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2024-CV-0000154
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
WITHIN AND FOR SWEETWATER COUNTY, WYOMING

CODY WYLIE and, JOSHUA THOMAS LARSON, Plaintiffs, vs WY FREEDOM PAC, Defendant.	))))))))))	2024-CV-154 L

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER came before the Court for hearing on April 30, 2026, on *Defendant WY Freedom PAC's Motion for Summary Judgment*, filed on March 2, 2026. Plaintiffs filed their response on March 23, 2026, and Defendant filed its reply on April 7, 2026. After careful consideration of the parties' submissions and their arguments at the hearing, the Court concludes that Defendant's motion for summary judgment should be granted because there is insufficient evidence to permit a jury to conclude that Defendant's statements were made with actual malice.[1]

[1] The Court announced its ruling on the motion and the reasons therefore at the conclusion of the hearing. That ruling is incorporated herein as if fully set forth.

INTRODUCTION

> In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

Cantwell v. State of Connecticut, 310 U.S. 296, 310 (1940).

This case involves political messages criticizing the votes of two legislators. The language used was catastrophizing and conflated the votes the legislators actually took with remarkably remote and improbable consequences. There is no doubt the messages were purposely crafted to exaggerate the effect of the legislators' votes and to more effectively criticize them. In short, the messages were pretty standard political attack ads. Similar ads plague Americans every day, but they are indisputably protected speech under the First Amendment.

"[P]olitical speech directed toward public officials is at the pinnacle of protected speech." *Welch v. American Publishing Co. of Kentucky*, 3 S.W.3d 724, 726 (Ky. 1999). While "there is no constitutional right to espouse false assertions of fact, even against a public figure in the course of public discourse[,]" a public official asserting that they have been defamed must clear a high bar to recover for speech critical of their conduct in office. *Palmtag v. Republican Party of Nebraska*, 999 N.W.2d 573, 585 (2024). They must produce evidence demonstrating that the criticism was published with actual malice, meaning the publisher either knew the statement was false or they made the statement with reckless disregard for the truth. And they must make this demonstration by clear and convincing evidence. The bar is high because the right to criticize our government and our public officials is so fundamental to our democracy.

Here, the Court concludes Plaintiffs have not cleared this high bar. That is not an

endorsement of the message or of the pervasive use of negative misleading political attack ads. It is an endorsement of the fundamental right to freedom of speech established in the First Amendment. Today's political speech is often distasteful but rarely is it defamatory. The remedy for such speech has been and continues to be more speech. Plaintiffs employed exactly that remedy in response to the attack ads at issue and ultimately prevailed in their reelection campaigns. Their success was enabled by same fundamental liberty that protects the Defendant from liability in this case. Thus, the system still seems to work.

BACKGROUND

The Court previously set forth the facts alleged in the *First Amended Complaint* on pages two through nine of its *Order of Dismissal in Part* entered on March 21, 2025. The facts set forth on those pages have largely been confirmed during discovery. Rather than repeat those facts the Court incorporates them herein.

With regard to the issue of actual malice, discovery added few material facts to those alleged in the *First Amended Complaint*. However, discovery did reveal Defendant's thought process in making the statements at issue. Karen Drost, chair of the WY Freedom PAC, and John Bear, who was then chair of the Wyoming Freedom Caucus, were the individuals responsible for the statements at issue. They explained in their depositions that they believed votes to keep footnote 1 in the budget bill were, in fact, votes to remove Trump from the ballot. Mot. at 4-5 and 13-14. Neither testified that they believed that the votes in the Wyoming Legislature would directly and immediately cause Trump's removal from any state ballot, just that they believed the votes could contribute to that eventual outcome.

Plaintiffs are not persuaded by Ms. Drost and Mr. Bear's assertions of their subjective belief about the significance of the vote to keep footnote 1 in the budget bill. They assert the

statements were made intentionally and with reckless disregard for the truth, because "Defendant knew that the votes on the spreadsheet were not votes to remove Trump's name from the ballot in any state, but were rather about funding the Wyoming Secretary of State's office on and after July 1, 2024." Opp. at 25. However, Plaintiffs offer no evidence contradicting Ms. Drost and Mr. Bear's deposition testimony that they believed the votes on footnote 1 could contribute to Trump being removed from state ballots.

