Comm'n (FEC)*, which invalidated federal aggregate contribution limits. 134 S.Ct. 1434, 1441 (2014). Aggregate contribution limits are unconstitutional because, while government may limit individual contributions, there is no recognized government interest in banning aggregate contributions that are each individually legal.
2. Since the Supreme Court's ruling in *McCutcheon*, several states have taken affirmative steps to repeal or not enforce their *McCutcheon*-style aggregate limit given their facial unconstitutionality. *See, e.g.*, Massachusetts Office of Campaign & Political Finance, "Updated Statement on the Supreme Court's *McCutcheon v. FEC* Decision," June 2, 2014, available at <http://ocpf.cloudapp.net>; Maryland State Board of Elections, Contribution Limits Guidance, Apr. 11, 2014, available at http://www.elections.state.md.us/campaign_finance/documents/Aggregate_limits_04112014_final.pdf.
3. Wyoming maintains an aggregate *McCutcheon*-style contribution limit. WYO. STAT. § 22-25-102(c)(ii). This forbids citizens from contributing more than \$25,000 in the aggregate to candidates. Even in the wake of *McCutcheon*, the State of Wyoming has not acted to repeal or bar enforcement of WYO. STAT. § 22-25-102(c)(ii).
4. Plaintiffs Daniel and Carleen Brophy are politically active citizens who have contributed to several candidates running for Wyoming public office. Under current law, they are forbidden from making additional contributions beyond Wyoming's \$25,000 aggregate

limit. While Daniel and Carleen Brophy wish to support more candidates by making additional contributions, WYO. STAT. § 22-25-102(c)(ii) ensures they cannot, thus violating their First Amendment freedoms.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as challenges arising under the First and Fourteenth Amendments to the Constitution of the United States. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, and the Civil Rights Act, 42 U.S.C. § 1983.
6. This Court has jurisdiction to, in its discretion, award attorneys' fees in this action. 42 U.S.C. § 1988(b).
7. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1)–(2) because Defendant resides in Wyoming and all of the events or omissions giving rise to this claim occurred in the District of Wyoming.

PARTIES

8. Plaintiff Daniel Brophy is a resident of Wilson, Wyoming. He is capable of contributing more than \$25,000 per election cycle in \$1,000 contributions to individual candidates. Daniel Brophy seeks to exceed Wyoming's \$25,000 aggregate limit immediately and again in the general election.
9. Plaintiff Carleen Brophy is a resident of Wilson, Wyoming. She is capable of contributing more than \$25,000 per election cycle in \$1,000 contributions to individual candidates. Carleen Brophy seeks to exceed Wyoming's \$25,000 aggregate limit immediately and again in the general election.
10. Plaintiffs are a married couple.

11. Defendant Maxfield is the Secretary of State of Wyoming, sued in his official capacity as the chief election officer for the state of Wyoming. WYO. STAT. § 22-2-103. Secretary Maxfield is also charged with promulgating rules as may be necessary to administer the Wyoming Election Code, and has the duty to “report the names of all candidates in violation of the Election Code of the state of Wyoming to the attorney general or to the district attorney, respectively, for appropriate action.” WYO. STAT. § 22-2-121, § 22-25-109.

STATEMENT OF FACTS

12. Wyoming election law permits individuals to contribute up to \$1,000 per election per candidate. WYO. STAT. § 22-25-102(c)(i)(A).

13. Wyoming election law does not permit individuals to contribute more than \$25,000 in contributions in the aggregate, or beyond \$50,000 as a married couple. WYO. STAT. § 22-25-102(c)(ii).

14. Because of legislative amendments, this aggregate upper limit will increase to \$50,000 effective January 1, 2015. Wyoming House Enrolled Act No. 106 (2013), *available at* <http://legisweb.state.wy.us/2013/Enroll/HB0187.pdf>. This change does nothing to affect this challenge or the constitutionality of WYO. STAT. § 22-25-102(c)(ii).

