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**IN THE FIRST JUDICIAL DISTRICT COURT**

**STATE OF WYOMING**

**KARL ALLRED, on behalf of himself )  
and the citizens of Wyoming, and )  
REPRESENTATIVE GERALD GAY, )  
in his capacity as a member of the )  
House of Representatives, )**

**Plaintiffs, )**

**vs. )**

**PHILIP NICHOLAS, President of the )  
Senate, Wyoming Legislature, )  
MATTHEW H. MEAD, Governor, )  
KERMIT BROWN, Speaker of the )  
House, ELI BEBOUT, Senate Majority )  
Floor Leader, CHRIS ROTHFUSS, )  
Senate Minority Floor Leader, )  
ROSIE BERGER, House Majority )  
Floor Leader, MARY THRONE, )  
House Minority Floor Leader, )  
TIM STUBSON, House representative, )  
and TONY ROSS, Senate representative, )  
and PETER MICHAEL, Attorney )  
General, )**

**Defendants )**

**FILED**

**MAR 03 2016**

**DIANE SANCHEZ  
CLERK OF THE DISTRICT COURT**

**Case No.** 185-545

**JURY DEMANDED**

# **COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE WYOMING CONSTITUTION**

COMES NOW, Karl Allred, on behalf of himself and the citizens of Wyoming and Representative Gerald Gay, in his representative capacity as a member of the Wyoming House of Representatives, and for this action against the above-named Defendants, state as follows:

## **I. INTRODUCTION**

This Complaint calls into issue matters of great public importance and concern over the pervasive efforts of the Wyoming Legislature to exceed its constitutional authority and to assume executive functions. At issue are contracts and actions taken with respect to what is known as the "Capitol Square Project." Where the Legislature has been unwilling to constrain itself to its constitutional role, the Plaintiffs ask that the judiciary set the limits of the Legislature's constitutional authority and restore the balance of powers, confining the Legislature to those powers prescribed to it by the Wyoming Constitution. This case represents only the latest in the inclination on the part of the Wyoming Legislature to exceed its constitutional authority.

This case not only calls for the judicial examination of contracting practices with respect to the Capitol Square Project, but also, the general contracting practices by the State of Wyoming. The Defendants have shown a pervasive disregard of the competitive bidding requirements of Article 3, Section 31 of the Wyoming Constitution and the procurement statutes. This disregard for the competitive bidding requirements of Wyoming law exposes the public to the risk of not receiving competitively priced goods and services, the risk of crony capitalism, graft and corruption flourishing inside of state government, and risking the compromise of the integrity of government and the citizens' trust in government. This Complaint seeks to obtain rulings on constitutional questions and to correct government practices working widespread harm on the citizens of Wyoming.

## II. THE PARTIES

### *The Plaintiffs*

1. Pursuant to the Uniform Declaratory Judgment Act, the following individuals petition this Court for a declaration as to the unconstitutionality of the acts of the Defendants as set forth below and a declaration of the scope of the constitutional powers of the Wyoming Legislature.

2. Plaintiff Karl Allred, referred throughout as “citizen Plaintiff,” is a citizen of Wyoming and an individual residing in Uinta County, Wyoming. He brings this suit on behalf of himself in his capacity as a citizen of Wyoming and on behalf of the citizens of Wyoming for the Defendants’ violations of their constitutional and statutory duties holding power inherent to the people.

3. Plaintiff Gerald Gay, referenced throughout as the “legislative Plaintiff,” is the duly elected representative of House District 36 from Natrona County and is a member of the House of Representatives of the Wyoming Legislature. He brings this action in his representative capacity seeking a declaration of the constitutionality of the Wyo. Stat. 9-5-110 through 9-5-113 as a violation of Separation of Powers under the Wyoming Constitution (Article 2, Section 1, Wyoming Constitution) and Article 1, Section 1 (Powers Inherent In the People) along with a declaration that the actions of the Governor and certain legislators

have violated Article 3, Section 31 of the Wyoming Constitution and the procurement statutes of the State of Wyoming.

***The Defendants***

4. SF103 (2014), codified at Wyo. Stat. §§ 9-5-110 – 9-5-113, created a body to oversee procurement functions and construction oversight relating to the “Capitol Square Project.” Section 111(a) refers to this body as the “state capitol building rehabilitation and restoration oversight group” (referred to herein as the “Capitol Square Oversight Group” or simply as “Oversight Group”). Section 9-5-111 provides, through reference to position, that the Governor, Matthew H. Mead, President of the Senate, Philip Nicholas, Speaker of the House, Kermit Brown, Senate Majority Floor Leader, Eli Bebout, Senate Minority Floor Leader, Chris Rothfuss, House Majority Floor Leader, Rosie Berger, House Minority Floor Leader, Mary Throne, and Senate President selected member Senator Tony Ross and House Speaker selected member Representative Tim Stubson comprise the oversight body. Peter Michael, as the Attorney General of Wyoming, is responsible for ensuring compliance with the Wyoming Constitution and the procurement statutes.

5. Pursuant to W.S. § 9-5-111, Defendant Matthew H. Mead, as Governor, is responsible for ensuring compliance with the Wyoming Constitution and the

procurement statutes of Wyoming as pertaining to the Capitol Square Project and as pertaining to all contracting on behalf the State of Wyoming.

