



EQUALITY STATE
POLICY CENTER

An Independent Voice for Wyoming
EQUALITY STATE POLICY CENTER

Spring 2013 Newsletter

Celebrate spring with news from the ESPC

Our spring ESPC newsletter brings you the highlights (or lowlights) of the 2013 general session of the Wyoming Legislature, along with news of related activities important to Wyomingites and the places where they live and work.

First, the 2013 Legislature. Last year at this time we reported that the 2012 budget session of the Wyoming Legislature was one of the most successful in years for the ESPC. Unfortunately, the 2013 session was not. The 2012 election produced changes in personnel and ideologies that adversely affected issues of interest to the ESPC.

We did manage to kill several particularly onerous pieces of legislation, with the help of our ESPC Alert List and the Friends of the ESPC. Even in these polarized times, citizen action makes a difference!

Gov. Mead vetoed a bill that would have denied unemployment compensation to workers fired for inadvertent violations of company rules.

A tip pooling bill that would have taken tips earned by one employee to pay others died near the end of the session in a conference committee.

Read more inside this report about both these bills and a few positive pieces of successful legislation supported by the ESPC, including:

- Two bills aimed at improving worker safety;
- Prohibition of human trafficking;
- A 10-cent hike in fuel taxes that will shore up the highway system;
- More funding for the public pension system.

Thanks to years of advocacy by the ESPC coalition, a wealth of information about legislative actions is available on the Legislature's website, legisweb.state.wy.us.

Each of the following descriptions of legislative action includes the information needed for you to look up the votes online to see how your legislators voted (the website will even help you identify your legislators). We hope you'll take the opportunity.

Please consider signing up to receive our Email Alerts. Action at the Wyoming Legislature happens quickly. Our Alert List enables us to inform and mobilize people quickly when public comment is crucial on an important issue. (Read more about this opportunity on the back page.)



Legal protections for Wyo workers attacked

The 2013 session may be remembered most for its efforts to weaken laws and the safety net that protect the state's workers.

The Legislature made it legal for an employer to take earned vacation pay and also voted to make it virtually impossible for a discharged worker accused of misconduct to obtain Unemployment Compensation.

HB237 – Unemployment insurance-worker misconduct

Sponsor: Rep. Tom Reeder, R-HD58, Casper

See votes: legisweb.state.wy.us/2013/Digest/HB0237.htm

See veto message: legisweb.state.wy.us/2013/Enroll/HB0237V1.pdf

As introduced, the bill would have placed into statute the tenets of a 1986 Wyoming Supreme Court decision that have guided the award of unemployment insurance benefits when an employee is fired for misconduct.

In order to deny benefits, the decision declared that a worker's conduct had to rise above mere negligence and be shown to have been intentionally, willfully, and wantonly contrary to the employer's rules and policies.

The ESPC had no major issue with the bill as originally written or as it passed the House. On the Senate floor, however, Sen. Charles Scott, R-SD30-Casper, successfully amended the bill to strike language that said misconduct does not include "ordinary negligence ... or good faith errors."

When the bill passed with the Senate changes approved by the House, the ESPC called on Gov. Mead to veto the bill, and set its citizen alert list in motion. We noted that a worker who simply complained about management decisions or misinterpreted company policy could be charged with misconduct, fired, and receive no unemployment benefits.

The governor agreed, saying in his veto message that "... it could be interpreted that in no case would a discharged employee be eligible for unemployment insurance."

Human trafficking barred in Wyoming

HB133 – Human trafficking

Sponsor: Rep. Cathy Connolly, D-HD13, Laramie

See votes: legisweb.state.wy.us/2013/Digest/HB0133.htm

One of the Legislature's most significant progressive policy steps was passage of a state law prohibiting human trafficking. Wyoming is the 50th state to adopt such a law, which is aimed particularly at preventing sex trafficking. It puts laws in place that will allow local authorities to charge and prosecute in state courts criminals who essentially are slavers. It also establishes a defense for criminal acts committed while a victim of human trafficking. Students from the University of Wyoming and two ESPC member groups, the Wyoming Association of Churches and the Wyoming Coalition Against Domestic Violence and Sexual Assault, played major roles in this successful lobbying effort.

Vacation pay theft legalized

HB79 – Collection of unpaid wages

Sponsor: Rep. Tim Stubson, R-HD56, Casper

See votes: legisweb.state.wy.us/2013/Digest/HB0079.htm

Despite its disingenuous title, this bill allows employers to impose an agreement on workers that allows the employer to avoid paying earned vacation pay if the employee leaves the job, no matter what the reason.

