

**IN THE SUPREME COURT, STATE OF WYOMING**

MATTHEW MALCOM, JEFF THOMAS,  
JIM ROOKS, JOSHUA MALCOM,  
CHRISTINA KITCHEN, and JIM ROSCOE,  
Appellants,

v.

CHUCK GRAY, in his capacity as  
Wyoming Secretary of State,  
Appellee.

No. S-26-0029

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**BRIEF OF APPELLEE**

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## STATEMENT OF JURISDICTION

Matthew Malcom, Jeff Thomas, Jim Rooks, Joshua Malcom, Christina Kitchen, and Jim Roscoe appeal from a November 7, 2025, order denying their motion for summary judgment and granting Wyoming Secretary of State Chuck Gray's motion for summary judgment. An order granting a motion for summary judgment that resolves all outstanding issues is a final appealable order under Rule 1.05 of the Wyoming Rules of Appellate Procedure. *Painter v. McGill ex rel. Wyo. Bd. of Med.*, 2019 WY 108, ¶ 10, 450 P.3d 1243, 1246 (Wyo. 2019). As required by Rule 2.01 of the Wyoming Rules of Appellate Procedure, the Appellants timely filed a notice of appeal on December 5, 2025. (R. at 742-45). This Court has jurisdiction over this appeal under article 5, section 2 of the Wyoming Constitution.

## STATEMENT OF THE ISSUES

- I. Whether Wyoming's party registration requirements are a valid exercise of the Legislature's authority to secure the purity of elections under article 6, section 13 of the Wyoming Constitution.
- II. Whether the party registration requirements deny equal protection of the law.

## STATEMENT OF THE CASE

### I. Nature of the Case

This appeal arises from a district court decision on cross-motions for summary judgment related to state statutes governing Wyoming's elections. (R. at 715-16). Appellants sued Wyoming Secretary of State Chuck Gray challenging various election code provisions. (*Id.*) Specifically, they challenged Wyoming's "sore loser" statutes, the closed primary system, and the party affiliation deadline. (*Id.*) The district court concluded none of the challenged statutes abridged any citizens' constitutional rights to vote for the candidates of their choice or to seek and hold public offices, either substantively or on an equal protection basis. (*Id.* at 716). It held that each challenged election code provision is a valid exercise of legislative authority. (*Id.* at 716).

On appeal, Appellants concede all of their claims except one. They continue to challenge the party registration deadline. Specifically, they claim the requirements for declaring or changing party affiliation (Wyo. Stat. Ann. §§ 22-5-212 and 22-5-214) and the restriction on cancelling that party affiliation (Wyo. Stat. Ann. § 22-3-115(a)(vi)) violate the guarantee to an "open, free and equal" election and an "untrammelled exercise of the right of suffrage" found in article 1, § 27 of the Wyoming Constitution. They also claim these statutes impermissibly impose extra-constitutional conditions on a political right in violation of article 1, § 3 of the Wyoming Constitution.

The Secretary asserts that the district court is correct. The challenged statutes do not violate the Wyoming Constitution and are valid exercises of legislative authority. To resolve this dispute, this Court should decide whether the party registration requirements

are valid exercises of legislative authority under article 6, § 13 of the Wyoming Constitution. To do so, the Court must determine whether the challenged statutes violate article 1, § 27 and article 1, § 3 of the Wyoming Constitution by interpreting the Constitution in accordance with *Cathcart v. Meyer*, 2004 WY 49, ¶¶ 39-40, 88 P.3d 1050, 1065-66 (Wyo. 2004).

## **II. Facts Relevant to the Issues Presented for Review**

Appellants Matthew Malcom, Jeff Thomas, and Jim Rooks are qualified electors who sought to be nominated by their respective major political parties for different public offices in the 2024 Primary Election (R. at 148).<sup>1</sup> Neither Matthew, Thomas, nor Rooks succeeded in their primary contests to become their parties' candidates in the general election. *Id.* After losing the 2024 primaries, they learned unsuccessful primary candidates may not seek nomination as independent candidates for the same office in the general election. (R. at 246, 281, 283). They all abandoned their candidacies, choosing to forgo write-in campaigns. (R. at 231, 246, 250).

Appellants Joshua Malcom, Christina Kitchen, and Jim Roscoe (collectively Voter-Appellants) are all qualified electors. (R. at 150-51). Joshua is not and does not wish to be a member of any political party. (*Id.*). As an unaffiliated voter, Joshua was not able to vote in the 2024 Republican primary in which his brother was running. *Id.* Joshua voted for Matthew as a write-in candidate in the 2024 general election. (R. at 225).

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<sup>1</sup> Matthew and Joshua Malcom are brothers. This brief uses the Malcom brothers' first names to distinguish between them. (R. at 150).

