

IN THE SUPREME COURT, STATE OF WYOMING

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STATE OF WYOMING  
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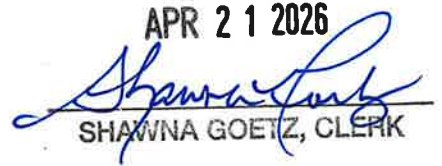
MATTHEW MALCOM, JEFF THOMAS, )  
JIM ROOKS, JOSHUA MALCOM, )  
CHRISTINA KITCHEN, and JIM ROSCOE, )

Appellants (Plaintiffs), )

v. )

CHUCK GRAY, in his capacity as Wyoming )  
Secretary of State, )

Appellee (Defendant). )

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S-26-0029

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AMICUS BRIEF OF THE EQUALITY STATE POLICY CENTER  
AND THE LEAGUE OF WOMEN VOTERS OF WYOMING  
IN SUPPORT OF APPELLANTS AND REVERSAL

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## INTEREST OF *AMICI CURIAE*

*Amici* are nonpartisan nonprofit organizations that share a commitment to ensure that all voters – including those from traditionally underrepresented or underserved communities (such as first-time voters, non-college youth, new citizens, communities of color, the elderly, and low-income citizens) – have the opportunity to exercise their constitutionally protected right to vote.

The Equality State Policy Center’s (“ESPC”) fundamental philosophy is that a representative democracy works better for all Wyomingites when it is inclusive and accessible to all of its citizens – starting with ensuring Wyoming’s elections are open, free and equal, and that its election infrastructure maintains public trust. ESPC has conducted extensive research, produced policy briefs, and advocated against partisan political tactics that reduce citizen participation in elections. Its mission is to advance fair elections and transparent government in support of all Wyoming citizens.

The League of Women Voters of Wyoming (“LWVWY”) is likewise dedicated to encouraging informed and active participation in government, including through civic education, get out the vote efforts, voter registration promotion, and the advocacy for voter’s rights in Wyoming.

*Amici* believe that Wyoming’s election laws are increasingly missing the mark. Instead of being aimed at encouraging voter participation, they have become among the most restrictive in the Country. The Anti-Crossover statutes at issue in this appeal, along with other recent statutory amendments, impermissibly place restrictions and barriers on

Wyoming voters and elections in contravention of the declaration of rights espoused in art. I, §§ 3 and 27 of the Wyoming Constitution.

## STATEMENT OF JURISDICTION

*Amici* concur with Appellants' Statement of Jurisdiction.

### INTRODUCTION

Voting is of the most fundamental right under the Wyoming Constitution. *Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974) (citations omitted) (“The right to vote is a fundamental right entitled to the strict protection of the courts”).

As aptly stated by the United States Supreme Court in 1964:

**No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.** Other rights, even the most basic, are illusory if the right to vote is undermined.

*Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535 (1964) (emphasis added). For these reasons, the federal courts have reiterated (in the context of challenges to state voting laws under protections afforded by the United States' Constitution), that *any* qualification of the right to vote, including burdens which may appear “slight,” are subject to scrutiny. *Fish v. Schwab*, 957 F.3d 1105, 1124 (10th Cir. 2020); *accord Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 and 210, 128 S. Ct. 1610, 1616 and 1627-28 (2008) (citation omitted) (Souter, J., dissenting). It follows, then, that due to the unique and more robust protections contained in the Wyoming Constitution, our fundamental right to vote is even more deserving of the highest level of safeguarding.

The Wyoming Constitution guarantees that all Wyoming citizens will enjoy political equality and that Wyoming laws affecting such political rights and privileges will be without distinction of race, color, sex, or *any circumstance or condition whatsoever*.

Wyo. Const. art. I, § 3. The Wyoming Constitution further mandates that elections shall be open, free and equal, and the government shall protect the untrammelled exercise of the right of suffrage. Wyo. Const. art. I, § 27. Sadly, the recent amendments to Wyo. Stat. Ann. §§ 22-5-212 and 22-5-214 (the “Anti-Crossover statutes”) contravene the very rights the Wyoming Constitution guarantees.