It is legislation by definition: the new law removes earned vacation time from the legal definition of wages. The employer must have written policies in place that make clear that accrued vacation will be forfeited upon termination of employment. The employer also must require the employee to acknowledge the forfeiture policy in writing.

The proponents describe this as a simple deal between employer and employee. But in that relationship, the employer always has the upper hand. Once the law takes effect, will employers make signing the termination agreement a condition of future employment for people who now work for them? And can anyone without a union contract expect to see earning vacation time as part of their wages in the workplace?

A worker who delays taking vacation at an employer's request also puts her vacation time at risk. The employer later could decide to discharge the employee before she used the vacation. Some other intervening life event likewise could result in loss of the vacation time.

A FEW WINS FOR WORKERS

Tip pooling

HB112 – Tip distribution policies

Sponsor: Rep. Ruth Ann Petroff, R-HD16, Jackson

See votes: legisweb.state.wy.us/2013/Digest/HB0112.htm

We defeated a tip-pooling measure pushed by the Wyoming Lodging & Restaurant Association. Tip pooling allows restaurants to require a primary server to give a percentage of her tips to her employer, which in turn could be used to pay the minimum wage to other workers. The bill further reduced minimum wage obligations of restaurants by enabling the classification of more restaurant workers, such as bussers and hosts, as tipped employees.

Wyoming's minimum wage for tipped employees is \$2.13/hour. Federal law also requires employers to make up the difference to a tipped employee if tips plus the \$2.13/hour fail to reach the federal minimum wage of \$7.25/hour; this is known as the "tip offset." The tip pooling bill legalized taking tips from one employee to pay at least part of the "tip offset" to other workers, thereby reducing the employer's obligation. Testimony in conference committee reveals that some Wyoming employers currently require tip pooling, an apparent violation of state law.

The tip pooling bill failed only when the House and Senate could not resolve differences over a Senate amendment prohibiting the use of the pooled tips to pay the "tip offset."

Fuels tax

HB69 – Highway funding

Sponsor: Joint Revenue Interim Committee

See votes: legisweb.state.wy.us/2013/Digest/HB0069.htm

The ESPC supported increasing Wyoming's fuels tax from 14 cents to 24 cents per gallon, bringing the Wyoming tax in line with surrounding states. When the measure was considered by the Senate Revenue Committee, the ESPC proposed an amendment to blunt the regressivity of the tax. The amendment would have paid a rebate to lower-income working families who qualify for the federal Earned Income Tax Credit. The committee declined to consider the idea.

Job safety – railroad crossings and Workers Compensation discounts

HB95 – Railroad crossings – on-track vehicles

Sponsor: Rep. Stan Blake, D-HD39, Green River

See votes: legisweb.state.wy.us/2013/Digest/HB0095.htm

HB52 – Workplace safety initiatives

Sponsor: Speaker Tom Lubnau, R-HD31, Gillette

See votes: legisweb.state.wy.us/2013/Digest/HB0052.htm

Two successful bills promise improvement for job safety. House Bill 95 protects workers charged with maintaining tracks and crossings. It simply requires drivers to pay attention and stop for on-track vehicles used by these crews. Drivers approaching a rail crossing must stop if they can see an on-track vehicle approaching or working at the crossing and must obey signals, whether human or mechanical, warning of the presence of on-track equipment, just as they do for railroad trains.

House Bill 52 builds on legislation passed in 2012 that expanded the state OSHA office's courtesy inspection and consultation program and offered matching grants to employers to purchase safety equipment or to institute safety programs. The 2013 legislation allows employers a discount of up to 10 percent on Workers Compensation insurance premiums if they comply with the health and safety consultation program. State officials say the employer will get a 3 percent discount if they go through a consultation and mitigate any safety issues identified. The 3 percent discount remains in effect for three years after compliance is certified. Employers will have to meet additional requirements to get a second-level discount of 6% or the third-level discount of 10 percent. The discount will remain in effect barring a fatality on a company's job site or a catastrophe in which three or more workers are seriously injured.

The ESPC continues to advocate for more compliance inspections of hazardous worksites and stiffer penalties for violation of worker safety laws.

Medicaid Expansion: At least they brought the idea to the floor

Senate File 122 – Expansion of Medicaid;

Sponsor: Sen. John Hastert, D-SD13, Green River

See votes: legisweb.state.wy.us/2013/Digest/SF0122.htm

See House vote on expansion amendment offered by Rep.