STANDARD OF REVIEW

> Summary judgment is governed by Wyoming Rule of Civil Procedure (W.R.C.P.) 56 and imposes obligations on the movant and nonmovant. Summary judgment is appropriate when no genuine issue as to any material fact exists and when the prevailing party is entitled to judgment as a matter of law. ... A district court may grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.
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> Once a movant has made a prima facie case showing that no genuine issue of material fact exists, the burden shifts to the party opposing the motion to present evidence showing that a genuine issue of material fact does exist. Materiality of a fact depends upon it having some legal significance so that it establishes or refutes some essential element of a cause of action or defense asserted by one of the parties.
>
> The opposing party must present competent evidence which would be admissible at trial. The party opposing the motion must present specific facts; relying on conclusory statements or mere opinion will not satisfy that burden, nor will relying solely upon allegations and pleadings. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. However, the facts presented are considered from the vantage point most favorable to the party opposing the motion, and that party is given the benefit of all favorable inferences that may fairly be drawn from the record.

Lewis v. Francis, 2025 WY 109, ¶¶ 10-12, 577 P.3d 433, 436–37 (Wyo. 2025) (citations and quotations omitted).

DISCUSSION

"A defamatory communication is one which tends to hold the plaintiff up to hatred, contempt, ridicule or scorn or which causes him to be shunned or avoided; one that tends to injure his reputation as to diminish the esteem, respect, goodwill or confidence in which he is held." *Tschirgi v. Lander Wyoming State J.*, 706 P.2d 1116, 1119 (Wyo. 1985) (citing Prosser and Keeton, *The Law of Torts* (5th ed. 1984), p. 773). Wyoming recognizes "two general classes of defamation: defamation with special damages and defamation per se." *Hill v. Stubson*, 2018 WY 70, ¶ 25, 420 P.3d 732, 741 (Wyo. 2018).

> Defamation with special damages is actionable only if the plaintiff suffers special harm, meaning the "loss of something having economic or pecuniary value." *Hoblyn*, ¶ 42, 55 P.3d at 1233. Defamation per se differs in that damages are presumed and the claim is actionable without special damages.
>
> > Defamation per se means a statement which is defamatory on its face and, therefore, actionable without proof of special damages. The only statements classified as defamatory per se or damaging on their face, and which therefore do not require proof of special harm, are those which impute (1) a criminal offense; (2) a loathsome disease; (3) a matter incompatible with business, trade, profession, or office; or (4) serious sexual misconduct.
>
> *Thomas v. Sumner*, 2015 WY 7, ¶ 49, 341 P.3d 390, 402 (Wyo. 2015) (quoting *Hoblyn*, ¶ 41, 55 P.3d at 1233).

Id.

Wyoming's defamation per se law derives from the Restatement (Second) of Torts. *Bextel v. Fork Rd. LLC*, 2020 WY 134, ¶ 13, 474 P.3d 625, 629 (Wyo. 2020). A defamation per se claim does not require proof of pecuniary or economic loss. *Thomas v. Sumner*, 2015 WY 7, ¶ 49, 341 P.3d 390, 402 (Wyo. 2015). It has three elements:

> (1) the defendant made a false and defamatory communication concerning the plaintiff; and (2) the defendant made an unprivileged publication to a third party; and (3) at the time of the publication the defendant knew the communication was false, or the defendant acted in reckless disregard of whether the statement was

> false; or the defendant acted negligently in failing to ascertain whether the communication was false.

Id. (citing Restatement (Second) of Torts § 558 (1977)).