The Anti-Crossover statutes prevent Wyoming electors from declaring, changing, or cancelling party affiliation during a “freeze period” prior to the primary election and require that all party affiliation actions occur 96-days prior to the primary election – a time period *before* applications for candidate nominations must be filed. *See*, Wyo. Stat. Ann. §§ 22-5-212; 22-5-214; and Wyo. Stat. Ann. § 22-5-209. The Anti-Crossover statutes impermissibly add extra-constitutional qualifications and barriers, which both impede Wyoming citizens’ rights to cast meaningful votes and degrade the “free, equal and open” nature of our elections.

The district court characterized Wyoming primary elections as mere “nomination” exercises in order to rule that they are not entitled to the same constitutional protections that general elections enjoy. But Wyoming’s Constitution makes no such distinction – it applies to all elections. Wyo. Const. art. I, § 27. Moreover, when viewed in context, the primary election is where the real choice in our government’s representatives are now made. Thus, it is of especially great public importance that Wyoming’s citizens have meaningful access to vote in the primary election, and that those elections be conducted in accord with the values expressed in the Wyoming Constitution. *Wesberry v. Sanders*, 376 U.S. at 17 (emphasis added) (“No right is more precious...than that of having a voice in

the election of those who make the laws under which, as good citizens, we must live”). This brief is submitted to urge this Court to evaluate the Anti-Crossover statutes and their effect within the cumulative context of Wyoming’s growing single party dominance combined with new voter restrictions and other attempts to further limit voter participation in Wyoming’s elections as it decides whether the statutes are indeed unconstitutional as advocated by Appellants and *Amici* alike.

## ARGUMENT

### **I. The Anti-Crossover Voting Statutes Must Be Evaluated in Cumulative Context**

Wyoming’s electoral landscape is shaped by a combination of one-party dominance, low electoral competitiveness, and administrative barriers to voter participation. Within this system, the new Anti-Crossover statutes further restrict who may participate in primaries—the very elections where meaningful electoral choice exists. These restrictions do not operate in isolation; rather they interact with, *inter alia*, historically low voter turnout, aggressive voter roll purges, and documentary proof of citizenship, and proof of residency requirements to limit the ability of citizens to engage in the only competitive contests in the state. These factors demonstrate how Wyoming’s election laws act both individually and cumulatively to constrain access to meaningful participation, meaningful access, and the exercise of electoral choice. The burdens imposed by the Anti-Crossover statutes are contrary to the Wyoming Constitution’s guarantee of open, free and equal elections and further fail to “prevent an untrammelled exercise of the right of suffrage” as promised by our founders.

## **A. Electoral Competition is Key to Higher Voter Participation and Wyoming's One-Party Dominance Limits Electoral Competition**

Empirical research indicates that electoral competition is associated with higher voter participation: voters in competitive districts are more likely to turn out than those in less competitive or noncompetitive districts, and exposure to competitive elections can increase participation over time.<sup>1</sup>

In Wyoming, meaningful electoral competition occurs most predominantly in the primary elections; however, participation in these primaries is limited by factors such as party registration and timing, and overall turnout remains low. As a result, while competition generally promotes engagement, the structure of Wyoming's electoral system constrains access to competitive primary elections, contributing to persistently low voter participation.

Considered the most Republican-dominated state in the country by the Cook Partisan Voting Index,<sup>2</sup> Wyoming has not elected a Democrat to a major state office or the U.S. Congress since Dave Freudenthal left the governor's seat in 2011. All Wyoming U.S.

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<sup>1</sup> *The Turnout Effects of Redistricting Institutions*, Brennan Center for Justice (Oct. 28, 2025), <https://www.brennancenter.org/our-work/research-reports/turnout-effects-redistricting-institution>; Robert Ainsworth, Emanuel Garcia Munoz & Andres Munoz Gomez, *District Competitiveness Increases Voter Turnout: Evidence from Repeated Redistricting in North Carolina*, 19 *Quarterly Journal of Political Science* 387 (2024).

<sup>2</sup> *Cook Partisan Voting Index*, Wikipedia, [https://en.wikipedia.org/wiki/Cook\\_Partisan\\_Voting\\_Index](https://en.wikipedia.org/wiki/Cook_Partisan_Voting_Index).

congressional representatives and the highest state officers, along with over 90% of state legislators, are Republicans.