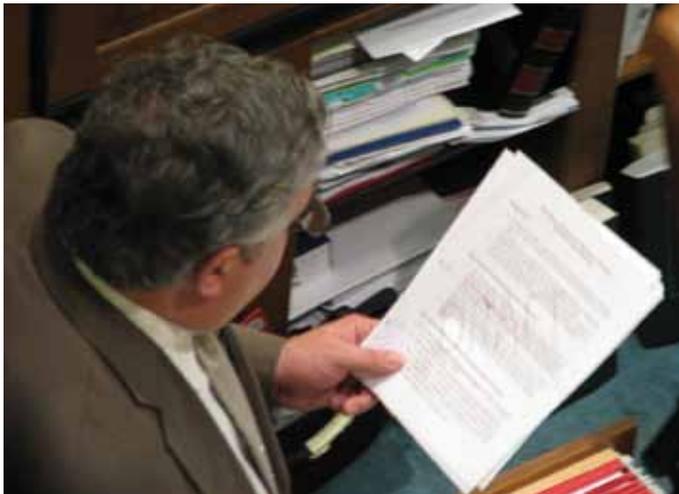
Dan Zwonitzer, R-HD43, Cheyenne, and Rep. Lee Filer,

D-HD12, Cheyenne on Feb. 22 to SF60 – Medicaid reform:

<http://legisweb.state.wy.us/2013/Digest/SF0060.htm>

The Affordable Care Act (ACA) lays a foundation under the nation's health care system by ensuring that virtually all Americans have insurance. Experts see full coverage as the necessary first step as the health care reform law strives to turn the system toward preventive care and management of chronic diseases and other problems. The effort will move the system away from the current framework based on paying for procedures.

As originally envisioned under the ACA, Americans with incomes under 133% of the federal poverty level would be covered under an expansion of the existing



Sen. John Hastert, bill sponsor, consults notes.

Medicaid program. When the U.S. Supreme Court upheld the ACA in the summer of 2012, however, the justices held that the federal government could entice states to expand their Medicaid programs, but could not force them to do so. Thus each individual state is deciding whether to expand its Medicaid program.

Wyoming has one of the country's most restrictive Medicaid programs. Although many people assume that Medicaid covers all low-income people, in fact it provides coverage only to people in certain categories: aged, blind, and disabled; children; pregnant women; and caretaker adults. A sick adult male who has not been designated as disabled cannot get any coverage from Medicaid, no matter how poor. These individuals have no choice but to seek whatever health care they need in the emergency room.

The ESPC joined the Wyoming Coalition for Medicaid Expansion, which includes the Wyoming Hospital

Association, the Primary Care Association, and many other provider groups, and advocates like Wyoming AARP, League of Women Voters, and the Wyoming Business Coalition on Health. Hospitals and other health care providers know that if more people have insurance coverage, bills will be paid and that will help reduce the soaring costs of indigent care, thereby stabilizing our state's health care system.

There was no organized effort to lobby against SF122 – Medicaid expansion. However, the groups in the Wyoming Coalition for Medicaid Expansion faced stiff opposition from legislators themselves, many of whom view Medicaid as an "entitlement" that should be reduced, rather than as social insurance that should be expanded.

Gov. Matt Mead did not support the expansion but left the door open to exploring its advantages. These became evident when the director of the Wyoming Department of Health reported that adopting the expansion would save Wyoming millions of dollars in offset expenditures (services currently being financed from other state funds that would be picked up by the Medicaid expansion). Opponents then shifted their attack, saying the federal government cannot be trusted to meet its promise to pay all of the expansion costs through the years 2014-2016 and 90 percent of the cost thereafter.

During the session and since, a number of conservative governors in the region who had opposed the ACA saw the benefits to the system and supported the expansion in their states.

In a meeting with the expansion advocates, the Governor said he will make the health department director available to speak around the state about the costs and benefits of expansion. Expansion advocates, for their part, will strive to explain the program to the public and work to address the argument that the federal government cannot be trusted to pay its share of the program costs.

The Governor also said he will enter discussions with the federal Department of Health and Human Services to determine whether Wyoming can tailor a program that the feds will accept and the Legislature will support.

In late March, the ESPC participated in a public forum on the ACA in Worland. Attendees, mostly small business owners, wanted accurate information about how the ACA affects them, their business, and their employees. Look for similar opportunities to learn about the health care reform law and the Medicaid Expansion in your community this summer.

