S-26-0029

IN THE SUPREME COURT, STATE OF WYOMING

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).

OPENING BRIEF OF APPELLANTS

William P. Schwartz, #5-2164
Leah C. Schwartz, #7-5019
PARSONS BEHLE & LATIMER
375 West Broadway Ave. | P.O. Box 3890
Jackson, WY 83001
t. (307) 733-5130 | f. (801) 536-6111
BSchwartz@parsonsbehle.com
LSchwartz@parsonsbehle.com

Benjamin J. Rowland (7-5654)
DAVIS & CANNON, LLP
422 W. 26th Street
Cheyenne, WY 82001
T: (307) 634-3210 | F: (307) 778-7118
browland@davisandcannon.com

Attorneys for Appellants

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STATEMENT OF JURISDICTION

This is an appeal from the district court's order granting the summary judgment motion of Defendant (Appellee) and denying the summary judgment motion of Plaintiffs (Appellants). *See* Order Granting Defendant's Motion for Summary Judgment (the "Order"). Appx. 1; *see* Record on Appeal or Trial Record ("R.") 715-41. The Order is appealable under Rule 1.05(a), Wyo. R. App. P. The district court entered the Order on November 7, 2025. Appellants timely filed their Notice of Appeal on December 5, 2025.

STATEMENT OF THE ISSUES

In 2023, the Wyoming legislature enacted House Bill 103 (enrolled as HEA 70), which dramatically changed longstanding Wyoming primary election law. Seeking to discourage so-called "crossover voting," the legislature amended Wyoming statutes to end the longstanding ability of voters to declare or change party affiliation up to the date of the primary. Certain of the HB 103 amendments (codified as Wyo. Stat. § 22-5-212) now require Wyoming electors wishing to vote in the August primary election "to declare or change" party affiliation before a new deadline set 96-days before the election (the "Affiliation Deadline")—a deadline established to fall before candidates are permitted to apply to run for office. Another HB 103 amendment (codified at Wyo. Stat. § 22-3-115) prohibits Wyoming electors from "cancelling" their declared party affiliation during the 96-day hiatus between the Affiliation Deadline and the primary election. (The 96-day period during which party affiliation can no longer be declared, changed, or cancelled is referred to herein as the "Freeze Period.")

This appeal asks whether the amendments to Wyoming Stat. §§ 22-5-212 and 22-5-214 (the "Amendments") impermissibly infringe on rights guaranteed to Appellants as Wyoming "electors"[1] under the Wyoming Constitution.

The issues on appeal are:

Issue #1: Whether the Amendments impermissibly infringe upon the right of Appellants to "open, free, and equal elections" and/or the "untrammeled exercise of the right of suffrage" guaranteed by Article 1, § 27 of the Wyoming Constitution?

Issue #2: Whether the Amendments impermissibly impose extra-constitutional legislative conditions on Appellants' "political rights" in violation of Article 1, § 3 of the Wyoming Constitution?

STATEMENT OF THE CASE

A. NATURE OF THE CASE & PROCEDURAL HISTORY

On August 28, 2024, following that year's primary election, Appellants Matthew Malcom and Jim Roscoe filed this action in the First Judicial District Court of Laramie County seeking declaratory relief that Wyoming's "sore loser law" violates the Wyoming Constitution. R. 1–8. The additional Appellants, Jeff Thomas, Jim Rooks, Joshua Malcom, and Christina Kitchen, joined in the action through an Amended Complaint filed September

[1] Article 6 of the Wyoming Constitution (relating to "Suffrage & Elections") calls persons meeting the constitutional requirements to either vote or run for office in Wyoming "electors." Because this appeal does not address the rights of persons running for office, any reference to "electors" herein refers exclusively to qualified voters.

27, 2024. R. 20–30. By order dated December 12, 2024, the district court certified the question concerning the constitutionality of the sore loser law to this Court. R. 67–85. This Court declined to answer the question by its order dated January 28, 2025. R. 93.

Appellants thereafter obtained leave to file a Second Amended Complaint, adding claims challenging the constitutionality of other election statutes, including the Amendments. R. 132-47. The parties exchanged written discovery and stipulated upon various facts pursuant to the district court's scheduling order. R. 101–3; 148–52. The parties then filed cross motions for summary judgment, and the district court heard oral argument. The district court ultimately rejected each of Appellants' claims in its Order of November 7, 2025. Appx. 1; R. 715–41.

In the interest of narrowing the important constitutional issues presented here, Appellants have chosen to limit their appeal to the denial of their claims challenging the Amendments to House Bill 103. **They do not seek review of the district court's dismissal of their other claims challenging the constitutionality of other statutes, specifically Wyoming's sore loser law or its laws closing public primary elections to electors not affiliated with the applicable political party.**

Appellants' challenge to the Amendments was and is based entirely upon provisions of the Wyoming Constitution. They make no claims under federal law.

B. HISTORICAL CONTEXT OF ISSUES PRESENTED

1. *Constitutional Guarantees Regarding Voting & Elections*

The Wyoming Territory entered the world in 1868 at the height of Reconstruction—the same month the 14th Amendment to the U.S. Constitution was ratified and just seven

months before Congress approved the 15th Amendment.[2] The federal statutes authorizing the Wyoming Territory required it to grant all male citizens over twenty-one the rights to vote and hold office and prohibited the territorial legislature from abridging suffrage on account of race—"the first time that Congress explicitly protected the right to hold office free of racial discrimination." Crum, T., *The Unabridged Fifteenth Amendment*, 133 Yale Law Journal 1039, 1059-60 (2024). Riding these currents, the very first Wyoming territorial legislature made history in 1869 by becoming the first government in the world to grant women full political rights to vote and hold office—prompting Susan B. Anthony to proclaim in Laramie: "Wyoming is the first place on God's green earth which could consistently claim to be the land of the Free!" Larson, *supra* n.2*,* 79–80.

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[2] President Andrew Johnson signed the Wyoming Territory organic act on July 25, 1868, when the Union Pacific's "tracklayers were near present-day Rawlins." Larson, T.A., *History of Wyoming*, University of Nebraska Press, (1965) (hereinafter "Larson"), 64. The 14th Amendment was ratified on July 9, 1868. *See* 14th Amendment to the U.S. Constitution: Civil Rights (1868), NATIONAL ARCHIVES, available at: https://www.archives.gov/milestone-documents/14th-amendment?_ga= .50507887.739710570.1766084126-2058488916.1761606238 (last visited Mar. 21, 2026). The 15th Amendment was passed by Congress on February 26, 1869. *See 15th Amendment to the U.S. Constitution: Voting Rights (1870)*, NATIONAL ARCHIVES, available at: https://www.archives.gov/milestone-documents/15th-amendment?_ga=2.38049637.739710570.1766084126-2058488916.1761606238 (last visited Mar. 21, 2026).

By 1889, Territorial Governor Francis E. Warren called for election of delegates to a constitutional convention in Cheyenne. The 49 delegates who attended—elected on a non-partisan basis and consisting of 32 Republicans and 17 Democrats—were dominated by lawyers who, playing to stereotype, "did most of the talking." Larson, *supra* n.2, 238, 244. In addition to inheriting the territory's legacy of extending full political rights to women, these delegates shared the populist concerns common to Western state constitution makers of the era—a group scholars sometimes call the "class of 1889."[3] As Professor John D. Hicks observed in an influential 1923 study, these delegates were driven by firsthand experience with the spoils system, legislative corruption, and unchecked corporate power to build structural protections into their constitutions designed to place the rights of the people beyond the reach of corruption-prone legislatures. Hicks, J.D., *The Constitutions of the Northwest States*, 23 Neb. L. Bull. 32, 52–53 (1923). In Wyoming, this populist impulse was especially pronounced with respect to "political rights."

Indeed, in language unique to the Wyoming Constitution, the express protection of the political rights of Wyoming citizens garnered a singular position in Article 1, § 3 as the first substantive rights guaranteed in the new state charter's "Declaration of Rights." After affirming in the first two sections of the Declaration that "all power is inherent in the people" and "all members of the human race are equal," the delegates declared in Article 1, § 3 that Wyoming laws specifically affecting the "political rights" of its citizens could

[3] *See generally*, Western, S., *The Spirit of 1889: Restoring the Lost Promise of the High Plains and Northern Rockies*, Univ. Kansas Press (2024).

not be diminished by extra-constitutional conditions imposed by the legislature. That powerfully populist provision states as follows:

> 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. Article 1, § 3 (emphasis added).

Collectively, Article 1, § 3's studied distinction between "natural," "civil," and "political rights,"[4] its recognition that "natural" and "civil rights" depend specifically upon "political rights," and its broad prohibition of *any* law "affecting" those political rights, whether based on personal traits like race or gender or "*any circumstance or condition*

[4] Under the "hierarchy or rights" regime enunciated by the U.S. Supreme Court during and after Reconstruction, "*political rights*" had a narrow and definite meaning and referred to those particular privileges (conferred by the states and generally only for men) empowering those who held them to participate in the "functions of government," specifically the right to vote, hold office, and serve on juries. Crum, *supra* p. 4, 1054-55. In contrast, "*civil rights*" were those privileges and immunities "inherent in citizenship" and which were more broadly held, including by women; they consisted of "private" rights, such as the right to own property, enter contracts, and sue or be sued. *Id.*

whatsoever," distill the most progressive "universalist rights" thinking of the era.[5] No other state has a closely analogous provision. Article 1, § 3 shows that Wyoming's founders were far ahead of their time in building our state charter on the capstone of equal political rights. The provision held an elevated place in the minds of those who drafted it.[6]

In sum, Article 1, § 3's prominent placement as the first of all guaranteed substantive rights, its historically unique expression and scope, and its demonstrated importance to those who drafted it, all point to it more than any other constitutional provision as embodying the political "spirit" of the Wyoming Constitution. Indeed, that spirit infuses the several other constitutional provisions following it that expressly protect the rights of

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[5] *See, e.g.*, Charles Sumner, *Political Equality Without Distinction of Color. No Compromise of Human Rights.* Speech in the U.S. Senate (Mar. 7, 1866), 13 *The Works of Charles Sumner*, 282, Lee & Shepard (1900), available at https://www.gutenberg.org/ebooks/50159 (last visited Mar. 21, 2026).

[6] After Wyoming voters overwhelmingly approved the new constitution, a committee of convention delegates sent a memorandum to Congress and the President entitled "*Praying for Admission of Wyoming into the Union of States*." Larson, *supra* n. 2, 256. The committee memorandum touted the substance of Article 1, § 3 almost verbatim as being singularly reflective of the "republican form" of the new Wyoming charter. *Congressional Record*, December 18, 1889, 262, available at: Congressional Record | Congress.gov | Library of Congress (last visited March 23, 2026).

all Wyoming electors to vote in every Wyoming election free of legislatively created shackles, to wit:

> Art. 1, § 27: "Elections shall be open, free and equal, and no power, civil or military, shall at any time interfere to prevent an untrammeled exercise of the right of suffrage."
>
> Art. 6, § 1: all "male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges," and "[t]he rights of citizens of the State of Wyoming to vote and hold office shall not be denied or abridged on account of sex."
>
> Art. 6, § 2: providing all age-qualified citizens of the United States residing in Wyoming for the requisite period "shall be entitled to vote" in "any election" "except as herein otherwise provided."

Building on the "political rights" edifice of Article 1 § 3, these specific voting and election provisions are the tap root of Wyoming's "Equal Rights" motto, seal, and proud identity as the "Equality State."

2. *Legislative Regulation of Wyoming Elections*

Wyoming's robust constitutional provisions regarding voting and elections were enacted against a backdrop of what Dr. Larson described as "reprehensible" territorial election practices, including vote-buying, repeat voting under assumed names, and a system in which private entrepreneurs printed and sold "ticket" ballots to candidates in exchange for payment.[7] Larson, *supra* n. 2, 241–42. The constitutional delegates put a decisive end to these practices by adopting Article 6, § 11, guaranteeing voters "absolute privacy" in ballot preparation and requiring that "all elections" use uniform ballots printed "at public expense" and delivered "by sworn public officials." They further defined the age

[7] Copies of private tickets used in 1884 and 1886 are included in the record. R. 392–93.

and residency requirements and other qualifications of electors entitled to vote and run for office, mandated voter registration (Art. 6, § 11), required the legislature to enact laws to "secure the purity of elections" (Art. 6, § 13), and prohibited "special laws" regarding the "conducting of any election" (Art. 3, § 27).[8]

3. *Wyoming's Early Election Code*

In 1890–91, the territorial and then state legislature adopted comprehensive election provisions establishing the framework that remains largely in effect today. Consistent with the Constitution's suffrage provisions, the first state Election Code granted all constitutionally qualified citizens ("electors") the right to vote in every election and established a registration system that permitted those who had not formally pre-registered within four weeks of the election to vote on election day by giving an oath of their qualifications. R. 347, 350, 357, 385, 386 (copy of *Wyoming Session Laws* 1890, Chapt. 80 Secs. 16, 29, 76; Chapt. 100; Secs. 11, 13).

[8] The age requirement of twenty-one was superseded by the 26th Amendment (prohibiting state laws restricting voting rights to those over eighteen years old). And in *Delgiorno v. Huisman*, 498 P.2d 1246, 1250–51 (Wyo. 1972), this Court held the lengthy residency requirements violated the federal equal protection clause. Other sections of Article 6 require that Wyoming electors be citizens of the United States (Article 6, § 5) who have not been adjudicated to be mentally incompetent or convicted felons with unrestored civil rights (Article 6, § 6), or who are unable to read the state constitution (Article 6, § 9) (preempted by the Federal Voting Rights Act Amendment of 1970).

During this period before public primary elections, political parties nominated their candidates through private conventions and caucuses; a candidate's name appeared on the general election ballot either through a party's certificate of nomination or through a nominating petition signed by the requisite number of qualified electors. R. 358-59 (copy of *Wyoming Session Laws* 1890, Chapt. 80, Secs. 84–88).

4. *Wyoming's First Public Primary Election Law and Its Evolution*

By 1896, political dominance of the Republican Party under the control of Senator Francis E. Warren and his allies had begun in earnest. Betsy Ross Peters, *Joseph Carey and the Progressive Movement in Wyoming*, 28–29, 34–68 (1971) (Ph.D. dissertation, University of Wyoming). In 1910, after losing to Warren's chosen candidate at the Republican convention, Joseph Carey (Warren's former Republican ally) then sought and won the Democratic nomination, and thereafter won the general election decisively, carrying every county. *Larson, supra,* at 316–21. Governor Carey, having defeated the "Warren machine," immediately pushed through various progressive reforms, including his desired direct primary law in 1911. *Id.* at 83–84, 87, 93.

The first primary statutes in Wyoming provided that nominees of "political parties" were required to be "elected at primary elections." R. 395 (copy of *Wyoming Session Laws* 1911, Chapt. 23, Sec. 1). The primary election was to be held during August of general election years for parties whose candidate for the U.S. House had received at least ten percent of the total vote in the preceding general election. R. 395; 408 (copy of Chapt. 23, Secs. 2, 44). Consistent with the Constitution's requirement for the "uniform operation" of

laws and its prohibition of "special laws" concerning the "conducting of any election," the first primary law expressly stated:

> all primary elections shall be conducted as required for general elections under the general election laws of the State of Wyoming, as far as the provisions thereof may be applicable, and the election officers for such primary election shall have the same powers and perform the same duties as those for general elections, as nearly as may be applicable.