This dominance of the Republican Party has coincided with a decline in the viability of the Democratic Party. In 2024, to the extent the Democratic Party even fielded candidates in the primary election, for the most part those candidates ran without competition for the party's nomination.<sup>3</sup> For the Democratic Party to remain a major party in Wyoming, its candidate for U.S. Representative, Governor, or Secretary of State must receive at least ten percent (10%) of the vote in the general election.<sup>4</sup> While this benchmark has been consistently met (albeit barely), in the 2024 general election, only one of those seats was up for re-election, meaning that votes for the Democratic candidate running for Wyoming's U.S. House seat were the sole determinant of maintaining major party status.<sup>5</sup>

The overwhelming Republican Party dominance has effectively shifted real electoral competition to the Republican Party primaries, where voters have meaningful choices, while general elections are largely uncompetitive and the Democratic Party struggles to remain a viable alternative for electors. Moreover, only one independent candidate has been elected to the Wyoming legislature in recent decades. As a result,

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<sup>3</sup> *2024 Wyoming Primary Election Results*, Wyoming Secretary of State (Aug. 20, 2024), [https://sos.wyo.gov/Elections/Docs/2024/Results/Primary/2024\\_Wyoming\\_Primary\\_Election\\_Results.pdf](https://sos.wyo.gov/Elections/Docs/2024/Results/Primary/2024_Wyoming_Primary_Election_Results.pdf).

<sup>4</sup> Wyo. Stat. Ann. § 22-1-102.

<sup>5</sup> Maggie Mullen, *Wyoming Democrats Urge Their Voters to 'Come Home' as Party Numbers Sag*, WyoFile (Oct. 15, 2024), <https://wyofile.com/wyoming-democrats-urge-their-voters-to-come-home-as-party-numbers-sag>.

actionable ideological disagreement, policy direction, and candidate differentiation in Wyoming occur almost entirely within the Republican Party itself, making its primary elections the principal venue in which Wyoming voters can exercise meaningful electoral choice.

**Of note, in 2024, 77% of state legislative races in the 2024 general election were uncontested.**<sup>6</sup> Thus, the outcome for those districts was decided in the August primary. This lack of general election competition evidences that voters excluded from primary elections are effectively excluded from meaningful electoral participation.

To make matters worse, voter turnout even in the primaries is historically low. Voter turnout in the 2024 primary was the lowest of any primary election since 2016 with only twenty-seven percent (27%) of the voting age population voting.<sup>7</sup> Low turnout in primary elections is especially concerning as primaries are highly dispositive in Wyoming elections as stated above. The upshot of such low turnout and lack of general election competition is that, in 2024, **81% of state legislative seats** were decided by the **27% of eligible voters** who cast ballots in the partisan primary election.<sup>8</sup>

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<sup>6</sup> *2024 Wyoming General Election Results*, Wyoming Secretary of State (Nov. 5, 2024), [https://sos.wyo.gov/Elections/Docs/2024/Results/General/2024\\_Wyoming\\_General\\_Election\\_Results.pdf](https://sos.wyo.gov/Elections/Docs/2024/Results/General/2024_Wyoming_General_Election_Results.pdf).

<sup>7</sup> *Wyoming Voter Registration and Voter Turnout Statistics*, Wyoming Election Division (Nov. 2024), <https://sos.wyo.gov/Elections/Docs/VoterProfile.pdf>.

<sup>8</sup> *Id.*; *2024 Wyoming Primary Election Results*, Wyoming Secretary of State (Aug. 20, 2024), [https://sos.wyo.gov/Elections/Docs/2024/Results/Primary/2024\\_Wyoming\\_Primary\\_Election\\_Results.pdf](https://sos.wyo.gov/Elections/Docs/2024/Results/Primary/2024_Wyoming_Primary_Election_Results.pdf); *2024 Wyoming General Election Results*, Wyoming Secretary of State (Nov. 5, 2024),

Wyoming taxpayers fund Wyoming primary elections and our county officials administer them as they do general elections.<sup>9</sup> It is therefore vital that any laws enacted by the legislature impacting primary elections be free from any extra-constitutional qualifications or burdens that may prevent, impede, or discourage Wyoming voters from exercising the electoral franchise. Wyoming’s laws should encourage and expand voter participation – not curtail it.