6. As President of the Senate, pursuant to W.S. § 9-5-111, Defendant Philip Nicholas is responsible for ensuring compliance with the Wyoming Constitution and the procurement statutes of Wyoming as pertaining to the Capitol Square Project.

7. As Speaker of the House, pursuant to W.S. § 9-5-111, Defendant Kermit Brown is responsible for ensuring compliance with the Wyoming Constitution and the procurement statutes of Wyoming as pertaining to the Capitol Square Project.

8. As Majority Floor Leader in the Senate, under W.S. § 9-5-111, Defendant Eli Bebout is responsible for ensuring compliance with the Wyoming Constitution and the procurement statutes of Wyoming as pertaining to the Capitol Square Project.

9. As Majority Floor Leader for House of Representatives, pursuant to W.S. § 9-5-111, Defendant Rosie Berger is responsible for ensuring compliance with the Wyoming Constitution and the procurement statutes of Wyoming as pertaining to the Capitol Square Project.

10. As Minority Floor Leader in the Senate, pursuant to W.S. § 9-5-111, Defendant Chris Rothfuss is responsible for ensuring compliance with the

Wyoming Constitution and the procurement statutes of Wyoming as pertaining to the Capitol Square Project.

11. As the Minority Floor Leader for the House of Representatives, pursuant to W.S. § 9-5-111, Defendant Mary Throne is responsible for ensuring compliance with the Wyoming Constitution and the procurement statutes of Wyoming as pertaining to the Capitol Square Project.

12. Defendant Tony Ross, as a senator, is a member of the Capitol Building Restoration Oversight Group, as selected by the President of the Senate, pursuant to W.S. § 9-5-111, and is responsible for ensuring compliance with the Wyoming Constitution and the procurement statutes of Wyoming as pertaining to the Capitol Square Project.

13. Defendant Tim Stubson, as a representative and as the Speaker of the House selected member of the Capitol Building Restoration Oversight Group, is responsible for ensuring compliance with the Wyoming Constitution and the procurement statutes of Wyoming as pertaining to the Capitol Square Project.

14. Defendant Peter Michael, as the Attorney General of Wyoming, has the responsibility to oversee the execution and administration of contracting for the State of Wyoming and has the responsibility to ensure that the Wyoming Constitution and the procurement statutes are followed. He is a signatory to one of the contracts at issue and his designees are signatories to other contracts at issue in

this Complaint. Further, he has authored a "Formal Opinion" reversing a 1936 Attorney General Opinion that is called into question by this Complaint.

15. Each of the Defendants has the responsibility for the enactment of the law at issue and having the statutory authority for the implementation of the law, and therefore, each is sued in their official capacity. Each Defendant has been involved in the implementation of legislation violating Article 2, Section 1 of the Wyoming Constitution (Separation of Powers) and Article 1, Section 1 of the Wyoming Constitution and through their oversight function has engaged violations of the Wyoming Constitution and the procurement statutes of the State of Wyoming. These violations of the Wyoming Constitution and the procurement statutes include the letting of contracts without utilization of the competitive bidding process as constitutionally and statutorily required. These actions constitute a pattern of conduct of violations of the Wyoming Constitution and Wyoming statutes. Further, contracts were directed to specific persons and entities including some who had made campaign contributions to the Governor and raise the potential for violation of the prohibition against self-interest contained in Article 3, Section 31 of the Wyoming Constitution and the Wyoming statutes.

### III. JURISDICTION AND VENUE

16. This Court is vested with jurisdiction under Articles 1, Section 8 and Article 5, Section 10 of the Wyoming Constitution and the Wyoming Declaratory Judgments Act, Wyo. Stat. § 1-37-101 et seq.

17. Venue is properly situated in this Court as the occurrences that form the material aspects of this Complaint have arisen in Laramie County, Wyoming.

### IV. FACTUAL BACKGROUND

18. Article 3, Section 31 of the Wyoming Constitution provides that,

*All stationary, printing paper, fuel, and lights used in the legislature and other departments of government shall be furnished, and the printing and binding of the laws, journals and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislature, and its committees shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and the state treasurer. (Emphasis added).*

19. This constitutional provision was adopted by the delegates to the Wyoming Constitutional Convention in 1889 to (a) ensure that the public received competitively priced goods and services, (b) to guard against governmental graft and corruption through the letting of contracts as furthering the political or



pecuniary interests of elected officials, and (c) to maintain the integrity of government.

20. Article 3, Section 31 of the Wyoming Constitution requires the use of competitive bidding to secure the lowest responsible bidder and price for goods and services. The section further requires that contracts be set below a maximum price. No member of the legislature or elected official may have an interest in such contracts. Finally, all such contracts must be approved by the governor and the state treasurer.

21. Contracts entered into for the Capitol Square Project have not complied with Article 3, Section 31 in that (a) contracts for the repairing and furnishing of the halls of the legislature were not let utilizing competitive bidding processes, (b) contracts did not set a maximum price and have been allowed to escalate through change orders and mismanagement, (c) contracts were let in furtherance of the political interests of an elected official, and (d) contracts were not approved by the Governor and State Treasurer.