R. 400; (copy of Chapt. 23, Sec. 17).

In addition, under the first primary law, an elector wishing to vote in a primary was permitted to do so at the election by requesting that party's ballot, which constituted a "declaration of party affiliation" R. 401 (copy of Chapt. 23, Sec. 23). An elector wishing to thereafter change party affiliation could do so not less than ten days before the next primary. R. 402 (copy of Chapt. 23, Sec. 24). The law also provided a mechanism by which a voter's declared affiliation could be challenged, requiring the challenged voter to swear an oath of party fealty. R. 403 (copy of Chapter 23, Sec. 25).

The underlying architecture of the original primary law has remained unchanged. Today's statutes continue to treat the primary election in the same manner as the general. Indeed, the current Election Code defines the word "election" to mean "all elections participated in by the voters of a city, town, county, district or the state," Wyo. Stat. § 22-1-102(a)(xiii), and expressly specifies that its provisions apply to "General" and "Primary" elections, Wyo. Stat. § 22-2-101(a)(i-ii).

Still, the Election Code has undergone numerous amendments over the last 115 years. In 1961, the requirements of the "party fealty" affidavit were significantly reduced. *Wyoming Session Laws* 1961, Chapt. 235, Sec. 29. And in 1973, comprehensive changes

to the Election Code abolished the mechanism to challenge an electors declared party affiliation entirely, and electors wishing to vote in primary elections could do so by declaring or changing their party affiliation during the official registration period or at the polls on primary election day. Wyo. Stat. §§ 22.1-18(a); 22.1-69. This later change was reaffirmed in further revisions in 1998, and again in 2014. *See* Wyo. Stat. § 22-3-102(a); 22-5-214.

Election day registration ("EDR") has thus been part of Wyoming elections since statehood, having been permitted at *general* elections from 1890 through the present, and in *primary* elections since 1911. Since at least 1973, electors in primary elections were also permitted to change their party affiliation on primary election day, the right now terminated by HB 103. Notably, Wyoming's longstanding democracy-enhancing allowance of EDR earned it—along with only five other states—a full exemption from the requirements of the National Voter Registration Act of 1993. *See* 52 U.S.C. § 20503(b)(2) (exempting any "[state in which, under law . . ., all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office"); *see also The National Voter Registration Act of 1993 (NVRA)*, U.S. DEP'T OF JUSTICE, available at: www.justice.gov/crt/national-voter-registration-act-1993-nvra (last visited Mar. 22, 2026).

C. CHALLENGED AMENDMENTS UNDER HOUSE BILL 103

The Amendments challenged here are the most drastic changes to Wyoming's primary election system since it was enacted. They altered Wyoming's longstanding primary practices by implementing never-before-seen restrictions on the timing of party affiliation and the free ability to change or cancel that affiliation. Under House Bill 103,

Wyoming electors seeking to declare, change, or even terminate their party affiliation in an election year may now only do so before or after the 96-day Freeze Period.

House Bill 103 specifically established the Freeze Period through three statutory changes:

First, it modified Wyo. Stat. § 22-3-115(a)(vi), pertaining to when electors can "cancel" their registration. Whereas before electors could cancel their registration without time limitation upon their written request, the statute now forecloses cancellation during "the period for which party changes are prohibited as specified in Wyo. Stat. § 22-5-214." Wyo. Stat. § 22-3-115(a)(vi).

Second, it modified Wyo. Stat. § 22-5-212, pertaining to electors entitled to receive a party ballot at a primary election. Whereas before any elector declaring or changing their party affiliation at or before the primary election could receive the applicable party's ballot, the statute now makes primary ballots available only to those who "shall declare or change party affiliation in accordance with Wyo. Stat. § 22-5-214." Wyo. Stat. § 22-5-212.

And *third*, it modified Wyo. Stat. § 22-5-214, pertaining to "declaration or change of party affiliation." Whereas an elector could previously declare or change their party affiliation at any time during the formal registration period or "at the polls on the day of the primary or general election," the statute now restricts affiliation declarations or changes to the time beginning "*before* the first day on which an application for nomination may be filed under W.S. 22-5-209" and ending "after the primary election"—i.e., the Freeze Period. Wyo. Stat. § 22-5-214. (Under Wyo. Stat. § 22-5-209, unchanged by HB 103, applications

for candidate nominations must be filed "not more than ninety-six (96) days" before the next primary election—i.e., the day *after* the Freeze Period begins.

Appellants served discovery requests on the Secretary asking him to identify the governmental interest served by the Amendments. In response, the Secretary avowed their purpose is "ensuring political stability and the integrity of the nomination and election process." R. 337. The Secretary could not identify any documents supporting this contention and provided no evidence to support this avowed purpose to the district court. R. 338-39. In briefing, the Secretary also claimed, without evidence, that the Amendments serve "election integrity" by discouraging "party raiding."[9] R. 213-14. But even if an elector's purported status as a party "raider" could somehow be determined, the Secretary provided no evidence that "party raiding" has occurred in any Wyoming primary election, or that it has ever impacted the outcome of any primary election.

The majority party sponsors and supporters of HB 103 made clear its purpose was partisan. Its specific object was to discourage minority party voters from "crossing over" to vote in the majority party's primaries. Long-time bill proponent Senator Biteman

[9] Per the Secretary, "[p]arty raiding occurs when voters in one political party switch parties to influence or determine the results of another party's primary election." R. 213. The Secretary argued to the district court: "This dilutes the primary process by allowing potentially disingenuous actors to switch their party affiliation, vote in another party's primary election, then switch back, without ever intending to be a member in good faith of that party." R. 214.

candidly explained that "Democrats" would not bother crossing over in uncompetitive "Republican" primaries, but where a "moderate or liberal" "Republican" faced a conservative challenger, "Democrats" would be incentivized to switch affiliations to support "the more liberal" candidate. R. 596. His proffered solution was to move the affiliation deadline before the candidate filing period. He explained:

> Now you've got a competitive primary between a liberal . . . and a conservative Republican in a Republican primary. Of course the Democrats are going to—it's going to incentivize them to switch over, change their party affiliation to play in a Republican primary to affect the outcome of that race and vote for the liberal . . . and drag them across the finish line where otherwise that liberal . . . would not win a Republican primary. . . . That's why you move it before the nominating period ends so you don't know, so it takes all that activity out of the equation and leaves it only for people that have truly changed minds.

R. 596.

Senator Ide, seeking to assuage his colleagues' concerns about effectively disenfranchising registered *unaffiliated* electors who wish to affiliate with a party during the Freeze Period (which would not amount to "crossing over"),[10] assured them the bill was only intended to impact the minority party: "crossover voting benefits one party: the Democrats. I don't think we see a lot of Republicans crossing over to vote the other way." R. 600. Dismissing concerns about disenfranchising unaffiliated electors during the Freeze Period, he remarked: "that's a choice that they make. I mean, they don't have to be unaffiliated, so they put themselves in that position." *Id.*

[10] Majority Senators Case, Scott, and Landon along with Rothfuss all expressed especially strong and eloquent opposition to the bill. R. 651–54; 659–61.

The purely partisan character of the bill was further confirmed when Republican supporters twice rejected an amendment proposed by Democratic Senator Rothfuss that would have allowed the Democratic Party (or any party) to "opt out" of the new early affiliation requirements. This proposed amendment would not have impacted the Republican Party's desired restrictions for its primary in any way, but it was nevertheless rejected without meaningful discussion by Republican legislators. R. 608; 644.

On October 24, 2023, the Secretary issued *Directive No. 2023-01 to Wyoming's County Clerks* (the "*Directive"*) providing "uniform interpretation and guidance" on the implementation of HB 103. R. 490–92. The *Directive* acknowledges the new legislation expressly prohibits all registered voters—whether affiliated with a major party, a minor party, or unaffiliated—from *declaring* ***or*** *changing* party affiliation during the Freeze Period. R. 490 (emphasis added). However, it then purports to create a blanket exception to "unregistered" voters and "new registrants," directing County Clerks to "permit an unregistered elector who otherwise meets the qualifications to register to vote, to declare an affiliation with a major political party upon registration, during the period for which party changes are otherwise prohibited." R. 491.

The *Directive* contradicts the plain language of amended Wyo. Stat. § 22-5-212, which provides that an elector requesting a major party ballot in a primary election must now "*declare or change* party affiliation in accordance with W.S. § 22-5-*214 before receiving a party ballot*." Wyo. Stat. § 22-5-212 (emphasis added). The statute uses the word "declare"—not just "change"—meaning that by its express terms it applies to all electors declaring an affiliation, without regard to whether it is an elector's first declaration.

The *Directive* thus purports to create by administrative fiat a distinction the statute does not make, granting all "new" registrants the right to freely declare party affiliation during the Freeze Period while denying that same right to already registered voters. The Secretary concludes the *Directive* stating: "I will determine any questions regarding how to interpret this Directive or how it applies to other provisions of the Election code at my sole discretion." R.492.

D. IMPACT OF HB 103 ON APPELLANTS AS RELATED TO BROADER TRENDS

Appellants, each undisputed Wyoming electors, testified in sworn affidavits about how the Amendments negatively affected their ability to vote in the 2024 primary for the candidates of their choice, and how it continues to adversely affect their political rights and choices. R. 449–88, 660–70. Most of them have changed their party affiliation from time to time depending upon the primary election and have also routinely voted for candidates of different parties at the general election. R. 451, 455, 462, 465, 471; *see also* R. 503–04.

For example, Appellant Christina Kitchen, a registered Republican in Teton County, went to the Teton County Clerk's office in the summer of 2024 to change her affiliation to Democrat so she could vote for her brother-in-law (Appellant Jim Rooks) in the Democratic primary for County Commission. R. 450. Previously she had always been able change affiliation at the time of voting, but in 2024 she was told the deadline had passed and thus she could not vote for Rooks. *Id.* Ms. Kitchen testified that the new law forces her to commit to a party affiliation "at a time months before the primary election (before

candidates are even required to file to run) and long before my final candidate preferences are known," and thus "adversely impacts my right to vote for the candidates I support." *Id.*

Appellant Joshua Malcom, a registered but unaffiliated elector in Laramie County who does not wish to affiliate with any political party, illustrated the before-and-after impact of HB 103 directly: in 2022, he declared affiliation with the Republican Party at the time of the primary to vote for his brother (Appellant Matthew Malcom), then changed back to unaffiliated immediately after the primary. R. 456. In 2024, when he again attempted to change his affiliation to Republican to again vote for his brother, the Laramie County Clerk informed him the deadline had passed, and he could not do so. R. 456–57. He was thus unable to vote for his brother in the primary. R. 457.

Jim Rooks, a candidate for Teton County Commission in the 2024 Democratic primary, discovered during his primary campaign that almost all of his friends, family, and prior supporters were affiliated with the Republican Party—many having changed affiliation in prior years when election day changes were permitted. Virtually all of them told Rooks they wanted to vote for him and were surprised when he told them they could not because the new deadline had passed. R. 478.

Appellants' experiences as a result of the challenged Amendments are particularly concerning when viewed in the context of broader trends underscoring the electoral significance of Wyoming primary elections. In recent years, electoral competition in Wyoming has declined precipitously. In 2024, of the 77 races for state legislative office, **76% had only one name on the general election ballot**—12 of 15 senate races, and 47 of 62 house races were uncontested following the primary. R. 151. Plainly, Wyoming

primary elections have become the deciding contest in the vast number of state election contests.

Equally concerning is the decline of voter participation in the primary election which now determines the identity of most of Wyoming's future leaders. In 2024, only 54% of Wyoming's voting age population was registered to vote at primary time, and only 27% of that population turned out to vote. R 411.

Voter registrations are converging toward Republican Party registration. As of May 2025, some 212,356 voters were registered Republicans, only 31,885 were registered Democrats, and only 25,987 were registered as Unaffiliated.[11] R. 415. All of Wyoming's current representatives in the U.S. Congress and its highest state officers are Republicans, as are 85 of 93 state legislators. According to the Cook Partisan Voting Index, Wyoming is the most Republican-dominated state in the nation. R.309 (citing Cook Partisan Voting Index - Wikipedia last visited July 7, 2025).

[11] As of *twelve years ago* in 2014, "more than six out of every 10 Wyoming voters register[ed] as Republican. This [was] the highest percentage of Republican registration in the United States, although not every state requires registration by political party." King, J. et al., *The Equality State: Government and Politics in Wyoming,* Hayden-McNeil (8th Ed. 2017), 28.

These "constitutional facts"[12] are undisputed: the vast majority of our national and state elected representatives are now effectively determined in one party's primary and by a very small percentage of Wyoming's eligible electors, a group that may well grow even smaller because of the restrictions of House Bill 103.

STANDARD OF REVIEW & LEVEL OF SCRUTINY

This Court reviews "a district court's rulings on summary judgment and the constitutionality of statutes de novo." *State v. Johnson*, 2026 WY 1, ¶ 12. Summary judgment is proper when there are no genuine issues of material fact and a party is entitled to judgment as a matter of law. *Id*. As in *Johnson*, the parties presented cross-motions for summary judgment on uncontested facts, and there are no factual disputes which preclude the Court's entry of summary judgment in favor of Appellants as a matter of law.

Ordinarily, a party challenging a statute on constitutional grounds bears the "heavy burden" of demonstrating unconstitutionality "clearly and exactly" and "beyond any reasonable doubt." *Id.* at ¶ 13. If the implicated right is "ordinary rather than fundamental," then the Court applies the rational basis test to determine if the challenged statutes are "rationally related to the achievement of an *appropriate* legislative purpose." *Id.* at ¶ 65 (quoting *Martin v. Bd. of Cnty. Comm's of Laramie Cnty*., 2022 WY 21, ¶ 33); *Greenwalt*

[12] In *State v. Johnson*, the Court said "[c]onstitutional facts are those which 'assist a court in forming a judgment on a question of constitutional law'…[and] [t]hey include social and economic data and may come into a case in various ways including through the evidence and submissions by the parties." 2026 WY 1, ¶ 26 (internal and other citations omitted).

v. Ram Restaurant Corp., 2003 WY 77, ¶ 40 (emphasis in original). Under rational basis scrutiny, the statute must both serve an appropriate government interest and constitute a "rational way to serve that interest." *Id.* (citing *Hardison v. State*, 2022 WY 45, ¶ 10).

Critically though, "when a law disproportionately affects more than ordinary rights . . ., a more critical analysis is warranted." *Id*. at ¶ 14 (quoting *Martin*, 2022 WY 21, ¶ 14). When a fundamental constitutional right is involved, the presumptions in favor of constitutionality are "inverted" and the Court will "carefully assess the nature of the right considering the express constitutional language from which it is derived to determine whether strict scrutiny or some other test for constitutionality should apply." *Id.*

As the Court stated in *Johnson*:

> Applying the strict scrutiny test, the Court closely analyzes the statute "to determine if it is necessary to achieve a compelling state interest. In addition, the burden is on the State to demonstrate that it could not use a less onerous alternative to achieve its objective." *Id*.

Id. at ¶ 52 (quoting *Mills v. Reynolds*, 837 P.2d 48, 53).

Even when a fundamental right is involved, if express constitutional language "suggests a more appropriate test," then a standard other than strict scrutiny may be applied. *Id.* at ¶ 54. In that regard, the majority in *Johnson* expressed its agreement with the concurring and dissenting justices that "it is necessary to review the constitutional language in determining the test for constitutionality," while reiterating that the test ultimately adopted "is also influenced by [whether the right] is fundamental," which under

this Court's precedent "often" triggers strict scrutiny.[13] *Id*. at n. 10 (citing *Mills v. Reynolds*, 837 P.2d 48, 53 (Wyo. 1992); *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1266–67 (Wyo. 1995)).