**B. Wyoming’s Aggressive Voter Removal Process Narrows the Electorate**

Wyoming is exempt from the National Voter Registration Act (NVRA), which restricts states from purging eligible voters solely based on their inactivity.<sup>10</sup> Congress exempted Wyoming and five other states because they had either no voter-registration requirements or, like Wyoming, offered election-day registration, meaning those states had eliminated a significant obstacle to voting.<sup>11</sup> Unfortunately, Wyoming has used this exemption to create more obstacles and further curtail voter participation, by creating the quickest and most aggressive voter removal process in the nation, the effects of which are

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[https://sos.wyo.gov/Elections/Docs/2024/Results/General/2024\\_Wyoming\\_General\\_Election\\_Results.pdf](https://sos.wyo.gov/Elections/Docs/2024/Results/General/2024_Wyoming_General_Election_Results.pdf).

<sup>9</sup> Wyo. Stat. Ann. § 22-1-102 (xiii) (definition of “Election”); Wyo. Stat. Ann. § 22-2-123 (all costs and expenses relating to elections shall be paid with public funds).

<sup>10</sup> 52 U.S.C. § 20507(d)(1); *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 775 (2018).

<sup>11</sup> 52 U.S.C.A. § 20503(b); *The National Voter Registration Act of 1993 (NVRA)*, U.S. Department of Justice, Civil Rights Division, <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> (last visited April 6, 2026).

further compounded by the burdens of the new proof of citizenship requirements created by HB 156 (codified at Wyo. Stat. § 22-1-102(a)(lvi)).<sup>12</sup>

Wyoming law dictates that county clerks must remove any registered voter from rolls if they do not vote in a single general election (including midterms).<sup>13</sup> In 2022, after the midterm elections, **over 86,000 voters** were purged from the state’s voter rolls.<sup>14</sup> This represented about **28%** of all registered voters in Wyoming.<sup>15</sup> Most of the removals were due to voters who failed to vote in just *one* general election. Removal of 28% of all registered voters significantly narrowed Wyoming’s electorate given that in 2022, there were 446,379 persons of voting age and yet only 287,014 (64%) were registered to vote in the first instance.<sup>16</sup> Moreover, since at least 2014, Wyoming has remained in the bottom half of the states in terms of registered voters as a share of the voter population in Wyoming, falling as low as 49th in November of 2014 and remaining in the bottom 10 states as recently as November 2024.<sup>17</sup>

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<sup>12</sup> *Voter Registration List Maintenance: Removing Voters for Lack of Voting-Related Activity*, National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/voter-registration-list-maintenance> (last updated April 6, 2026).

<sup>13</sup> Wyo. Stat. Ann. § 22-3-115.

<sup>14</sup> *Voter Registration Statistics*, Wyoming Secretary of State, <https://sos.wyo.gov/Elections/VRStats.aspx> (last visited April 5, 2026) (*compare* 2022 statistics with 2023 and 2024 statistics).

<sup>15</sup> *Id.*

<sup>16</sup> *Wyoming Voter Registration and Voter Turnout Statistics*, Wyoming Election Division (Nov. 2024), <https://sos.wyo.gov/Elections/Docs/VoterProfile.pdf>.

<sup>17</sup> *Number of Voters and Voter Registration as a Share of the Voter Population*, KFF, <https://perma.cc/8TYH-5CE4> (last visited April 6, 2026).

Voters who are purged must register again. While those voters can re-register even on election day, the Anti-Crossover statutes, as written, prevent them (and all other voters) from receiving a party ballot in a primary election unless they declare their party affiliation before the freeze period.<sup>18</sup> Moreover, as discussed further below, Wyoming’s new documentary proof of citizenship requirements further curtails this re-registration ability and will further reduce Wyoming’s electorate.

**C. Identification Requirements Add Administrative and Cost Barriers  
Leading to Further Voter Disenfranchisement**

In 2025, the Wyoming legislature enacted Wyo. Stat. § 22-1-102(a)(lvi) which, for the first time, requires every voter in Wyoming to provide documentation to prove their citizenship. The documentary proof of citizenship (“DPOC”) requirements apply to all methods of registration (including election-day registration) and affect both first-time registrants and already registered voters seeking to return to the polls. Undoubtedly, the new requirements will make voting in Wyoming more difficult across the board.