15. Plaintiffs Daniel and Carleen Brophy are citizens concerned about the direction of their country, the rule of law, and government accountability. In recent years, they have been active in the Jackson Hole Tea Party. Both are active in discussing policy and political issues with elected representatives and candidates for public office in Wyoming. In addition, Carleen Brophy is active in the Conservative Women’s Group of Jackson.

16. Daniel Brophy engages the Wyoming citizenry through a personally crafted newsletter about candidates he is likely to support relevant to his political perspectives. Daniel also calls upon Wyoming citizens to make contributions to conservative candidates in these newsletters to support political change in Wyoming.
17. Both Daniel and Carleen Brophy show their support for preferred Wyoming candidates by making lawful financial contributions to their campaigns. To date, Daniel and Carleen Brophy have made a total of \$31,000 in contributions to candidates running for public office in Wyoming.
18. Daniel and Carleen Brophy would like to support additional candidates running for public office in Wyoming. They would like to support additional candidates separately in both the primary and general elections beyond the aggregate limit found in Wyoming law. WYO. STAT. § 22-25-102(c)(ii) prohibits them from doing so by maintaining an aggregate contribution limit of \$25,000. Based on their current spending and plans for additional contributions, Daniel and Carleen Brophy are concerned their contributions will exceed the aggregate limit. They require relief from this court before they may exercise their First Amendment rights to make contributions to additional candidates.
19. Wyoming law imposes civil and criminal penalties for violation of election law offenses. WYO. STAT. § 22-26-112(a)(ix) provides that “knowingly and willfully commit[ing]” violations of the campaign practices section of the Election Code is “punishable by not more than six (6) months in a county jail or a fine of not more than one thousand dollars

(\$1,000.00), or both.” Likewise, WYO. STAT. § 22-25-102(e) provides for penalties up to \$10,000 and attorney’s fees.¹

20. Daniel and Carleen Brophy have not exceeded Wyoming’s aggregate contribution limit established by WYO. STAT. § 22-25-102(c)(ii) due to their fear of civil or criminal penalties established by the law. They seek declaratory and injunctive relief to eliminate the chill this law creates in exercising their First Amendment rights.

CAUSE OF ACTION I

21. The United States Supreme Court ruled that government may not impose aggregate contribution limits since they do not promote any government interest in preventing corruption or its appearance. *McCutcheon*, 134 S.Ct. at 1441.

22. While individual contribution limits have been upheld to protect against corruption, aggregate limits act as an outright ban because the “limits deny the individual all ability to exercise his expressive and associational rights by contributing to someone who will advocate for his policy preferences.” *Id.* at 1448.

23. Since the Court’s ruling in *McCutcheon*, several states have taken affirmative steps to repeal or issue statements of non-enforcement concerning their aggregate contribution limits given the weighty First Amendment interests at stake. For example, both Maryland and Massachusetts have issued statements of non-enforcement to protect First Amendment rights in upcoming elections. To date, the State of Wyoming has not issued any repeal or statement not to enforce its aggregate, *McCutcheon*-style limit.

¹ On January 1, 2015, penalties will change to allow up to a \$5,000 fine for the first violation and \$10,000 for the second or subsequent violations. Wyoming House Enrolled Act 106 (2013).