Here, the Secretary affirmed to the district court: "It is undisputed that the right to vote is a fundamental right. Plaintiffs are correct that the Wyoming Constitution placed great importance on ensuring the right to vote was protected." R. 678. The district court agreed, recognizing this Court has long held that both "political rights" and the "right to vote" are "fundamental." R. 722. Nevertheless, the district court rejected the application of strict scrutiny and instead reviewed Appellants' claims under a new *sui generis* standard resembling rational basis scrutiny which placed the presumptions and burdens on Appellants. R. 12. The district court described its adopted "analytic framework" as follows:

> 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. [. . .] an election statute is a permissible regulation of the electoral process if it prescribes reasonable regulations, consistent with the Wyoming Constitution, by which political rights may be exercised. R. 728–29 (citations omitted).

[13] The U.S. Supreme Court has adopted "intermediate scrutiny" in federal equal protection cases involving gender classifications. *Johnson*, ¶ n. 9 (quoting *Martin,* 2022 WY 21, ¶ 14 n. 4 (citing *Craig v. Boren*, 429 U.S. 190, 197–98 (1976)). However, this Court does not appear to have ever applied "intermediate scrutiny" in any case. *See Johnson*, ¶ 51; *see also Johnson*, ¶ 115 (Fenn, J, concurring).

As argued below, the district court's framework not only contravenes this Court's prior decisions, but it also directly contradicts the Wyoming Constitution's text and spirit guaranteeing the strongest protection for the fundamental political rights at issue.

ARGUMENT

Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.

Wyo. Const., Art. 1, § 7

I. ARTICLE 1, § 27 AND ARTICLE 1, § 3 GUARANTEE ALL QUALIFIED ELECTORS DECLARING PARTY AFFILIATION BEFORE THE ELECTION THE RIGHT TO VOTE IN THAT PARTY'S PRIMARY ELECTION.

A. General Interpretative Principles.

1. *Threshold Structural Parameters & Considerations*

The Preamble to Wyoming's Constitution states:

> All power is *inherent in the people*, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper.

Wyo. Const., Preamble (emphasis added).

Before the people delegated any of their inherent power to any governmental branch, they first set forth a list of specific rights in Article 1 as their "Declaration of Rights." Plainly, those rights were set forth at the beginning of the Constitution with the expectation that whatever else followed would be subject to rights the people expressly reserved to themselves in "posterity." It would make no sense for the people, having declared their rights, to then give them away through the delegations of power that followed.

Having established their rights in Article 1, the people only then delegated executive, legislative, and judicial powers to three distinct branches of government. "Wyoming has incorporated an explicit separation of powers article into its constitution," dividing the government into three distinct departments such that "powers properly belonging to one of these departments" shall not be exercised by either of the other departments except as "expressly directed or permitted" in the Constitution. *Johnson*, ¶ 9 (citing Robert B. Keiter, *The Wyoming State Constitution,* 111 (2d ed. 2017); Wyo. Const. Article 2, § 1).

Reinforcing these delegation principles, the Court has stated that "a constitution is not a grant but a limitation upon legislative power." *Cathcart v. Meyer*, 2004 WY 49, ¶ 45. Consequently, the legislature may only enact laws that are not "prohibited by the constitution"—whether "expressly or inferentially." *Id*. Similarly, while the legislature is authorized to use its inherent police power "to enact laws for the health, safety, comfort, moral and general welfare of the people" those powers are also "limited by individual constitutional rights." *Johnson*, ¶ 50 (quoting *State v. Langley,* 84 P.2d 767, 770 (Wyo. 1938)).

In *Powers v. State*, Justice Davis aptly described constitutional separation of powers as "a delicate and uneasy balance between the legislative, executive, and judicial branches" designed "to prevent any one branch from becoming tyrannical." 2014 WY 15, ¶ 77. Since *Marbury v. Madison*, he observed, the courts "have been the final arbiters of when legislative or executive action complies with constitutions," which, as this Court knows, is "always a controversial duty, and often an unpleasant one, but it is the judicial branch which

must make those difficult determinations." *Id*. at ¶ 79. He went further to explain the uneasy tension accompanying judicial review:

> There can be no doubt that it is unhealthy for the balance of power between the branches when courts intrude on the powers delegated to the legislature by the people through the Wyoming Constitution. However, it would be equally unhealthy if the judicial branch did not fulfill its duty to determine the meaning of the supreme law of the state as that meaning is expressed in the words of the document. Failure to fulfill that duty could result in the legislative or executive branches exceeding the powers enumerated in the Wyoming Constitution.

Id. at ¶ 80.

Most recently in *Johnson,* the Court echoed this constitutional reality, acknowledging that separation of powers requires the judiciary "to give great deference to legislative pronouncements and uphold constitutionality when possible," but also reaffirming the judiciary's "equally imperative duty to declare a legislative enactment invalid if it transgresses the state constitution." *Johnson*, ¶ 9–10 (quoting *Witzenburger v. State ex rel. Wyoming Cmty. Dev. Auth.*, 575 P.2d 1100, 1114 (Wyo. 1978)). In his concurring opinion, Justice Fenn provided the fundamental justification for the exercise of of the power of judicial review as follows:

> The power of the people is superior to both the power of the judiciary and the power of the legislature. Where the will of the legislature as declared in its statutes is in opposition to that of the people as declared in the Constitution, *courts are and must be governed by the will of the people and must regulate judicial decisions by the fundamental law found in the Constitution.*

Johnson, 2026 WY 1, ¶111 (Fenn, J., concurring) (internal and other citations omitted) (emphasis added).

And, finally, of particular relevance to the Secretary's attempt through his *Directive* to read exemptions into HB 103 not found in its express language, in the recent case of *Castaner v. State* the Court stated:

> For over a century, courts in Wyoming have recognized that it is their duty only to interpret and declare what the law is, not to be responsible for its defects. *And of specific importance to the instant case is the precept that exceptions not made by the legislature in a statute cannot be read into it*.

2026 WY 25, ¶ 20 (citations omitted) (emphasis added).

2. *General Rules of Construction*[14]

Johnson restates longstanding general rules pertaining to the interpretation of constitutional and statutory provisions, including that "we interpret the Constitution as

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14 The "*Saldana* factors" arising from *Saldana v. State*, 846 P.2d 604 (Wyo. 1993) exist to help the Court determine whether the Wyoming Constitution extends broader protection than a federal constitutional counterpart. *Sheesley v. State*, 2019 WY 32, ¶ 15. That inquiry is not relevant here given that neither Article 1, § 27's guarantee of "open, free, and equal elections" and the "untrammeled exercise of suffrage," nor Article 1, § 3's prohibition of laws adding special conditions to "political rights," have federal analogs. See accord Johnson, ¶ 57 (finding Art. 1, § 38's protection of health care rights to be "unique," such that the Court did not reference Saldana and merely undertook an independent review of the Wyoming Constitution); *Hicks v. State*, 2025 WY 113, ¶ 57 n. 10 (finding Article 1, § 15 had "no analog in the Eighth Amendment" such that the Saldana analysis was not employed).

written to determine the intent of the drafters" and "[i]n determining that intent we look first to the plain and unambiguous language used in the text." 2026 WY ¶ 16 (citations omitted). In doing so, this Court utilizes a "harmonizing rule" so that every statement in the constitution (or relevant set of statutes) is read in relation to each other and in light of the whole, and no portion is rendered meaningless, inoperative, or superfluous. *Id.*

Johnson also reiterates the rule that, even in the absence of ambiguity, "in some cases, it is appropriate to use extrinsic aids of construction to confirm our interpretation of the plain language of the provision," including examining "the mischief the act was intended to cure, the historical setting surrounding its enactment, the public policy of the state, the conditions of the law and all other prior and contemporaneous facts and circumstances that would enable the court intelligently to determine the intention of the lawmaking body." *Id*. at ¶ 17 (citing *Parker Land & Cattle Co.*, 845 P.2d 1040, 1044 (Wyo. 1993)).

If the Court determines the constitution or statute's plain language does not reveal the intent, it construes the language using a long-defined set of rules, including looking to the extrinsic aids listed above. In *Cathcart v. Meyer* (involving Art. 1, § 3), the Court cited several other rules (seemingly applicable to either plain or ambiguous language) to wit:

1. "the rule that a statute that enumerates the subjects or things on which it is to operate, or the persons affected, or forbids certain things, is to be construed as excluding from its effect all those not expressly mentioned—*expressio unius est exclusio alterius*;"

2. "[d]ecisions from other states' courts may provide some guidance in the interpretation of constitutional provisions . . . but each case is controlled by the specific wording of the constitutional provision;" and

3. "in construing constitutional provisions, courts will not ignore the general spirit of the instrument."

2004 WY 49, ¶¶ 40, 51 (citations omitted).

Additionally, on several occasions the Court has observed that the Constitution is a "living thing" such that "'we must apply the constitution's language in the context of the times in which we live.'" *Hicks*, 2025 WY 113, ¶ 41 n. 4 (citing *Mogard v. City of Laramie*, 2001 WY 88, ¶ 17 n. 4); *see also Chicago & N.W. Ry. Co. v. Hall*, 26 P.2d 1071, 1073 (1933)). Further, it has often said: "[W]e will not interpret a statute…in a manner producing absurd results." *Delcon Partners LLC v. Wyoming Dep't of Revenue*, 2019 WY 106, ¶ 11 (Wyo. 2019) (citing *City of Casper v. Holloway*, 2015 WY 93, ¶ 20 (Wyo. 2015) (quoting *Stutzman v. Office of Wyo. State Eng'r*, 2006 WY 30, ¶ 16 (Wyo. 2006)).

3. *Special Rule of Construction for Voting & Election Provisions*

Since 1897, this Court has recognized the right of suffrage is so essential to the maintenance of popular sovereignty that a special canon of construction is applicable to laws impacting the electoral franchise. *See Rasmussen v. Baker*, 50 P. 819, 822 (Wyo. 1897). As stated by Justice Potter, such laws must be interpreted "liberally," resolving any reasonable doubt in favor of voters. *Id.* Put another way, "any provision which excludes any class of citizens from the exercise of the elective franchise ought to receive a strict

construction." *Id*. (citations omitted). "Such a rule would seem to be the natural and reasonable outgrowth of the fundamental principles of our form of government."[15] *Id.*

This Court has recognized the continued vitality of this pro-voter rule on many occasions, including in *Brimmer v. Thomson*, where it stated:

> [T]he basic and universally accepted rule that statutory and constitutional provisions which tend to limit the candidacy of any person for public office or exclude any citizen from participation in the elective process must be construed in favor of the right of the voters to exercise their choice and should be construed strictly and not extended to cases not clearly covered thereby.

Brimmer v. Thompson, 521 P.2d 574, 578 (Wyo. 1974).

More recently, in *Murphy v. State Canvassing Board*, a case also involving Wyoming's primary statutes, this Court again stated that "election laws, *particularly in their application to primaries*, should be construed liberally and *in pari materia*" so as to not deprive voters of their franchise. *Murphy*, 12 P.3d 677, 681 (Wyo. 2000) (citing *Pritel v. Burris,* 94 N.J. Super. 485, 490, 229 A.2d 257 (App. Div. 1967)) (emphasis in original);

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[15] Justice Potter's enunciation of this principle was one of the earliest examples of what Professor Richard Hasen has more recently described as the "Democracy Canon." Hasen, R., "*The Democracy Canon*," 62 *Stanford Law Review* 69 (2009). Hasen traces the origin of the canon to a decision by the Texas Supreme Court in 1885 and shows its wide use by state courts. *Id*. at 76. He argues generally for its broader recognition as a judicial "pro-democracy" measure, which would, among other things, serve as a potential check on legislatures weakening voting rights through vaguely worded "election integrity" measures." *Id*. at 105, 125.

see also State ex. Rel. Pape v. Hockett, 156 P.2d 299, 303 (Wyo. 1945); *Shumway v. Worthy*, 2001 WY 130, ¶ 9 ("we construe statutes that confer or extend the elective franchise liberally").

B. Construction of Article 1, § 27: All Wyoming Elections Must Be "Open, Free, & Equal" and Conducted to Allow "Untrammeled" Voting

1. *Primary Elections Are "Elections."*

Article 1, § 27 mandates that "elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free and untrammeled exercise of the right of suffrage." Wyo. Const., Article 1, § 27. The Secretary contends that "elections" as used in § 27 (and elsewhere in the Constitution) cannot include primary elections because they only result in the election of *party nominees* rather than *public officers*. R. 704. This interpretation is incompatible with the framers' intent for at least four reasons.

First, the framers' use of the phrase "elections" in § 27 is unqualified. Ergo, the plain language does not evince any exception. Nor does the language distinguish between one type of election or another or contain any language suggesting that "elections" only occur or "suffrage" is only exercised when contests result in election to public office.

Second, the word "election" is broadly defined. *Webster's New International Dictionary of the English Language of 1890* ("*Webster's 1890"*) defines the primary meaning of the noun "election" as: "1. The act of choosing; choice; selection" and the verb "elect" as: "To choose between alternatives." *Webster's 1890*, Vol. 1, p. 476 available at: Websters International Dictionary Of The English Language Vol 1 : Noah Porter : Free

Download, Borrow, and Streaming : Internet Archive (last visited Mar. 22, 2026). The word "election" thus broadly describes *the process of choosing*, not the result of the choice.

Third, this expansive definition comports with other provisions of the Wyoming Constitution. Read in *pari materia*, the "election and suffrage" provisions of Article 6 confirm a broad understanding of "elections" because (i) they guarantee the right to vote to every age-qualified resident in "**any** election" except those disqualified "as herein otherwise provided," Wyo. Const., Art. 6, § 2, and (ii) establish that "**all** elections" shall be held utilizing secret ballots "at public expense" delivered "by sworn public officials," Wyo. Const., Art 6, § 2. No language in Article 6 can be read to exclude a primary election, nor any other public election, from its scope.

And *fourth*, the broad constitutional meaning of "elections" is confirmed by the "historical legislative understanding" under the reasoning set forth in *Dir. Office of State Lands & Investments v. Merbanco*, 2003 WY 73, ¶ 11, 70 P.3d 273, 276 (Wyo. 2003) (pointing to legislative and executive branches' historical recognition of validity of state land exchanges). From the inception of direct primary elections in 1911 until the present, Wyoming's Election Code has always treated primary elections as public elections to be run in the same manner as general elections, except as otherwise provided in the Code. Indeed, the Wyoming Legislature has always regulated primary elections using the same election machinery and the same administrative framework it uses for general elections—treating primaries as "elections" in every operative sense of the word. And, of course, Wyoming taxpayers foot the bill for both primary elections and general elections. This

unbroken tradition and legislative understanding confirm the broad, plain meaning of the text.[16]

By contrast, the Secretary's cramped reading requires this Court to judicially legislate exceptions the framers did not write, in direct conflict with the interpretative principles discussed above including those requiring the Court to (i) resolve any doubts concerning the scope of laws impacting voting rights *in favor* of voters and not against them, (ii) avoid reading in constitutional exceptions not appearing in the text, and (iii) construe the document as a "flexible, living document" intended to accommodate "new conditions and circumstances in a changing society."[17] *See* discussion *supra*, pp. 26-29.

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[16] Although the Court has never addressed the specific interpretive question at issue here, it has assumed primary elections are constitutional elections. *See Murphy*, 12 P.3d at 681 ("election laws, particularly in their application to primaries, should be construed liberally and *in pari materia* so as to not deprive voters of their franchise") (emphasis in original).

