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Media Release

– November 17, 2009

WEA, ESPC, WTLA join public records case **Oppose governor in dispute before Wyoming Supreme Court**

(Motion and brief available at wyoea.org)

Wyoming citizens deserve accountability and transparency in our Government which is why the Wyoming Education Association (WEA), the Wyoming Trial Lawyers Association, and the Equality State Policy Center (ESPC) today announced that they have filed a motion and brief with the Wyoming Supreme Court, seeking to appear as an amicus curiae, or friend of the Court, in a dispute between the State and Cheyenne’s daily newspaper.

The WEA, ESPC and the WTLA argue in the brief that, “This Court should not recognize a new ‘deliberative process’ privilege in litigation or under the Public Records Act; creation of a new privilege, with far-reaching public policy consequences, belongs to the Legislature, not the Courts.”

The Supreme Court case stems from a lawsuit filed by Cheyenne Newspapers, Inc., against the State of Wyoming when the State refused to make public documents from state agencies containing recommendations to Gov. Dave Freudenthal regarding potential state budget cuts. Cheyenne Newspapers, Inc. argued this violated the Public Records Act. Neither side was happy with the decision by the District Court and subsequently both appealed to the Wyoming Supreme Court.

The WEA, ESPC and the WTLA oppose the State’s claim that there is a “deliberative process privilege” which would allow state officials to suppress release of documents under the Public Records Act and in litigation.

“The Governor essentially claims that any advice he gets is his alone to hear. He contends the

public does not need to know how powerful agency directors think their programs can be cut,” said Dan Neal, executive director of the Equality State Policy Center.

“Worse, this same privilege would soon be claimed by every mayor, commissioner, and cemetery district manager in the state,” Neal said. “Any time they wanted to keep a public record out of public hands, they could claim it is ‘pre-decisional’ and thus privileged information.”

The WEA, ESPC and the WTLA contend that no such privilege exists under Wyoming law, and creating one could prevent public access to large volumes of documents currently available.

“It is essential that the Court appreciate how its decision will impact Wyoming citizens, and potentially change the landscape of litigation in Wyoming forever ... it is inappropriate for the Court to establish by judicial fiat such a far-reaching rule that flies in the face of decades of open government case law, and contravenes core principles of modern discovery in litigation,” they state in the brief.

“But since those issues are present in this case, the Court should hear a broader array of Wyoming citizens as a part of that discussion.”

Often referred to as Wyoming’s “good government watchdog,” the ESPC is a non-profit coalition of organizations devoted to open, accountable government, civic participation by all Wyoming citizens, and public policy research. ESPC member organizations include social and civil justice groups, educators, labor organizations, church groups, sportsmen and environmental organizations.

“We believe that it is critical for the Court to understand that recognition of such a new barrier to public disclosure is not legally justified, and it could profoundly damage the ability of citizens to know what government is doing and hold officials accountable,” said Neal.

The WEA is a non-profit corporation with approximately 6,000 members who are employed in public schools, community colleges, and the University of Wyoming. The interests of the WEA in this matter relate to the fact that the potential recognition of a litigation privilege and an exception to the disclosure requirements of the Wyoming Public Records Act could seriously impair WEA’s ability to protect the rights of its members, and to be able to advocate for and support improvements in education.

The potential adoption of this “privilege” has serious impact on the ability to gather essential information needed in school reform and school finance issues, administrative and court cases dealing with employment issues, as well as potentially severely restricting access to critical information held by the Wyoming Department of Education, State Board of Education, School Facilities Commission, public schools, colleges and other governmental entities.

“WEA strongly believes that the studies, reports, and advice which form the basis for government decisions should be open to the public,” stressed Kathryn Valido, WEA President.

“WTLA stands solidly with the Cheyenne newspaper, the WEA, and the ESPC in favor of the access of citizens and litigants to this information and against a new privilege which is not founded in the existing law,” added Steve Kline, WTLA President.