Even prior to Wyo. Stat. § 22-1-102(a)(lvi) and its new and confounding DPOC requirements, Wyoming had one of the most cumbersome registration systems in the country as one of only eight states that does not allow online voter registration.<sup>19</sup> The time it takes to obtain DPOC will now impede one of the few voter-friendly aspects of

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<sup>18</sup> Wyo. Stat. § 22-5-212.

<sup>19</sup> Ballotpedia *Online Registration by State*, [https://ballotpedia.org/Online\\_voter\\_registration](https://ballotpedia.org/Online_voter_registration) (updated March 2026).

Wyoming’s registration system: election-day registration. Many voters who realize they lack the requisite proof of citizenship on or near Election Day will not be able to vote and the new requirements may deter eligible voters from seeking to register altogether.

Implementation of the law requires voters to now present specific forms of documentation that may differ from the identification previously accepted for voting purposes, adding steps at the point of registration.<sup>20</sup> These include passports and birth certificates. There are costs associated with obtaining these documents and the time and energy involved is also significant. Individuals may have to navigate a bureaucracy including state, county, and municipal agencies, find notaries and “credible witnesses,” make photocopies, and submit to weekslong (or longer) wait times.<sup>21</sup> These hurdles may also affect older Wyoming residents and those with disabilities, who are less likely to drive or have state-issued IDs.<sup>22</sup>

United States citizens who could formerly register in Wyoming with a student ID, state or federal employment ID, military ID, or ID cards issued to military dependents can no longer rely on those documents to register to vote. For example, there are approximately

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<sup>20</sup> *Compare Registering to Vote in Wyoming: Acceptable Identification for Registering to Vote, and Proof of United States Citizenship for Registering to Vote*, Wyoming Secretary of State, <https://sos.wyo.gov/elections/state/registeringtovote.aspx> (last accessed April 6, 2026), *with* W.S. 22-1-102(a)(xxxix)(A) (2024).

<sup>21</sup> Such can be particularly problematic for persons leaving abusive relationships who may leave behind critical paperwork that will need to be replaced through these processes.

<sup>22</sup> *See Wyoming AARP Says Photo IDs to Vote Would Alienate Many Senior Voters*, Cowboy State Daily (Jan. 2, 2025), <https://cowboystatedaily.com/2025/01/02/wyoming-aarp-says-photo-ids-to-vote-would-alienate-many-senior-voters>.

35,000 University of Wyoming and Wyoming Community College students, as well as eligible voters still in high school, who are now subject to the new DPOC requirements, but may not be able to comply.<sup>23</sup> Students are more likely than the average population to be away from home, increasing the likelihood that they hold a non-REAL ID out-of-state driver's license or lack access to important documents like a birth certificate.

In all, Wyoming residents will face significant burdens obtaining the requisite documentation to comply with Wyo. Stat. § 22-1-102(a)(lvi) with those impacts felt most acutely in communities that already struggle to participate in the democratic process, and in a state that already has a highly restrictive electoral environment – especially compared to neighboring states.

**D. Wyoming's Existing Election Laws Already Contribute to a Restrictive Electoral Environment in Comparison to Neighboring States.**

When comparing the electoral environment of Wyoming to that of its neighboring states (Idaho, South Dakota, and Montana), Wyoming has the most restrictive voter list maintenance laws, voter identification requirements, and party affiliation policies. The following chart illustrates these points:

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<sup>23</sup> See *University of Wyoming Enrollment Summary Spring 2025*, [https://www.uwyo.edu/oia/\\_files/enrollment/spring-2025-beg-of-semester.pdf](https://www.uwyo.edu/oia/_files/enrollment/spring-2025-beg-of-semester.pdf); *Wyoming Community Colleges at a Glance 2024-25*, <https://www.wacct.org/wp-content/uploads/WACCT-Community-Colleges-At-A-Glance-2024-25.pdf>.