22. This Complaint makes no accusations against recipients of contracts for work related to the Capitol Square Project or for other contracts awarded by the State of Wyoming or those making political donations. Nor does this Complaint seek to set aside any contract(s). Rather, this Complaint seeks a ruling as to the constitutionality of the statute, potential violations of the Wyoming Constitution

and procurement statutes in the implementation of the statutes, and of the proper administration of government. None of the Defendants enjoys immunity for their governmental actions for the nature of the causes of action alleged in this Complaint.

23. The following three lease contracts and associated tenant improvement contracts demonstrate a failure to competitively bid contracts, an interest of a member or officer of the government, with none of the contracts having been approved by the Governor and the State Treasurer.

***The Lease for Housing the Legislature during Capitol Renovation***

24. Wyo. Stat. § 9-5-1016 (b) (xix) governs the process of leasing buildings and requires a bid and proposal basis with advertising of space needs. The Wyoming Constitution also requires bidding for a lease contract in Article 3, Section 31. That article requires that no member or officer of any department of the government shall in any way be interested in such contract.

25. The lease for the housing of the legislature during Capitol construction is a contract between Pershing Circle, LLC (Lessor) and the Department of Administration and Information Construction Management Division (Tenant). This building is known informally as the Jonah Business Center.

26. The lease was signed on January 30, 2015 by the lessor Neil A. McMurry commonly known as Mick McMurry, Managing Member of Pershing

Circle LLC. The contract was witnessed by Richard J. Bratton, Registered Agent of Pershing Circle, LLC. Dean Fausset, Director of Department of Administration and Information, signed presumably as the Governor's designee. Mel Muldrow, Administrator Construction Management Division of Department of Administration and Information also signed presumably as the Governor's designee. Peter K. Michael signed as to form as the Attorney General and thereby signified the review and approval of the contract. The lease was entered into **without competitive bid and was not approved by the State Treasurer.**

27. Mark Edward Macy, Chairman of the Wyoming for Matt Mead PAC collected funds for the election of Matt Mead to the office of Governor in 2014. The Mead for Governor Campaign Committee was the entity that collected contributions to Matt Mead, the Candidate. The following contributions pertain to the contracting for the lease of the Jonah Business Center:

- Neil A. ("Mick") McMurry Contributed \$60,000 to Building a Better Wyoming PAC on July 24, 2014. This was the sole contribution to that PAC, controlled by Mr. McMurry.
- Building a Better Wyoming PAC, a PAC known to be influenced by Mick McMurry, contributed \$50,000 to Wyoming for Matt Mead PAC on July 24, 2014. Wyoming for Matt Mead PAC is controlled by Mark Macy.
- Building a Better Wyoming PAC contributed \$2,500 to Mead for Governor Candidate Committee on June 19, 2014.

- The Wyoming for Matt Mead PAC paid expenses for the Mead campaign.

28. Mr. McMurry, using the Building a Better Wyoming PAC and contributing \$50,000 to the Wyoming for Mead PAC, made **one of the largest contributions in a political campaign outside of the candidate or immediate family of a candidate in Wyoming history** by an individual. Seven months later, the McMurry entity benefitted from the lease agreement with rent of \$872,336 annually not to exceed \$2,617,008, providing that tenant improvements up to \$750,000 are payable at lessor's expense (later amended in Amendment 1 and 2 to the lease).

#### ***2020 Carey Avenue Lease***

29. Wyo. Stat. § 9-5-1016 (b) (xix) governs the process of leasing buildings and requires a bid and proposal basis with advertising of space needs. The Wyoming Constitution also requires bidding for a lease contract in Article 3, Section 31. That article requires that no member or officer of any department of the government shall in any way be interested in such contract.

30. The lease for the housing of the Wyoming State Treasurer, Wyoming State Auditor and the Wyoming Secretary of State during capitol construction is a contract between Voss Family Limited Partnership (Lessor) and the Department of Administration and Information Construction Management Division (Tenant). This building is known informally as 2020 Carey Avenue.

31. The lease was signed on January 30, 2015 by the Wayne T. Voss on behalf of lessor Voss Family Limited Partnership. The contract was witnessed by Tina M. Ortiz. Dean Fausset, Director of Department of Administration and Information, signed presumably as the Governor's designee. Mel Muldrow, Administrator Construction Management Division of Department of Administration and Information also signed presumably as the Governor's designee. Kristin M. Nuss signed as to form as the Attorney General's designee and thereby signified the review and approval of the contract. The lease was entered into **without competitive bid. The lease was not approved by the State Treasurer.**

32. The language of the contract requires use of contractors determined by the State of Wyoming for all improvements to the building regardless of whether the cost is to be applied to the owner or the tenant. Therefore, the procurement of those contractors would be subject to the constitution and the statutes that govern procurement.

33. A number of contracts were entered into by the State of Wyoming purportedly to bring the building into compliance with building codes as well as improving the spaces for occupancy.