ELECTIONS

Campaign Finance bill closes PAC loop hole

but opens door for bigger individual contributions

HB187 – Campaign finance

Sponsor: Rep. Tim Stubson, R-HD56, Casper

See votes: legisweb.state.wy.us/2013/Digest/HB0187.htm

Campaign finance has long been an area of interest for both the ESPC and the League of Women Voters. We believe limits on spending make it possible for people without personal fortunes to compete on a more equal footing with wealthier candidates.

After several years of trying, the ESPC finally succeeded in closing a loophole in state campaign finance law that allowed individuals to form a Political Action Committee (PAC) and give unlimited contributions to candidates. Although the new finance law closes this loophole, it also opens the door for individuals who can afford to put plenty of money into campaigns. The law more than doubles the amount individuals can contribute to individual candidates.

House Bill 187 limits PAC contributions to statewide candidates to \$7,500 per election (the primary and general elections are considered two elections) and \$3,000 per election to legislative and other candidates.

The overall giving limit for an individual was doubled from \$25,000 in a two-year election cycle to \$50,000. Individual contribution limits were hiked from \$1,000 per election to \$2,500 – more in line with federal limits but very high for Wyoming, where contested legislative races typically cost between \$10,000 and \$20,000.

Finally, the bill cut the civil penalty for violating contribution limits from \$10,000 to \$5,000 for the first violation and \$10,000 for subsequent violations.

The delayed effective date for the new law means it takes effect Jan. 1, 2015 – after the current election cycle.

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Felon voting rights

HB 129 – Voting rights

Sponsor: Rep. Dan Zwonitzer, R-HD43, Cheyenne

See votes: legisweb.state.wy.us/2013/Digest/HB0129.htm

Thanks to previous legislation supported by the ESPC, nonviolent felons can have their voting rights restored five years after completion of all terms of sentence or probation. The 2013 bill would have reduced the waiting period to one year and directed the Department of Corrections, which holds the essential records, to handle the paperwork necessary to complete the restoration of voting rights.

The bill cruised through the House and made it through two readings in the Senate before falling prey – again – to the idea that encouraging civic participation by people who have paid their debt to society somehow means we’re getting soft on crime. It failed on the closest of votes, 15 ayes to 14 noes. A bill must receive a majority of the Senate to pass, so 16 aye votes are required.

Voter Identification killed but will be considered in interim

SF 134 – Voter identification

Sponsor: Sen. Ogden Driskill, R-SD1, Devils Tower

No votes; bill withdrawn after hearing in committee

In keeping with national trends seeking to disenfranchise minority voters, voter identification (voter ID) bills keep cropping up in the Wyoming Legislature, even though voter fraud in Wyoming is next to non-existent. So far, the ESPC and its allies have successfully opposed voter ID bills, and did so once again during the 2013 session. But the subject will come up again during an interim study of state election laws.

The Joint Corporations, Elections, and Political Subdivisions Interim Committee will review voter ID with a focus on residency requirements. Other election change concepts that have so far failed as legislation also will be examined, such as an open primary system and restricting the ability of voters to switch parties when they vote at the primary election. In addition, the Secretary of State’s Office asked the committee to look at how the changes to campaign finance law affect its electronic reporting system, another voter service the ESPC worked hard to establish.

Equal rights for all – again, the victory was in having the discussion

HB168 – Domestic Partnerships-rights and responsibilities

Sponsor: Rep. Cathy Connolly, D-HD13, Laramie

See votes: legisweb.state.wy.us/2013/Digest/HB0168.htm

HD169-Marriage-definition

Sponsor: Rep. Cathy Connolly, D-HD13, Laramie

See committee vote: legisweb.state.wy.us/2013/Digest/HB0169.htm

SF131 – Discrimination

Sponsor: Sen. Chris Rothfuss, D-SD9, Laramie

See votes: legisweb.state.wy.us/2013/Digest/SF0131.htm



Three bills gave Wyoming the opportunity to live up to its moniker as the Equality State.

The House Corporations, Elections and Political Subdivisions Committee heard the two House bills, one authorizing domestic partnerships in Wyoming, the second changing state law to allow marriages between “two natural persons” – rather than a “man and a woman.” The domestic partnership bill proposed to grant the same kinds of legal protections enjoyed by married couples to individuals committed to same-gender domestic partnerships.

After taking public comment for about 75 minutes from proponents and opponents of both bills, committee chairman Rosie Berger, R-HD51, Big Horn, noted that it was a mistake to pair the two bills, as different issues were involved in each.

