

PAUL ROCK,  
DARI QUIRK,  
    &  
ERNEST KAWA  
Plaintiffs,  
vs.

MARY LANKFORD IN HER )  
OFFICIAL CAPACITY AS )  
SUBLETTE COUNTY CLERK )  
& )  
MAX MAXFIELD IN HIS )  
OFFICIAL CAPACITY AS )  
WYOMING SECRETARY OF STATE )

MARILYN M. JENSEN  
CLERK OF DISTRICT COURT  
PINEDALE WYOMING

COMPLAINT FOR DECLARATORY RELIEF & WRIT OF MANDAMUS

1. This is an action for declaratory relief pursuant to the Uniform Declaratory Judgment Act Wyo. Stat. §1-37-101 to 1-37-115, and Wyo. Stat. §18-5-301, and for a Writ of Mandamus pursuant to Article 5 §10 of the Wyoming state constitution.

2. Plaintiffs bring this action for declaration of their right to vote for three (3) county commissioner candidates in the 2012 Sublette County, Wyoming primary and general elections to be held in August and November 2012.

**Rock, Quirk, and Kawa v. Mary Lankford & Max Maxfield**

general elections, and that upon conclusion of the 2012 general election there shall be five (5) county commissioner members in Sublette County.

4. The Sublette County Clerk on May 9<sup>th</sup> 2012 issued a document entitled "Primary Election Proclamation" indicating that only one (1) commissioner seat shall be filled upon conclusion of the 2012 primary and general elections, in contravention of Wyo. Stat. 18-5-301 and Article 1§ 6 and Article 6 §13 of the Wyoming State Constitution, and otherwise without legal authority. Said Proclamation effectively and illegally negates the vote of Plaintiffs, and the lawful election held August 16<sup>th</sup> 2011, the conclusion and results of which mandate that the Clerk issue a Proclamation indicating that three (3) commissioner seats will be filled upon conclusion of the 2012 primary and general elections in Sublette County, thereby affirming the August 16<sup>th</sup> 2011 election results as legally required. Attached as **exhibit one (1)** is the official Proclamation bearing the seal of the Sublette County Clerk indicating that only one (1) county commissioner office will be filled upon conclusion of the 2012 primary and general elections.
5. The County Clerk pursuant to Wyo. Stat. §22-2-109 is required to issue a Proclamation which sets forth inter alia the number of persons required **by law** to fill the offices. The Clerk has failed to issue a Proclamation to lawfully fill the requisite three (3) county commission offices as required, and instead has issued a Proclamation dated May 9<sup>th</sup> 2012 which unlawfully indicates that only one (1) commissioner office will be filled.
6. The County Clerk is the chief election officer in Sublette County pursuant to Wyo. Stat. §22-2-103, and is obligated to ensure that elections are in strict

conformity with the legal requirements of the Wyoming Election Code, Constitution, and additionally in this instance Wyo. Stat. §18-3-501.

7. Max Maxfield, Wyoming Secretary of State, is the chief election officer of the State of Wyoming and pursuant to Wyo. Stat. §22-2-103 is charged with maintaining uniformity in the application and operations of the election laws of the State of Wyoming. Defendant Maxfield has failed to enforce the election laws by failure to require affirmation of the August 16<sup>th</sup> 2011 election, failure to require that a Proclamation issue which provides that three (3) commissioners will be seated during the 2012 elections, allowing an illegal election to take place on May 8<sup>th</sup> 2012, acquiescence in quashing the illegal Proclamation dated May 9<sup>th</sup> 2012, and failure to require that the Sublette County Clerk comply with the mandates of Wyo. Stat. §18-5-301.