<b>Electoral Factor</b>	<b>Wyoming</b>	<b>Idaho</b>	<b>Montana</b>	<b>South Dakota</b>
Party affiliation change <sup>24</sup>	Before 1st day to file for candidacy	The last day of candidate filing for a primary election	Open primaries – no restrictions	15 days before primary election
Voter roll maintenance <sup>25</sup>	Purged if a single general election is missed	Registration cancelled after failure to vote in past 4 years	Voters removed after up to 8 years of inactivity (following nonresponse to address confirmation and 2 inactive general elections)	Registration cancelled after 8 years of inactivity
ID Requirements <sup>26</sup>	Must present proof of name, residence, and citizenship	A single form of ID is required	Single photo ID or qualifying proof of name and current address	A single form of ID required
Election competitiveness (uncontested races in state legislature in 2024) <sup>27</sup>	77%	25%	14%	43%

### **E. The Grounds for Recent Amendments are Pretextual**

It is particularly concerning that the recent amendments to Wyoming election laws were passed, not due to administrative need or legitimate anti-fraud measures, but rather as pretextual “election integrity” measures.

For example, Secretary Gray contends that the Anti-Crossover statutes serve “election integrity” by discouraging “party raiding.” R. 213-14. Yet he has never provided

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<sup>24</sup> National Conference of State Legislatures, *Voter Party Affiliation Deadlines for Primaries*, <https://www.ncsl.org/elections-and-campaigns/voter-party-affiliation-deadlines-for-primaries>.

<sup>25</sup> National Conference of State Legislatures, *Voter Registration List Maintenance*, updated October 21, 2025, <https://www.ncsl.org/elections-and-campaigns/voter-registration-list-maintenance>.

<sup>26</sup> National Conference of State Legislatures, *Voter ID Laws* (updated June 2, 2025), <https://www.ncsl.org/elections-and-campaigns/voter-id>.

<sup>27</sup> Ballotpedia, *Election Results, 2024: Uncontested Races by State*, [https://ballotpedia.org/Election\\_results,\\_2024:\\_Uncontested\\_races\\_by\\_state](https://ballotpedia.org/Election_results,_2024:_Uncontested_races_by_state).

any evidence that “party raiding” has occurred in any Wyoming primary election, or that it has ever come close to impacting the outcome of any primary election. This Court should not be bamboozled. The Anti-Crossover statutes serve no administrative, anti-fraud, or other legitimate governmental purpose. They were designed to advance the partisan interests of the Republican Party and, as such, they are a clear legislative overreach and must be deemed unconstitutional.<sup>28</sup>

### CONCLUSION

The Wyoming Constitution guarantees the people open, free and equal elections and commands the legislature to protect against the “trammeling” of the people’s fundamental electoral rights. The Anti-Crossover statutes contravene those limits, to the great detriment of Wyoming’s citizens. The Court should find that the Anti-Crossover statutes violate Article 1, Sections 3 and 27, of the Wyoming Constitution and reverse the district court’s summary judgment order.

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<sup>28</sup> *See, e.g.*, Applt.’s Br., pp. 16-17, 26, 45, 55 (explaining that Wyo. Stat. § 22-5-212 is not narrowly tailored because it unambiguously closes the primary election entirely to people who only qualify as electors during the Freeze Period, such as those moving to Wyoming or who turn eighteen during that time period despite Secretary Gray’s attempt, through his “Directive” to read exemptions into HB 103 not found in its express language).

**RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of April, 2026.

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**CERTIFICATION OF REDACTIONS AND EXAMINATION**

I hereby certify that the foregoing document, as submitted in Digital Form, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with the Endpoint Protection, version 11.0.5002.333, Virus Definition File Dated: April 6, 2026, and, according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made, and with the exception of those redactions, every document submitted in digital form is an exact copy of the written document filed with the clerk.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and copy of the foregoing document was served electronically via the Wyoming Supreme Court C-Track Electronic Filing system on this 6th day of April, 2026, to the following:

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The original plus six copies of the *Amicus Brief of Equality State Policy Center and the League of Women Voters of Wyoming in Support of Appellants and Reversal* were sent to the Wyoming Supreme Court by U.S. mail, first class, postage pre-paid this 6th day of April, 2026.

  
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