With respect to the third element, the First Amendment limits the circumstances under which a public official may maintain a defamation action for statements critical of official conduct. "The United States Supreme Court has held that the constitutional guarantees of free speech and press prohibit a public official from recovering damages for defamatory statements unless it can be shown that the statements were made with actual malice." *Martin v. Comm. for Honesty & Just. at Star Valley Ranch*, 2004 WY 128, ¶ 9, 101 P.3d 123, 127 (Wyo. 2004) (citing *New York Times Company v. Sullivan,* 376 U.S. 254, 279 (1964)).

> Actual malice means the allegedly defamatory statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." *Martin*, ¶ 18, 101 P.3d at 131 (quoting *Davis v. Big Horn Basin Newspapers, Inc.*, 884 P.2d 979, 984 (Wyo. 1994)). It is a subjective standard that focuses on the defendant's state of mind. *Martin*, ¶ 18, 101 P.3d at 131-32.
>
> > " 'knowledge of falsity' involves a *subjective* awareness of the falsity of the statements, and 'reckless disregard' involves sufficient evidence to permit an inference that the defendant must have, in fact, *subjectively* entertained serious doubts as to the truth of the statements."

Martin, ¶ 18, 101 P.3d at 132 (quoting *Oil, Chemical and Atomic Workers Int'l Union v. Sinclair Oil Corp.*, 748 P.2d 283, 287 (Wyo. 1987)) (emphasis in original).

> "Actual malice, under *New York Times v. Sullivan*, concentrates on the defendant's attitude toward the truth or falsity of the material published, and does not focus on the defendant's attitude toward the plaintiff." *MacGuire v. Harriscope Broad. Co.*, 612 P.2d 830, 842 (Wyo. 1980) (Rooney, J., specially concurring) (citing *Cantrell v. Forest City Publ'g Co.*, 419 U.S. 245, 251-52, 95 S.Ct. 465, 469-70, 42 L.Ed.2d 419 (1974)) (emphasis omitted). In keeping with that focus, we have said that "bad or corrupt motives, spite, hostility, ill will, or deliberate intention to harm are not material" to a determination of actual malice. *Adams v. Frontier Broad. Co.*, 555 P.2d 556, 563 (Wyo. 1976) (citing *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81, 88 S.Ct. 197, 19 L.Ed.2d 248 (1967); *Rosenblatt*, 383 U.S. at 84, 86 S.Ct. 669).

Hill v. Stubson, 2018 WY 70, ¶¶ 21-22, 420 P.3d 732, 740–41 (Wyo. 2018) (emphasis in original).

Under the actual malice standard, a public figure must prove with " 'convincing clarity that the statement was made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not.' " *Martin*, 2004 WY 128, ¶ 18, 101 P.3d at 131 (quoting *Davis*, 884 P.2d at 984).

> "With respect to the standard of convincing clarity, it may be helpful to recognize in this case that that standard is a stringent one. It is greater than a mere preponderance of the evidence. It requires proof that is clear, precise and indubitable or unmistakable and free from serious and substantial doubt. It is that kind of proof which would persuade a trier of fact that the truth of the contention is highly probable."

Id. (quoting *MacGuire v. Harriscope Broadcasting Company,* 612 P.2d 830, 839 (Wyo.1980)).

"From one perspective, the actual-malice test 'puts a premium on ignorance [and] encourages the irresponsible publisher not to inquire' about the truth of material." *Lynch v. New Jersey Educ. Ass'n*, 735 A.2d 1129, 1136 (N.J. 1999) (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)). However,

> Supporting the actual-malice standard is "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attack on government and public officials." *New York Times, supra,* 376 *U.S.* at 270, 84 *S.Ct.* at 721, 11 *L.Ed.*2d at 701. A statement made in the heat of an election contest supplies the paradigm for that commitment to free debate. "When a candidate enters the political arena, he or she 'must expect that the debate will sometimes be rough and personal.' " *Harte–Hanks, supra,* 491 *U.S.* at 687, 109 *S.Ct.* at 2695, 105 *L.Ed.*2d at 588 (quoting *Ollman v. Evans,* 750 *F.*2d 970, 1002 (D.C.Cir.1984) (en banc) (Bork, J., concurring), *cert. denied,* 471 *U.S.* 1127, 105 *S.Ct.* 2662, 86 *L.Ed.*2d 278 (1985)). Readers know that statements by one side in a political contest are often exaggerated, emotional, and even misleading. *Milkovich v. Lorain Journal Co.,* 497 *U.S.* 1, 32, 110 *S.Ct.* 2695, 2712, 111 *L.Ed.*2d 1, 26 (1990) (Brennan, J., dissenting).

