

Plaintiffs Donald Wills and Jennifer Young bring this action for declaratory and injunctive relief, and complain as follows:

INTRODUCTION

1. Plaintiff Jennifer Young refuses to cede to the monopoly of Wyoming's two leading political parties. Young is running for the office of Wyoming Secretary of State as member of the Constitution Party. Plaintiff Wills seeks to support Young in her endeavor with financial contributions.
2. Both Wills and Young now face censorship. The Constitution Party of Wyoming selects its candidates through convention and committee, not through primary elections. *See* Constitution Party of Wyoming Bylaws, <http://www.bhccconstitutionparty.com/sbylaws/>. Thus, under the Wyoming Election Code, Wills may not make and Young may not accept contributions for her campaign from anyone but herself and her immediate family until after the August 19 primary. *See* WYO. STAT. § 22-25-102(c)(i)(B). However, opponents who are in parties that elect candidates through primaries (i.e., both major parties) may already accept contributions from any individual and engage in the full breadth of campaign activities. Practically, this means that minor party candidates like Young and independent candidates are entirely foreclosed from raising crucial funds to support their candidacy during this period while major party candidates may do so.
3. This prior restraint and fundraising disparity in the Election Code raise serious concerns under the First Amendment right to political speech, facially and as applied to Wills and Young, as well as under the Equal Protection Clause of the Fourteenth Amendment. *See* U.S. CONST. amend. I, XIV. A substantially similar Colorado law was recently struck

down by the Tenth Circuit Court of Appeals on these grounds. *See Riddle v. Hickenlooper*, 742 F.3d 922 (10th Cir. 2014).

4. Some state legislators attempted to address this unconstitutional provision in the Wyoming Election Code, but it remains in law. In the recent 2014 Wyoming Budget Session, Senator Cale Case and Representative James Byrd co-sponsored a bipartisan bill that would have remedied the disparity in question, Senate File 52. *See* <http://legisweb.state.wy.us/2014/Introduced/SF0052.pdf>. Had this bill passed, the law would have allowed any candidate running for office to engage in the full breadth of campaign fundraising during the primary season. However, the bill did not achieve the two-thirds majority vote necessary for introduction in the budget session. *See* Senate File 52 (2014) Digest, <http://legisweb.state.wy.us/2014/Digest/SF0052.htm>.
5. The Wyoming Legislature has adopted other amendments to the Election Code, which will only exacerbate its unconstitutional harms in this case. Following the 2014 election cycle, the contribution limitation for candidates for statewide office like the Secretary of State will increase from \$1,000 per election to \$2,500 per election. For non-statewide political office, the contribution limitation will increase from \$1,000 to \$1,500. *See generally* House Bill 187 (2013) Summary, <http://legisweb.state.wy.us/2013/Summaries/HB0187.htm>. In turn, the fundraising disparity between major party candidates and minor party or independent candidates will grow wider.
6. Young is censored under the Election Code, along with other candidates in minor parties that do not hold primaries and independent candidates throughout Wyoming. Wills is

likewise censored from supporting Young and other minor party or independent candidates. This only results in disparate advantages for major political parties.

JURISDICTION AND VENUE

7. 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.
8. This Court has jurisdiction to, in its discretion, award attorneys' fees in this action. 42 U.S.C. § 1988(b).
9. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1)–(2) because Defendants reside in Wyoming and all of the events or omissions giving rise to this claim occurred in the District of Wyoming.

PARTIES

10. Plaintiff Wills is a resident of Pine Bluffs, Wyoming. He is capable of donating \$2,000 to Plaintiff Young. Wills desires to contribute immediately, and additional amounts following the primary season.
11. Plaintiff Young is a resident of Torrington, Wyoming. She is currently running for Wyoming Secretary of State and is running as nominee of the Constitution Party of Wyoming.
12. Defendant Mead is the Governor of Wyoming, sued in his official capacity as an individual responsible to enforce the laws of the State of Wyoming. *See* WYO. CONST. art. 4, § 1.

13. 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. WYO. STAT. § 22-2-121.