Kitchen is a registered Republican and wanted to change her party affiliation to vote in the 2024 Democratic primary in which her brother-in-law, Rooks, was running. (R. at 150). She did not attempt to change her party affiliation until after the deadline for changing party registration had passed. (*Id.*) As a registered Republican, Kitchen was unable to vote in the Democratic Party primary election, and Rooks did not appear on the Republican Party primary ballot. (R. at 150-51). Kitchen voted for Rooks as a write-in candidate in the 2024 general election. (R. at 242).

Roscoe is a former Wyoming Representative who was last elected as an independent candidate. (R. at 151). Roscoe wants to be able to vote in the primary elections for the candidates he prefers regardless of their party affiliation. (*Id.*) Roscoe claims he wanted to vote for Rooks in the 2024 General Election but admits he chose not to write-in Rooks name. (R. at 25, 255).

### **III. Relevant Procedural History**

On August 28, 2024, Appellants Matthew Malcom and Jim Roscoe filed a complaint in district court seeking a declaration that Wyoming Statutes §§ 22-5-215 and 22-5-302, which prohibit an unsuccessful primary candidate from seeking nomination by petition for the same office in the general election, violate article 1, § 3 of Wyoming's Constitution. (R. at 1-8). About a month later Appellants amended their complaint, adding Jeff Thomas, Jim Rooks, Joshua Malcom, and Christina Kitchen as parties. (R. at 20-9).

After a brief pause while the parties unsuccessfully sought this Court's answer to a certified question, Appellants again amended their complaint. They added declaratory judgment claims challenging additional election code provisions. (R. at 132-47). After a

short time for discovery, the parties submitted both stipulated facts and cross-motions for summary judgment and responses on the legal issues. (R. at 148-178, 198-289, 290-92, 293-330, 493-507, 511-16, 523-58, 671-94, 701-09). Following full briefing and a hearing on the motions, the district court issued a written decision granting the Secretary's summary judgment motion and denying the Appellants' motion. (R. at 715-41). Appellants timely appealed the district court's decision to this Court. (R. at 742-45).

#### **IV. Rulings Presented for Review**

In its order, the district court first set out its analytic framework. (R. at 719-21). The court noted that outside of an equal protection question, this Court rarely uses the strict scrutiny standard, even when discussing fundamental rights under the Wyoming Constitution. (R. at 724). It distinguished between "strict scrutiny" and "strict protection of the courts." (R. at 722-24). Given that there are no Wyoming constitutional cases applying strict scrutiny to election laws, the district court concluded that strict scrutiny does not apply in this case. (R. at 725). The court applied the usual Wyoming constitutional review framework. It presumed the statutes are constitutional and Appellants bore the burden to prove the challenged statutes were unconstitutional. (R. at 726).

Based on this Court's constitutional interpretation process, it reasoned that "an election statute unconstitutionally infringes upon a political right when it erects an absolute or unreasonable barrier to the exercise of that right or imposes an additional, extra constitutional qualification upon it." (R. 728-29). Under this framework, the court recognized the distinction between the primary contest and the general election. (R. at 733). Specifically, it acknowledged a primary contest does not choose an office holder, and being

unable to vote in a primary contest did not infringe on the right to vote for a candidate to hold office. (*Id.*). It concluded any burden from the registration requirements is not a burden on the fundamental right to vote, but on the participation in a specific party's selection process. Accordingly, Appellants did not meet their burden to show the challenged statutes were unconstitutional. (R. at 735, 737).

Finally, the district court considered whether the challenged statutes violated the Wyoming Constitution's equal protection guarantees. (R. at 737). The court recognized that in order to prove an equal protection violation, the challengers must first demonstrate that a classification at issue treats similarly situation persons unequally. (R. at 738). The court concluded the party registration requirements did not violate equal protection because they do not treat similarly situated persons unequally. (R. at 738-39). Any difference in treatment occurs between dissimilarly situated people. (*Id.*). Even if similarly situated people were treated differently, there would still be no equal protection violation. (R. at 739). The challenged statutes do not infringe on a fundamental right or involve a suspect class. (*Id.*). The party registration requirements are rationally related to the legitimate government interest in preventing party raiding and preserving the integrity of the nomination process. (R. at 739-40). Accordingly, they would survive an equal protection rational basis review. (*Id.*).

## ARGUMENT

### **I. The registration requirements are a valid exercise of the Legislature's mandate to secure the purity of elections under Article 6, § 13 of the Wyoming Constitution.**

Article 6, § 13 of the Wyoming Constitution states, “[t]he legislature shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.” This provision does not just authorize action. It imposes a mandatory constitutional obligation on the Legislature to structure the election system in a way that preserves electoral integrity and defends against practices that may undermine the franchise.

To meet this obligation, the Legislature enacted measures to regulate primary contests. An elector requesting a major party ballot for a primary contest must declare or change their party affiliation before receiving that ballot. Wyo. Stat. Ann. § 22-5-212. The deadline for declaring or changing party affiliation before the primary is the day before candidates may file an application for nomination. Wyo. Stat. Ann. § 22-5-214(a). Additionally, voter registration cannot be cancelled during the time between the party registration deadline and the primary election. Wyo. Stat. Ann. § 22-3-115(a)(vi).