But both bills attracted the time-worn and discredited arguments that a person chooses their sexual orientation and gender identity. Several witnesses and legislators made very negative comments about advocates for equality in domestic partnerships. Rep. Jim Byrd, D-HD44, Cheyenne, son of the first African-American woman to serve in the Wyoming Legislature, pushed back and declared some comments “distasteful.”

He said he asked himself how Dr. Martin Luther King would have addressed the question. “He would tell us that people are created equal.”

HB 169 proved a non-starter, but HB 168, the domestic partnerships bill, was approved 7-2 by the House committee. Supporters thought they had the votes to go forward, but the bill failed on a 25-34 vote after its first debate on the House floor.

The Senate bill made it illegal to discriminate against people because of sexual orientation or gender identity by simply adding that language to the nondiscrimination clauses throughout state law (housing, lending, etc.).

SF 131 easily passed the Senate Judiciary Committee, but failed on the Senate floor on a 13-17 vote.

Compromise delivers more funding for public pension system

HB250 – Public employee retirement plans

Sponsor: Rep. Steve Harshman, R-HD37, Casper

See votes: legisweb.state.wy.us/2013/Digest/HB0250.htm



A legislative compromise achieved in the last week of the Wyoming Legislature’s general session will pour more than \$34.4 million into the state’s “Big Plan” over the next five fiscal years, according to calculations by the Legislative Service Office.

The “Big Plan” covers most state and local workers, including public school employees. HB 250 covers the Big Plan as well as the Highway Patrol-Game Warden-DCI Plan and the Fireman B Plan. Legislators sought the increased contributions to improve the funding ratio of the plans.

HB 250 nearly failed on Feb. 22 when a conference committee could not resolve differences between the House and Senate versions of the bill. Fearing that the loss of the bill might open a door for more onerous legislation in a future session, three ESPC member organizations, including the Wyoming Education Association, the Wyoming Public Employees Association and the Federated Fire Fighters of Wyoming, brokered a compromise that included more contributions from both employees and employers to buttress the retirement plans.

(continued on page 7)

For the Big Plan and the Highway Patrol plan, the state will pay half of the increased employee contribution for the three years starting Sept. 1. Thereafter, employees in the Big Plan will pay the full 0.5 percent increase, assuming no further legislative action; and participants in the Highway Patrol-Game Warden-DCI plan will pay the full 0.9 percent increase.

The bill increases the employers' contributions to both plans by 0.5 percent of salary starting Sept. 1, 2014.

The bill requires a .225% increase of participants in the Fireman B plan. Employer contributions are calculated based on the liabilities of the plan. A corresponding employer increase was not specified in the new law.

In 2012, the Legislature enacted a requirement that the Big Plan must be 100 percent funded before Cost of Living Adjustments can be granted to retirees. Projections then indicated there likely would be no COLAs for at least 30 years, meaning pension values would decline with inflation. The additional funding, coupled with the Wyoming Retirement System's success in the market lately, means that recently retired individuals may see COLAs in their lifetime, the WPEA says.

What's next?

Although the 2013 General Session itself offered few positive pieces of legislation on our issues, we convinced legislative leaders to take up several important issues during the interim period. We'll track these interim discussions and advocate actively on most of them.

Accountable process: The ESPC asked the Select Committee on Legislative Technology and Process to consider recording more votes, particularly votes on amendments. Most floor votes on amendments are by voice or by standing count. Individual votes are not recorded. The ESPC also believes that the conference committee meeting times and locations should be made available in writing, both on the Legislature's website and on notice boards in the Capitol.

Medicaid expansion: The Legislature still can enact the Medicaid Expansion in 2014. The Joint Labor, Health and Social Services Interim Committee will focus on this topic and others related to implementation of the Affordable Care Act.

Public pensions: The Joint Appropriations Interim Committee kept the public pension system high on its priority list for study in 2013. It will study the plans for fire fighters, game wardens and highway patrolmen; evaluate contribution levels, and consider the possibility of consolidating plans.

Severance tax rates: Rare earth minerals, gold, and other valuable minerals fall under the default severance tax rate of 2 percent. Plans for a new mine to extract rare earth minerals from mountains near Devils Tower in northeast Wyoming, as well as from Sweetwater County, make this discussion timely.

Tax exemptions: Wyoming has offered sales tax exemptions to various industries, believing the breaks might make a difference when a company considers locating in the state. No evidence has so far surfaced to buttress this claim, so the ESPC advocates eliminating these revenue losses.