34. JE Dunn was contracted in amendment 4 (\$1,708,477) and 6 (\$53,853) of their CMAR contract to provide improvements to 2020 Carey Avenue for a total

amount of \$1,762,330. **There was no competitive bidding for this contract.** The amendments are specifically separate from the Construction Cost Limit and therefore represent a different type of contract than the Construction Manager at Risk contract represented by the original contract. This may constitute a violation of the Wyoming Constitution and the procurement statutes. **The State Treasurer did not approve this contract or amendments to the contract.**

35. Kone Inc. provided a bid and was a sole source contract to bring 2020 Carey Avenue elevators into compliance with building codes. A bid waiver was issued. The owner rejected this contractor and a new bid was obtained from Thyssen Krupp for \$409,552 and awarded **without competitive bidding.** A bid waiver was also issued for this contract. **The State Treasurer did not approve this contract.**

36. Honeywell entered into a contract **without competitive bidding** for bringing the fire alarms into compliance with code. Later the contract was modified to include security upgrades **without competitive bidding.** The contract totaled \$568,355 after the original contract through three change orders and two bid waivers. **The State Treasurer did not approve the contract, amendments or change orders.**

37. A company called "Elements" provided a quote for wall trim, ceiling trim and parts for \$8,066.67. No contract was issued, but because there was **no**

**competitive bidding** a bid waiver was issued. With no contract issued, the **State Treasurer had no opportunity to approve this contract.**

38. The amount of contracts issued without competitive bidding for 2020 Carey to date totals \$2,748,303.67. Wayne Voss, signatory for lessor the contract on 2020 Carey Avenue, made a \$1,000 Campaign contribution to the Mead for Governor campaign committee on October 29, 2010.

***516 South Greeley Highway Shopping Center Lease***

39. Wyo. Stat. § 9-5-1016 (b) (xix) governs the process of leasing buildings and requires a bid and proposal basis with advertising of space needs. The Wyoming Constitution also requires bidding for a lease contract in Article 3, Section 31. That article requires that no member or officer of any department of the government shall in any way be interested in such contract. The lease for the housing of various agencies of state government during capitol construction and is a contract between Brown (Lessor) and the Department of Administration and Information Construction Management Division (Tenant). This building is known informally as 516 South Greeley Highway.

40. The lease was signed on May 28, 2015 by the lessor Maurice W. Brown. The contract was witnessed by Sharon L. Bailey. Dean Fausset, Director of Department of Administration and Information, signed presumably as the Governor's designee. Mel Muldrow, Administrator Construction Management

Division of Department of Administration and Information also signed presumably as the Governor's designee. Kristin M. Nuss signed as to form as the Attorney General's designee and thereby signified the review and approval of the contract. **The lease was entered into without bid. The State Treasurer did not approve the lease.**

41. Maurice Brown contributed \$1,000 to Mead for Governor campaign committee on March 26, 2014.

42. Examples of contracting for services in the Capitol Square Project are outlined below. There is **a pattern of not performing competitive bidding** in the examples. Some contracts are let without a maximum price. **There is no contract in the entire project that has been approved by the State Treasurer as required by the Wyoming Constitution.**

***Bidding of JE Dunn Contract***

43. The Construction Manager at Risk (CMAR) contract for the Capitol Square Project was bid based on *pre*-construction costs. **No competitive bidding was performed for the vast majority of the money to be spent on the Capitol Square Project.** The JE Dunn contract (referred to herein as the "JE Dunn Pre-Construction Contract") called for pre-construction or construction planning services and was not a contract for actual construction goods or services. While pre-construction services were competitively bid, **the actual construction**



**activities were not competitively bid.** The original contract was signed on March 9, 2015.

44. On May 26, 2015 the JE Dunn Pre-Construction Contract was amended (amendment 1) for additional work.

45. On June 11, 2015 the JE Dun Pre-Construction Contract was amended again (amendment 2) to simply raise the Construction Cost Limitation (CCL) from \$199,000,000 to \$219,382,000. There was no explanation given for the \$20,382,000 increase. Also on June 11, additional work was added to the contract (amendment 3). Amendment 3 of the JE Dunn Contract delays setting the Guaranteed Maximum Price for the contract. Article 3, Section 31 of the Wyoming constitution requires that contracts be given below a maximum price.

46. The next day, on June 12, 2015, work was added to the contract for tenant improvements at 2020 Carey Avenue. The amendment (amendment 4) was for \$1,708,477 and it was agreed that this would stand apart from the Guaranteed Maximum Price and the Construction Cost Limit. This amount constituted a separate project added onto the JE Dunn Pre-Construction Contract by amendment. There was **no competitive bidding or bid waiver** for tenant improvements at 2020 Carey.

47. On September 8, 2015 additional work, (amendment 5) was added to the JE Dunn Pre-Construction Contract. One week later on September 15, 2015,

another \$53,853 was added to the JE Dunn Pre-Construction Contract, **again without competitive bidding**, for work at 2020 Carey Avenue separate from the guaranteed maximum price and construction cost limit.

48. In summary, the JE Dunn Pre-Construction Contract, by amendments that avoided competitive bidding processes, allowed all construction activities to be performed without competitive bidding in violation of Article 3, Section 31 of the Wyoming Constitution and Wyo. Stat. § 9-2-1016. The contract was not set below a maximum price as required by Article 3, section 31 of the Wyoming Constitution and still remains without a guaranteed maximum price. Contracting became non-competitive with amendment 2 which raised the CCL and the construction fee. Even further, **no competitive bidding** was undertaken for construction work on 2020 Carey Avenue contrary to Article 3, Section 31 and Wyo. Stat. § 9-2-1016.