The party registration deadline preserves general election purity by guarding against outside interference in the primary process. It ensures party nominees for elective offices legitimately represent party views. The district court correctly concluded the party registration deadline statutes are a constitutional exercise of the Legislature's authority and this Court should affirm.

**A. Standard of Review**

A district court’s decision to grant summary judgment is appropriate where “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Baker v. Speaks*, 2013 WY 24, ¶ 30, 295 P.3d 847, 854 (Wyo. 2013); Wyo. R. Civ. P. 56(c). This Court reviews a district court’s order granting summary judgment and whether a statute is constitutional de novo. *Martin v. Bd. of Cnty. Comm’rs of Laramie Cnty.*, 2022 WY 21, ¶¶ 5-6, 503 P.3d 68, 71 (Wyo. 2022).

**B. The Constitution charges the Legislature with regulating elections to ensure their integrity.**

Article 6, § 13 of the Wyoming Constitution directs the Legislature to enact election integrity measures. Wyo. Const. art. 6, § 13. This Court first recognized the Legislature’s obligation less than five years after statehood. *Slaymaker v. Phillips*, 5 Wyo. 453, 40 P. 971, 972 (Wyo. 1895). In *Slaymaker*, the challenged statutes required ballots that did not bear an official stamp or the name or initials of the election judge to be voided. *Id.* This Court recognized the Legislature’s affirmative constitutional duty to secure the purity of elections. *Id.* It reasoned that the constitution charges the Legislature with determining whether a voting regulation is reasonable or unreasonable. *Id.* This Court should not invalidate or determine that an act of the Legislature is so unreasonable that it is unconstitutional “unless such a conclusion is necessary and unavoidable.” *Id.*

Article 1, § 3 of the Wyoming Constitution guarantees equal political rights. It states:

Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights

and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.

Wyo. Const. art. 1, § 3. Article 1, § 27 guarantees “[e]lections shall be open, free and equal, and no power, civil or military, shall at any time interfere to prevent an untrammelled exercise of the right of suffrage.” Article 6, § 13 directs the Legislature to “pass laws to secure the purity of elections, and guard against abuses of the elective franchise.” This constitutional provision is not self-executing. *Slaymaker*, 40 P. at 972. The guarantees of political equality, “open, free and equal” elections, and “untrammelled exercise of the right of suffrage” would be meaningless without the Legislature enacting regulations that secure the purity of elections and guard against abuses of the franchise. In this case, the Legislature is ensuring election purity by preventing party raiding. The Legislature’s obligation to regulate elections serves, rather than infringes, the rights recognized in article 1, § 3 and article 1, § 27 of the Wyoming Constitution.

When voters in one political party switch parties to influence or determine the results of another party’s primary election, it is called party raiding. *Rosario v. Rockefeller*, 410 U.S. 752, 760 (1973). Party raiding corrupts the primary process by making it less likely the nominee represents the party members’ actual views. *See California Democratic Party v. Jones*, 530 U.S. 567, 579-80 (2000). Disingenuous actors may switch their party affiliation, vote in a party’s primary contest, then switch away. Requiring registered voters to commit to a party affiliation before candidates file applications for nomination lessens the likelihood that affiliation decisions will be based on specific candidates.

In *Rosario*, voters challenged a New York law that required voters to affiliate with a party at least thirty days before the general election to vote in the next election's party primary. *Rosario*, 410 U.S. at 753. The law effectively required voters to affiliate eight months before a presidential primary and eleven months before a non-presidential primary. *Id.* at 760. The challengers raised an argument similar to Appellants', alleging their rights were violated because party enrollment was required before prospective voters knew who the candidates or issues would be. *Id.* The Court, while acknowledging the lengthy time period, noted it was "not an arbitrary time limit unconnected to any important state goal." *Id.* It recognized the New York state legislature intended to prevent party raiding, and that was a legitimate reason to prohibit changing parties as of a certain date. *Id.* Decades after *Rosario*, New York state courts upheld a nearly identical party affiliation deadline because it is rationally related to the legitimate state interest in a viable political party system by inhibiting party raiding. *Moody v. New York State Bd. of Elections*, 165 A.D. 3d 479, 480 (N.Y. App. Div. 2018).

Courts at both state and federal levels have addressed and upheld party registration deadlines. See *Smith v. Pena*, 405 A.2d 350 (N.J. 1979); *Polelle v. Florida Secretary of State*, 131 F.4th 1201 (11th Cir. 2025); *Crum v. Duran*, 390 P.3d 971 (N.M. 2017). In *Crum*, a New Mexico voter challenged the state's party registration deadline as a violation of the New Mexico Constitution's "free and open" clause. 390 P.3d at 972. This clause is notably similar to article 1, § 27 of the Wyoming Constitution. See N.M. Const. art 2, § 8. The court rejected the challenge, holding that the state's constitution provided the

legislature with the power to enact laws that secure the purity of elections and guard against the abuse of the elective franchise. *Crum*, 390 P.3d at 972 (citing N.M. Const. art. 7, § 1).