[17] In *Chicago & N.W. Ry. Co* this Court applied the "living document" principle to conclude that railroad tie plants were constitutionally taxable "railroad property" even though they did not exist in 1890. *Chicago & N.W. Ry. Co*., 26 P.2d at 1073. Similarly, the advent of primary elections after 1890 does not render them exempt from the Constitution. *See, e.g., United States v. Classic*, 313 U.S. 299, 316 (1941)(holding primary elections subject to U.S. Constitution despite their more recent origin as Constitution expounds "great purposes" and Court "cannot rightly prefer, of the possible meanings of its words, that which will defeat rather than effectuate the Constitutional purpose").

Accepting the Secretary's narrow interpretation of elections would also produce absurd results as it would deny the guarantees of "free and equal" elections and the "untrammeled exercise of the right of suffrage" at the very stage of the electoral process (e.g., the primary election) where the undisputed facts show the choice of Wyoming voters is most decisive.

The U.S. Supreme Court has long recognized the important practical reality of primary elections, particularly in states like Wyoming dominated by a single party. In *United States v. Classic*, it held that where a state makes the primary an "integral part" of its public election process—or where the primary effectively controls the choice because of one party dominance—the constitutional right of the people to choose cannot be confined to a stage of the process where the choice has already been made (e.g. the general election). 313 U.S. 299, 318-19 (1941). While *Classic* interprets the U.S. Constitution (which contains no express "right to vote"[18]), its reasoning is persuasive here because it rests on the same foundational premise: again, the word "election" describes *the act of choosing*, and constitutional protections for voters must apply to whatever stage in the public election process that choice is exercised.

[18] The U.S. Constitution "does not confer the right of suffrage upon anyone" and "the right to vote, per se, is not a constitutionally protected right." *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 9 (1982); *see* Douglas, Joshua A., *The Right to Vote Under State Constitutions*, 67 Vanderbilt Law Review 1:89; 95-96 (2014) (right to vote not directly provided under U.S. Constitution in contrast to state constitutional protections).

2. *"Free" & "Equal" Elections*

This Court has seemingly had but one occasion to construe the "free and equal" language of Article 1, § 27. In *State v. Johnson County High School*, involving school district bond elections (not a "general election"), the Court observed that many other states had "free and equal" provisions in their constitutions and quoted interpretations from a few other courts and authorities. 5 P.2d 255, 258 (Wyo. 1931). Notably, the Court omitted any reference to the "open" requirement of § 27. Even so, without expressly adopting an interpretation, the Court's holding indicates that, at a minimum, Article 1, § 27 requires all Wyoming elections be conducted to give all voters the same "influence" or "decisive effect" on the issue presented to the electorate. There, the Court rejected the plaintiff's contention that the bond election was not conducted in a "free and equal" manner—because in that case the plaintiff's vote had the "same influence" and "decisive effect" on the bond question as "that of any other voter." *Id.*

The most thorough recent construction of a similar "free and equal" provision is found in a 2018 decision from Pennsylvania. In *League of Women Voters v. Commonwealth*, the Pennsylvania Supreme Court struck down a gerrymandered redistricting map as violating Pennsylvania's "free and equal" guarantee. 178 A.3d 737 (Pa. 2018); Pa. Const. Art. 1, § 5 ("Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."). The Pennsylvania Court's analysis and construction is particularly relevant here because its "free and equal" language is the source of virtually identical provisions appearing in numerous later state constitutions, including Wyoming's (albeit with our more robust protections for "open"

elections).[19] Like Wyoming's founders, Pennsylvania's constitutional convention delegates were also keenly motivated to expand the right of suffrage to those who had previously not held it and otherwise empower common citizens to use their political rights to combat entrenched political and economic interests. *Id.* at 807.

After a detailed review of the relevant Pennsylvania history, *League of Women Voters* quotes the Pennsylvania Supreme Court's early definition of the free-and-equal language as controlling:

> [E]lections are free and equal within the meaning of the Constitution when they are public and open *to all qualified electors alike*; *when every voter has the same right as every other voter;* when each voter under the law has the right to cast his ballot and have it honestly counted; *when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him*.

Id. at 810 (quoting *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914)) (emphasis added).

This understanding of broad and meaningful constitutional protection for "free and equal" elections is consistent with the plain meaning of the words "free" and "equal" themselves, which according to *Webster's 1890* are principally defined as follows: *Free*: "1. Exempt from subjection to the will of others; not under restraint, control, or compulsion," and *Equal* as: "1. Agreeing in quantity, size, quality, degree, value, etc.: having the same magnitude, the same value, the same degree, etc." *Webster's 1890*, Vol. 1,

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[19] Kyle Graham, *"Free and Equal": James Wilson's Elections Clause and Its Implications*, 85.4 Alb. L. Rev. 799, 814 (2024) (tracing the migration of the "free and equal" clause across state constitutions from its Pennsylvania origin).

pp. 504, 594 available at Websters International Dictionary Of The English Language Vol 1 : Noah Porter : Free Download, Borrow, and Streaming : Internet Archive (last visited Mar. 22, 2026). It is also harmonious with other Wyoming constitutional provisions related to the unconditioned political and voting rights of Wyoming electors set forth in Article 1, § 3 and in Article 6. While more comprehensive than the analysis in *Johnson County High School*, the reasoning from *League of Women Voters* is also entirely consistent with this Court's conclusion there that the "free and equal" language requires all votes be given the same "decisive effect."

3. *"Open" Elections*

As noted, Article 1, § 27 not only requires "free and equal" elections, but it also requires the additional element that elections be "open," making Wyoming's constitution the only one in the United States that guarantees its elections shall be free *and* equal *and* open. This Court has not yet addressed how the word "open" adds to the protections otherwise encompassed by the "free and equal" requirement discussed in *Johnson County,* but as a matter of textual interpretation the term plainly has independent meaning.

The Court has had occasion to interpret the somewhat analogous "open courts" provision.[20] In doing so, the Court did not construe the word "open" technically or literally but instead gave it practical substance by holding it guarantees all Wyomingites the right

[20] *See* Wyo. Const., Art 1, § 8 ("All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay.")

to *"meaningful access* to the courts." *Mills,* 837 P.2d at 54 (emphasis added). In *Mills*, even though the statute in question (immunizing co-employees from tort liability to fellow employees for on-the-job injuries) did not in a literal sense deny anyone access to any court, the Court nevertheless held that it violated the open court provision because it denied the kind of access necessary (e.g. *meaningful* access) to allow employees to recover compensation for injury. *Id.*

In the same manner, the requirement of "open" elections should not be narrowly or literally construed such that it can be satisfied through half measures—such as affording a "write-in" vote in the general election to those who have been prevented by the Amendments from voting for the candidate of their choice in the decisive primary election. Rather, like the open courts provision, the open elections requirement should be practically construed to provide a right of "*meaningful* access" to the electoral process, which necessarily means *all* stages of the process, including primary contests that increasingly determine our elected representatives. Coupled with the "free and equal" requirement discussed above, the requirement of "open" elections thus reinforces that Article 1, § 27, properly construed, prohibits elections that have the effect of denying Wyoming electors "meaningful" access to the elective process, or diluting the effectiveness of their vote compared to other votes. *Webster's 1890* is in accord, defining the adjective "*Open*" as, *inter alia*: "1. Not shut to . . . 2. Hence, free to be entered, visited, or used." *Webster's 1890*, Vol. 2, p. 1506, available at Websters New International Dictionary Of The English Language Vol-ii M-z : G. Bell And Sons, Ltd. London : Free Download, Borrow, and Streaming : Internet Archive (last visited March 22, 2026).

4. *"Untrammeled" Right of Suffrage*

The second clause of Article 1, § 27 states that "no power, civil or military, shall at any time interfere to prevent an untrammeled exercise of the right of suffrage." Like so many parts of Wyoming's Constitution, the "untrammeled" language is unique.[21] *Webster's 1890* defines the verb "*Trammel,*" *inter alia*, as: "1. To entangle, as in a net," and the adjective "Trammeled" as: "1. Shackled; bound." *Webster's 1890* Vol. 2, p. 2183 Websters New International Dictionary Of The English Language Vol-ii M-z : G. Bell And Sons, Ltd. London : Free Download, Borrow, and Streaming : Internet Archive (last visited March 22, 2026).

The Wyoming framers' selection of this particular word is significant because it describes a category of interference broader than outright denial. To deny a right is to take it away entirely. To *trammel* a right is to "shackle" or "entangle" its exercise—to leave the right nominally intact while encumbering the holder's ability to exercise it, like a shackled horse. The scope of this protection is reinforced by the absolute terms in which it is expressed. The clause does not limit its prohibition to any particular type of governmental action—it reaches *all* "power, civil or military." It does not limit its prohibition in time—it applies "at *any* time." And it does not merely prohibit interference with voting

[21] *See* Nat'l Conf. of State Legislatures, *Free and Equal Election Clauses in State Constitutions* (Nov. 2019) (compiling all state constitutional provisions requiring free, equal, or open elections), available at Free and Equal Election Clauses in State Constitutions (last visited March 22, 2026).

generally—it prohibits interference with the "*free*" exercise of suffrage making it clear that the clause is concerned, not just with forbidding interference that succeeds in completely denying the vote, but with interference that impedes or restricts its free exercise. This language is deliberately and comprehensively protective. It reaches legislative action no less than executive or military action, and its unlimited temporal scope necessarily encompasses every stage of the public election process.

The "untrammeled" clause of course must also be read in harmony and *in pari materia* with the first clause of Article 1 § 27, as well as the broad structure and purpose of the political rights provision of Article 1, § 3. Read together with the § 27 requirements that elections be "open, free, and equal," and Art. 1, § 3's broad prohibition on the legislative conditioning of "political rights," the "untrammeled suffrage" clause means at least this: Wyoming citizens have a fundamental political guarantee of elections that are unencumbered by governmental restraints hindering the elector's free ability to vote for the candidates of their choice. The word "untrammeled" thus adds a distinct and meaningful layer of protection beyond what the "free, equal, and open" provision alone would provide. No other state constitution uses this word in connection with the right of suffrage, and this Court should give it the full protective force the framers plainly intended.

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Based on the foregoing, the electoral rights guaranteed in Article 1, § 27 must be construed to protect not merely the mechanical right to deposit a ballot at the general election, but also to cast an informed and meaningful vote *in every part* of the publicly administered election process that will carry the same decisive weight as the votes of

others. The right to vote under our Constitution is a functional right, not a technical one, and the Court should evaluate the effects of HB 103 with this understanding.

C. Construction of Article 1, § 3: The Legislature Is Without Power to Add Conditions Upon the Exercise of Voting Rights Not Enumerated in the Constitution

1. *Text and Placement of Article 1, § 3*

Article 1, § 3, as the first substantive rights guarantee in the Declaration of Rights, defines what the people retained with respect to their all-important "political rights," which they expressly understood as foundational to all other natural and civil rights. The importance they placed in the preservation of their political rights from legislative encroachment could not be expressed more clearly.

The provision works in three related but distinct ways. *First*, it expresses the prime importance of "political rights" in Wyoming as the foundation of all other rights. *Second*, it expresses a commitment to "political equality" for all Wyoming citizens. And *third*, it expressly guarantees that Wyoming laws "affecting the political rights and privileges of Wyoming citizens" will not contain distinctions based on "race, color, sex" or upon *"any other circumstance or condition whatsoever"* except "incompetency" or adjudicated "unworthiness." Wyo. Const. Art. 1, § 3. (emphasis added).

The phrase "any circumstance or condition whatsoever" is the broadest possible formulation. The word "any" is inherently expansive. The word "whatsoever" removes any remaining ambiguity, making clear that the prohibition is not limited to the specifically enumerated personal categories of race, color, and sex but extends to every conceivable basis for distinction. The only exceptions the framers permitted in § 3 are for "individual

incompetency," "unworthiness duly ascertained by a court of competent jurisdiction," and, necessarily, the other express elector qualifications (and disqualifications) set forth in Article 6. And it bears repeating: no other state constitution contains a comparably broad prohibition on legislative conditioning of political rights. *See* Douglas, *supra* note 22.

2. *This Court Has Construed Article 1 § 3 as an Unambiguous Limitation on Legislative Power to Place Extra-Constitutional Conditions on the Exercise of Political Rights.*

This Court has twice construed the meaning of Article 1, § 3—first in *Cathcart*, and again in *Maxfield v. State*, 2013 WY 14. Both cases involved constitutional challenges to Wyoming's term limit law, with *Cathcart* involving a challenge by incumbent state legislators (and voters who supported them), and *Maxfield* raising a similar claim by the incumbent Secretary of State. In both cases, the challenging incumbent office holders claimed that the term-limits law, by disqualifying them from running for additional terms, violated the "political rights" provisions of the Wyoming Constitution. Notably, these claims were not premised upon "equal protection" or "fundamental rights" arguments so as to trigger scrutiny analysis. Rather, they argued simply that Article 6 set forth the exclusive qualifications of "electors" with the "political rights" to run for office and that, under Article 1, § 3, the legislature was *without power* to create additional qualifications to their exercise of those political rights in the form of term limits.

This Court agreed. In so holding, *Cathcart* first applied the maxim of *expressio unius est exclusio alterius* to conclude that the "constitutionally prescribed qualifications for holding a constitutional office [in Article 6] are exclusive." *Cathcart*, ¶ 57. It explained the effect of this "lexigraphic rule" by stating: "we continue to believe that "'[i]f no person can

be elected to that office who does not possess these qualifications, it follows by a familiar rule of interpretation that any person who does possess them may be elected.'" *Id.* at ¶ 56 *(*quoting *State ex rel. Johnson v. Crane*, 197 P.2d 864, 870 (Wyo. 1948)). The Court then said, irrespective of rules of construction, Article 1 § 3 compels the same conclusion, noting that it is "one of the earliest sections in the Declaration of Rights" and that it:

> forbids the passage of any law making the exercise of Wyoming citizens' political rights dependent upon a circumstance or condition otherwise than as provided. Incumbency is simply not individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.

Id. at ¶ 57.

In *Maxfield*, the Court reached the same conclusion but went deeper into the meaning of Article 1 § 3. Specifically, the Court rejected the State's interpretation of the provision as being intended only to prohibit laws conditioning political rights on "personal" attributes like "race, color, or sex." In this regard it stated:

> The express, unambiguous language of art. 1, § 3 convinces us otherwise. The words "or any circumstance or condition whatsoever other than individual competency, or unworthiness duly ascertained by a court of competent jurisdiction" could not be more clear. Together, art. 1, § 3 and art. 6, § 1 clearly provide that laws affecting the political rights and privileges of Wyoming citizens, such as the right to hold public office, may not be based upon race, color, sex or ***any circumstance or condition whatsoever other than*** those conditions expressly stated. Incumbency is not one of the conditions expressly stated. To read the provision as the State would have us do would be either to read the highlighted words out of the provision completely, or to interpret them as modifying the words "race, color, sex" and meaning "***like or similar*** circumstance or condition." The broad language used by the framers does not support either reading.

Maxfield, ¶ 34 (emphasis in original).

The Court in *Maxfield* thus concluded, "as [. . .] in *Cathcart*," that Article 1, § 3 prohibits any law "conditioning political rights and privileges upon a circumstance or

condition other than those enumerated." *Id.*, ¶ 35. The Court said that "one such political right is the right to hold office," and because the term limit law conditioned that right on "incumbency," which was "not one of the circumstances or conditions enumerated," it was "unconstitutional." *Id.* The same holds true for the political right to cast an informed vote in every public election. Such rights cannot be impaired through extra-constitutional legislative conditions.

