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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

DR. FREDERICK WILLIAM “ERIC”)	
CUBIN III,)	
)	
Plaintiff,)	
)	
v.)	Case No. 24-CV-00164
)	
MARK GORDON, in both his personal and)	
official capacities as Governor of Wyoming,)	
)	
Defendants.)	

ANSWER

Defendant Governor Mark Gordon, in his individual and official capacities, hereby answers the Complaint and states as follows:

INTRODUCTION

1. Defendant admits that plaintiff was a member of the Wyoming Board of Medicine until his resignation therefrom on April 22, 2024. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 1 and, therefore, denies those allegations.

2. The referenced email, attached as Exhibit “1” to the complaint, speaks for itself. Defendant admits that plaintiff made allegations against the other physicians in the referenced email. Defendant denies that paragraph 2 accurately or completely set forth the terms of the email.

3. The first sentence of paragraph 3 sets forth a legal conclusion to which no response is required. Defendant admits that Senate File 99 passed, was signed by defendant and became law effective July 1, 2024. Defendant otherwise denies the allegations of paragraph 3.

4. The referenced email speaks for itself. Defendant denies that paragraph 4 accurately or completely sets forth its terms.

5-7. Defendant denies the allegations of paragraphs 5 through 7.

PARTIES

8. Defendant denies plaintiff was removed from the Wyoming Board of Medicine. Defendant admits that plaintiff served on the Board of Medicine, including during the period alleged in paragraph 8, until his resignation on April 22, 2024. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 8 and, therefore, denies those allegations.

9. Defendant admits the allegations of paragraph 9.

JURISDICTION AND VENUE

10-11. Paragraphs 10 and 11 state legal conclusions to which no response is required. To the extent any allegations are made therein against defendant, they are denied. Defendant denies that the Court has subject matter jurisdiction under the Eleventh Amendment to the United States Constitution.

12. Defendant admits the allegations of paragraph 12.

FACTUAL ALLEGATIONS

A. The Wyoming Board of Medicine

13-17. Defendant admits the allegations of paragraphs 13 through 17 to the extent they are consistent with the cited statutes. Defendant denies those allegations to the extent they are

inconsistent with the cited statutes.

18-20. Defendant admits the allegations of paragraphs 18 through 20.

21. Defendant denies the allegations of paragraph 21.

B. Chloe's Law

22. Defendant admits the allegations of paragraph 22 to the extent they are consistent with Senate File 99. Defendant denies the allegations of paragraph 22 to the extent they are not stated in, or consistent with, the referenced bill.

23-29. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraphs 23 through 29 and, therefore, denies those allegations.

C. Dr. Cubin's Email to the Wyoming House of Representatives

30. Defendant admits the allegations of paragraph 30.

31-36. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraphs 31 through 36 and, therefore, denies those allegations.

37. Defendant admits that plaintiff sent the referenced email after receiving no response from other physicians that satisfied him. Defendant admits that plaintiff sent an email to members of the Wyoming House of Representatives on February 28, 2024, a copy of which is attached to the complaint as Exhibit "1". Defendant denies paragraph 37 accurately or completely sets forth its terms.

38-40. The referenced email speaks for itself. Defendant denies that paragraphs 38 through 40 accurately or completely set forth its terms.

41. Defendant admits the allegations of paragraph 41.

42. Defendant denies the allegations of paragraph 42.

43. Defendant admits that Senate File 99 passed, was signed by the Governor and

enacted into law effective July 1, 2024. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 43 and, therefore, denies those allegations.

D. Governor Gordon's Response to Dr. Cubin's Speech

44. Defendant admits that a copy of the referenced letter is attached to the complaint as Exhibit "2". The referenced letter speaks for itself. Defendant denies that paragraph 44 accurately or completely sets forth its terms.

45. Defendant denies the allegations of paragraph 45.

46. Defendant admits the allegations of paragraph 46.

47. The referenced letter speaks for itself. Defendant denies that paragraph 47 accurately or completely sets forth its terms.

48. The referenced email speaks for itself. Defendant denies that paragraph 48 accurately or completely sets forth its terms.

49. The referenced letter speaks for itself. Defendant denies that paragraph 49 accurately or completely sets forth its terms.

50-51. Defendant denies the allegations of paragraphs 50 and 51.

52. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 52 and, therefore, denies those allegations.

53. Defendant denies the allegations of paragraph 53.

54. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 54 and, therefore, denies those allegations.

55. Defendant denies the allegations of paragraph 55.

56. Defendant admits that plaintiff resigned from the Wyoming Board of Medicine

on April 22, 2024. Defendant admits that plaintiff communicated his resignation again on April 26, 2024 by e-mail, a true and correct copy of which is submitted herewith as Exhibit “A”. Defendant admits that Exhibit “3” is a copy of a letter to plaintiff, which speaks for itself. Defendant denies that paragraph 56 accurately or completely sets forth the terms of the letter. Defendant denies that plaintiff was forced to resign and denies any remaining allegations of paragraph 56.