#### **Jurisdiction and Venue**

8. This Court has personal and subject matter jurisdiction pursuant to the Uniform Declaratory Judgment Act Wyo. Stat. §1-37-101 to 1-37-115; W.R.A.P. 12.12; W.R.C.P. 57; and Article 5 §10 of the Wyoming State Constitution. Venue is proper pursuant to Wyo. Stat §1-5-104(a)(ii), as all facts and circumstances arise from Defendants' conduct or unlawful acquiescence in their official capacities as duly elected public officers, as it pertains to the aforementioned elections in Sublette County, Wyoming.
9. Plaintiffs each voted to increase the number of county commissioner offices from three (3) to five (5) during the August 16<sup>th</sup> 2011 election, and are proper parties to the controversy due to Defendants' failure to issue a Proclamation that three (3) commission offices will be

filled during the 2012 elections, thereby unlawfully rendering Plaintiffs' lawful August 16<sup>th</sup> 2011 vote null and void and against their best interest constitutional rights as above enumerated. Attached as **Exhibit two (2)** are the official results of the August 16<sup>th</sup> 2011 election increasing the Sublette County Board of Commissioner offices from three (3) to five (5). Attached as **exhibit three (3)** are the official results of the May 8<sup>th</sup> 2012 election.

10. Plaintiff's Rock and Kawa have been additionally injured in fact due to the mathematical impossibility that both can be elected if only one commission seat is filled in 2012, and the mathematical probability that both are less likely to be elected commissioner if the present Proclamation and anticipated election stand.
11. A Proclamation is the final document of the Clerk indicating the offices up for election and the number of offices to be filled, pursuant to Wyo. Stat. §22-2-109. County Clerk Lankford has repeatedly evidenced her intent that only one (1) county commissioner will be seated upon conclusion of the 2012 elections. Attached as **exhibit four (4)** is an email sent by County Clerk Lankford on March 16<sup>th</sup> 2012 in which she effectively asserts that the May 8<sup>th</sup> 2012 election supersedes the August 16<sup>th</sup> 2011 election.
12. Plaintiffs are each qualified and registered members of the Sublette County electorate pursuant to Article 6 §5 of the Wyoming State Constitution, and are residents of Sublette County, Wyoming, and were at all times pertinent hereto.

#### **Facts Common To All Counts**

13. On or about August 16<sup>th</sup> 2011, the electorate of Sublette

County lawfully voted to increase the Sublette County Board of Commissioners from three (3) members to five (5) members, the election having been in compliance with all applicable laws including but not limited to Wyoming Statute §18-3-501.

14. On or about May 8<sup>th</sup> 2012 Defendant Lankford in her official capacity as Sublette County Clerk conducted an election not in compliance with Wyoming Statute §18-3-501 or other applicable law, upon conclusion of which the electorate voted to decrease the Board of Sublette County Commissioners from five (5) to three (3) offices.
15. Defendant Lankford lacked legal authority to hold the election May 8<sup>th</sup> 2012, purportedly negating the prior election conducted August 16<sup>th</sup> 2011, and said 2012 election results should be set aside and deemed null and void, and the results of the lawful August 16<sup>th</sup> 2011 election should be affirmed by Order of this Court, superseding the May 8<sup>th</sup> 2012 election results.
16. Wyoming Statute §18-3-501 is the primary legal authority controlling an increase or decrease in the membership of Board of County Commissioners in the State of Wyoming.
17. Wyoming Statute §18-3-501(f) provides in pertinent part, "Any county may decrease the **membership** (emphasis added) of its board of county commissioners from five (5) to three (3) members in the same manner as an increase under subsection (b) and (c) of this section." There is presently no membership to decrease, only vacant commission offices.
18. Wyoming Statute §18-3-501(b) states in pertinent part, "Additional offices created under this subsection in odd-numbered years **shall** (emphasis added) be filled in the general election next following the election at which the increase was approved."

19. The unambiguous wording of the foregoing statute mandates that the offices created upon conclusion of the election held August 16<sup>th</sup> 2011 shall be filled at the general election to be held in 2012, and that any subsequent election to decrease the board can only take place after an election seating additional members has taken place, after the 2012 general election.