II. THE AMENDMENTS VIOLATE THE PLAIN TEXT OF BOTH ARTICLE 1, § 27 AND ARTICLE 1, § 3.

A. The Freeze Period Violates Article 1, § 27

As shown, the second clause of Article 1, § 27 prohibits not only outright denial of voting rights but any governmental restraint that "shackles" a voter's ability to exercise the right of suffrage. The Freeze Period is the poster child of a shackle. Before HB 103, Wyoming electors could always freely declare or change their party affiliation within ten days of the primary election, and since 1973 even on primary election day. But now they must declare party affiliation over three months before the primary, before candidates are even allowed to file for office. The result, as the record demonstrates, is that voters like Christina Kitchen and Joshua Malcom (as well as the many Republican-affiliated voters who wanted to support Jim Rooks) have been and will continue to being impermissibly "shackled" from voting for the candidates of their choice in primary elections. *See* R. 450; 456–57.

The Amendments also violate the guarantee that our elections be "open." A primary election is not constitutionally "open" to voters who must commit to a party over three months before the election, before knowing which candidates will even appear on the ballot

for any party, and who cannot thereafter change that commitment even in response to important changed circumstances or preferences. Under the Amendments, a voter has no ability to change their affiliation based upon who declares their candidacy, how campaigns are launched and conducted, and what is revealed about a candidate or their platform after the Affiliation Deadline. All of this freezes voter registrations during the most critical stage in Wyoming's election process when the voting public's attention is focused on elections and campaigns. Thus, while the Amendments leave the formal right to participate in the primary nominally intact, they shut the door to voters who wish to make informed and meaningful electoral choices, rendering the primary considerably less than "open."

The Freeze Period also violates § 27's "free and equal" guarantee. As shown above, "free and equal" elections should require that every elector have the same relative voting power and that regulation of the franchise does not deny the franchise itself or make it so difficult as to amount to a denial. But as written, and as interpreted by the Secretary, the Amendments render our primary elections both unfree and unequal. An elector declaring party affiliation *before* the Freeze Period may freely vote in that party's primary; but an elector who reaches the same decision *one day after* the Affiliation Deadline is denied that right—not because of any difference in constitutional qualification, but solely because of when the affiliation decision was made. This disqualification by timing penalize less partisan voters like Appellants, whose electoral choices evolve in response to information and candidacies rather than being fixed by party loyalty.

Even more problematic, Wyo. Stat. § 22-5-212 unambiguously provides that *only* those electors who "declare or change" their party affiliation *before* the Freeze Period can

receive a party ballot. On its face, this requirement necessarily 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. Plainly, an election that denies participation to whole categories of qualified electors based purely on a time deadline imposed, not for administrative need but for pure partisan purposes, is neither "free" nor "equal."

The Secretary, recognizing this constitutional problem for newly qualified electors, issued the *Directive* to cure it, decreeing that Clerks should allow "first time registrants" to declare their affiliation during the Freeze Period notwithstanding that the language of the Amendments provides no exceptions. Ignoring that the purported exception is unsupported by the plain statutory text (violating the interpretive rule recently highlighted in *Castaner),* the Directive, if lawful, would grant Freeze Period rights to "first time registrants" denied to all other electors, including the Appellants. The unfair (and unconstitutional) effect of the Secretary's selective exemption can be vividly seen through the eyes of a registered but non-affiliated independent voter like Joshua Malcom who, denied the ability "to declare" party affiliation after the Freeze Deadline, must watch as "new" registrants enjoy that right based upon the Secretary's special dispensation to them.

All this demonstrates that HB 103 makes our primary elections "unfree" and "unequal" under the language of Article 1, § 27.

B. The Freeze Period Condition Also Violates Article 1, § 3

It is undisputed that the right to vote, like the right to run for office, is a "political right" expressly recognized both in Article 1, § 27 and Article 6, § 2. The constitutional

qualifications for electors to vote and run for office are the same. This Court's prior holdings in *Cathcart* and *Maxfield* compel the conclusion that, just as the legislature cannot condition an elector's "political right" to run for office on a factor not enumerated in the Constitution, it cannot condition the "political right" to vote on the timing of an elector's party affiliation decision—especially when the timing condition serves no administrative government purpose.

III. STRICT SCRUTINY APPLIES, AND THE AMENDMENTS CANNOT SURVIVE IT.

A. Strict Scrutiny Is the Proper Standard

This Court has already observed, albeit in passing and without analysis, that strict scrutiny applies to laws impacting voting rights. *See Shumway v. Worthey*, 2001 WY 130, ¶ 9. That said, the district court is correct in observing that to date the Court has never actually applied (or rejected) strict scrutiny in a voting rights case. Nevertheless, the "scrutiny framework" this Court has developed, as explained in *Johnson*, compels its application here. In *Johnson* the Court explained its straightforward scrutiny framework as follows:

> When a statute impacts a fundamental right, we carefully assess the nature of the right considering the express constitutional language from which it is derived to determine whether strict scrutiny or some other test for constitutionality should apply.

Johnson, ¶ 14.

After finding that Article 1, § 38 creates a fundamental right because it expressly guarantees the right to make health care decisions, this Court reviewed its prior fundamental rights cases to assess the level of scrutiny applied. *Id*. at ¶¶ 53-56. The Court

observed strict scrutiny applied unless the language in the provision creating the fundamental right suggested a different standard. *Id.* The Court thus carefully reviewed Article 1, § 38 to determine whether its "specific language…comports with [strict scrutiny] or suggests otherwise." *Id*. at ¶57. Although two members of the Court disagreed, the majority held that the express constitutional language "supports our application of the strict scrutiny standard." *Id.*

Notably, the Court's disagreement in *Johnson* was not about the scrutiny framework *per se* but over the relatively complex, multi-part language of Article 1, § 38, described by Justice Fenn as "unlike any other provision this Court has ever been asked to interpret." *Id.* at ¶ 115. Within that unusual and multi-layered language, Justices Fenn and Gray found support for the application of rational basis scrutiny. But unlike traditional rational basis review, where the "heavy burden" of proving unconstitutionality is on the challenger, Justice Fenn found that even under a lesser standard of scrutiny, Article 1, § 38 still shifted the burden to the government to prove the "statute passes constitutional muster." *Id.* at ¶ 121 (noting language that the state "shall act to preserve these rights from undue governmental infringement")

Article 1, § 27 involves none of the *Johnson* complexities. It does more than "support" strict scrutiny—it compels it. As shown above, it employs the most protective language found in any state constitution: elections must be "open, free, and equal," and "no power, civil or military, shall at any time interfere to prevent an untrammeled exercise of the right of suffrage." As discussed above, every operative term in this provision points toward the most rigorous judicial protection. If anything, its language suggests a standard

even more demanding than strict scrutiny—one approaching categorical prohibition, as Article 1, § 3 independently suggests. *See* Wyo. Const. Art. 1, § 3 (" . . . the laws of this state affecting the political rights and privileges of its citizens *shall be without distinction*….") (emphasis added).

This Court's longstanding use of what other commentators describe as the "Democracy Canon" further supports the application of strict scrutiny. Since *Rasmussen v. Baker*, this Court has held that "any provision which excludes any class of citizens from the exercise of the elective franchise ought to receive a strict construction." 50 P. 819, 822 (Wyo. 1897). This canon, established long before the advent of constitutional scrutiny review, does not describe a scrutiny standard. But it reflects a long and consistent judicial commitment by this Court to the most rigorous protection of the franchise—a commitment that strict scrutiny now operationalizes. A court that has long construed statutory restrictions on voting rights "strictly" in favor of voting rights should also review those restrictions under the most exacting level of constitutional scrutiny.

Article 1, § 3 reinforces this conclusion. The framers did not guarantee "political rights" that could be denied or shackled by extra-constitutional legislative restrictions. The whole point of Article 1, § 3 was to make the peoples' political rights inviolate by affirmatively prohibiting the legislature from conditioning their exercise on "any circumstance or condition whatsoever" beyond the elector qualifications expressly enumerated in the Constitution. *See Cathcart*, ¶ 57; *Maxfield*, ¶¶ 34–35. While not denying the legislature's delegated authority to legislate for "pure" elections, Article 1, § 3 reflects a constitutional intent that political rights receive the highest possible protection from the

judicial branch. If any rights guaranteed to the people in or Constitution command strict scrutiny, they must surely include the peoples' political rights.

B. The District Court's Framework Is Contrary to this Court's Precedent

Despite acknowledging the right to vote is fundamental, the district court concluded Wyoming's fundamental-rights jurisprudence only invokes "strict protection" (e.g. the "Democracy Canon" of strict construction) rather than requiring the application of strict scrutiny to laws that burden them. The district court read such "strict protection" language and the absence to date of any Wyoming case applying strict scrutiny to a voting-rights challenge as foreclosing the application of strict scrutiny in any voting rights case. This is unsupported—as now confirmed by *Johnson*.

Johnson did not announce a new rule; it applied and clarified the strict scrutiny framework announced more than four decades ago in *Washakie County School District v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980). However, *Johnson* did clarify that a different level of scrutiny *may* apply in cases involving fundamental rights—but only where a different level of scrutiny is suggested by *express* language in the Wyoming Constitution.[22]

[22] Where *federal* law is controlling it too may well supply a different level of scrutiny. *See* Winkler, A., *Fundamentally Wrong About Fundamental Rights*, 23 Const. Commentary 227 (2006). Professor Winkler aptly summarizes the dizzying evolution of federal scrutiny analysis which has resulted in different federal fundamental rights being reviewed under different levels of scrutiny, with strict scrutiny now seemingly reserved for certain

Here, no express language compels a different or lesser level of scrutiny. Thus, as in *Johnson*, strict scrutiny is the proper standard as this case involves fundamental rights uniquely arising under the Wyoming Constitution's Declaration of Rights.

The district court offered another practical reason to withhold strict scrutiny: that applying it to election statutes would "paralyze" the Legislature's constitutional duty, under Article 6, § 12 to "pass laws to secure the purity of elections," and under Article 1, § 27 to ensure that Wyoming elections are "open, free, and equal." R. 11, n. 3. The district court queried, "if Plaintiffs are correct that strict scrutiny applies, then would not every election law–from filing deadlines to ballot design to date of the primary election—be subject to the most exacting judicial scrutiny?" *Id.* "After all," the district court remarked, "a law requiring polls to close at 7:00 p.m. burdens the voter who cannot arrive until 7:05, and a law requiring registration burdens the citizen who fails to register." *Id*.

These hypotheticals miss the point. Uniform laws needed for the orderly administration of elections (or to prevent fraud) serve compelling governmental interests; strict scrutiny is no threat to such laws so long as they are not applied in a discriminatory fashion. *See, e.g., Delgiorno*, 498 P.2d at 1249-50, 1253 (holding that short durational residency requirements and pre-election registration deadlines both serve compelling governmental administrative interest in holding orderly elections). More fundamentally, however, the district court's concern reveals its misunderstanding of the relationship

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"preferred" fundamental rights, and then only sometimes. *Id.* 236-39. This Court should avoid importing this confusion into Wyoming state constitutional jurisprudence.

between the fundamental rights reserved to the people in the Declaration of Rights and the delegations of legislative power in other sections of the Wyoming Constitution. Yes, Article 6, § 12 and other provisions grant express legislative power to regulate elections. They also expressly empower the legislature to enforce voter qualification through registration laws. But those powers must necessarily operate within the boundaries established in Article 1.

As discussed, the Declaration of Rights was not superimposed over unlimited pre-existing legislative power; rather, declared rights were established before any legislative delegation was made and therefore necessarily carve out a protected space within which all subsequently delegated legislative power, including Article 6, § 12's mandate, cannot operate. *See Washakie*, 606 P.2d at 319. Strict scrutiny is the judiciary's tool to fairly fence off that protected space. Applying strict scrutiny to laws encroaching on that space does not "nullify" delegated legislative power; it merely ensures the power is not exercised beyond its intended scope. This Court, as well as every high court in the nation, has used strict scrutiny to keep legislatures in their authorized lanes. Requiring the government to show that laws impacting fundamental rights are justified by a very strong public need and designed to avoid all unnecessary burdens is not a radical notion, but one grounded in the structure and language of every American constitution. Especially given the extraordinarily elevated place of political rights expressed in Wyoming's Constitution, that test is especially appropriate here.

Further, under *any* standard of review involving such important rights, the district court's framework puts the burden on the wrong party. Under either strict or intermediate scrutiny, and according to Justice Fenn even under rational basis review when warranted

by the constitutional language at issue, the burden of justification is on the government.[23] *Johnson*, ¶121 (Fenn, J. concurring) (citations omitted). But the district court placed the burden of justification on Wyoming electors to prove the Amendments create "absolute or unreasonable" burdens on their voting rights, a standard virtually impossible for any voter to prove and one without any foundation in Wyoming law.

Although the district court did not say it outright, its standard strongly resembles the federal *Anderson-Burdick* "severe burden test" created by the U.S. Supreme Court specifically to review challenges to state election laws brought under the federal Constitution, usually under the 14th Amendment's equal protection clause. That standard, heavily grounded in the U.S. Supreme Court's jurisprudential commitment to upholding federalism, has been criticized by many commentators for its undue deference to legislatures at the expense of voting rights.[24] Undoubtedly, *Anderson-Burdick* owes its existence to the sad fact that, unlike Wyoming's charter, the U.S. Constitution contains no

[23] Justice Fenn's analysis of the burden shifting language of Article 1, § 38 suggests that Article 1, § 27's prohibition of state interference at any time "to prevent an untrammeled exercise of the rights of suffrage" would similarly shift the burden to the government to show its law has not trammeled upon voting rights even under rational basis scrutiny.

[24] See, Douglas, *supra* n.18, 98-99 (noting *Anderson Burdick* has "narrowed the protection of the right to vote" and "sanctions greater voting restrictions than might be available if there was an explicit right to vote in the U.S**.** Constitution").

guarantee of "political rights," no express "right to vote," no promise of "open, free, and equal" elections, and no requirement of laws requiring "untrammeled" electoral rights.

This Court, in upholding its duty to enforce the provisions of Wyoming's unique Constitution, should decline any invitation to import a federal standard founded on different jurisprudential concerns and a constitution without any of the express protection for political and voting rights contained in Wyoming's charter. To the extent the Court wishes to look elsewhere for guidance about formulating a "special test" for election law challenges, it should look, not to federal courts, but to state courts interpreting similarly protective language. In that regard, both the Pennsylvania Supreme Court and the Montana Supreme Court recently issued decisions interpreting election laws challenged as violating their state's "free and equal" provisions. *See Mont. Democratic Party v. Jacobsen*, 2024 MT 50; *League of Women Voters*, *supra*, 178 A.3d 737. Both engaged in extensive analysis of the voter protections guaranteed by the "free and equal" provisions of their respective state constitutions—neither as protective as Wyoming's—and both rejected the application of federal law. *Mont. Democratic Party,* ¶¶31-32 (noting "amorphous" *Anderson Burdick* test is without "textual or historical support in Montana Constitution"); *League of Women Voters,* 178 A.3d at 812 (rejecting federal equal protection law as being less protective than the Pennsylvania's Constitution).

C. The Amendments Fail Strict Scrutiny

1. *The State Has Not Demonstrated a Compelling Interest.*

The Secretary failed to demonstrate the Amendments are "necessary to further a compelling government interest" as required under strict scrutiny. *Johnson*, ¶ 52. The

Secretary has claimed the Amendments are justified to prevent "party raiding," which he defines as "disingenuous voters" switching party affiliation "to influence another party's primary nomination." R. 678. But by that definition "party raiding" is simply citizens exercising their electoral rights to align their party affiliation with the candidates they support (or do not support), an "associational" right that, until HB 103 "shackled" it, was always freely allowed under Wyoming's Election Code up until ten days before the election and since 1973 even on election day.