24. The State of Wyoming maintains WYO. STAT. § 22-25-102(c)(ii), which places a \$25,000 aggregate limit on contributions made to candidates running for public office. This statute is every bit as egregious as the federal law at issue in *McCutcheon* and fails to pass constitutional muster for the same reasons.
25. The giving of contributions to support political candidates constitutes a protected form of speech and association. *Id.* at 1448. “[C]ontribution and expenditure limitations impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties.” *Buckley v. Valeo*, 424 U.S. 1, 17–19 (1976).
26. Daniel and Carleen Brophy use contributions to show support for preferred candidates running for public office in Wyoming. However, WYO. STAT. § 22-25-102(c)(ii) sets an absolute cap on just how many candidates Plaintiffs may associate with and support. Once Plaintiffs have spent \$50,000 in \$1,000 contributions, Wyoming law absolutely bans any further use of this form of political association with candidates.
27. Contribution limits are subject to exacting scrutiny, requiring a “sufficiently important” governmental interest and closely drawn tailoring. *Buckley*, 424 U.S. at 25. The interests that historically support contribution limits are preventing corruption or preventing the appearance of corruption. *Id.* at 24–29. *See also McCutcheon*, 134 S.Ct. at 1441 (“Campaign finance restrictions that pursue other objectives . . . impermissibly inject the Government ‘into the debate over who should govern.’” (quoting *Arizona Free Enterprise Club’s Freedom PAC v. Bennett*, 131 S.Ct. 2806, 2826 (2011))).
28. While individual contribution limits are regularly upheld, aggregate limits place an absolute ban on further association and expression. *McCutcheon*, 134 S.Ct. at 1448. As Chief Justice Roberts reasoned in *McCutcheon*, an “aggregate limit on how many

candidates and committees an individual may support through contributions is not a ‘modest restraint’ at all. The Government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse.” *Id.*

29. Because aggregate limits do not serve any governmental interest in protecting against corruption and such measures are disproportionate to any legitimate interest, they are constitutionally invalid on their face and as applied.
30. WYO. STAT. § 22-25-102(c)(ii) acts in an identical manner as the aggregate limit at issue in *McCutcheon*. It wholly deprives individuals the First Amendment right to associate and express themselves freely with as many candidates as they like by imposing an indefensible aggregate contribution limit.
31. Because WYO. STAT. § 22-25-102(c)(ii) remains legally effective, is unconstitutional in accord with *McCutcheon*, and chills Plaintiffs’ First Amendment freedoms, it must be declared unconstitutional and injunctive relief issued.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

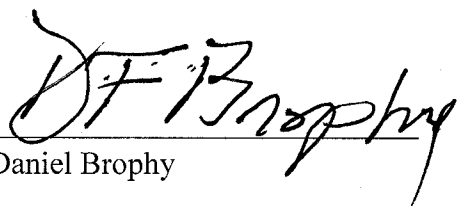
1. A declaratory judgment that the aggregate limit for contributions in WYO. STAT. § 22-25-102(c)(ii) is unconstitutional on its face and as applied.
2. Preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against enforcement of WYO. STAT. § 22-25-102(c)(ii).
3. Costs and attorneys’ fees pursuant to 42 U.S.C. § 1988 or any applicable statute or authority, and further relief this Court may grant in its discretion.
4. Any other relief that the Court deems just and appropriate.

DANIEL BROPHY VERIFICATION

I, Daniel Brophy, declare as follows:

1. I reside at 2925 N. Alderwood Lane, Wilson WY 83014.
2. I have personal knowledge of my activities, including those set out in this Verified Complaint, and if called upon to testify I would competently testify as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements contained in this Verified Complaint concerning my existing and proposed activities are true and correct.

Executed on July 21, 2014.

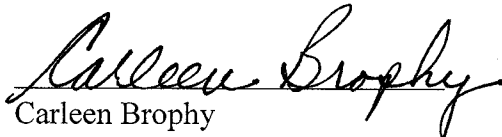

Daniel Brophy

CARLEEN BROPHY VERIFICATION

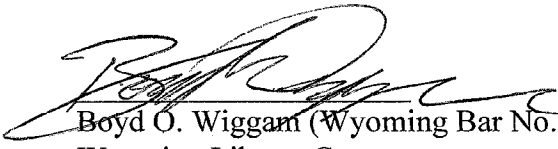
I, Carleen Brophy, declare as follows:

1. I reside at 2925 N. Alderwood Lane, Wilson WY 83014.
2. I have personal knowledge of my activities, including those set out in this Verified Complaint, and if called upon to testify I would competently testify as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements contained in this Verified Complaint concerning my existing and proposed activities are true and correct.

Executed on July 21, 2014.


Carleen Brophy

Respectfully submitted,



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**Motions for pro hac vice admission to be filed.*

Dated this 23 day of July, 2014.