49. The contract next reviewed illustrates the failure to obtain competitive bids from multiple vendors for common services. The contract was **not** approved by the Governor and the Treasurer as required by the Wyoming Constitution.

#### ***No Competitive Bidding of Prestige Corporate Relocation LLC Contract***

50. A single company bid on the moving of Department of Environmental Quality (DEQ) from the Herschler Building. Prestige Corporate Relocation LLC provided pricing matrices on pages 4 and 5 of their proposal. The addition of the

four activities listed in the company proposal added to a total of \$67,590.74. The company totaled the amount wrongly to \$93,852.92. The Department of Administration and Information incorporated the incorrect higher amount into the contract. There is no explanation for the discrepancy in the mathematics. The bid waiver justification was because of a non-response from the Request for Proposal (RFP) despite the fact that at least three other moving companies are involved in the moving of people for the project. At least ten companies are qualified to do the work within a 125 mile radius. When the work was completed the State Auditor paid \$83,256.61. The state treasurer did not approve the contract.

***A Pattern of Disregard of Procurement Laws***

51. A review of bid waivers published by the Department of Administration and Information reveals a pattern of conduct of avoiding or ignoring the competitive bidding statutes and the requirements under the Wyoming Constitution. This pattern of conduct extends to general contracting within state government. For the current biennium, a total of well over \$550,000,000 (over a half a billion dollars) has been expended under contracts that were not competitively bid.

52. The Department of Administration and Information, in response to a Public Records Act Request, has disclosed that approximately eighty percent (80%) of all contracting managed by the Department of Administration and

Information Procurement Division for the State of Wyoming is not done by competitive bidding but through sole source contracting.

***Requests for Investigation***

53. In the 2016 session of the Wyoming Legislature, the legislator Plaintiff in this action sought to introduce a resolution calling upon the Attorney General to appoint an independent investigator to determine whether Article 3, Section 31 and the procurement statutes have been violated as described in this Complaint. Certain members of the Capitol Square Oversight Group refused to introduce the resolution. Further, the legislator Plaintiff requested that the Attorney General conduct an investigation into these matters. The Attorney General did not respond to the request. As a result, this action has been brought to interpret constitutional and statutory requirements and to correct violations of law.

**— COUNT I —**

**SF103 (2014), CODIFIED AT WYO. STAT. §§ 9-5-110 – 9-5-113 VIOLATES  
ARTICLE 2, SECTION 1 OF THE WYOMING CONSTITUTION  
(SEPARATION OF POWERS)**

54. Plaintiffs re-allege Paragraphs 1-53 as though re-stated and re-alleged word for word.

55. Wyo. Stat. § 9-5-111(a), in creating the “state capitol rehabilitation and restoration oversight group,” states that this oversight body shall consist of the following members:

- (i) the governor;

(ii) the president of the senate and the majority and minority floor leaders of the senate;

(iii) the speaker of the house of representatives and the majority and minority floor leaders of the house; and

(iv) a member of the senate selected by the president of the senate and a member of the house selected by the speaker of the house

56. Under Wyo. Stat. § 9-5-111, actions of the Capitol Square Oversight Group may be taken by a vote of the majority of the legislative members and the governor. Under these provisions, the governor cannot take action without the approval of a majority of the legislative members of the Oversight Group and any action the governor would want to take contrary to the majority of the legislative members would be of no effect. The structure of the legislation grants control over decisions relating to the Capitol Square Project to the legislative members of the Capitol Square Oversight Group and subordinates the executive branch to the control of this select group of the Legislature over the Capitol Square Project.

57. Article 3, Section 1 of the Wyoming Constitution provides that the legislative power is vested in a senate and a house of representatives designated as “the legislature of the State of Wyoming.” No body other than the Legislature has the power to legislate.

58. Article 4, Section 1 of the Wyoming Constitution provides that the executive power is vested in a governor. Article 4, Section 4 of the Wyoming

Constitution provides that the governor shall transact all necessary business and expedite and execute all measures passed by the legislature and shall take care that the laws be faithfully executed. Only the executive branch holds the power to execute the laws passed by the legislative branch.

59. The Wyoming Supreme Court has held that the power to legislate is vested exclusively in the Legislature by constitutional edict whereas the executive branch holds the power to execute the laws passed by the Legislature. *Bulova Watch Co. v. Zale Jewelry Co.*, 371 P.2d 409 (Wyo. 1962).

60. Article 2, Section 1 of the Wyoming Constitution provides as follows:

The powers of the government of this state are divided into three distinct departments: The legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

61. As to the Capitol Square Project, by vesting responsibility and control over for supervision, execution, and administration of expenditures to a group controlled by members of the Wyoming Legislature, who hold power to overrule any vote of the executive branch, the Legislature and a select group of legislators have departed from their constitutionally prescribed and limited role and have usurped and taken control over executive branch functions in violation of Article 2, Section 1 of the Wyoming Constitution and separation of powers doctrine.