The testimony of Christina Kitchen and Joshua Malcom both show that electors declare or change their party affiliations for many reasons other than loyalty or disloyalty to any party. Kitchen, a registered Republican, sought to change her party affiliation to vote for her brother-in-law in the Democratic Party; she makes her affiliation decisions based on the views and identities of the candidates—not on their party brand. R. 451. Similarly, Joshua Malcom, a registered independent, does not seek to "cross-over" at all; in 2022 and 2024 he sought to affiliate with the Republican Party simply to cast a vote for his brother. R. 456-57. These are not disingenuous motives.

Further, requiring electors to declare or change their affiliations over three months before the primary when they do not know who is running for office, will not prevent any elector who might be disloyal to a party from affiliating with it. Forcing voters to affiliate before candidate filing simply impedes *all Wyoming electors* from aligning their political preferences with informed electoral choice. And, as several majority party opponents of HB 103 argued, the Freeze Period will not prevent but rather will more likely incentivize

permanent affiliation with the majority party by all Wyoming electors seeking to ensure their continued ability to vote in the decisive controlling party's primary.

And finally, and perhaps most fundamental, the Secretary presented *no* evidence that "party raiding" even exists, let alone "influenced the outcome" of any Wyoming election. In fact, in recent decades the majority party's dominance has steadily grown notwithstanding any assumed proliferation of "party raiding." An assertion of an assumed "problem," unsupported by any evidence, cannot demonstrate a "compelling" government interest, or even an "appropriate" one needed to survive rational basis scrutiny.

2. *The Amendments Are Not Narrowly Tailored*

Even if the Secretary could identify a sufficient governmental interest, the Amendments are neither the least restrictive nor even a rational means of achieving it. The Secretary's Directive—purporting to exempt "new" registrants from the Freeze Period restrictions—shows that the Amendments were *not* narrowly tailored. Without this administrative exemption, the Secretary knows the Amendments not only target affiliation "changes" by undesired "cross-over" voters, but also disqualify *anyone* from receiving a primary ballot who "declares" affiliation during the Freeze Period—regardless of their prior registration status. A statute the government's own chief election officer determines is overbroad as written cannot satisfy the narrow-tailoring requirement. Moreover, while the Freeze Period places a new burden on the free exercise of the franchise by all Wyoming electors, there is no rational basis (or evidence) to conclude it will serve its intended purpose of preventing cross-over voting. Indeed, it will more likely serve to further incentivize the practice.

IV. THE SECRETARY'S FREEDOM OF ASSOCIATION ARGUMENTS ARE PROCEDURALLY IMPROPER, SUBSTANTIVELY INCORRECT, AND SELECTIVELY APPLIED FOR THE BENEFIT OF ONE PARTY.

A. The Secretary Improperly Asserts Arguments on Behalf of a Non-Party

No political party was named or sought intervention as a party in this action. Nonetheless the Secretary defends the Amendments on the grounds that they are necessary to protect the federal "associational rights" of "political parties" arising under the 1st and 14th Amendments. R. 210, 212, 217, 219. The district court relied upon such "political party" associational rights in upholding the Amendments. R. 734–37.

This Court has recognized the "common sense rule" that "this Court and trial courts should ordinarily refrain from adjudicating the rights of non-parties in order to maintain consistency with well-established principles of standing." *Koch v. J & J Ranch, LLC,* 2013 WY 51, ¶ 32 and n. 1 (citing *Olsen v. Olsen,* 2011 WY 30, ¶ 14; *Singleton v. Wulff*, 428 U.S. 106, 113–14 (1976)). The Secretary's attempt to invoke generic associational rights of non-participating "political parties" is especially inappropriate here because the record demonstrates (i) minority party legislators held diametrically opposed views to those of the majority party regarding HB 103, and (ii) the bill was conceived, advanced, and passed exclusively by legislators affiliated with the majority party solely to advance that party's partisan interests. This Court should not entertain arguments from the Secretary purportedly advancing "political party associational rights" when those arguments favor only one party at the expense of another.

B. Federal Rights of Association Do Not Legitimize the Amendments

Even if considered, federal associational rights do not support the Secretary's position. He relies on *California Democratic Party v. Jones*, where the U.S. Supreme Court held the ability of political parties "to select their own candidates" implicates "associational freedom" protected by the 1st Amendment. 530 U.S. 567, 573-75 (2000). *Jones* struck down California's "blanket primary" law which allowed all voters to vote for any candidate regardless of party, thereby allowing non-affiliated voters to have a say in selecting party nominees. *Jones* held this violated party associational rights because it "force[d] political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." *Id.* at 577.

Importantly, *Jones* expressly recognized the California "blanket primary" was "qualitatively different from a closed primary," a system where "it is made quite easy for a voter to change his party affiliation the day of the primary" but which thereby requires the voter to "formally *become a member of the party;* and once he does so, he is limited to voting for candidates of that party." *Id.* (emphasis in original). In contrast, the California blanket primary forced political parties "to adulterate their candidate-selection process—a political party's basic function—by opening it up *to persons wholly unaffiliated with the*

party." *Id.* at 568 (emphasis added). This was a "heav[y] burden" upon "associational freedom" serving no "compelling state interest." *Id*. [25]

The rationale of *Jones* and related case law thus does not support the Secretary's argument that the Freeze Periods protects federal associational rights of political parties. Unlike the blanket primary system in *Jones*, Wyoming's Election Code has always allowed electors to change their affiliation—and thereby "to become members of the party"— to vote in any party's primary elections. As stated in *Jones*, this statutory right does *not* involve impermissible "forced association." Nor does *Jones* in any way suggest that a lengthy statutory "freeze" on party affiliation designed to advance the partisan interests of a single party is somehow justified under any provision of the U.S. Constitution.

[25] After *Jones*, in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008) the Court rejected a facial challenge to an "open primary" system allowing all voters regardless of affiliation to select the candidates appearing on the general election ballot, because unlike *Jones,* the primary system was not designed to select "party nominees" but rather as a "winnowing" process to select the top two vote winners (regardless of party) to appear on the general election ballot. The case makes clear that the constitutional line is drawn *to protect a party's ability to exclude those unaffiliated with the party from its nomination selection process*—not to preclude states from designing non-partisan public primary systems open to all voters regardless of party affiliation. *Id*. at 452.

Wyoming political parties of course retain the constitutional right to *privately* enforce "party fealty" in various ways.[26] But the Wyoming Constitution forbids the legislature from doing that work for them through laws that shackle the fundamental right of Wyoming electors to cast informed and meaningful votes in publicly funded and administered primary elections, elections that are required by our Constitution to be "free, open, and equal." The Wyoming Constitution protects voters and elections; it does not protect political parties from voters participating in those elections.

To repeat, Appellants do not seek here to force any party to accept non-members to vote for its nominees, or to alter Wyoming's primary structure requiring them to declare party affiliation before receiving that party's ballot. Appellants seek only to participate in statutory public elections by making their affiliation decisions at a time when they know the identities of the candidates and in response to information and circumstances arising during the campaign season sufficient to inform their vote.

C. The Secretary Ignores the Compelled Voter Association Required by the Amendments

The Amendments prohibit all Wyoming registered voters from cancelling their party affiliation during the Freeze Period. Wyo. Stat. § 22-3-115(a)(vi). A voter who has declared a party affiliation and subsequently wishes to disassociate from that party—for any reason—is now forbidden from doing so until after the primary election. This is not a

[26] For example, parties can and do "censure" or even expel "disloyal" members and office holders under their party rules.

regulation that protects freedom of association; rather, it *compels association*—which is the precise type of evil the federal right of association is designed to prevent. *See Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) (recognizing that freedom of association includes the right *not* to associate). If the Secretary is allowed to selectively invoke associational principles on behalf of "political parties" not participating in this litigation, then the Court should balance those arguments against HB 103's compelled association on all Wyoming voters.

CONCLUSION

The Amendments violate the plain language of the Wyoming Constitution and cannot survive strict scrutiny. For the foregoing reasons, this Court should reverse the district court and declare that HB 103 and each of the Amendments violate the Wyoming Constitution.

[Signatures on Following Page]

Dated: March 24, 2026

/s/ William P. Schwartz

William P. Schwartz (Wyo. Bar #5-2164)
Leah C. Schwartz (Wyo. Bar #7-5019)
PARSONS BEHLE & LATIMER
P.O. Box 3890 | 375 West Broadway Ave.
Jackson, WY 83001
T: (307) 733-5130 | F: (801) 536-6111
bschwartz@parsonsbehle.com
lschwartz@parsonsbehle.com

/s/ Benjamin J. Rowland
Benjamin J. Rowland (7-5654)
DAVIS & CANNON, LLP
422 W. 26th Street
Cheyenne, WY 82001
T: (307) 634-3210 | F: (307) 778-7118
browland@davisandcannon.com

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was *Opening Brief of Appellants* electronically filed with the Wyoming Supreme Court on the 24th day of March 2026, and was therefore served via the Court's electronic filing system to the following:

Mackenzie Williams
mackenzie.williams@wyo.gov
Dami Metzler
dami.metzler@wyo.gov
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
(307) 777-7888

Per W.R.A.P. Rule 1.01, the original paper copy plus six (6) copies of the Opening Brief of Appellants were sent to the Wyoming Supreme Court by U.S. Mail, first class postage pre-paid on March 25, 2026. I have accepted the terms for e-filing and hereby certify that the foregoing document, as submitted in electronic form, is an exact copy of the original and hard-copy documents filed with the Wyoming Supreme Court Clerk and is free of viruses. Additionally, I certify that, to my knowledge, no privacy redactions were required.

/s/ Emma Bourne
Emma Bourne, Legal Assistant
PARSONS BEHLE & LATIMER

Appendix 1

DISTRICT COURT OF LARAMIE COUNTY
FIRST JUDICIAL DISTRICT, STATE OF WYOMING
Docket # 2024-CV-0202658

MATTHEW MALCOM, JEFF THOMAS, JIM ROOKS, JOSHUA MALCOM, CHRISTINA KITCHEN, AND JIM ROSCOE, *Plaintiffs,*	)
v.	)
CHUCK GRAY, IN HIS CAPACITY AS WYOMING SECRETARY OF STATE, *Defendant.*	)

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This case presents a constitutional challenge, arising exclusively under the Wyoming Constitution, to state statutes governing Wyoming's election framework. Plaintiffs, a group of candidates and voters, contend that Wyoming's so-called "sore loser," closed primary, and party affiliation deadline statutes impermissibly burden their fundamental rights to vote and run for office under the Wyoming constitution. They assert these statutes infringe upon the fundamental right to vote and seek and hold office, deny them equal protection of the laws, and contravene specific various provisions of the Wyoming Constitution.

State statute prohibits unsuccessful primary election candidates from seeking nomination by petition for the same office in the ensuing general election. These statutes are colloquially known as "sore loser" statutes. *See* Wyo. Stat. Ann. §§ 22-5-215, 22-5-302.

Wyoming's closed primary system and the deadline for changing party affiliation restrict voter's participation in a major political party's primary election to those who are registered members of that party. *See* Wyo. Stat. Ann. §§ 22-5-204, 22-5-212, 22-5-214.

Defendant, the Wyoming Secretary of State, counters that these statutes do not violate the Wyoming Constitution, and instead are reasonable, equally applicable regulations of the electoral process that fall squarely within the Legislature's constitutional authority.

As the parties made clear at argument on these motions, this dispute will inevitably be resolved by the Wyoming Supreme Court. At this juncture, though, the matter is before the Court on the parties' cross-motions for summary judgment. The material facts are not in dispute. Upon careful consideration of the parties' extensive briefing, the stipulated factual record, and the relevant provisions of the Wyoming Constitution and the precedents of the Wyoming Supreme Court, the Court finds that the challenged statutes are a valid exercise of legislative power. The challenged statutes regulate the manner in which political rights are exercised but do not abridge the rights themselves. Accordingly, and for the reasons set forth in detail below, the Court concludes that Plaintiffs have not met their burden of demonstrating that the statutes are unconstitutional. The Court likewise finds the challenged statutes do not deny Plaintiffs equal protection of the laws. Defendant's Motion for Summary Judgment is therefore granted, and Plaintiffs' Motion for Summary Judgment is denied.

I. Facts

The parties have stipulated to the material facts. Plaintiffs consist of two groups. Candidate-Plaintiffs include Matthew Malcom, Jeff Thomas, and Jim Rooks. Each were qualified electors who ran for their respective party nominations in the August 20, 2024,

primary election. Matthew Malcom sought Republican nomination for House District 61. Jeff Thomas sought Republican nomination for House District 4. Jim Rooks ran in the Democratic primary for Teton County Commission. None were successful in their primary races. After their electoral losses, each desired to run for the same office in the general election as an independent candidate. The Secretary of State's office informed them that Wyoming's sore loser statutes, Wyo. Stat. Ann. §§ 22-5-215 and 22-5-302 (the "sore loser" statutes) barred them from doing so. Relying on this, the Candidate-Plaintiffs ceased their efforts to appear on the general election ballot. They chose not to pursue write-in campaigns.

Voter-Plaintiffs include Joshua Malcom, Christina Kitchen, and Jim Roscoe. Each were qualified electors who were unable to vote for their preferred candidates in the 2024 primary.

Joshua Malcom is not affiliated with any political party. Since he was not registered as a Republican, he was unable to vote for his brother, Matthew Malcom, in the Republican primary.

Christina Kitchen, a registered Republican, wished to vote for her brother-in-law, Jim Rooks, in the Democratic primary but did not attempt to change her party affiliation until after the statutory deadline had passed. Ms. Kitchen states she is registered as a Republican not because she agrees with the party's candidates or its platform, but because she believes it is the only way to cast a meaningful vote when most electoral races are effectively decided in the Republican primary. Despite the barriers they faced in the primary, both Joshua Malcom and Ms. Kitchen successfully voted for their preferred candidates in the 2024 general election by casting write-in votes.

Jim Roscoe, a former independent state legislator, desires to vote for candidates in primary elections regardless of party affiliation. He believes the major political parties have become too extreme and that this trend makes it difficult, if not impossible, for members of a minority party or political moderates to be elected. In the 2024 election cycle, he registered as a Republican – even though he strongly prefers to remain independent – because he believes "the only votes that matter in Wyoming . . . are those cast in the Republican Primary."

Defendant, Chuck Gray, is the Wyoming Secretary of State and is sued in his official capacity as the chief election officer for the State of Wyoming.

The stipulated facts also reflect a political landscape of increasing one-party dominance. In the 2024 general election, 12 of 15 state Senate races and 47 of 62 state House races featured only a single candidate on the ballot. Voter registration statistics show a similar trend: from February 2008 to May 2025, the number of registered Republicans increased from 136,844 to 212,356, while registered Democrats decreased from 57,327 to 31,885. The number of unaffiliated votes has remained relatively stagnant over the same period.

II. Summary Judgment

Summary judgment is appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." W.R.C.P. 56(a); *Cardenas v. Swanson,* 2023 WY 67, ¶10, 531 P.3d 917, 919 (Wyo. 2023) (internal citations omitted). A genuine issue of material fact is one that "would have the effect of establishing or refuting an essential element of the cause of action or defense asserted by the parties." *Id.* The party moving for summary judgment bears the initial burden of making a "prima facie case for summary judgment using admissible evidence." *Id.* The

burden then shifts to the non-moving party "to present admissible evidence demonstrating a genuine dispute of material fact for trial." *Id.* Here, the parties have stipulated to the material facts, leaving only questions of law for the Court to resolve.