**First Claim For Relief**  
**Declaratory Relief**

20. Plaintiffs re-allege and incorporate herein by reference all of the paragraphs of this Complaint as if more fully set forth herein.
21. Pursuant to the Uniform Declaratory Judgments Act, the Court has power to "declare rights, status and other legal relations whether or not further relief is or could be claimed." Wyo. Stat. Ann. §1-37-102.
22. The Uniform Declaratory Judgments Act is remedial and is to be liberally construed and administered. Wyo. Stat. Ann. §1-37-102.
23. In the context of administrative agency action, a party is not required to exhaust administrative remedies before seeking declaratory relief regarding the power of an entity to act. See *Director of Office of State Lands and Investments v. Merbanco*, 70 P.3d 241, 246 (Wyo 2003).
24. The existence of another remedy does not preclude a judgment for declaratory relief in cases where appropriate. (W.R.C.P. 57).
25. The relief, review, or redress available in suits for declaratory judgment based on agency action or inaction, in actions seeking any common law writ to compel, review, or restrain agency action, shall be available by independent action notwithstanding any Petition For Review. W.R.A.P. 12.12; *Wyoming Community College Commission v. Casper Community College Dist., et al.* 2011

WY 86, ¶13.

26. Plaintiffs request that this Court declare that Wyo. Stat. §18-5-301 mandates that the Sublette County Clerk issue a Proclamation indicating three (3) Sublette County commission offices will be filled upon conclusion of the 2012 elections, and mandate that five (5) commission offices shall exist thereafter, unless and until a legal election reduces the commission offices.
27. Plaintiffs further request that the Court declare that the May 8<sup>th</sup> 2012 election is null and void and not in conformity with law.
28. Plaintiffs further request the Court affirm the August 16<sup>th</sup> 2011 election results and declare that said election supersedes and negates the May 8<sup>th</sup> 2012 election results.

**Second Claim For Relief**  
**Writ of Mandamus**

29. Plaintiffs re-allege and incorporate herein by reference all of the paragraphs of this Complaint as if more fully set forth herein.
30. Plaintiffs seek a writ of mandamus from the Court  
Ordering the Sublette County Clerk and Secretary of State to immediately issue a Proclamation indicating that three (3) commissioner offices will be filled upon conclusion of the 2012 elections.

WHEREFORE, Plaintiffs pray the Court:

1. Award all relief sought and requested by Plaintiffs in paragraphs one (1) through twenty nine (29) of this Complaint.
2. Declare that the August 16<sup>th</sup> 2011 election results are affirmed and shall have full force and effect, and supersede the May 8<sup>th</sup> 2012 election results.
3. Declare and Issue a Writ of Mandamus that a  
Proclamation shall immediately issue from the Sublette  
County Clerk in comport with law whereby three (3)

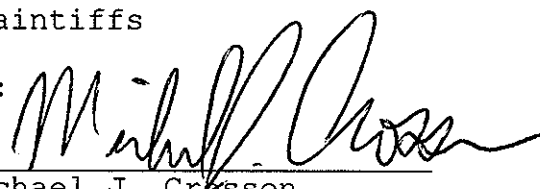
Sublette County Commission offices shall be filled upon conclusion of the 2012 elections, resulting in a board comprised of five (5) commissioner members.

4. Through affirmation of the August 16<sup>th</sup> 2011 election results declare the May 8<sup>th</sup> 2012 election results null and void and of no future or retroactive effect.
5. Declare that the May 8<sup>th</sup> 2012 election results are not in conformity with Wyo. Stat. §18-5-301.
6. Declare and mandate that the electorate of Sublette County, Wyoming shall be presented with a Proclamation and voting ballots that indicate three (3) county commission offices will be voted upon and filled upon conclusion of the 2012 elections.
7. Declare and mandate that the Sublette County Clerk shall prepare and present to the electorate ballots which reflect that up to three (3) county commissioner candidates may receive the vote of each elector during the 2012 elections.
8. Declare that the actions/inactions of the County Clerk and Secretary of State rendering Plaintiffs' August 16<sup>th</sup> 2011 vote null and void is violative of Article 1 §6 and Article 6 §13 of the Wyoming State Constitution.
9. For such other and further relief as the Court deems just and equitable.