As *Crum* teaches, Wyoming’s constitutional provisions requiring the Legislature to regulate elections and its statutes setting a deadline for choosing party affiliation are not unique. *Id.* Courts have consistently held that party registration deadlines are a valid exercise of legislative authority. Only in the most extreme cases—a nearly two-year waiting period before voting in a new party’s primary, for example—have party registration deadlines been struck down. *See Kusper v. Pontikes*, 414 U.S. 51 (1973). Here, the party registration deadline is limited to ninety-six days and is directly tied to the candidacy filing period, requiring registration before candidates can file their nominations. Wyo. Stat. Ann. §§ 22-5-214(a), 22-3-115(a)(vi). It does not prevent an elector from declaring or changing party affiliation except as necessary to prevent party raiding in the primary. It is well within the Legislature’s right and responsibility to protect the integrity of the election process and is rationally related to that interest.

**C. Appellants’ challenges require this Court to apply rational basis review.**

Appellants urge this Court to depart from its usual constitutional analysis framework. (Br. of Appellants at 46). They contend that the party registration laws warrant strict scrutiny. (*Id.*). This Court should decline their invitation. This Court ordinarily defers to the Legislature. Statutes are presumed constitutional and any doubt is resolved in favor of the statute’s constitutionality. *Cathcart*, ¶ 7, 88 P.3d at 1056. The party challenging the constitutionality of a statute bears the burden of proving the statute is unconstitutional. *Id.* The burden is “heavy” and the challenger must “clearly and exactly show the

unconstitutionality beyond any reasonable doubt.” *Id.* (internal quotation marks and citations omitted).

When considering a constitutional challenge, this Court must determine which “test” or type of review to apply. *State v. Johnson*, 2026 WY 1, ¶ 51, 582 P.3d 380, 400 (Wyo. 2026). Generally, the Court must choose between rational basis or strict scrutiny. *Id.* If the law allegedly violates a non-fundamental right, courts apply a rational basis test. *Vaughn v. State*, 2017 WY 29, ¶ 26, 391 P.3d 1086, 1095 (Wyo. 2017). Under the rational basis test, this Court upholds the law if it is rationally related to a legitimate state interest. *Id.* If the law infringes a fundamental constitutional right, strict scrutiny is often, but not always, applied. *Johnson*, ¶ 52, 582 P.3d. at 400. Under strict scrutiny, the State has the burden of showing that the statute is narrowly tailored to achieve a compelling state interest. *Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980).

**1. A primary contest is not a constitutional “election.”**

Rational basis is the appropriate test in this case because the party registration requirements do not impact a fundamental right. This Court has recognized two fundamental political rights. These political rights are the right to vote and the right to seek and hold office when qualified. *Maxfield v. State*, 2013 WY 14, ¶¶ 35, 36, 294 P.3d 895, 903 (Wyo. 2013); *see Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974) (“The right to vote is a fundamental right”). But this Court has never held that a person has a fundamental or political right to participate in a political party’s primary nomination process. Participation in a primary contest is separate and distinct from the fundamental right to

vote in the general election because a primary contest is not an “election” under the Constitution.

When interpreting the state Constitution, this Court follows the same rules as it does when interpreting statutes. *Cathcart*, ¶ 39, 88 P.3d at 1065. The fundamental purpose is to ascertain the framers’ intent. *Id.* If the language is plain and unambiguous, there is no need for construction. *Id.* This Court assumes the framers intended what was plainly expressed. *Id.* In applying this framework, this Court interprets every statement in the Constitution in light of the entire document. *Id.*, ¶ 40, 88 P. 3d at 1066. It should not be interpreted to render any portion of it meaningless, with all portions read *in pari materia*. *Id.*

**a. Participation in the primary nomination process of a political party is not the same as the right to vote in a general election.**

Appellants assume—without serious legal argument or any authority to speak of—the word “election” in the Wyoming Constitution includes primary contests. (Br. of Appellants at 30-33). They rely on a broad definition of “election” that fails to account for the context in which it would have been used by the framers. (Br. of Appellants at 30). They admit primary “elections” did not exist in Wyoming when the Constitution was adopted, yet they insist the framers intended to protect asserted rights in a process that did not yet exist. (Br. of Appellants at 10).