STATEMENT OF FACTS

14. From March 27-29 of this year, the Constitution Party of Wyoming held its state convention. On March 29, the convention nominated Young as candidate for Secretary of State. Verification of the Constitution Party's certification is attached as EXHIBIT A. Plaintiff Young's application for ballot listing is attached as EXHIBIT B.

15. Young seeks to immediately raise contributions to be used for yard signs, mailings, advertisements, and all other election related expenses described in the Election Code. *See* WYO. STAT. § 22-25-103.

16. Wills seeks to immediately contribute to Young's campaign. Following the primary season, Wills wishes to contribute additional funds to Young's campaign.

17. Pursuant to WYO. STAT. § 22-25-102(c), "[N]o individual other than the candidate, or the candidate's immediate family shall contribute directly or indirectly: (i) To any candidate for political office, or to any candidate's campaign committee: (A) More than one thousand dollars (\$1,000.00) per election; and (B) No contribution for the general election may be given prior to the date for the primary election."¹ Under Wyoming law, minor party and independent candidates may not accept certain contributions during the

¹ After January 1, 2015, the law will treat candidates for statewide and non-statewide elected offices differently, and increase the contribution limits for both offices. *See* ¶5. The timing restriction on fundraising for the general election before the end of the primary will remain.

primary season since they do not participate in a primary election. *Id.* This means that Young cannot raise funds outside of her family for the November 4 general election until after the August 19 primary election and that Wills cannot contribute funds until then.

18. Practically speaking, Young will have 76 days to raise contributions for her campaign and, in effect, run her campaign for the general election, instead of the nearly two year window she would enjoy were it not for the restrictions in the Election Code.

19. For contribution limitations, the Election Code treats the primary and general elections as separate elections. WYO. STAT. § 22-25-102(j) (“For purposes of subsection (c) of this section the primary, general and special elections shall be deemed separate elections”). There is no restriction on major party candidates who run unopposed in a primary from accepting contributions and spending them on an election before the primary. Furthermore, candidates who participate in a primary, whether opposed or unopposed, may spend excess funds in the general election and still accept up to twice the total contribution from an individual donor during an election season.

20. Violations of the campaign practices section of the Election Code carry strict liability civil penalties. Pursuant to WYO. STAT. § 22-25-102(e), “[a]ny person . . . violating the provisions of subsection . . . (c) or (j) of this section is subject to a civil penalty up to ten thousand dollars (\$10,000.00) and costs including a reasonable attorney’s fee.”²

21. Violating the Election Code can also lead to criminal penalties. Pursuant to WYO. STAT. § 22-26-112(a)(ix), “knowingly and willfully commit[ing]” violations of the campaign

² After January 1, 2015, the law will change to reduce the civil penalty for a first-time violation to \$5,000. *See* ¶5. This will not resolve or significantly affect the issues in this case.

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.”

22. Young has not solicited or accepted contributions, and Wills has not made contributions to Young, for fear that doing so would subject each of them to fines or criminal penalties under the law.

CAUSE OF ACTION 1

Claim of Unconstitutionality – Timing Restriction in WYO. STAT. § 22-25-102(c)(i)(B)

23. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.
24. By prohibiting general election contributions to minor party and independent candidates before the primary, WYO. STAT. § 22-25-102(c)(i)(B) violates the freedoms of political speech and association of Wills and other persons who contribute or want to contribute to minor party and independent candidates. The statute also violates the freedoms of political speech and association of Young and all other minor party and independent candidates who seek office in Wyoming by limiting their freedom to associate with supporters and limiting their resources for campaign speech. *See* U.S. CONST. amend. I. At the same time, major party candidates are able to fundraise and associate freely, providing them with distinct advantages over minor party and independent candidates.
25. Facially and as applied, WYO. STAT. § 22-25-102(c)(i)(B) is a prior restraint upon the Plaintiffs’ speech and association. *See Buckley v. Valeo*, 424 U.S. 1, 17–19 (1976) (“contribution and expenditure limitations impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties”)