Workers' Compensation: As part of our long-term effort to make sure legislative service is a possibility for state residents of more modest means, we asked the Management Council to study providing Workers' Comp coverage to legislators. Legislators should not worry that an accident while driving to and from a session or an interim committee meeting or while sitting in an official legislative meeting might leave them unable to work or facing high medical bills. A quick assessment by system administrators indicates coverage for each legislator would cost only a few hundred dollars annually.

The Joint Interim Labor, Health and Social Services Interim Committee will take up Workers' Compensation safety programs and rules when it meets June 4 and 5 in Casper. It also will review the appeals processes in Unemployment Compensation and Workers' Compensation.

Worker safety: The Department of Workforce Services will deliver a report to the Joint Minerals, Business and Economic Development Interim Committee on the success of recently approved safety incentive programs. We'll analyze that report to see if further legislative action is needed.

Energy policy: The Joint Minerals Committee has been directed to study the integration of the Governor's Energy Plan "between the executive and legislative branches, institutes of higher education and the public sphere."

Sagebrush rebellion, again: A bill funding a study of a state takeover of federal lands in Wyoming, including national parks, was fundamentally changed by a gubernatorial veto. The governor reduced the executive branch's participation nearly to zero. The bill creates a task force of two representatives and two senators. The task force is directed to report by Nov. 1 to the Joint Agriculture, State and Public Lands and Water Resources Interim Committee on the possibilities of the transfer or purchase of federal lands.

OTHER WORK THIS SPRING

Workers Memorial Day commemoration

There's no issue more important to Wyoming's working families than worker safety. Wyoming continues to have one of the worst fatality rates in the nation. The ESPC and its friends at the Wyoming State AFL-CIO, Wyoming Trial Lawyers Association and the Spence Association for Employee Rights continue to make ensuring the health and safety of workers one of our top priorities.

On April 29, we hosted our second annual Workers Memorial Day commemoration in Casper to remember the workers killed on the job last year, including 23 in



Wyoming alone and more than 4,600 across the nation. Kathy Morgan, the widow of David Morgan, talked about the effect of a workplace death not just on a family, but to their communities and the state.

Ed Simmons, father of Anthony Simmons, lamented the death of his son on a Casper construction site on April 10 and demanded to know why policy-makers have failed to impose tougher penalties on employers who place workers in dangerous positions without the training they need.

The ESPC will continue to keep this issue before policymakers. Meanwhile, we have planned a safety training workshop for Spanish-speaking immigrants who work in construction, mining, and other hazardous industries in the Gillette area on June 15. Workers need to know how to identify safety problems on their job sites and they need to know their rights under the law to bring those problems to the attention of their bosses.

Torrington group challenges water & sewer district election

Three members of CORAJE, the Leadership Council that the ESPC has helped organize in Torrington, ran for seats on the South Torrington Water and Sewer District board of directors on March 19.

Unfortunately, they ran into serious problems with the conduct of the election. The polls were not open for the hours required by state law. The district said voters had to be registered 14 days prior to the election and sent out a flyer noting that "...ID is required to vote."

The ESPC is working with its member group, the Wyoming Chapter of the American Civil Liberties Union, on behalf of the CORAJE candidates.

While the water and sewer district officials probably did not intend to act improperly, serious problems occurred: providing misinformation to voters, turning away prospective voters, failing to stay open during required polling hours, and failing to plan for absentee votes. These all resulted in the disfranchisement of voters, which ultimately affected the results of the election.

The CORAJE candidates and a number of other residents of the district filed a petition in district court contesting the results. The case is pending.

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Many of you receiving this mailing aren't on our Email Alert List. As you know, especially during the legislative session but also throughout the year, things can happen quickly – in Cheyenne and around the state. When they do, we send out an email Alert to let people know about current and upcoming developments and to ask you to take action. It takes just a minute to sign up and you'll be part of our statewide network of informed, active citizens. Just go to our web site (www.equalitystate.org) and click on the "Sign Up Today" button under "Sign Up for E-Alerts." Then you can make E-comments on the Legislature's Online Hotline!

We also send out Alerts to let people know about upcoming legislative committee meetings and hearings, as well as ESPC and member organization events (such as our very successful pension town hall meetings last fall). Please sign up today so that you can join with others all over the state who take critical action on issues that are important to working people.

Again, just go to our web site and click on the "Sign Up Today" button on the right side of the screen.