62. In the case of the Capitol Square Project, the Wyoming Legislature appropriated funds to be administered by a legislative committee that, in turn, performed executive branch functions in making hundreds of day-to-day executive decisions including approval and modification of construction plans and designs, temporary space decisions, decisions over the renovation of the Herschler Building, the choice of furniture, fixtures and equipment for the project, contingency costs, security needs for the Capitol, the design and choice of office space for state elected officials, the temporary location of elected officials and their staffs, approval of final designs, contracting, administrative, personnel and a host of decisions that are not made by the legislative branch. The Legislature has gone beyond the written word to now carrying out legislation. In short, the Capitol Square Oversight Group has taken charge of total project management for the state capitol building rehabilitation, repairs, restoration, modifications and additions to the Herschler Building. The committee has reviewed and approved contractual documents, architectural documents, where to locate people and equipment, the choice of materials and construction methods, down to finite details. The exercise of this "authority" (the described unconstitutional acts) is continuing. Further, all such contracts must be competitively bid and must be subject to the approval of the governor and state treasurer, which the Capitol Square Oversight Group has ignored.

63. The legislative branch and the Capitol Square Oversight Group have usurped the will of the people and transferred constitutionally vested powers held by the executive branch to the legislative branch.

64. Pursuant to the Wyoming Declaratory Judgment Act, Wyo. Stat. § 1-37-101 et seq., raising constitutional questions of great public interest or importance impacting each citizen of Wyoming, Count I of this Complaint seeks a declaration that the passage of SF103 (2014)(including each subpart), codified at Wyo. Stat. §§ 9-5-110 through 9-5-113, violates Article 2, Section 1 of the Wyoming Constitution as it purports to assign executive branch duties to the legislative branch. The remedy for these constitutional violations is to declare void and sever all legislative branch duties from the referenced statutes, leaving those duties to be executed by the executive branch.

65. Pursuant to the Wyoming Declaratory Judgment Act, Wyo. Stat. § 1-37-101 et seq., raising constitutional questions of great public interest or importance impacting each citizen of Wyoming, Count I of this Complaint also seeks a declaration that any executive branch function sought to be performed by the legislative members of the Capitol Square Oversight Group after the entry of an order by this Court on the separation of powers question shall be of no effect and that all executive branch functions be performed in fact by the executive branch.

66. Count I meets the declaratory judgment four-part test:



(a) The executive branch was endowed with specific authority to execute the laws passed by the legislative branch and has both a right and duty to exercise and perform those duties without usurpation of those duties by the Legislature. In violation of Article 2, Section 1 of the Wyoming Constitution, executive branch powers have been removed by the Legislature.

(b) The judiciary's decision of this issue will impact future performance of executive branch duties over the Capitol Square Project and impacts every citizen in Wyoming in their rightful expectation that both branches of government that exercise only the authority given to it under the Wyoming Constitution. This action will further delineate the scope and powers of the legislative branch to divest the executive branch of constitutionally created authority and delineate the power of the legislative branch to transfer those duties to itself.

(c) A final judgment in this matter will affect the powers and limitations of the legislative and executive branch and will impact the rights of the people to be assured that constitutionally defined and assigned governmental functions are not altered or reformed without their consent as guaranteed by Article 1, Section 1 of the Wyoming Constitution. The citizen Plaintiff's right to expect that government function in accordance with the Wyoming Constitution has been impaired, and the legislative Plaintiff has the right to expect that the branch of government that he represents is constrained to the functions delegated to it by the Wyoming Constitution and he has been aggrieved to the extent the branch of government that he represents acts outside of its constitutionally prescribed authority.

(d) This case involves two branches of government and the usurpation of power by one branch over the other and meets the adversarial prong requirement and presents an actual case and controversy as the administration of the Capitol Square Project is ongoing and with

unconstitutional authority being asserted by the Capitol Square Oversight Group.

— COUNT II —

**SF103 (2014), CODIFIED AT WYO. STAT. §§ 9-5-110 – 9-5-113 VIOLATES  
ARTICLE 1, SECTION 1 OF THE WYOMING CONSTITUTION  
(ALL POWER INHERENT IN THE PEOPLE)**

67. Plaintiffs re-allege Paragraphs 1-66 as though re-stated and re-alleged word for word.

68. Article 1, Section 1 of the Wyoming Constitution provides that,

All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of these ends they have at all times and inalienable right to alter, reform or abolish the government in such manner as they think proper.

69. Article 1, Section 1 recognizes the ultimate power of the people to alter, reform, or abolish government and that reading Article 1, Section 1 in pari materia with other relevant constitutional provisions, the framers of the Wyoming Constitution intended that any laws altering the government are adopted only through the constitutional amendment process. *Maxfield v. State*, 2013 WY 14, 294 P.3d 895 (Wyo. 2013).

70. SF103 (2014), codified at Wyo. Stat. §§ 9-5-110 through 9-5-113 violates Article 1, Section 1 of the Wyoming Constitution as it purports to assign executive branch duties to the legislative branch and thereby alter the duties and functions of the legislative branch and to strip the duties and functions of the

executive branch by assigning those duties to the legislative branch. In accordance with Article 1, Section 1, such action may not be undertaken by other than constitutional amendment. Where the legislative branch has passed a statutory scheme altering and abolishing responsibilities of branches of government, the Legislature has usurped powers delegated solely to the people and the Capitol Square Oversight Group is implementing an unconstitutional alteration and repeal of constitutionally defined roles.

71. The legislative branch and the Capitol Square Oversight Group have usurped the will of the people, purporting to alter or abolish constitutionally divided duties, and transferred constitutionally vested powers held by the executive branch to the legislative branch.