CLAIMS FOR RELIEF

COUNT ONE

**42 U.S.C. § 1983 – First Amendment Retaliation
(Against Governor Gordon in his personal and official capacities)**

Governor Gordon retaliated against Dr. Cubin because he exercised his First Amendment Free Speech Rights in communicating with the Wyoming House of Representatives and advocating for Chloe’s Law

57. Defendant repeats and incorporates by this reference the responses set forth above.

58. Defendant admits that paragraph 58 accurately quotes a portion of the First Amendment.

59-67. Paragraphs 59 through 67 state legal conclusions to which no response is required. To the extent any allegations are made therein against defendant, they are denied.

68. Defendant denies the allegations of paragraph 68.

69. Defendant admits that the referenced email refers to a pending piece of legislation. Defendant denies the remaining allegations of paragraph 69.

70. Defendant denies the allegations of paragraph 70.

71. Paragraph 71 states legal conclusions to which no response is required. To the extent any allegations are made therein against defendant, they are denied.

72-77. Defendant denies the allegations of paragraphs 72 through 77.

78-79. Paragraphs 78 and 79 state legal conclusions to which no response is required.

To the extent any allegations are made therein against defendant, they are denied.

COUNT TWO
42 U.S.C. § 1983 – First Amendment Retaliation
(Against Governor Gordon in his personal and official capacities)

Governor Gordon retaliated against Dr. Cubin because he exercised his First Amendment Free Speech right to petition the Wyoming House of Representatives by expressing his ideas, hopes, and concerns about Chloe’s Law

80. Defendant repeats and incorporates by this reference the responses set forth above.

81-84. Paragraphs 81 through 84 state legal conclusions to which no response is required. To the extent any allegations are made therein against defendant, they are denied.

85. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 85 and, therefore, denies those allegations.

86. Defendant denies that plaintiff was removed from the Wyoming Board of Medicine. As admitted by plaintiff in this lawsuit, he resigned from the Wyoming Board of Medicine. Defendant denies the remaining allegations of paragraph 86.

87-91. Defendant denies the allegations of paragraphs 87 through 91.

92-93. Paragraphs 92 and 93 state legal conclusions to which no response is required.

To the extent any allegations are made therein against defendant, they are denied.

COUNT THREE
(Against Governor Gordon in his official capacity)

Governor Gordon violated Dr. Cubin's free speech rights and right to petition under the Wyoming State Constitution

94. Defendant repeats and incorporates by this reference the responses set forth above.

95-96. Defendant admits the allegations of paragraphs 95 and 96.

97. Paragraph 97 states legal conclusions to which no response is required. To the extent any allegations are made therein against defendant, they are denied.

98. Defendant denies that he removed plaintiff from the Wyoming Board of Medicine, in retaliation or otherwise. As admitted by plaintiff in this lawsuit, he resigned from the Wyoming Board of Medicine. Defendant denies the remaining allegations of paragraph 98.

99-100. Defendant denies the allegations of paragraphs 99 and 100.

PRAYER FOR RELIEF

Defendant denies that plaintiff is entitled to any relief herein. Defendant acted lawfully, properly and appropriately in this matter.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Qualified immunity bars plaintiff's 42 U.S.C. § 1983 claims against defendant in his individual capacity.

THIRD AFFIRMATIVE DEFENSE

The Court should abstain from taking or exercising jurisdiction over this matter.

FOURTH AFFIRMATIVE DEFENSE

This action is barred by the Eleventh Amendment immunity.

WHEREFORE, defendant requests that the Court dismiss this matter with prejudice, plaintiff taking nothing hereby, award defendant his costs incurred herein and grant defendant such other and further relief as the Court deems proper.

DATED this 19th day of September, 2024.

/s/Timothy W. Miller

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Attorney for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that on this 19th day of September, 2024, a true and correct copy of the foregoing **Answer** was served as indicated below:

D. Stephen Melchior
Melchior Law Firm, P.C.
2010 Warren Avenue
Cheyenne, WY 82001
steve@melchlaw.com

CM/ECF

/s/Kailie D. Harris

Kailie D. Harris, Paralegal

Office of the Wyoming Attorney General

I hereby resign from the Wyoming State Board of Medicine effective immediately.

Eric Cubin

Sent from my iPhone

On Apr 23, 2024, at 2:27 PM, Betsy Anderson <betsy.anderson@wyo.gov> wrote:

[Quoted text hidden]

E-Mail to and from me, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.