

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT
STATE OF WYOMING, COUNTY OF LARAMIE

DOCKET NO. 190-183

STATE OF WYOMING, ex. Rel.)

Wyoming Secretary of State, Edward Buchanan)

Plaintiff,)

vs.)

TAYLOR HAYNES, M.D.)

Defendant.)

FILED

AUG 03 2018

DIANE SANCHEZ
CLERK OF THE DISTRICT COURT

**ORDER DENYING INJUNCTIVE RELIEF AND DENYING EXPEDITED
CONSIDERATION OF DECLARATORY JUDGMENT**

THIS MATTER came before this Court on the Plaintiff's July 20, 2018 COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF and the Defendant's July 31, 2018 RESPONSE TO PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF. The Court, having considered the law, the pleadings, and having heard argument on the matter on August 1, 2018, **FINDS and ORDERS;**

DECLARATORY JUDGMENT

1. Declaratory Judgment actions authorized by W.S. 1-38-101 et seq., are civil proceedings and not subject to an exception from the Wyoming Rules of Civil Procedure as they are not special statutory proceedings. *See* Wyo. R. C. P. 81.
2. As it relates to the questions presented here, there are facts in dispute and "[w]hen a declaratory judgment proceeding involves the determination of an issue of fact, the issue may be tried and determined as in other civil actions." Wyo. Stat. Ann. § 1-37-111 (West 2018).
3. The Plaintiff asks this Court to determine whether the Defendant is eligible as a candidate for, or, if elected, eligible to serve as Governor. Resolution of that question requires findings of mixed questions of fact and law concerning the Defendant's residency.
4. Plaintiff suggests this Court order an expedited litigation process, including discovery, given the gravity of the relief requested. This Court would be required

to hear and decide the issue substantially prior to the primary election on August 21, 2018.

5. The Defendant unequivocally states that he does not stipulate to an accelerated litigation process that he is entitled to in the Wyoming Rules of Civil Procedure.
6. It is impractical and unfair to the Defendant to bypass the Wyoming Rules of Civil Procedure entirely and compress the litigation process into less than a three (3) week period.
7. Accordingly, this Court declines to determine the Declaratory Judgment action at this time and further scheduling of that matter will be undertaken which will meet the needs of the parties and the requirements of the law, including, if appropriate, advancement of certain issues the State argues may be purely legal.

PRELIMINARY INJUNCTION

8. The requirements for preliminary injunctions in Wyoming include;

[a] party seeking preliminary injunction bears the burden of showing: (1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) [that] the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) [that] the injunction, if issued, will not adversely affect the public interest.

CBM Solutions, Inc. v. Gas Sensing Technology Corp., 2009 WY 113, ¶ 8, 215 P.3d 1054, 1057 (Wyo. 2009).

9. Furthermore, an injunction's purpose "is to preserve the status quo until the merits of an action can be determined." *Id.*
10. Likelihood of prevailing. The Defendant maintains he is an eligible candidate for the office of Governor, while the State asserts that the physical location of the Defendant's residence in the state of Colorado patently disqualifies him. As the Court must ordinarily undertake an assessment of the likelihood that the State would prevail, it could move forward requiring the presentation of evidence. A hearing is set for August 7-8 for that purpose, if needed. Though at this juncture, the affidavits and the parties' assertions might be sufficient for the court to doubt the likelihood

that the Plaintiff will prevail on the merits; however, such a finding is unnecessary here as other prerequisites for injunction are not met.

11. Irreparable harm. The State appropriately asks the Court to give great weight to the public's interest in the integrity of the electoral process.

[t]o permit the candidacy, and perhaps the election, of an individual for any public office who would not be qualified to hold that office after he had been so elected, would frustrate the democratic process represented by the electoral system in this state. It would result in the unwarranted expenditure of public funds for such elections, which would be of no efficiency, and. . . in the expenditure of funds on behalf of the candidate for election to an office which he could not hold.

State ex rel. Willis v. Larson, 539 P.2d 352, 356 (Wyo. 1975). Certainly, post-election litigation, or action by the canvassing board, loom as serious potential consequences; but litigation is already underway here and unresolved. The precise harm that may occur by declining issuance of an injunction remains hypothetical. The Court would have to speculate as to the outcome of the pending primary election. If the vote totals result in the Defendant's election, or receipt of a certain number of votes, a contest might certainly occur. Yet, under these facts, that potential harm is already in play as voting on an absentee basis has been underway for weeks. This Court already has the issue of the Defendant's eligibility in front of it for trial. That, combined with the doubtful effectiveness of an injunction (essentially an order enjoining campaigning by the Defendant) and the Courts concern that it should rarely act nullifying a citizen's vote, result in a finding that Plaintiff cannot show irreparable harm.