At the time the Wyoming Constitution was adopted, the most relevant definition of “election” was “[t]he act or process of choosing a person or persons **for office** by vote; a polling **for office**; also, the occasion or set time and provision for making such choice: as a **general** or special *election*[.]” *Election, The Century Dictionary* (1891) (emphasis

added). Contemporary courts recognized that elections in the constitutional sense meant choosing the candidate that would hold office. For example, in an 1891 case from the Iowa Supreme Court, the court looked specifically at the definition of “election” in the constitutional context. *Seaman v. Baughman*, 47 N.W. 1091, 1092 (Iowa 1891). It stated “‘election’, in its broadest sense, signifies a choice; the act of choosing; the act of selecting one or more from others; but in the sense in which it is used in the constitution it means a choice of persons for public offices, made by the people.” *Id.*

*Seaman* is not an outlier. Multiple courts in the early 20th centuries held that the word “elections” in their state constitutions refer to the general election. *Woodruff v. State*, 52 A. 294, 296 (N.J. 1902); *In re Jamestown Caucus Law*, 112 A. 900, 901 (R.I. 1921); *McLain v. Fish*, 251 S.W. 686, 689-90 (Ark. 1923); *Ledgerwood v. Pitts*, 125 S.W. 1036, 1039 (Tenn. 1910); *State ex rel. Dunn v Coburn*, 168 S.W. 956, 958 (Mo. 1914). These courts have consistently held their state constitutional protections related to voting do not extend to political parties selecting their nominees. *McLain*, 251 S.W. at 689 (“Constitutional provisions with respect to elections do not apply to party primaries.”); *Ledgerwood*, 125 S.W. at 1039 (“the limitations and safeguards of the Constitution apply exclusively to the final election when the officer is chosen in the mode required by the Constitution”); *Riter v. Douglass*, 109 P. 444, 452 (Nev. 1910) (“It is not the purpose of the primary election law to elect officers. The purpose is to select candidates for office, to be voted for at the general election. Being so, the qualifications of electors provided by the Constitution for the general election can have no application [to the primary].”); *Coburn*, 168 S.W. at 958 (The primary election statute does not violate the State’s constitutional

provisions because “the word ‘elections’ as used [in the Constitution] has reference to ‘choosing a person or persons for office by vote, and nowhere in the sense of nominating a candidate for an office by a political party.’”) (citation omitted).

In *In re Jamestown Caucus Law*, a challenge was brought against a statute that restricted voting in a political party’s caucus if the person had voted in the caucus of a different political party in the previous twenty months. 112 A. at 900. Noting the state’s constitutional provision empowering the legislature to regulate elections, the court held that the word election in the constitution “does not refer to the caucus held for the purpose of naming the candidates of a political party” and that the right to vote in a caucus is not a right guaranteed under the constitution. *Id.* at 901.

Beyond their overly broad definition of “election,” Appellants rely on *United States v. Classic*, 313 U.S. 299 (1941) to support their position they have as much a right to participate in any party primary as in the general election. (Br. of Appellants at 33). In *Classic*, the appellees were charged with “willfully alter[ing] and falsely count[ing] . . . the ballots of voters cast in the primary election” and injuring “the right of qualified voters who cast their ballots in the primary election to have their ballots counted as cast for the candidate of their choice[.]” *Classic*, 313 U.S. at 307-08. Essentially, the appellees took ballots cast for two candidates, altered them, and counted them as votes for a third candidate. *Id.* at 308. The question for the court was whether the right of *qualified* voters to vote in the primary and to have their ballots counted was a right secured by the constitution within the meaning of certain sections of the criminal code. *Id.* at 307 (emphasis added).

The right to vote in the primary election at issue in *Classic* is wholly different than the right at issue in this case. The voters in *Classic* were qualified voters who had cast their votes for the candidate of their choice in a primary contest, only to have those ballots changed and counted for another candidate. The Voter-Appellants in this matter were not qualified to even participate in a specific party's primary election because they failed to affiliate with that party by the required deadline. (R. at 150-51). They do not allege that their primary votes were not counted as cast. (R. at 132-47). The *Classic* Court recognized electors' right to have their ballots counted in the primary. *Classic*, 313 U.S. at 318. The court relied on the importance of election integrity considerations and Louisiana's constitutional authority to regulate the primary process. *Id.* at 318-19. The right to vote in the primary applied to qualified voters who cast votes. *Id.* at 314. The Court did not disturb the state's judgment concerning who was qualified to vote and how primaries are regulated. *See id.* at 310-20.

This Court should decline to treat a primary contest as an "election" for constitutional purposes. When Wyoming's Constitution was drafted, the contemporary understanding of "election" in the constitutional context did not encompass primary contests. This interpretation is reinforced by the authority that has followed. Non-party members have no Wyoming constitutional right to participate in the primary nomination process of a political party.

**b. The party registration deadline does not infringe on the right to vote.**

Even if a primary contest is an “election” in the constitutional sense, party registration requirements do not infringe on any constitutional right recognized by this Court. This Court has never recognized that an elector has a constitutional right to participate in the primary election process for a party to which they do not belong, or a right to declare or change their party affiliation at any time. The district court correctly observed that, “[Appellants] are asking [the] Court to recognize new dimensions of these rights that have no precedent in Wyoming law.” (R. at 728.) Appellants’ case rests on the incorrect assumption that any limit on their ability to freely change political parties without restriction automatically infringes their right to vote. (Br. of Appellants at 43). Their assumption contradicts this Court’s interpretations of the Wyoming Constitution’s meaning of “open, free and equal” elections, an “untrammelled exercise of the right of suffrage,” and “extra-constitutional” conditions on voting under article 1, § 3 and article 1, § 27. Accepting Appellants’ invitation to broaden these provisions’ reach is not benign. It is contrary to the Constitution as a whole and would do serious damage to article 6, § 13, which requires the legislature to “pass laws to secure the purity of elections, and guard against abuses of the elective franchise.”