The WEA, ESPC and the WTLA argue that this case reaches far beyond the issue of a member of the media seeking information for publication. “Every attorney who litigates with a governmental agency or who subpoenas documents or witness testimony from governmental sources, will potentially have to jump a new hurdle over whether the materials and information sought qualify under such a new privilege,” the brief states.

The *amicus* parties ask the Court to hold Wyoming law does not recognize such a privilege against disclosure and that the State’s arguments to create such a sweeping, new doctrine should be left to the legislature where the views of all citizens can be heard and considered.

The motion and brief filed emphasize several major points:

- The State is asking the Court to invent a new right for government to withhold information from the public and in litigation that has never been recognized in 119 years of Wyoming legal cases. The State is asserting the right to keep secret documents and information that constitute any form of advice or information that may be a part of government decision-making. If the State’s request is accepted, access to potentially thousands of documents now routinely provided to the public could be cut off.

- The parties dispute the assertion of the State that public employees and officials cannot render honest, competent advice unless the advice is kept secret from the public and litigants. They contend that such secrecy is contrary to long standing principles of Wyoming government that require openness and transparency.
- The State is asking the Court to recognize a privilege to suppress information on the theory that such a right is somehow embedded in Wyoming common law. The *amicus* parties contend that the claimed privilege is not part of common law and the Court should not invent such a new doctrine now.
- If the Court were to recognize such a privilege, it would be judicially legislating in the dark. The Court would be creating a new doctrine that could undermine existing statutes and cases protecting public access and deny access to critical information in litigation. Judicial proceedings lack the ability to hear and consider the concerns of the diverse categories of citizens that would be affected. There is no valid reason for such a restriction to access. Wyoming government has functioned very well for 119 years without such secrecy. But if the State believes there is a need, the issue should be resolved in the Legislature, where citizens can have input, not in Court case.

The Wyoming Rules of Appellate Procedure provide that persons who are not direct parties may request to file a brief as a “friend of the Court” in situations where the rights of others not represented in the case may be affected or where the *amicus* present an important perspective beyond the arguments of the named parties. The Court, in its discretion, may allow the brief to be filed for the benefit of the Court, but the *amicus* parties are not permitted to argue the case.

Equality State Policy Center member organizations include Wyoming Trial Lawyers Association; Wyoming State AFL-CIO; Wyoming Affiliate American Civil Liberties Union; Biodiversity Conservation Alliance; Brotherhood of Locomotive Engineers; Construction and General Laborers Union, Local 1271; Greater Yellowstone Coalition; International Brotherhood of Electrical Workers, Local 322; Jackson Hole Conservation Alliance; Northeast Wyoming Central Labor Council; Pacific Northwest Carpenters Council, Wyoming Chapter; Operating Engineers, Local 3; Powder River Basin Resource Council, Wyoming Chapter; Northern Plains Office of Sierra Club; Wyoming Chapter of Sierra Club; Southwest Wyoming Central Labor Council; United Association of Plumbers and Pipefitters of America, Local 192; United Steelworkers Union Local 13214; United Transportation Union; Utility Workers Union of America Local 127; Wilderness Society, Wyoming Chapter; Wyoming Association of Churches; Wyoming Building and Construction Trades Council; Wyoming Coalition Against Domestic Violence and Sexual Assault; Wyoming Conference of Electrical Workers; Wyoming Conservation Voters; Wyoming Conservation Voters Education Fund;

Wyoming Education Association; Wyoming Wildlife Federation; Wyoming Wilderness Association.

Wyoming Education Association members include over 6000 Wyoming education employees including certified and non-certified school employees, administrators, higher education employees, students preparing to be educators and retired members.

The Wyoming Trial Lawyers Association is a non-profit association of attorney members established to uphold and defend the Constitution of the United States and to promote the administration of justice for the public good. WTLA strongly supports the principles of transparency, openness, and public access to information, including provisions of the Wyoming Public Records Act and Wyoming Open Meetings Act.