12. Threatened injury outweighs harm to defendant. As to this requirement the uncertain impact or effectiveness of enjoining Defendant to "not campaign" does not alter the reality that a court order of that kind, as a public proposition, would adversely effect Defendant's opportunity to become Governor. That result, short of a finding of ineligibility which cannot be made at this point, is an improper interference in the electoral process. Irreversible action by courts must be based on a degree of certainty, which is not present here.

13. Adverse impact on public interest. The public's interests and the Defendants are, of course, dramatically impacted regardless of whether an injunction is entered. For the reasons noted already, the adverse impact on the public, (including of course those who which to or already have voted for the Defendant) would be an unacceptable cost of granting relief.
14. Preservation of status quo. A preliminary injunction would not preserve the status quo, but rather disturb it. Some Wyoming citizens already cast votes in the election after the Secretary certified the primary ballot including the Defendant as candidate for Governor. The State tempts the Court to intervene now and "prevent" a problem rather than "fix it later". Prevention by injunction, even if available here, would not eliminate issues post-election, but instead give rise to a different set of issues. The status quo sought to be persevered, in other words, is already disrupted and is subject to potential litigation.
15. The Wyoming Supreme Court also warns that "[g]enerally, a preliminary injunction will not be awarded where its effect is to give the principle relief [the] plaintiff seeks without bringing the case to trial." *Simpson v. Petroleum, Inc.*, 548 P.2d 1, 3 (Wyo. 1976) (additional citations omitted). Here, the relief sought does exactly that, as it would grant the State relief without affording the Defendant the most rudimentary rights he might exercise in his defense. By asking the Court to grant a preliminary injunction, the Plaintiff essentially asks the Court to issue an expedited Declaratory Judgment, and the Court cannot do so within the expedited proceedings afforded by Rule 65.
16. Finally, this Court is unconvinced that the injunction process allows for the types of relief sought by the Plaintiff. While an injunction can prohibit or direct certain actions by the Defendant, it does not by its nature provide a mechanism through which a court can grant authority to the party who seeks the injunction. Again, the appropriate remedy is seemingly the action for Declaratory Judgment, within which

the Court would have considerable authority to direct enforcement or execution of its judgment.

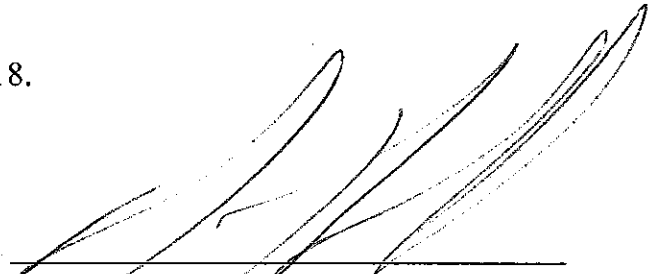
17. The Court cannot issue a preliminary injunction against the Defendant at this stage, and as such no evidentiary hearing will be conducted on the matter.

IT IS THEREFORE ORDERED that the Plaintiff's Request for Preliminary Injunction is **DENIED**.

IT IS FURTHER ORDERED the request for Declaratory Judgment will proceed on a schedule set after consultation with the parties.

IT IS FURTHER ORDERED that the hearing currently scheduled for August 7 and 8, 2018 shall be and the same is hereby **VACATED**.

Dated this 3 day of August, 2018.



THOMAS CAMPBELL
DISTRICT JUDGE

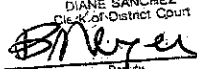
cc: Peter K. Michael *M*

Michael James Pearce *M*

I hereby certify that I distributed a true and correct copy of the foregoing this 3 day of August, 2018, as indicated. (M-mail); B-box in Clerk's Office, H-hand delivery; F-facsimile transmission.]



Deputy Clerk

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE
I Diane Sanchez, Clerk of the District Court in and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a full true and correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of the date of this certificate.
Witness my hand and seal of said court this 30 Aug 18 day of August, 2018.
DIANE SANCHEZ
Clerk of District Court
By  Deputy