72. Pursuant to the Wyoming Declaratory Judgment Act, Wyo. Stat. § 1-37-101 et seq., raising constitutional questions of great public interest or importance impacting each citizen of Wyoming, Count II of this Complaint seeks a declaration that the passage of SF103 (2014), codified at Wyo. Stat. §§ 9-5-110 through 9-5-113 violates Article 1, Section 1 of the Wyoming Constitution. The remedy for this constitutional violation is to declare void and sever all legislative branch duties from the referenced statutes, leaving those duties to be executed by the executive branch.

73. Pursuant to the Wyoming Declaratory Judgment Act, Wyo. Stat. § 1-37-101 et seq., raising constitutional questions of great public interest or importance impacting each citizen of Wyoming, Count II of this Complaint also seeks a declaration that any executive branch function sought to be performed by the Capitol Square Oversight Group after the entry of an order by this Court on the Article 1, Section 1 question, and any actions of the legislative members thereof, shall be of no effect and that all executive branch functions be performed in fact by the executive branch.

74. Count II meets the declaratory judgment four-part test:

(a) In violation of Article 1, Section 1 of the Wyoming Constitution, executive branch powers have been removed by the Legislature and constitutionally delegated duties and functions have been altered by the statutes at issue, and thus, the Legislature has sought to alter or reform the Wyoming Constitution and has thereby violated rights reserved to the people.

(b) The judiciary's decision of this issue will impact future performance of executive branch duties over the Capitol Square Project and impacts every citizen in Wyoming in their rightful expectation that the legislature confine itself to the powers delegated to it by the Wyoming Constitution and that both branches of government exercise only the authority given to it under the Wyoming Constitution. This action will further delineate the scope and powers of the legislative branch to divest the executive branch of constitutionally created authority and delineate the power of the legislative branch to transfer those duties to itself and will test whether the legislative branch may alter or abolish the division of responsibilities in the Wyoming Constitution

and whether those duties may be altered or abolished without a constitutional amendment.

(c) A final judgment in this matter will affect the powers and limitations of the legislative and executive branch and will impact the rights of the people to be assured that constitutionally defined and assigned governmental functions are not altered or reformed without their consent as guaranteed by Article 1, Section 1 of the Wyoming Constitution. The citizen Plaintiff's right to expect that government function in accordance with the Wyoming Constitution has been impaired, and the legislative Plaintiff has the right to expect that the branch of government that he represents is constrained to the functions delegated to it by the Wyoming Constitution and he has been aggrieved to the extent the branch of government that he represents acts outside of its constitutionally prescribed authority.

(d) This case involves two branches of government and the usurpation of power by one branch over the other and meets the adversarial prong requirement and presents an actual case and controversy as the administration of the Capitol Square Project is ongoing and with unconstitutional authority being asserted by the Capitol Square Oversight Group.

**— COUNT III —**

**THE CAPITOL SQUARE OVERSIGHT GROUP HAS  
VIOLATED ARTICLE 3, SECTION 31 OF THE  
WYOMING CONSTITUTION AND THE  
PROCUREMENT STATUTES**

75. Plaintiffs re-allege Paragraphs 1-74 as though re-stated and re-alleged word for word.

76. Article 3, Section 31 of the Wyoming Constitution was adopted by the delegates to the Wyoming Constitutional Convention in 1889 to (a) ensure that the public received competitively priced goods and services, (b) to guard against governmental graft and corruption through the letting of contracts as furthering the political or pecuniary interests of elected officials, and (c) to maintain the integrity of government.

77. Article 3, Section 31 of the Wyoming Constitution requires the use of competitive bidding to secure the lowest responsible bidder. The section further requires that contracts set a maximum price. No member of the legislature or elected official may have an interest in such contracts. Finally, all such contracts must be approved by the governor and the state treasurer.

78. Contracts entered into for the Capitol Square Project have not complied with Article 3, Section 31 in that (a) contracts for the repairing and furnishing of the halls of the legislature were not let utilizing competitive bidding processes, (b) contracts did not set a maximum price and have been allowed to escalate through change orders and mismanagement, (c) contracts were let in furtherance of the political interests of an elected official, and (d) contracts were not approved by the Governor and State Treasurer.

79. Plaintiffs incorporate as though fully restated Paragraphs 24 through 50 of this Complaint the description of contracting that has violated Article 3, Section 31 of the Wyoming Constitution and the procurement statutes.

80. Pursuant to the Wyoming Declaratory Judgment Act, Wyo. Stat. § 1-37-101 et seq., raising constitutional questions of great public interest or importance impacting each citizen of Wyoming, Count III of this Complaint seeks a declaration that the Capitol Square Oversight Group (including the Governor) and Attorney General have violated the competitive bidding, maximum contract price, bar against self-interest, and signatory requirements of Article 3, Section 31 and the competitive bidding requirements of Wyoming statutes. Plaintiffs request a finding that (a) contracts for the repairing and furnishing of the halls of the legislature were not let utilizing competitive bidding processes, (b) contracts did not set a maximum price and have been allowed to escalate through change orders and mismanagement, (c) contracts were let in furtherance of the political interests of an elected official, and (d) contracts were not approved by the Governor and State Treasurer all in violation of Article 3, Section 31.