26. Contribution limitations 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 v. Federal Election Commission*, 134 S.Ct. 1434, 1441 (2014) (“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)).
27. WYO. STAT. § 22-25-102(c)(i)(B) does not address any valid government interest in preventing corruption or its appearance since it only prevents fundraising of minor party and independent candidates. If there is a plausible argument that minor party and independent candidates are more susceptible to corruption than major party candidates—and there is not—the disparity between \$0 and \$1,000 limits is not closely tailored. *See Randall v. Sorrell*, 548 U.S. 230, 248–53 (2006); *see also Riddle*, 742 F.3d at 928.
28. For substantially similar reasons, WYO. STAT. § 22-25-102(c)(i)(B) also violates the Plaintiffs’ equal protection rights under the 14th Amendment. *See generally Riddle*, 742 F.3d 922.
29. WYO. STAT. § 22-25-102(c)(i)(B) is unconstitutional facially and as applied to the Plaintiffs.

CAUSE OF ACTION 2

Claim of Unconstitutionality – Contribution Disparity in WYO. STAT. § 22-25-102(c)

30. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

31. Once Wills is allowed to contribute and Young is allowed to accept funds, they face another significant disparity. Following the primary, contributors may donate, and major party candidates may accept, up to another \$1,000 from the same contributor who donated to the same major party candidate's primary, even if the major party candidate ran unopposed. Major party candidates may also carry over funds from the primary election for use in the general election. This fundraising disparity violates the Plaintiffs' right to equal protection under the 14th Amendment.
32. Plaintiff Wills is similarly situated to persons contributing to major party candidates; Plaintiff Young is similarly situated to her major party opponents. *See Riddle*, 742 F.3d at 926–27.
33. The statutory classification of independent, minor and major party candidates affects the Plaintiffs' fundamental rights to free speech and association. Thus, the appropriate level of scrutiny is exacting scrutiny. *See Riddle*, 742 F.3d at 927, *citing Meyer v. Grant*, 486 U.S. 414, 420 (1988) (“[T]he statute treated contributors differently based on the political affiliation of the candidate being supported. And by treating the contributors differently, the statute impinged on the right to political expression for those who support . . . other nominees who are unable to obtain funds prior to nomination.”)
34. Wyoming's interest in preventing corruption or its appearance is sufficiently important to justify contribution limits, but it is not closely drawn to alleviate the burden on Plaintiffs. “The statute creates a basic favoritism between candidates vying for the same office.” *Riddle*, 742 F.3d at 929. Because this restriction is not closely drawn, it fails exacting scrutiny under the Fourteenth Amendment.

35. The fundraising disparity in WYO. STAT. § 22-25-102(c) is unconstitutional facially and as applied to the Plaintiffs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

1. A declaratory judgment that the timing restriction for contributions in WYO. STAT. § 22-25-102(c)(i)(B) is unconstitutional on its face and as applied.
2. A declaratory judgment that the contribution disparity in WYO. STAT. § 22-25-102(c) is unconstitutional on its face and as applied.
3. Preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against enforcement of WYO. STAT. § 22-25-102(c).
4. 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.
5. Any other relief that the Court deems just and appropriate.

Dated this 25th of June, 2014.

WILLS VERIFICATION

I, Donald N. Wills, declare as follows:

1. I reside at 105 County Rd. 161, Pine Bluffs, WY 82082.
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 June 23, 2014.

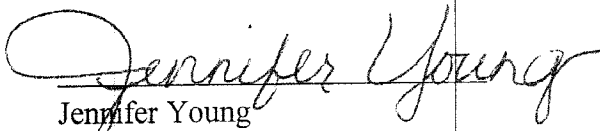

Donald Wills

YOUNG VERIFICATION

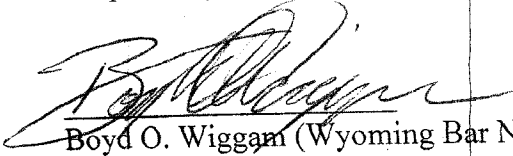
I, Jennifer Young, declare as follows:

4. I reside at 3153 Lingle-Veteran Rd., Lingle WY 82223.
5. 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.
6. 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 June 23, 2014.