This Court has never held the constitutional guarantee of “open, free and equal” elections precludes reasonable regulation. This language only prohibits a complete denial of the right or the unequal counting of a vote. In the bond election law context, this Court determined that “free and equal” required that every vote in an election had equal weight.

*State v. Johnson Cnty. High Sch.*, 5 P.2d 255, 258 (Wyo. 1931). It upheld a dual-ballot box system because it required a concurrent majority from both boxes, ensuring that a vote in either box carried equal weight in determining the outcome. *Id.* The Constitution has never been stretched to prohibit reasonable restrictions on party registration.

This Court has not had an opportunity to address the meaning of “open” for an election, but did in the context of the fundamental right to access the court system. *Mills v. Reynolds*, 837 P.2d 48, 54 (Wyo. 1992). This Court held the law which granted complete immunity from suits by co-employees to employees who were acting within the scope of their employment infringed on the right because it completely barred access to the courts. *Mills*, 837 P.2d at 54. In contrast, in *Meyer v. Kendig*, the court held a separate statute was constitutional because it only “sets a standard to be applied by the courts” and did not fully deny recovery. 641 P.2d 1235, 1240-41 (Wyo. 1982).

Similar to interpreting “open” in the court access context, this Court interpreted article 1, § 3 in *Cathcart* and in *Maxfield*. In both cases, incumbent politicians were challenging the State’s term limit statutes as a violation of their constitutional right to seek and hold office. *Cathcart*, ¶ 1, 88 P.3d at 1054; *Maxfield*, ¶ 1, 294 P.3d at 896. The term limit statutes at issue created an absolute bar to being elected or serving in a particular office based on incumbency, which this Court found to be an extra-constitutional condition. *Cathcart*, ¶¶ 4-5, 88 P.3d at 1055; *Maxfield*, ¶ 8, 294 P.3d at 898. In effect, the constitutionally infirm term limit statute constituted a total bar to holding office, not a mere regulatory restriction.

Turning to partisan primary contests and the party registration requirements, Appellants have not shown the party registration requirements violate the right to a “free and equal” election. Voter-Appellants’ votes in the primary election, either on the partisan ticket for the party they were affiliated with at the time, or the non-partisan ticket if they were unaffiliated, counted the same as every other similarly situated primary voter. And more importantly, their general election votes also counted the same as every other voter in the general election. Even if their preferred candidate was not printed on the ballot, they all were entitled to and able to write in their preferred candidates. (R. at 225, 242, 255).

Further, the party registration requirements cannot be construed as violating an “open” election or being an “extra-constitutional condition.” The requirements do not create an absolute bar or an unreasonable barrier to voting. An unaffiliated voter may vote on the non-partisan ballot. Wyo. Stat. Ann. § 22-5-212. Party members may vote on the party ballot for the political party they were affiliated with at the time of the deadline. Wyo. Stat. Ann. §§ 22-5-212 and 22-5-214. Nothing in the election code restricts write-in votes or voting in the general election where the candidate for office is selected. Every elector has a meaningful opportunity to declare or change their party affiliation and vote in partisan primary elections. That opportunity is available for the twenty-one months between primary election cycles—the restriction is limited to a ninety-six day period before the primary contest. Appellants seem to wholly ignore the fact that Voter-Appellants had ample opportunity to change their party affiliation before the deadline but chose not to do so.

The party registration requirements do not infringe on Appellants' right to vote. They are reasonable regulations enacted by the Legislature pursuant to its constitutional authority. They do not trammel Appellants' right to vote because their right to vote was never extinguished or infringed. Consequently, they have failed to show that the party registration requirements at issue impact their fundamental constitutional rights.

**2. The party registration requirements survive rational basis.**

As established above, no fundamental right is at issue, so the rational basis test is the appropriate yardstick to measure the party registration requirements. Appellants bear the heavy burden of clearly and exactly showing the registration requirements are unconstitutional beyond a reasonable doubt. *Cathcart*, ¶ 7, 88 P.3d at 1056. The rational basis test is a two-part analysis. First, Appellants must show that a constitutional right was violated. If there is no violation of constitutional rights, the analysis ends there. *See Greenwalt v. Ram Rest. Corp. of Wyo.*, 2003 WY 77, ¶ 37, 71 P.3d 717, 729 (Wyo. 2003) (ending analysis once the court concluded law did not violate Wyoming's fundamental right to access courts). Second, if there is a violation of constitutional rights, but the right at issue is not fundamental, the Court must then determine whether the law is reasonably related to a legitimate government interest. *Vaughn*, ¶ 26, 391 P.3d at 1095. The rational basis test does not require that the law "be in every respect logically consistent with its aims to be constitutional. . . . Rather it is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Id.*, ¶ 30, 391 P.3d at 1096. (internal quotation marks and citations omitted).