Id.

In actions for defamation against public officials, courts must hold plaintiffs to their heightened burden and should not hesitate to dispose of these matters in summary judgment proceedings.

> A libel suit cannot be allowed to get to the jury, at enormous expense to the defendant, based on mere assertions of malice by the plaintiff. *Cf. St. Surin v. Virgin Islands Daily News, Inc.,* 21 F.3d 1309, 1318 (3d Cir.1994) ("Summary judgment for the publisher is quite often appropriate because of the difficulty a public official has in showing 'actual malice.' "). Indeed, without judicious use of summary judgment to dispose of libel suits, "the threat of being put to the defense of a lawsuit ... may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself." *Immuno AG. v. Moor–Jankowski,* 74 N.Y.2d 548, 561, 549 N.E.2d 129, 135, 549 N.Y.S.2d 938, 944 (1989) (internal quotation marks omitted), *vacated,* 497 U.S. 1021, 110 S.Ct. 3266, 111 L.Ed.2d 776 (1990), *adhered to,* 77 N.Y.2d 235, 567 N.E.2d 1270, 566 N.Y.S.2d 906 (1991), *cert. denied,* 500 U.S. 954, 111 S.Ct. 2261, 114 L.Ed.2d 713 (1991). Because the freedoms guaranteed by the First Amendment are designed to ensure that debate, not litigation, is vigorous, the subjective nature of the test of liability cannot create a bar to summary disposition of libel suits. *See McLee v. Chrysler Corp.,* 38 F.3d 67, 68 (2d Cir.1994) (ruling that district court's view—that summary judgment was unavailable in discrimination cases where employer's intent was at issue—was unsupportable). Indeed, this Court finds little to distinguish silence enforced by oppressive litigation from "silence coerced by law—the argument of force in its worst form." *Whitney v. California,* 274 U.S. 357, 375–76, 47 S.Ct. 641, 648–49, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring).

Church of Scientology Int'l v. Time Warner, Inc., 903 F. Supp. 637, 640 (S.D.N.Y. 1995) (footnote omitted), on reconsideration, 932 F. Supp. 589 (S.D.N.Y. 1996), and aff'd sub nom. *Church of Scientology Int'l v. Behar*, 238 F.3d 168 (2d Cir. 2001), and aff'd sub nom. *Church of Scientology Int'l v. Behar*, 238 F.3d 168 (2d Cir. 2001), and aff'd sub nom. *Church of Scientology Int'l v. Behar*, 238 F.3d 168 (2d Cir. 2001).

It is undisputed that Plaintiffs are public officials and the speech at issue involves matters of public concern. Thus, the actual malice standard applies regardless of whether the claim is for defamation with special damages or defamation per se.

The evidence submitted by the parties is not in dispute. Defendant was not happy with

Plaintiffs' votes on the budget footnote prohibiting the Secretary of State from spending money on lawsuits outside Wyoming. The immediate subject of the votes was the proper role of the Secretary of State in litigation outside Wyoming, not whether Trump should appear on the ballot in Wyoming or anywhere else. Defendant supported the Secretary of State's stance in the out-of-state litigation—that Trump should be on the ballot in all fifty states. Defendant wanted the Secretary of State to continue litigating and viewed Plaintiffs' votes on the budget footnote as undermining the overall effort to ensure that litigation in other states seeking to remove Trump from the ballot would not succeed.