Jennifer Young

Respectfully submitted,



Boyd O. Wiggam (Wyoming Bar No. 6-4059)

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

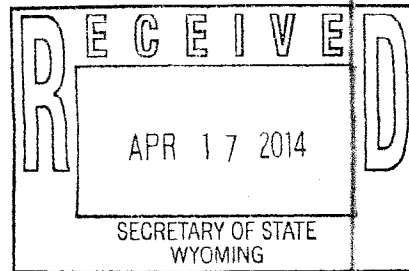


CONSTITUTION PARTY OF WYOMING

P.O. Box 15

Hartville, Wyoming 82215

www.wyomingconstitutionparty.com



April 9, 2014

Max Maxfield, -Secretary of State

State Capitol Building
200 West 24th Street
Cheyenne, WY 82002-0020

As state chairman for the Constitution Party of Wyoming, I am writing to inform you pursuant to W.S. 22-4-304 of our certification of the Constitution Party candidates for Secretary of State, Wyoming. The below listed candidate was successfully vetted by our Nominations/Credentials/Vetting Committee and advanced to the general session of the Constitution Party of Wyoming State Convention held 29 March 2014, in Cheyenne, Wyoming. Where she received majority vote by the voting delegates. She is now considered eligible by the Constitution Party of Wyoming to file as a candidate for the office of Wyoming Secretary of State.

Mrs. Jennifer Young
1596 W C
Torrington, WY 82240
(307) 575-4815

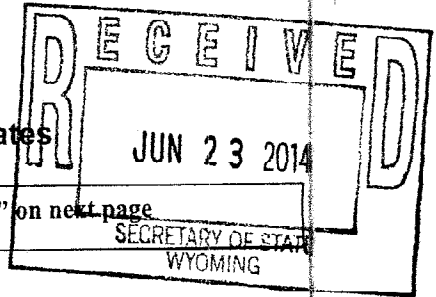
In God We Trust

Bill Motley-- State Chairman
604 12th Street
Wheatland, WY 82201
(307) 331-0162

Joyce Collins-Secretary
35 W. 10th Street
Lovell, WY 82431
(307) 250-1115

cf:
Jennifer Young
File copy for Joyce Collins-- Constitution Party Secretary

Federal and State Offices
Application for Minor & Provisional Party Candidates



Before filing this application: Please review "Qualifications for Office" on next page

State of Wyoming)
 County of Goshen) ss. W.S. 22-4-304; W.S. 22-4-406

I, Jennifer Young, swear or affirm that I was born on August (month) 28 (day), 1967 (year), that I have been a resident of the State of Wyoming since MAY 1972 (month/year), and that I am a registered voter of Election District No. 13, in Precinct No. 1, residing at 3153 Lingle Veteran Rd. in the city/town of Lingle in the County of Goshen, (if for the office of state senator or representative) in House District _____ or Senate District _____, state of Wyoming, and registered as a member of the Constitution Party party, and I hereby request that my name be printed upon the official ballot at the next general election as a candidate for the office of Secretary of State, and hereby declare that if elected, I will qualify for the office.

DATED the 23rd day of June, 2014.

Jennifer Young
 Print or type your name exactly as you wish it to appear on the ballot. (W.S. 22-6-111 states that professional titles and degrees shall not appear on the ballot.)

Jennifer Young
 Signature

Gender: Male Female

Mailing Address (if different from residential)

Mailing City/Town, Zip Code

Gen-if-fur Yung
 In order to meet federal requirements for audio ballots and to accommodate individuals with disabilities, please print your name phonetically on the line above (i.e., Peggy Nighswonger would be Peg-gee Nice-wong-ger).

307-575-4815
 Campaign Telephone (will be published)

307-837-0183
 Telephone Number (will not be published)

vote.young.2014@gmail.com
 E-Mail Address

Filing Deadline: No later than August 18, 2014	Filing Office: <ul style="list-style-type: none"> Secretary of State: Candidates for federal, statewide and state legislative offices file with the Secretary of State. 	Filing Fee (must be attached to application): \$200 – Candidates for federal and statewide offices \$25 – Candidates for state legislature
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This form is available on the Secretary of State's website: <http://sos.wy.state.wy.us/Forms/FormsFiling.aspx>