

**FILED**

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IN THE DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
LARAMIE COUNTY, WYOMING

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WYOMING REPUBLICAN PARTY, )  
HON. BEN HORNOK, HON. CLARENCE )  
STYVAR, TAFT LOVE, DALLAS TYRRELL, )  
and KATHY SCIGLIANO, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
DEBRA LEE, in her official capacity as )  
LARAMIE COUNTY CLERK, )  
)  
Defendant. )

Docket No.: 2024-CV-0202597

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**PLAINTIFFS' PRETRIAL MEMORANDUM**

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COME NOW, Plaintiffs, by and through undersigned counsel, and hereby file their Pretrial Memorandum in compliance with this Court's *Order Granting Joint Motion to Amend Deadlines in Case* stating in support thereof as follows:

## ISSUES BEFORE THE COURT

The issue before this Court is whether Defendant violated the Court's *Stipulated Consent Decree* dated August 19, 2024 ("Consent Decree"). Specifically, this Court must determine if Defendant should be held in contempt of court or otherwise be required to conform her conduct to the Consent Decree. Lastly, this Court must determine the appropriate sanctions against Defendant in this case.

## RELEVANT FACTS

Defendant utilized sixteen ES&S DS200 Tabulation Machines ("Tabulation Machines") to count votes in the 2024 Primary Election ("Election"). To ensure election integrity, Wyoming Statute § 22-11-104(b)(iii) requires the Defendant publicly test each Tabulation Machine following specific testing protocols known as a "Logic and Accuracy Test." Defendant failed to follow such protocols and failed to publicly test each Tabulation Machine yet sought to use the improperly tested Tabulation Machines in the Election. Plaintiffs sued to require Defendant to utilize the proper testing procedures and to ensure the testing of each Tabulation Machine. The Parties quickly reached a stipulation and reduced the same to writing in the form of the Consent Decree. As relevant, the Consent Decree contains the following provision:

Defendant shall provide, within ten (10) days of the Primary Election [*August 30*], **a written statement describing any non-public testing conducted by the Defendant of the DS200 Tabulation Machines describing the date of such test, the parties conducting the test, and the nature of the test. Defendant shall, if available, provide the Test Deck summary sheets and the corresponding post-test receipts from the tabulation machines,** and such information shall be considered sufficient information for the purposes of this paragraph for any such individual tabulation machine for which such information is provided. Nothing in this paragraph shall limit the Defendant from providing additional information within such written statement regarding other tests or security measures implemented to test or secure such tabulation machines.

*Consent Decree pg. 3-4 (dates added in brackets) (emphasis added).*

Plaintiff sought the information in Paragraph 3 because there were genuine concerns as to whether or not Defendant had ever tested the Tabulation Machines, publicly or privately. In the absence of such testing, there were, and are, genuine questions as to whether the Tabulation Machines would correctly tabulate votes cast in the Election. The Paragraph 3 deliverables were intended to ensure the testing actually occurred as Defendant had only engaged in public testing of two (2) of the sixteen (16) Tabulation Machines.

Defendant ultimately produced a short-written statement on August 30 that failed to provide the specific information required by Paragraph 3. Additionally, Defendant refused to provide the “Test Deck summary sheets and the corresponding post-test receipts” stating such documents “are not in a format that they are susceptible to being readily duplicated.” Plaintiffs attempted to resolve this matter informally with Defendant, and Defendant initially agreed to provide the same. However, Defendant recanted such position and ultimately took the stance that the Paragraph 3 Deliverables were “unavailable” because they had been “sealed.”

In subsequent depositions, both Defendant and her election manager have admitted that the Paragraph 3 deliverables were “available” and could have been produced with “de minimum” effort. In fact, discovery has revealed that portions of the Paragraph 3 Deliverables existed in electronic form on one of Defendant’s computers and could have easily been emailed to Plaintiffs. Further, Defendant and her election manager have also admitted in depositions that the alleged “sealing” of the Paragraph 3 Deliverables in no way prevented their production to Plaintiffs. Despite such wholesale admission, Defendant continues to refuse to provide such records.

Defendant’s refusal to conform her conduct to the requirements of the Consent Decree is particularly concerning because she is required by law to maintain all Paragraph 3 Deliverables for a period of at least twenty-two (22) months. Additionally, such documents are subject to a

preservation letter in this case. Unfortunately, Defendant appears to have permitted the destruction of certain copies of the Paragraph 3 Deliverables in contravention of law and the preservation letter. However, Defendant and her election manager have both confirmed that all Paragraph 3 deliverables continue to exist in a format that can be copied and provided to Plaintiffs as required by the Consent Decree.