The statements at issue are: (1) "[Y]ou should know that your state Rep. J.T. Larson voted with the radical left to REMOVE President Trump's name from the ballot[,]" and (2) "Voted NO – to KEEP President Trump on the ballot this fall." Both statements describe the effect of Plaintiffs' votes on the budget footnote. Plaintiffs read the statements as false descriptions of the direct effect of their votes, because they did not specifically vote to remove or keep Trump on the ballot. That is true, but the statements also describe Defendant's perception of the indirect effect of the votes—that the out-of-state lawsuits could be lost because there was not enough support for them and through a cascade of events Trump would not be on the ballot in any state. Ms. Drost and Mr. Bear's deposition testimony makes clear they were talking about the indirect effects of the vote not the direct effects. Their deposition testimony also makes clear that they sincerely believed those indirect effects were possible. Thus, they harbored no doubt about the truth of their statements as to the potential indirect effects of Plaintiffs' votes.

Ms. Drost and Mr. Bear do not deny that Plaintiffs voted on a measure to limit the Secretary of State's use of funds for out-of-state litigation. Plaintiffs presume that any other characterization of the votes beyond the specific substance and direct effect of the footnote is false and evinces

Defendant's knowledge of that falsity. Not so. Defendants are permitted to describe what they believe to be the indirect effects of the vote no matter how attenuated those effects might be. Plaintiffs may believe that Ms. Drost and Mr. Bear's fear about the effect of the votes is not realistic, but that does not make their expressions of that fear false or demonstrate that they entertained serious doubts about the truth of these statements.

This Court is not aware of any law that requires Defendant to supply context or explain its statements about the indirect consequences of Plaintiffs' vote. *See, e.g., Hein v. Lacy*, 616 P.2d 277, 286 (1980) (noting that "it should be added that the whole truth was not stated. It seldom is in political campaigns."). Most readers know that political advertisements "are often exaggerated, emotional, and even misleading." *Milkovich*, 497 U.S. 1, 32 (Brennan, J., dissenting). That some voters might be misled by the statements into thinking that Plaintiffs actually voted on legislation that would have directly removed Trump from the ballot is not determinative of the question of actual malice. That inquiry is subjective and personal to Ms. Drost and Mr. Bear. Even their crafty wording of these statements does not clearly establish their subjective awareness of the falsity of the statements or that they subjectively entertained serious doubts as to the truth of the statements. *Martin*, ¶ 18, 101 P.3d at 132. In fact, because they are merely speculation about the indirect effect of the votes, the statements cannot be proven true or false.

After carefully examining all the materials submitted by the parties, the Court must conclude that there is insufficient evidence to permit a jury to conclude that Defendant's statements were made with actual malice. They were certainly made to harm Plaintiffs' reelection campaigns, but:

> To preserve our freedoms the expression of individual opinion and criticism of public officials must be given a broad scope. A person who holds political office should expect that opposition to his candidacy for reelection will be expressed at times with distortion and vituperation. A person who holds political office should

> not be a rabbit or wear his feelings on his sleeve. In this case it is easy to understand why the plaintiff was concerned by the language used and the time and manner in which [these statements were] distributed. However, it is only under unusual circumstances that a public official may successfully seek redress in an action for defamation for injury to his reputation. This case does not present factual circumstances where such a cause of action is maintainable.

Hein, 616 P.2d at 286.

WHEREFORE IT IS HEREBY ORDERED that *Defendant WY Freedom PAC's Motion for Summary Judgment* is granted and Plaintiffs' *First Amended Complaint* is dismissed with prejudice.

DATED this 30th day of April, 2026.

JAMES KASTE
District Court Judge

CERTIFICATE OF SERVICE

I, _____, Deputy Clerk of Court, Sweetwater County, Wyoming, hereby certify that I served true and correct copies of the foregoing on the _____ day of _____, 2026, to the following:

Joseph Hampton
Hampton & Newman
PO Box 1000
Rock Springs WY 82901

Mark Jackowski
Attorney at Law
PO Box 1982
Wilson WY 83014

Stephen Klein
Barr & Klein, PLLC
1629 K. St. NW Ste. 300
Washington DC 20006