As discussed above, the *Rosario* Court upheld a significantly more restrictive party registration deadline. *Rosario*, 410 U.S. at 753. It held that the restriction merely imposed a time deadline on their enrollment, which they had to meet in order to participate in the next primary. *Id.* at 757. Recognizing that the voters had ample opportunity to enroll with the party of their choice before the deadline, the Court stated that “if their plight can be characterized as disenfranchisement at all, it was not caused by [the law], but by their own failure to take timely steps to effect their enrollment.” *Id.* at 758.

The party registration requirements at issue here do not violate a constitutional right. They have no impact on Appellants’ right to vote in the general election for the candidate of their choice. Each Appellant voted in the general election for the candidate of their choice for office, and each of their votes counted the same as every other voter in their party. Further, the registration requirements did not create an absolute bar to voting in the primary election, the general election, or even to changing their party affiliation. It merely regulated these things as required by article 6, § 13 of the Wyoming Constitution. Similar to *Rosario*, any impact the registration requirements had on Appellants’ ability to receive a party ballot in the primary contest was by their own failure to take timely steps to change their party affiliation before the deadline. As such, there is no violation of a constitutional right and the analysis should end there.

Even if the party registration requirements did infringe on a constitutional right, this Court should still uphold them because they are reasonably related to the legitimate government interest of securing the purity of elections by preventing party raiding. These requirements help inhibit party raiding by requiring electors to be affiliated with a party

before the time that candidates file. *See Rosario*, 410 U.S. at 760. Requiring party registration a reasonable period before a primary election to prevent party raiding has been recognized as a legitimate state action at both the federal and state level. *California Democratic Party*, 530 U.S. at 572; *Van Allen v. Cuomo*, 621 F.3d 244, 248 (2nd Cir. 2010); *Boydston v. Weber*, 307 Cal.Rptr.3d 27, 41 (Cal. Ct. App. 2023).

While recognizing Appellants bring their claims under Wyoming Constitutional provisions, the state and federal case law on similar issues demonstrate that party raiding and party registration requirements are not unique to Wyoming. Neither are Wyoming's Constitutional provisions surrounding elections, including those requiring the Legislature to take action to regulate and protect the process. Appellants may not agree with the Legislature's motives or its approach to addressing the issue of party raiding, but they have no evidence or argument showing that party raiding is not a legitimate concern of the state or that the party registration requirements are not a rational way of addressing that concern.

### **3. The current political climate cannot influence constitutional interpretations**

Finally, Appellants ask this Court to consider the current electoral success of one major political party. This current climate, they contend, is sufficient for this Court to abandon its established rules of constitutional interpretation. Not only is there no basis for this in the Constitution, but to do so would result in ever-changing constitutional interpretations based on the then-current political climate. Constitutional interpretation cannot be founded on the current political climate. As the district court recognized, “[t]oday the river of political power may appear to flow through a single party; tomorrow,

Wyoming’s citizens may alter the current. In the meantime, the Wyoming Constitution protects – but does not assist – [Appellants] in their efforts to change the course.” (R. at 737).

## **II. The registration requirements do not deny equal protection of the law.**

It is unclear whether Appellants have raised an equal protection claim on appeal. Throughout their brief, they appear to allude to the idea that the party registration requirements violate equal protection principles, but they fail to clearly raise an equal protection claim or engage in a thorough analysis. To the extent this Court determines that Appellants have raised and adequately briefed an equal protection claim, the claim is without merit. The district court correctly concluded the challenged statutes do not violate equal protection guarantees under the Wyoming constitution. (R. at 738-739).

There is no express equal protection clause in the Wyoming Constitution. Rather, it contains a variety of equality provisions. *Hageman v. Goshen Cnty. Sch. Dist. No. 1*, 2011 WY 91, ¶ 53, 256 P.3d 487, 503 (Wyo. 2011). To succeed on an equal protection claim, Appellants bear the burden of first demonstrating that the classification at issue “treats similarly situated persons unequally.” *Id.*, ¶ 54; 256 P.3d at 503 (citations omitted). If the classification does treat similarly situated persons unequally, the analysis moves to whether the statutes affect a fundamental interest or create an inherently suspect class, which determines the level of scrutiny this Court should apply. *Id.* When there is a suspect class or a fundamental right is infringed, the Court applies strict scrutiny. *Id.* When neither a fundamental right nor a suspect class are at issue, the Court must only determine whether the statutes are rationally related to a legitimate state objective. *Id.*

**A. Standard of Review**

This Court reviews a district court’s order granting summary judgment and whether a statute is constitutional de novo. *Martin*, ¶¶ 5-6, 503 P.3d at 71.