81. This Complaint requests, after the entry of an order by this Court on findings relating to the violations of Article 3, Section 31 of the Wyoming Constitution and the procurement provisions of Wyoming statutes, that the Court enter an order directing that all further contracting be performed under competitive

bidding, under maximum contract pricing, without self-interest, conforming to the signatory requirements of Article 3, Section 31, as administered and as carried out by the executive branch alone.

82. Count III meets the declaratory judgment four-part test:

(a) The Capitol Square Oversight Group has violated Article 3, Section 31 of the Wyoming Constitution and the procurement statutes in that (a) contracts for the repairing and furnishing of the halls of the legislature were not let utilizing competitive bidding processes, (b) contracts did not set a maximum price and have been allowed to escalate through change orders and mismanagement, (c) contracts were let in furtherance of the political interests of an elected official, and (d) contracts were not approved by the Governor and State Treasurer.

(b) The judiciary's decision of this issue will impact future performance of executive branch duties over the Capitol Square Project and impacts every citizen in Wyoming in their rightful expectation that the Wyoming Constitution and procurement statutes be followed.

(c) A final judgment in this matter will affect the powers and limitations of the legislative and executive branch and will impact the rights of the people to be assured that the Wyoming Constitution and procurement statutes are strictly followed to ensure that the public receive competitively priced goods and services, to guard against governmental graft and corruption, to prevent the letting of contracts as furthering the political interests of elected officials, and to maintain the integrity of government.

(d) This case involves the proper administration of government contracts and will affect the way in which contracts are granted relating to the Capitol Square Project.



**— COUNT IV —**  
**PATTERN OF VIOLATION OF COMPETITIVE BIDDING**  
**REQUIREMENTS OF PROCUREMENT STATUTES**

83. Plaintiffs re-allege Paragraphs 1-82 as though re-stated and re-alleged word for word.

84. A review of bid waivers published by the Department of Administration and Information reveals a pattern of conduct by the Governor and the Attorney General of avoiding or ignoring the competitive bidding statutes as a matter of practice in awarding state contracts. This pattern of conduct extends to general contracting within state government. For the current biennium, a total of well over \$550,000,000 (over a half a billion dollars) has been expended under contracts that were not competitively bid.

85. The Department of Administration and Information, in response to a Public Records Act Request, has disclosed that approximately eighty percent (80%) of all contracting managed by the Department of Administration and Information Procurement Division for the State of Wyoming is not done by competitive bidding but through sole source (anti-competitive) contracting.

86. Pursuant to the Wyoming Declaratory Judgment Act, Wyo. Stat. § 1-37-101 et seq., raising constitutional questions of great public interest or importance impacting each citizen of Wyoming, Count IV of this Complaint seeks a declaration that the Governor and Attorney General have violated the competitive

bidding requirements of the procurement statutes as a matter of regular practice. Plaintiffs request a finding that the Governor and the Attorney General have allowed or promoted a general practice of violation of the competitive bidding requirements under Wyoming law.

87. This Complaint requests that, after the entry of an order by this Court on findings of violations of the procurement statutes, the Court enter an order directing that all further contracting be performed under competitive bidding, except where expressly excepted, and without self-interest on the part of any member of the executive or legislative branches.

88. Count IV meets the declaratory judgment four-part test:

(a) A pattern of disregard of the competitive bidding requirements of the procurement statutes is evidenced in the number and kind of contracts not competitively bid.

(b) The judiciary's decision of this issue will impact future performance of executive branch duties over contracting for goods and services by the State of Wyoming and impacts every citizen in Wyoming in their rightful expectation that the procurement statutes be followed.

(c) A final judgment in this matter will affect the powers and limitations of the executive branch and will impact the rights of the people to be assured that the procurement statutes are strictly followed to ensure that the public receive competitively priced goods and services, to guard against governmental graft and corruption, to prevent the letting of contracts as furthering the political interests of elected officials, and to maintain the integrity of government.

(d) This case involves the proper administration of government contracts and will affect the way in which contracts are granted relating to general contracting by the State of Wyoming.

— COUNT V —  
REQUEST FOR INJUNCTIVE RELIEF

89. Plaintiffs re-allege Paragraphs 1-88 as though re-stated and re-alleged word for word.

90. As a result of the violations of the Wyoming Constitution and the procurement statutes, Plaintiffs ask for injunctive relief to halt the continued violation of the Wyoming Constitution and procurement statutes and providing the affirmative relief of requiring that all future actions taken with respect to the Capitol Square Project and general contracting by the State of Wyoming be performed in accordance with the Wyoming Constitution and the procurement statutes. No adequate remedy at law exists for the enforcement of the Wyoming Constitution and the procurement statutes and Wyoming citizens will suffer irreparable harm by the continuing violations of the Wyoming Constitution and the procurement statutes. Upon the entry of a judgment, Plaintiffs seek a permanent injunction and the continuing supervision of the Court to the extent necessary to enforce the requirements of the Court's judgment.

WHEREFORE, as to Counts I through IV, the Plaintiffs seek the declaratory relief specified in those Counts. As to Count V, the Plaintiffs seek injunctive relief

to stop future violations of the Wyoming Constitution and the procurement statutes.

DATED this 3<sup>rd</sup> day of March, 2016.

Karl Allred and Representative Gerald  
Gay, *Plaintiffs*

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