Dated this 18<sup>th</sup> day of June, 2012.

Paul Rock  
Dari Quirk  
&  
Ernest Kawa  
Plaintiffs

By:

  
Michael J. Crosson  
Crosson Law Office P.C.  
P.O. Box 1910  
219 E. Pine St. # 202  
Pinedale, WY 82941

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(307) 367-4529  
(307) 367-7121 (fax)  
Attorney No. 6-3597

**PRIMARY ELECTION PROCLAMATION**

**SUBLETTE COUNTY, WYOMING**

**PRIMARY ELECTION DAY: TUESDAY, AUGUST 21, 2012**

**FILING DATES: MAY 17 through JUNE 1, 2012**

**FILING OFFICE:** Candidates for Federal and State  
Legislative offices file with the Secretary of  
State.

Candidates for County and Precinct offices file  
with the County Clerk.

**LAST DAY TO REGISTER TO VOTE: MONDAY, AUGUST 6, 2012.**

**VOTER REGISTRATION WILL BE PERMITTED AT THE POLLS ON PRIMARY  
ELECTION DAY.**

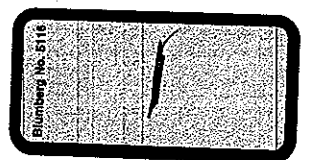
**PARTISAN OFFICERS TO BE NOMINATED BY EACH PARTY**

<u>No.</u>	<u>TITLE</u>	<u>TERM</u>
1	U.S. Senator	6 yr.
1	U.S. Representative	2 yr.
1	State Senator, District 14	4 yr.
1	State Senator, District 16	4 yr.
1	State Representative, District 20	2 yr.
1	State Representative, District 22	2 yr.
1	County Commissioner	4 yr.
1	County Assessor	2 yr.

**TITLES AND TERMS OF OFFICE TO BE ELECTED AT THE PRIMARY**

<u>No.</u>	<u>TITLE</u>	<u>TERM</u>
11 pr.	Republican Precinct Committeemen & Committeewomen	2 yr.
8 pr.	Democratic Precinct Committeemen & Committeewomen	2 yr.

**CAMPAIGN FILING REQUIREMENTS**



EVERY candidate, whether successful or not, must file a Statement of Receipts and Expenditures by August 31, 2012. **A candidate must file the statement as required by law before receiving a certificate of election.**

Every Candidate's Campaign Committee and Political Action Committee shall file a Statement of Campaign Receipts and Expenditures by August 31, 2012.

If you require assistance to vote by reason of blindness, disability, or inability to write, you may be given assistance by a person of your choice. If you have questions regarding the accessibility of your polling place, please contact your County Clerk.

Any person who expects to be absent from his place of residence on Election Day, or who cannot be present at his precinct polling place on Election Day because of illness, injury, disability, old age or tenets of his religion, may apply for an absentee ballot in person, in writing, or by telephone, at the Office of the County Clerk, Sublette County Courthouse, P.O. Box 250, Pinedale, WY 82941, 367-4372, 276-3827, or maryl@sublettewyo.com. Absentee ballots may be requested through August 20, 2012, at your County Clerk's Office.

DATED THIS 9TH DAY OF MAY, 2012.

/s/Mary L. Lankford  
Sublette County Clerk

Publish in the Sublette Examiner, May 15, 2012.

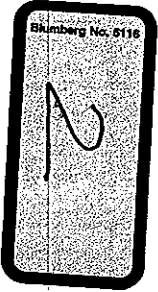
INCREASE THE BOARD OF COUNTY  
COMMISSIONERS ELECTION

OFFICIAL RESULTS

Shall the membership of the Board of County Commissioners be increased from three (3) to five (5)?