**B. The registration requirements do not treat similarly situated persons unequally.**

Appellants appear to identify two groups of people they believe are treated unequally under the party registration requirements as they are written, and by a directive the Secretary issued.<sup>2</sup> First, they believe the challenged statutes impermissibly grant rights to “unregistered voters” or “new registrants” that are denied to already registered voters. (*See* Br. of Appellants at 16-17). Second, they claim an elector who does not reach a decision on party affiliation until after the declaration deadline is impermissibly denied a right that an elector who reaches the decision before the deadline is guaranteed. (*See* Br. of Appellants at 44-45). The directive they take issue with is not an agency rule and has no force or effect of law. *Yeik v. Dept. of Revenue & Tax’n*, 595 P.2d 965, 968 (Wyo. 1979) (“Rules and regulations adopted pursuant to statutory authority and when properly

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<sup>2</sup> *Directive No. 2023-01—Interpretation of HEA 70* is the Secretary’s guidance to enable county clerks to uniformly interpret party registration requirements. The Secretary noted that House Enrolled Act 70 does not prevent unregistered voters from declaring or changing party affiliation in the time period party changes are otherwise restricted. (R. at 490-92).

promulgated have the force and effect of law”), Wyo. Stat. Ann. § 16-3-102(b). Consequently, the directive is not relevant to the constitutionality of the statutes at issue.

“Persons are ‘similarly situated’ if they are subject to the same circumstances and same conditions.” *Hicks v. State*, 2025 WY 113, ¶ 142, 578 P.3d 366, 401 (Wyo. 2016) (citations omitted). Hicks, the appellant, was nineteen years old at the time of his offenses and was sentenced to life without parole. *Id.*, ¶¶ 10-11, 578 P.3d at 376. He claimed his sentence violated equal protection provisions, arguing that nineteen-year-olds and juveniles are similarly situated because there is no substantial difference between the two groups, and juveniles cannot be sentenced to life without parole. *Id.*, ¶¶ 1, 143-44, 578 P.3d at 401. This Court disagreed, noting that by enacting a juvenile code, the Legislature has recognized that juveniles and adults are not similarly situated. *Id.*, ¶ 143, 578 P.3d at 401. Even though Hicks disagreed with the Legislature’s decision to draw a line between adults and juveniles at eighteen years old, the line was not drawn arbitrarily. *Id.*, ¶ 144, 578 P. 3d at 401.

Appellants’ claims concerning registered voters and unregistered voters being treated differently fail because the groups are dissimilarly situated. The Election Code clearly draws a distinction between those who are registered to vote and those who are not. Wyo. Stat. Ann. § 22-1-102(a)(xxvi). Registered voters have the opportunity to declare party affiliation before the deadline and request a major party ballot for a primary election, while unregistered voters would not have that opportunity because they are not registered and therefore, cannot affiliate with a party, request a major party ballot for a primary election, or vote in an election. Wyo. Stat. Ann. §§ 22-1-102(a)(xxvi), 22-5-212. It is not

until they become registered that they have that opportunity, at which time they would need to declare party affiliation or go unaffiliated. Wyo. Stat. Ann. §§ 22-5-212, 22-5-214. Once they make that determination, they are restricted from changing or declaring party affiliation during the time period before the primary election along with all other registered voters.

The second purported differential treatment Appellants identify is based largely on personal choice, not any classification or distinction the statutes make. In this hypothetical, there is one group who exercised their right to choose affiliation with a party before the deadline and one who chose not to exercise that right. Both groups have equal opportunity under the statutes but would be exercising personal choice differently and, consequently, they are not similarly situated.

**C. The party registration requirements survive rational basis review.**

Even if this Court holds that any groups are similarly situated, Appellants' claim would still fail because the statutes would be subject to, and survive, a rational basis review.<sup>3</sup> The burden is on Appellants to prove that the Legislature lacks a rational basis to draw a distinction between those registered to vote before the deadline, and those who are not. *See Hageman*, ¶ 54, 256 P.3d at 503.

The Legislature has a rational basis to draw the distinction between those registered to vote before the deadline and those who are not. Those who are registered to vote can

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<sup>3</sup> Appellants do not contend that the statutes impact a suspect class, and there is no fundamental right at issue, so rational basis applies.

declare or change their party affiliation before the deadline, while unregistered voters would not have that same opportunity. The latter group includes those that did not meet the age requirement until after the deadline, those that became United States citizens after the deadline, and those that did not meet the durational residency requirements until after the deadline. Wyo. Stat. Ann. § 22-1-102(a)(xxvi). To the extent there is a distinction, it is rationally related to the State's legitimate interest in preventing party raiding and is a valid exercise of the Legislature's authority under article 6, § 13 of the Wyoming Constitution to secure the purity of elections.

## CONCLUSION

For the foregoing reasons, the Secretary respectfully requests that this Court affirm the district court's decision granting the Secretary's motion for summary judgment and denying the Appellants' motion for summary judgment.

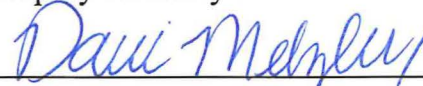
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## CERTIFICATE REGARDING ELECTRONIC FILING

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