### **RELEVANT LAW**

Defendant argues that this Court must first determine what the phrase, “if available” means within the context of the Consent Decree. Courts interpret consent decrees like a contract. *Thomas v. JLC Wyoming, LLC*, 2019 WY 14, ¶ 18, 434 P.3d 104, 110 (Wyo. 2019). Black’s Law Dictionary defines “available” as an adjective meaning “legally valid or colorable.” AVAILABLE, Black’s Law Dictionary (12th ed. 2024). Merriam-Webster defines “available” as “present or ready for immediate use” or “accessible, obtainable.” AVAILABLE, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/available>, last accessed October 21, 2024. Under such definitions, the term “available” clearly means that such data exists and can be produced. While Defendant initially argued that this Court should adopt a novel definition of “available,” Defendant has now conceded the above definition in her deposition. Further, Defendant has conceded that the Paragraph 3 Deliverables were indeed “available.”

A consent decree is a judgment based upon an agreement between the parties thereto that is enforceable in the same manner as any other judicial decree. *Thomas v. JLC Wyoming, LLC*, 2019 WY 14, ¶ 18, 434 P.3d 104, 110 (Wyo. 2019). A court has inherent power to punish contempt of court and discretion to determine what sanction is appropriate. *Stephens v. Lavitt*, 2010 WY 129, ¶ 18, 239 P.3d 634, 639 (Wyo. 2010). If a judgment requires a party to perform a specific act and the party fails to perform such act within the time specified, the court may order the act to be

done by a third party at the expense of the party failing to act. *Wyo. R. Civ. P. 70(a)*. Alternatively, the court may also hold the disobedient party in contempt of court. *Wyo. R. Civ. P. 70(e)*. The Court has distinguished between civil and criminal contempt of court noting that civil contempt is to coerce a party into complying with a prior court order, while the purpose of criminal contempt is to punish a party who failed to comply with a prior order. *Munoz v. Munoz*, 2002 WY 4, ¶ 10, 39 P.3d 390, 392-93 (Wyo. 2002).

The elements of civil contempt are 1) an effective court order that required certain conduct by the alleged contemnor, 2) the contemnor had knowledge of the order, and 3) the alleged contemnor disobeyed the order. *Meckem v. Carter*, 2014 WY 52, ¶ 20, 323 P.3d 637, 644 (Wyo. 2014). Once the movant has proven such elements, the burden shifts to the alleged contemnor to show he or she was unable to comply with the order. *Id.* Courts have generally interpreted “unable” to mean impossible or outside the contemnor’s control.” *United States v. Rylander*, 460 U.S. 752, 757, 103 S. Ct. 1548, 1552, 75 L. Ed. 2d 521 (1983). In this case, the Paragraph 3 Deliverables are in Defendant’s exclusive control pursuant to statute. Wyo. Stat. Ann. § 22-11-104(b)(iii); § 22-14-110 & 11; Wyo. Sec. Stat. Rules Chapter 29, Section 6(j).

#### **MISCELLANEOUS MATTERS & PENDING MOTIONS**

There are no pending motions currently other than Plaintiffs’ *Motion to Show Cause*. Plaintiffs do not anticipate any unique issues in this case or the need for special accommodations.

Plaintiffs have attached a Witness List and Exhibit List hereto. Pursuant to the Uniform Rules of District Court, Plaintiffs have served the substantive exhibits below on Defendant but have not filed the same herewith.

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DATED this 23<sup>rd</sup> day of April, 2025.

WYOMING REPUBLICAN PARTY, HON. BEN  
HORNOK, HON. CLARENCE STYVAR, TAFT  
LOVE, DALLAS TYRRELL, and KATHY  
SCIGLIANO

By: /s/ Caleb C. Wilkins  
Caleb C. Wilkins, WSB #7-5527  
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*Attorney for Plaintiffs*

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**CERTIFICATE OF SERVICE**

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I hereby certify that on the 23<sup>rd</sup> day of April 2025, a true and correct copy of the foregoing **PLAINTIFFS' PRETRIAL MEMORANDUM** was served via File & Serve Xpress e-service to the following:

Crowley Fleck LLP  
Attn: Timothy Stubson  
[tstubson@crowleyfleck.com](mailto:tstubson@crowleyfleck.com)

/s/ Caleb C. Wilkins  
COAL CREEK LAW LLP

## EXHIBIT A – PLAINTIFFS’ WITNESS LIST

1. Debra Lee, c/o Tim Stubson, Crowley Fleck – Will Call – Ms. Lee is expected to testify consistent with her deposition. She is anticipated to testify to her knowledge of the Consent Decree, her failure to serve the Paragraph 3 Deliverables, and her ability to have tendered the same to Plaintiffs.

