

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

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STEPHAN HARRIS, CLERK
CASPER

Anne Marie Guzzo and Bonnie Robinson;)
Ivan Williams and Charles Killion;)
Brie Barth and Shelly Montgomery;)
Carl Oleson and Rob Johnston; and)
Wyoming Equality,)

Case No. 14-CV-200

Plaintiff(s),)

vs.)

Matthew H. Mead, in his official capacity)
as the Governor of Wyoming; Dean)
Fausset, in his official capacity as Director)
of the Wyoming Department of)
Administration and Information; Dave)
Urquidez, in his official capacity as)
Administrator of the State of Wyoming)
Human Resources Division; and Debra K.)
Lathrop, in her official capacity as Laramie)
County Clerk,)

Defendant(s).)

ORDER GRANTING GOVERNOR MEAD'S MOTION TO QUASH

The above-captioned matter comes before the Court on Defendant Governor Mead's Motion to Quash Subpoena [Doc 18] to Appear and Testify at a Hearing or Trial in a Civil Action on October 16, 2014. The Court will GRANT the Motion to Quash.

Based upon the affidavit of Governor Mead [Doc 18-2] on the evening of October 9, 2014, just prior to the start of a scheduled debate between gubernatorial candidates, two unidentified individuals approached him and his security detail in an effort to serve upon him the aforementioned subpoena. The subpoena was received by the Governor's Deputy Chief of Staff. *Id.* at ¶ 2. The Governor notes that he has multiple preexisting commitments scheduled for the day of as well as the day before the October 16th hearing. The Subpoena to Appear does not identify any particular subject or documents sought by its issuance, but rather simply seeks to require the Governor to appear to testify. [Doc 18-1].

This is a case in which Plaintiffs have filed a Complaint for Declaratory and Injunctive Relief [Doc 1] seeking, among other things, to have this Court declare Wyoming Statute § 20-1-101 unconstitutional and declaring that same sex marriages are valid in the State of Wyoming in accordance with Wyo. Stat. § 20-1-111. *Id.* at 21. There are no claims or assertions that Governor Mead has enacted any executive order(s) impacting Plaintiffs.

The issues before this Court revolve around the constitutionality of Wyoming's statutory definition of marriage and the adverse impact(s) this definition is alleged to have upon Plaintiffs. There is no legitimate evidentiary need for the testimony of Governor Mead for this court's resolution of the issues before it. Rather, it appears

Plaintiffs' counsel has engaged in a political stunt, which simply detracts from the merits of the serious legal issues before this court.¹

Pursuant to the Rules of Civil Procedure, Rule 45(d)(3) when required and upon timely motion the court for the district in which compliance is required must quash or modify a subpoena that (i) fails to allow a reasonable time to comply; or (iv) subjects a person to undue burden. In his Motion to Quash Governor Mead asserts that the subpoena does not allow him sufficient time to comply, given his schedule and other pre-existing commitments. While this Court agrees, the short turn around between the filing and scheduling of this matter gave Plaintiffs' counsel little time to subpoena witnesses in advance. Thus, the Court does not fault Plaintiff for the short time between service of the subpoena and the date of appearance. Nonetheless, Rule 45(b)(1) "requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and mileage allowed by law." *Id.* The requisite fee and mileage was not tendered at the time of service upon Governor Mead. However, the more apparent problem is the undue burden that compliance would have upon Governor Mead. His obligations as Governor and many already scheduled appointments place an undue burden upon him, particularly given the absence of any legal or factual

¹ The typical practice in serving subpoenas upon parties represented by counsel is to advise in advance opposing counsel of the intent to serve his or her client with a subpoena, and seek to have counsel accept service on behalf of their client to minimize costs and difficulties in service. That initially was not done in this case. For no good reason.

significance to his testimony in this matter. *See Patel v. Snapp*, 2013 WL 5876435 (D.Kan. 2013).

The Court GRANTS Defendant's Motion to Quash [Doc 18] the Subpoena to Appear based upon the undue burden placed upon the Governor. Counsel for all parties will be well advised, out of court and in court, to focus their energy and argument upon the significant **legal** issues before this Court.

Dated this 13th day of Oct., 2013.



Scott W. Skavdahl
United States District Judge