III. The Wyoming-Specific Method for Constitutional Construction

Plaintiffs' claims rise exclusively under the Wyoming Constitution. That instrument provides an independent basis for liberties separate from, and sometimes beyond, those protected under its federal counterpart. *See, e.g., Sheesley v. State*, 2019 WY 32, ¶ 14, 437 P.3d 830, 836 (Wyo. 2019) ("[o]ur state constitution provides protection of individual rights separate and independent from the protection afforded by the U.S. Constitution.").

When analyzing claims under the Wyoming Constitution, the Court's "fundamental purpose is to ascertain the intent of the framers." *In re Neely*, 2017 WY 25, ¶ 41, 390 P.3d 728, 742 (Wyo. 2017) (citing *Cathcart v. Meyer*, 2004 WY 49, ¶ 39, 88 P.3d 1050, 1056 (Wyo. 2004). This analysis is guided by established rules of constitutional construction, as summarized in *Cathcart*:

> [The Court] look[s] first to the plain and unambiguous language… Every statement in the constitution must be interpreted in light of the entire document, with all portions thereof read [in pari materia]… and every word, clause and sentence considered so that no part will be inoperative or superfluous.

Cathcart, 2004 WY 49, ¶ 39-40 (citations omitted). In determining the constitutionality of these statutes, Plaintiffs

> bear the burden of proving the statute is unconstitutional. That burden is a heavy one, in that [Plaintiffs] must clearly and exactly show the unconstitutionality beyond any reasonable doubt. In [the Court's] analysis, [the Court] presumes the statute to be constitutional. Any doubt in the matter must be resolved in favor of the statute's constitutionality.

Hicks v. State, 2025 WY 113, ¶ 25 (Wyo. 2025) (citations omitted).

Plaintiffs' claims arise under Article 1, § 3 ("Equal Political Rights") of the Wyoming Constitution, and other claims arise under different equality provisions such as Article 1, § 2 ("Equality of all"), Article 1, § 3 , Article 1, § 27 ("Elections free and equal") [1], Article 6, § 1 ("Male and Female citizens to enjoy equal rights"), Article 1, § 34 ("Uniform operation of general law"), and Article 3, § 27 ("Special and local laws prohibited").

The state-centric approach requires the Court to ground its analysis in the specific text, history, and precedent of the Wyoming Constitution, rather than defaulting to federal constitutional standards or tests. *See generally Hicks*, 2025 WY 113 at ¶ 83-91. The task of reviewing the constitutionality of a legislative act is one that this Court approaches with the gravity and restraint. *Id.* at ¶ 86-90. Statutes are generally presumed to be constitutional. *Cathcart* 2004 WY 49, ¶ 7, 88 P.3d 1050, 1056 (Wyo. 2004). This presumption is not a mere courtesy; it is a cornerstone of the separation of powers, reflecting the judiciary's respect for the plenary authority of the legislative branch. *Hicks*, 2025 WY 113 at ¶ 91. If, however, legislative pronouncements exceed constitutional limits, the Court will strike down those laws as unconstitutional. *See, e.g., Washakie Cnty. Sch. Dist. v. Herschler*, 606 P.2d, 310, 319 (Wyo. 1980) (though the court has a "duty to give great deference to legislative pronouncements and to uphold constitutionality when possible, it is the court's equally imperative duty to declare a legislative enactment invalid if it transgresses the state constitution.").

[1] The Court is unable to locate any Wyoming Supreme Court cases that characterize Article 1, § 27 as being part of Wyoming's equality provisions. And, as the Secretary points out, Professor Keiter's treatise, repeatedly cited by Plaintiffs, does not either. Robert B. Keiter, *The Wyoming State Constitution*, 48 (2nd ed. 2017).

The "unconstitutionality beyond a reasonable doubt" standard is deeply rooted in Wyoming jurisprudence and state court practice. *Hicks,* 2025 WY 113 at ¶ 91. The challenger must overcome the presumption of validity by demonstrating the statute's unconstitutionality "clearly and exactly… beyond a reasonable doubt." *Cathcart*, 2004 WY 49 at ¶ 7, 88 P.3d at 1056. Any doubt regarding a statute's constitutionality must be resolved in favor of upholding the law. *Id*. The Court's role is not to question the wisdom of the Legislature's policy choices, but only to determine whether those choices transgress the clear boundaries established by the Wyoming Constitution. *Hicks,* 2025 WY 113 at ¶ 25 (citing *Gordon v. State,* 2018 WY 32, ¶ 12, 413 P.3d 1093, 1099 (Wyo. 2018) (citation modified)).

IV. Rejection of Strict Scrutiny, and Plaintiffs Bear a Burden of Proving the Challenged Statutes are Unconstitutional

At the outset, the Court must address whether the presumption of constitutionality applies in this case, and what level of judicial review or analysis to apply. Plaintiffs acknowledge the general presumption of constitutionality but contend the presumption is inverted in this case and that strict scrutiny must apply because the challenged statutes implicate the fundamental rights to vote and seek office. Plaintiffs cite to *Shumway v. Worthey,* 2001 WY 130, § 9, 37 P.3d 361, 366 (Wyo. 2001) (the right to vote is fundamental under the Wyoming Constitution) and *Allhusen v. State ex rel. Wyo. Mental Health Pros. Licensing Bd.*, 898 P.2d 878, 885 (Wyo. 1995) (an equal protection case applying strict scrutiny) in support. Strict scrutiny requires the State to show the statute is as narrowly tailored as possible to achieve a compelling state interest. *See Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980). Plaintiffs argue the Secretary has not, and cannot, meet that burden.

Plaintiffs are correct that Wyoming courts have long recognized these political rights as fundamental. *See Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974) ("The right to vote is a fundamental right."). And likewise, Plaintiffs are correct that where a statute makes a suspect classification upon a fundamental interest, the State to must demonstrate that the law is necessary to achieve a compelling state interest. *Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980); *Allhusen*, 898 P.2d at 885.

A. Strict Scrutiny Is Not the Same as Strict Protection of the Court

Nonetheless, the Court finds this approach misapprehends Wyoming law. Plaintiffs advance this "burden shifting" argument with respect to their plain-language, textualist, argument of the Wyoming Constitution. Yet the cases they cite are not plain-language, textualist cases; instead, *Washakie* and *Allhusen* are equal protection cases, at least with respect to the portions cited by Plaintiffs.

Although the right to vote is fundamental, it does not necessarily follow that strict scrutiny is the correct level of review. In fact, in *Shumway* the Wyoming Supreme Court declined to adopt strict scrutiny as the applicable level of review. *See Shumway v. Worthey,* 2001 WY 130, § 9, 37 P.3d 361, 366 (Wyo. 2001). It noted, however, that statutes "limiting the right to vote in some way . . . invoke[] strict scrutiny." *Id*. It cited *Murphy v. State Canvassing Bd.*, 12 P.3d 677, 680 (Wyo. 2000) in support.

This raises a dilemma; and like untangling a knotted cord, we must trace it back to its source to resolve it. First, the *Murphy* Court did not apply strict scrutiny. *Murphy,* 12 P.3d 677. at 680. Which is to say, the Court did not conduct a "narrowly tailored as possible to achieve a compelling state interest" analysis, which is what Plaintiffs mean when they invoke "strict scrutiny." Indeed, "strict scrutiny" does not appear in the

Murphy opinion. Instead, the *Murphy* Court cited to *Brimmer v. Thomson*, which held that the "right to vote is a fundamental right entitled to the ***strict protection of the courts***." *Id.*; *see also Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974) (emphasis added).

Is "strict scrutiny" the same as "strict protection of the courts"? The Court thinks not. Aside from the fact that no strict scrutiny analysis is contained in *Murphy*, that decision ultimately rested upon the absence of plain statutory language prohibiting a person who loses the primary nomination of one party from being selected as the nominee of the other party through write-in votes at the same primary election. *Murphy*, 12 P.3d at 681-82. Strictly construing the relevant statutes, the Wyoming Supreme Court found the absence of clear legislative intent and therefore would "not interpret the election laws so as to disenfranchise the electors." *Id.* at 682. Through that analysis, the Wyoming Supreme Court provided strict protection for the right to vote.

Brimmer is the same. "Strict scrutiny" does not appear and no "narrowly-tailored-compelling-state-interest" analysis is conducted. *Brimmer*, 521 P.2d at 578. More, the *Brimmer* Court cited to federal precedent in support, and that precedent is different today than it was when *Brimmer* was decided in 1974.[2] As in *Murphy*, the decision in *Brimmer* ultimately rested upon the plain words of the relevant law. That was the election statutes in *Murphy*, and Article 3, § 8 of the Wyoming Constitution in *Brimmer*. And as in

[2] Today, federal law would resolve such questions under the *Anderson-Burdick* balancing test. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). That framework recognizes a distinction between severe burdens on political rights, which trigger a requirement to show a compelling government interest to survive, and lesser burdens, which are permissible if they are nondiscriminatory and advance important state interests. *Anderson*, 460 U.S. at 789-90. *See also Utah Rep. Party v. Cox*, 892 F.3d 1066, 1077 (10th Cir. 2018).

Murphy, the *Brimmer* Court strictly construed the law in favor of those seeking to participate in the elective process but did not apply "strict scrutiny." *Id.*

The same is true of the cases which Candidate-Plaintiffs argue are dispositive of much of their claims. With respect to Article 1, § 3, Plaintiffs argue the disqualification statutes at issue in this care are "functionally equivalent" to the term-limit statutes that were struck down in prior cases and that strict scrutiny should apply. *See Cathcart,* ¶ 60, 88 P.3d at 1072 (holding that the term limit law was unconstitutional as a violation of Article 1, § 3 and Article 3, §§ 2 and 52(g)); *see also Maxfield v. State,* 2013 WY 14, § 35, 294 P.3d 895 (Wyo.2013) (holding that the term limit law was unconstitutional in relation to Article 1, § 3). But neither *Cathcart* nor *Maxfield* are "strict scrutiny" cases. Instead, the Wyoming Supreme Court strictly construed the rights at issue and analyzed the plain and unambiguous constitutional language. *See Cathcart*, ¶ 48, 88 P.3d at 1068; *Maxfield*, ¶ 28, 294 P.3d at 902. Under that textualist analysis, the Wyoming Supreme Court held that "the framers did not intend to allow . . . [a] statute . . . to add qualifications for holding office to those enumerated in the constitution" and struck down the term-limit laws. *Maxfield,* ¶ 29, 294 P.3d at 902.

Outside of equal protection analysis, very few Wyoming cases utilize "strict scrutiny", even when discussing fundamental rights under the Wyoming Constitution. Although not an election case, *In Re: Neely*, 2017 WY 25, 390 P.3d 728 (Wyo. 2017), is particularly illustrative of this point. In that case, the Wyoming Supreme Court analyzed the party's claims under both the federal and Wyoming constitutions. It conducted a strict scrutiny analysis of the federal constitutional claim. *See id.* at ¶ 18-38, 390 P.3d at 736-741. But with respect to the Wyoming constitutional claims – fundamental as those claims may have been – the Wyoming Supreme Court followed its rules for constitutional

construction and did not resort to federal-style strict scrutiny analysis. *Id.* at ¶ 41, 390 P.3d at 742.

In sum, despite the "strict scrutiny" language in *Shumway*, there are no Wyoming constitutional cases applying strict scrutiny to election laws. Neither *Cathcart* nor *Maxfield* nor *Shumway* nor *Brimmer* did so. Instead, the right to vote and seek office are entitled to the "strict protection of the courts." The Court concludes that "strict protection" is not synonymous with "strict scrutiny." "Strict protection" is a canon of construction, directing the Court to strictly construe election laws, as the Wyoming Supreme Court has done repeatedly. [3]

[3] None of this discussion should be read as a critique of either parties' arguments or briefing, which is altogether excellent. Instead, both parties might clarify on appeal the way in which they believe these laws either burden Plaintiffs' political rights or lawfully regulate the election process. In that vein, if Plaintiffs are correct that strict scrutiny applies, then would not every election law – from filing deadlines to ballot design to date of the primary election – be subject to the most exacting judicial scrutiny? After all, a law requiring polls to close at 7:00 p.m. burdens the voter who cannot arrive until 7:05, and a law requiring registration burdens the citizen who fails to register. Perhaps such laws would survive strict scrutiny review, but maybe not. Now to be fair, one might reasonably respond that laws setting the closing time for polls do not substantially burden voting rights, whereas the challenged statutes are a substantial burden. Maybe so. Yet to engage in that inquiry gets quite close to the *Anderson-Burdick* balancing test, and Plaintiffs' argument is explicitly *away* from *Anderson-Burdick* and exclusively *toward* the Wyoming Constitution.

Instead, Plaintiffs' theory seems to be that ***any*** statute touching upon voting or running for office necessarily burdens fundamental rights, and all such regulations would therefore be subject to maximum inspection. That strikes the Court as contrary to the case law and contrary to the rules of constitutional construction.

More fundamentally, strict scrutiny for every election law would paralyze the Legislature's ability to perform its separate constitutional duty to administer elections. Under the Wyoming constitution, it is difficult, if not impossible, to square Plaintiff's claim of strict scrutiny with the constitutional requirement that "[t]he legislature shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise." Wyo. Const. Art. 6, § 12. That provision is not only a grant of power, but a directive. Furthermore, Article 1, § 27 requires that elections be "open, free and equal," which suggests the State has an interest in ensuring elections are uniform, comprehensible, and orderly. Strict scrutiny for every election regulation would render these provisions a nullity, or close to it.

B. **Plaintiffs Bear the Burden. Constitutional Construction Analysis Applies to Plaintiffs' Claims**

For the same reasons, the Court is unpersuaded that the presumption of constitutionality should be inverted in this case. Instead, the Court begins with a presumption that the challenged statutes are constitutional. *Powers v. State*, 318 P.3d 300, 303 (Wyo. 2014) (citations omitted). Any doubt in the matter must be resolved in favor of the statute's constitutionality. *Id.* Plaintiffs bear the burden of proving the challenged statutes are unconstitutional. *Id.* That burden is a heavy one, "in that the [Plaintiffs] must clearly and exactly show the unconstitutionality beyond a reasonable doubt." *Id. See also Catchart*, 88 P.3d at 1056.

The Court will apply the same rules for construing the Wyoming Constitution as were applied in *Cathcart*, *Maxfield*, and recently, *Hicks v. State*. Those rules are well-established. In *Cathcart*, the Wyoming Supreme Court summarized those rules as follows:

- In construing the state constitution, this Court follows the same rules that govern construction of a statute, and that our fundamental purpose is to ascertain the intent of the framers.

- We look first to the plain and unambiguous language to determine intent. If the language is plain and unambiguous, there is no need for construction, and we presume the framers intended what was plainly expressed.

- Every statement in the constitution must be interpreted in light of the entire document, with all portions thereof read [together with other provisions relating to the same matter].

- Every statement in the constitution must be interpreted in light of the entire document, rather than as a series of sequestered pronouncements, and that the constitution should not be interpreted to render any portion of it meaningless, with all portions of it read in *pari materia* and every word, clause and sentence considered so that no part will be inoperative or superfluous.

- Furthermore, the rule that a statute that enumerates the subjects or things on which it is to operate, or the persons affected, or forbids certain things, is to be construed as excluding from its effect all those not expressly mentioned—*expressio unius est exclusio alterius*—is applicable in construing constitutional provisions. And finally, in construing constitutional provisions, courts will not ignore the general spirit of the instrument.

Cathcart at¶¶ 39-40, 88 P.3d at 1065–66 (cleaned up and re-organized for clarity).