<u>POLLING PLACE:</u>	<u>PINEDALE</u>	<u>BOULDER</u>	<u>MARBLETON</u>	<u>CORA</u>	<u>DANIEL</u>	<u>BONDURANT</u>	<u>TOTALS</u>
FOR	324	37	84	52	33	32	562
AGAINST	180	64	203	26	48	10	531
TOTALS	504	101	287	78	81	42	1093

REGISTERED VOTERS	1611	484	961	327	242	187	3812
TURNOUT	504	101	287	78	81	42	1093
PERCENTAGE (%)	31.28%	20.87%	29.86%	23.85%	33.47%	22.46%	28.67%



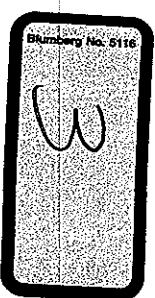
DECREASE THE BOARD OF COUNTY  
COMMISSIONERS ELECTION

OFFICIAL RESULTS

Shall the membership of the Board of County Commissioners be decreased from five (5) to three (3)?

POLLING PLACE:	PINEDALE	BOULDER	MARBLETON	CORA	DANIEL	BONDURANT	TOTALS
FOR	368	114	329	43	93	27	974
AGAINST	468	78	131	66	55	34	832
TOTALS	836	192	460	109	148	61	1806

REGISTERED VOTERS	1673	492	998	327	255	191	3936
TURNOUT	836	192	460	109	148	61	1806
PERCENTAGE (%)	49.97%	39.02%	46.09%	33.33%	58.04%	31.94%	45.88%



## Mary Lankford

**From:** Mary Lankford [maryl@sublettewyo.com]  
**Sent:** Friday, March 16, 2012 1:53 PM  
**To:** 'ernie@erniekawa.com'  
**Subject:** RE: Article in Examiner

Ernie—

Sorry for the slow response to your question. With having Commissioners last Friday, my work schedule has been disrupted this week.

This is the answer to your question.

W.S. 18-3-501(f) provides the authority for the proposition to decrease the size of the commission, as well as the authority to submit the proposition to vote in May. That statute states that the "vote to decrease membership shall be in the general election or at an election date authorized under W.S. 22-21-103 preceding the election of three (3) commissioners" Since the County is now scheduled to have an election of three (3) commissioners this fall, W.S. 18-3-501(f) when read in conjunction with W.S. 22-21-103, requires that the vote to decrease the size of the Board be held on the "...Tuesday following the first Monday in May..." In the event that the proposition to decrease the size of the Board passes, the two vacant offices are eliminated. Therefore, the provisions of 18-3-501(b), which only pertain to "filling" the "[a]dditional offices created under this subsection," no longer apply, because there are no additional offices to fill.

Mary Lankford

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**From:** [ernie@erniekawa.com](mailto:ernie@erniekawa.com) [mailto:[ernie@erniekawa.com](mailto:ernie@erniekawa.com)]  
**Sent:** Friday, March 09, 2012 6:00 AM  
**To:** Mary Lankford  
**Subject:** Article in Examiner

Mary,

I read in the Examiner dated 3/6/2012, the following: Lankford said that if the May ballot was to pass, the vote would precede November's general election and negate the results of the previous voted increase in commissioners. "It is my understanding that if this election passes, when we call the proclamation for the election this summer, then we would be at three. So it would switch it before it goes to the ballot for additional commissions," she said.

My question is in reference to your statement "It is my understanding ...": Can you tell me what state statute authorizes this switch before it goes to ballot? State statute 18-3-501 (b) which basically says that votes to increase (or decrease) the number of county commissioners in odd number years take effect at the next election. The vote to go to 5 was held last year, so the increase takes place at this year's election. It goes on to say if a vote to increase (or decrease) is voted on in an even numbered year, which will take place this year, that action would take place two years from now, or in 2014.

This seems pretty specific, nothing here about switching back and forth. Your clarification would be appreciated.

Thanks,  
Ernie