2. Mikala Portz, c/o Christopher Humphrey, Humphrey Legal – Will Call – Ms. Portz is expected to testify consistent with her deposition.

3. Rick Weibel, c/o Caleb Wilkins, Coal Creek Law LLP – Will Call – Mr. Weibel is anticipated to testify consistent with his deposition and expert report on file in this matter. He is further anticipated to testify to his knowledge of tabulation machine errors in other counties such as Weston County, Wyoming.

4. Taft Love, c/o Caleb Wilkins, Coal Creek Law LLP – May Call – Mr. Love is anticipated to testify as to his knowledge of the to the negotiations of the Consent Decree, his understanding of the same, and the Defendant’s failure to perform thereunder. Mr. Love is further anticipated to testify as to his personal observations of testing performed on certain tabulation machines and the failure of such testing to comply with applicable statutes.

5. Delegate of Wyoming Republican Party, c/o Caleb Wilkins, Coal Creek Law LLP – May Call – Such delegate is anticipated to testify as to the negotiations of the Consent Decree, the Wyoming Republican Party’s understanding of the same, and the Defendant’s failure to perform thereunder.

6. Kathy Russell, 17114 Capital Avenue, Cheyenne, WY, 307-234-9166 – May Call – Ms. Russell is anticipated to testify as to the preservation notice she emailed to Defendant.

7. Dallas Tyrell, 2142 W Lincolnway, Cheyenne, WY, 307-634-2540 – May Call – Mr. Tyrell is anticipated to testify as to certain statements publicly posted by the Defendant related to the Testing and as to his observations at one or more of the Tests.

8. Any witnesses designated by Defendant.

9. Any rebuttal witnesses.

EXHIBIT B – PLAINTIFFS’ EXHIBIT LIST

Exhibit	Description	Offered	Accepted
1	Stipulated Consent Decree		
2	Affidavit of Debra Lee dated 11/19/2024		
3	Email correspondence regarding Paragraph 3 deliverables between C. Wilkins and T. Stubson dated 8/28/2024 through 8/30/2024		
3.1	Email from T. Stubson to C. Wilkins including attachment of Clerk’s statement describing non-public testing of DS200 dated 8/30/2024		
3.2	Letter from T. Stubson to C. Wilkins regarding Consent Decree Compliance dated 9/9/2024		
3.3	Letter from C. Wilkins to T. Stubson in response to 9/9/2024 letter dated 10/9/2024		
3.4	Letter from T. Stubson to C. Wilkins in response to 10/9/2024 letter dated 10/18/2024		
4	Clerk’s statement regarding suit		
4.1	Meth press release		
4.2	Screenshot of meth press release search results		
4.3	Photo of pick error		
4.4	Photo of pick error		
4.5	Photo of pick error		
5	Email spoliation notice from Kathy Russell to Clerk dated 8/13/2024		
6	Transfer of records		
7	Thermal paper		
8	Clerk’s certification dated 10/4/2024		
8.1	Clerk’s certification dated 7/19/2024		
8.2	Clerk’s certification dated 7/24/2024		
8.3	Clerk’s certification dated 8/13/2024		
8.4	Clerk’s certification dated 8/14/2024		
8.5	DS200 machine list		
9	DS200 checklist		
10	Secretary of State’s placement of seals guide		

11	Email from T. Stubson to R. Piper with audit logs		
11.1	Pine Bluffs audit logs		
11.2	Storey audit logs		
12	8/20/2024 Expected results		
13	7/19/2024 DS200 Results tape		
14	Email from Debra Lee to C. Wilkins with audited results dated 8/5/2024		
14.1	Expected Results		
14.2	Results from machine A		
14.3	Results from machine B		
15	Defendant's Responses to Plaintiffs' First Set of Requests for Production dated 3/5/2025		
16	Defendant's Responses to Plaintiffs' First Set of Interrogatories dated 3/5/2025		
16.1	Defendant's First Supplemental Responses to Plaintiffs' First Set of Interrogatories dated 3/19/2025		
17	Election management guidelines		
17.1	System overview		
17.2	DS200 Manual		
	Any exhibits designated by Defendant and any exhibits necessary for rebuttal or impeachment.		