In line with the language used in Article 1, § 3 of the Wyoming Constitution and *Cathcart* and *Maxfield*, the Court will refer to the rights at issue as "political rights and privileges."

C. Political Rights

The right to political participation and the right of suffrage are paramount under a plain reading of the Wyoming Constitution. The Constitution's Declaration of Rights states that "[e]lections shall be open, free and equal, and no power, civil or military, shall at any time interfere to prevent an untrammeled exercise of the right of suffrage." Wyo. Const. art. 1, § 27. The Wyoming Constitution further guarantees that the laws of this state affecting political rights "shall be without distinction of… any… circumstance or condition whatsoever." Wyo. Const. art. 1, § 3. These provisions are not ambiguous, and the Court acknowledges the essential nature of these two pillars of our constitutional system. The Plaintiffs' claims are grounded in these rights, and they deserve this Court's most serious consideration.

However, the political rights Plaintiffs seek to vindicate in this case are more specific and more procedural than these two general principles. As the Secretary points out, the Wyoming Supreme Court has never held that the loser of a primary election nonetheless has a right to have their name printed on the general election ballot, nor has it held that an individual has a right to a "second bite at the apple" – that is, a right to

pursue a second method of nomination after failing in their first attempt. Similarly, the Wyoming Supreme Court has never recognized that a voter has a fundamental right to participate in the primary election of a political party to which they do not belong. Plaintiffs are asking this Court to recognize new dimensions of these rights that have no precedent in Wyoming law.

In addition to a plain reading of the relevant constitutional provisions, the Court is also mindful of other constitutional commands. For instance, Article 6, § 13 of the Wyoming Constitution directs that "[t]he legislature shall pass laws to secure the purity of elections, and guard against the abuses of the elective franchise." As phrased, this provision is not advisory; it is a mandate. It grants the Legislature the constitutional authority and duty to structure the electoral process in a way that promotes order and ensures that electoral outcomes reflect the fair and free will of the people. The statutes Plaintiffs challenge were enacted pursuant to this authority. The critical question, therefore, is whether in exercising this power, the Legislature has crossed the line from permissible regulation to unconstitutional infringement. *See, e.g., Washakie Cnty. Sch. Dist. v. Herschler*, 606 P.2d, 310, 319 (Wyo. 1980) ("[t]hough the supreme court has the duty to give great deference to legislative pronouncements and to uphold constitutionality when possible, it is the court's equally imperative duty to declare a legislative enactment invalid if it transgresses the state constitution.").

D. Analytical Framework

Thus, the proper framework for analyzing these questions emerges from the plain text of the Wyoming Constitution, and from the rules for construing the Constitution as discussed in the Wyoming Supreme Court's prior decisions. That framework is: 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. *See, e.g., Cathcart* and *Maxfield*. However, an election statute is a permissible regulation of the electoral process if it prescribes reasonable regulations, consistent with the Wyoming Constitution, by which political rights may be exercised. *See, e.g.,* Wyo. Const. art. 6 §§ 11, 12, 13 & 17.

1. The "Sore Loser" Statutes are Constitutionally Permissible

Candidate-Plaintiffs argue the "sore loser" statutes are unconstitutional because they effectively add a new qualification for holding office that is not found in Article 1, § 3 of the Wyoming Constitution. Specifically, they argue the statutes add a requirement that a candidate must not have been unsuccessful in a primary election for the same office in the same election cycle. They contend that this case is controlled by the Wyoming Supreme Court's decisions in *Cathcart* and *Maxfield*.

This comparison, while superficially appealing, fails to distinguish between a regulation of ballot access and a qualification for office. The argument misreads the effect of the "sore loser" statutes and misapplies the holdings of *Cathcart* and *Maxfield*.

The statutes at issue in *Cathcart* and *Maxfield* imposed an absolute disqualification. There, the term-limit laws declared that certain individuals, by virtue of their prior service, were legally ineligible to hold a particular office. They could not run, they could not be elected, and they could not serve, regardless of the will of the voters. The individuals were statutorily barred from taking office even if those candidates won a write-in campaign or successfully ran unaffiliated with a party. The laws operated as a complete disqualification from holding office based on incumbency. In those cases, the Wyoming Supreme Court held the challenged statutes unconstitutionally added

qualifications for office not enumerated in the Constitution. *Maxfield*, 2013 WY 14, ¶ 35, 294 P.3d at 903; *Cathcart*, 2004 WY 49, ¶ 47, 88 P.3d at 1068.

Wyoming's "sore loser" statutes are fundamentally different. These statutes do not, in any way, affect a candidate's qualifications or eligibility to hold office. An unsuccessful primary candidate remains fully qualified to be elected and to serve if they receive the highest number of votes in the general election. The "sore loser" statutes do not speak to a candidate's eligibility to be elected or to serve if elected. The meaning of Article 1, § 3 is plain and unambiguous: enjoyment of political rights, including the right to run for office, cannot be conditioned on any circumstance or condition except those enumerated. But because the "sore loser" statutes do not bar a candidate from campaigning, being elected, or serving if they win the general election, the "sore loser" statutes do not add extra-constitutional qualifications for running for office. Crucially, the "sore loser" statutes do not render the Candidate-Plaintiffs ineligible to hold office.

The "sore loser" statutes regulate only one specific aspect of the electoral process: the method by which a candidate's name is pre-printed on the general election ballot. The challenged statutes prevent a candidate who has chosen the path of party nomination and has been rejected by the members of that party from then attempting to secure ballot access through a second, alternative path of nomination by petition.

This distinction is dispositive. The right to seek and hold office is not synonymous with an unconditional right to have one's name printed on the general election ballot after a primary defeat. The former is protected from legislative alteration by Article 1, § 3. The latter is a matter of ballot access, which the Legislature is constitutionally empowered to regulate so long as the regulation does not transgress constitutional bounds. Had any Candidate-Plaintiff mounted a successful write-in campaign, they would have been duly

elected and would have taken office. *See* Wyo. Stat. § 22-2-117(a). The availability of the write-in option, explicitly protected by the Wyoming Constitution, ensures that the right to seek office is not extinguished. *See* Wyo. Const. art. 6, § 11 ("But no voter shall be deprived the privilege of writing upon the ballot used the name of any other candidate.").

Candidate-Plaintiffs acknowledge this when they note that they considered, but ultimately rejected, a write-in campaign. The Wyoming Constitution itself protects the right of a voter to write-in a candidate. Mr. Malcom, for example, voluntarily abandoned this option, not because of a legal prohibition, but for strategic and financial reasons. Plaintiffs' right to seek and hold office was not extinguished; only their access to a particular procedural advantage – nomination by a particular political party and a pre-printed spot on the ballot – was curtailed after their first attempt at nomination failed.

In response, Plaintiffs argue the likelihood of winning a write-in campaign approaches impossibility. The Court takes no position on whether that is true, or not. But in doing so, Plaintiffs conflate the practical difficulty of winning a write-in campaign with the constitutional availability of that option. The Wyoming Constitution guarantees the opportunity to run for office. Nothing in these statutes, either before or after Candidate-Plaintiffs lost the primary, abridged that right.

These laws further the sort of policy choices entrusted to the Legislature. True, the Legislature might have chosen – or may choose in the future – a different path. But the Legislature can reasonably and constitutionally conclude these laws promote political stability by preventing the primary election from becoming a mere "preliminary heat" that losing candidates can ignore. The Legislature may constitutionally conclude that these laws prevent voter confusion that could arise from seeing a candidate who was just rejected by their own party appear on the general election ballot under a different banner.

And these laws may prevent intra-party feuds from spilling over into the general election, thereby preserving the integrity of the party nomination system.[4] *See generally Storer v. Brown*, 415 U.S. 724, 736 (1974). As law-making bodies across the county have done, the Wyoming Legislature has decided that the nomination process should be an orderly one where candidates choose a path, either by seeking a party's nomination or running as an independent, and then abide by the outcome of that choice. These are the kinds of considerations the Legislature is empowered to address under its Article 6, § 13 mandate to ensure the order of elections.

Plaintiffs have not demonstrated that the "sore loser" statutes are unconstitutional. Construing the Wyoming Constitution pursuant to established rules, and finding Plaintiffs' proposed reading of *Cathcart* and *Maxfield* inapplicable, the Court concludes the "sore loser" statutes establish permissible regulations, and not unconstitutional qualifications or prohibitions. The Wyoming Constitution empowers the Legislature to make structural choices about how to conduct elections.

Wyoming's sore loser statutes have been in effect in some form since 1915. The law represents a long-standing legislative judgment that the electoral process is best served by requiring candidates to choose a single path to the ballot. A candidate may seek the nomination of a major party through the primary system, or they may seek ballot access as an independent through the petition process. The State is not constitutionally required to provide a second chance for those who choose the primary route and are unsuccessful. The statutes are a reasonable and constitutional regulation of the electoral process, and do not violate Article 1, § 3.

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[4] The Court acknowledges different people will dispute *how well* these statutes advance these policy choices. But in the absence of a constitutional violation, that is a matter for the people, and their representatives, to sort out.

2. Wyoming's Closed Primary System and Party Affiliation Deadline are Constitutionally Permissible

Voter-Plaintiffs next claim Wyoming's closed primary system and party affiliation deadline unconstitutionally burden their fundamental right to vote. They argue that the requirement of party affiliation to vote in a major party's primary (Wyo. Stat. §§ 22-5-204, 22-5-212) and the deadline for declaring or changing that affiliation (Wyo. Stat. § 22-5-214) violate their rights under Article 1, § 27 to an "open, free and equal" election and the "untrammeled exercise of the right of suffrage." They claim these laws disenfranchise unaffiliated voters and prevent affiliated voters from making informed choices, particularly because the affiliation deadline precedes the candidate filing period.

In resolving this question, the Court first emphasizes the distinction between a primary election and a general election. Only the general election selects officeholders. A primary election, by contrast, is a mechanism by which a private association selects its standard-bearer for the general election. Applying the identical framework as above, the Court concludes the Legislature's decision to limit participation in a party's nomination process to members of that party is a reasonable regulation enacted pursuant to its constitutional authority.

First, the closed primary system does not infringe upon the right to vote for the candidate of one's choice in the election that chooses the office holder: the general election. The Voter-Plaintiffs' own conduct proves this truth. Both Joshua Malcom and Christina Kitchen, though unable to vote for their preferred candidates in the primary, were fully able to, and did, cast votes for them in the general election. Jim Roscoe was equally free to do so but made a choice to vote for someone else. The right to vote for a candidate to hold public office was never denied to any Plaintiff. What was regulated was

their ability to participate in the internal selection process of a political party to which they did not belong. That is a permissible regulation of the electoral process, not a barrier or extra-constitutional qualification upon a political right or privilege.

Next, Wyoming's closed primary system protects the associational rights of the political parties themselves. Under the First Amendment, political parties have a right "to identify the people who constitute the association and to select a standard bearer who best represents the party's ideologies and preferences." *Conrad v. Uinta Cnty. Rep. Party*, 2023 WY 46, ¶ 26, 529 P.3d 482, 493 (Wyo. 2023). The United States Supreme Court has made clear that this associational right is severely burdened when a state forces a party to allow non-members to participate in its nominating process. In *California Democratic Party v. Jones*, 530 U.S. 567 (2000), the Supreme Court struck down California's "blanket primary" system, which allowed any voter to vote for any candidate, regardless of party. The Court held that such a system "forces political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." *Id.* at 577. Forcing a party to allow outsiders to choose its nominee impermissibly "adulterate[s] their candidate-selection process" and has the "intended outcome of changing the parties' message." *Id.* at 581-82.

Plaintiffs' vision of an "open" primary may or may not be good policy. But a primary election where any voter can participate in any party's nomination contest would compel precisely the kind of forced association the Supreme Court found unconstitutional in *Jones*.

Plaintiffs have not shown that Wyoming's closed primary system denies the right to vote; on the contrary, it protects the right of association. The right to vote in a primary

is not an absolute right to vote for any candidate, but rather a right to participate in the selection process of the political party with which one has chosen to affiliate. Plaintiffs have not shown the State is disenfranchising unaffiliated voters; rather, the primary system recognizes and enforces the associational boundaries of the private political associations. Any burden is not on the fundamental right to vote, but on the choice of whether to participate in a specific party's internal selection process.

Plaintiffs also argue that Wyoming's primary system violates Article 6, § 11 of the Wyoming Constitution. That provision states, in relevant part, that "[t]he legislature shall provide by law that the names of all candidates for the same office, to be voted for at any election, shall be printed on the same ballot." Plaintiffs contend that because the primary system utilizes separate ballots for the Republican and Democratic parties, it runs afoul of this plain language.

This argument fails because it overlooks the distinct nature and purpose of a primary election. A primary election is not an election for a public office; it is an election to select a party's nominee for that office. The "office" being sought on a Republican primary ballot is, for example, "Republican Nominee for Governor," while the "office" on the Democratic ballot is "Democratic Nominee for Governor." These are not the "same office" within Article 6, § 11. One candidate seeks to become the standard-bearer for the Republican party; the other seeks to become the standard-bearer for the Democratic party. They are competing in separate contests for separate party-specific positions.

This interpretation is consistent with the historical purpose of Article 6, § 11. As Plaintiffs note, this provision was adopted to implement the Australian ballot system and put an end to the territorial-era practice of political parties printing and distributing their own "tickets" for the general election. As Plaintiffs show, the framers' intent was to ensure

that in the final contest for public office, all nominees from all parties, as well as independent candidates, would appear on a single, official, state-printed ballot, giving voters a complete and effective choice. By its plain language, the provision is aimed at the general election, where candidates from different parties are competing for the "same office."

To read the clause as Plaintiffs suggest would be to apply it out of its historical and structural context. It would render the concept of a partisan primary constitutionally suspect. The Court's job is to interpret constitutional provisions "in light of the entire document, rather than as a series of sequestered pronouncements." *Cathcart*, 2004 WY 49, ¶ 40, 88 P.3d at 1065. Reading Article 6, § 11 in pari materia with the Legislature's authority to regulate elections and the recognized associational rights of political parties, the Court concludes that the phrase "candidates for the same office" must be understood in the context of the specific election being conducted. In a partisan primary, candidates on different party ballots are not seeking the "same office." The use of separate ballots is therefore not unconstitutional.

Plaintiffs finally argue this conclusion is detached from the political reality of a State where, due to the ascendancy of one party, the primary election is often the de facto final word. This perspective, however, invites the Court to step beyond its constitutional bounds. It is not the Court's function to diagnose the causes of political imbalance, much less to prescribe a remedy. Rather, the Court must champion the very political rights Plaintiffs exercised: the freedom to organize, to advocate, to persuade, to seek public office, and to cast a vote for the candidate of their choice. Plaintiffs had, and still have, those political rights and privileges.

Today 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 – Plaintiffs in their efforts to change the course.

The Legislature reasonably and constitutionally decided that allowing non-members to vote in a party's primary might dilute the votes of party members and might lead to the selection of a nominee who does not reflect the party's platform, undermining the party's associational right in the process. Plaintiffs have not identified, and the Court is hard-pressed to identify on its own, how to square the relief they seek with a party's First Amendment associational rights. Indeed, it is difficult to see how the Court can simultaneously strike down Wyoming's closed primary system while acknowledging and protecting those associational rights.

Plaintiffs have not carried their burden of showing the challenged statutes are unconstitutional.

E. The Challenged Statutes Do Not Violate Equal Protection Guarantees of the Wyoming Constitution

Finally, Plaintiffs contend the challenged statutes violate the various equality provisions of the Wyoming Constitution. Contrary to the federal constitution, Wyoming's Constitution does not contain an express equal protection clause. *Hageman v. Goshen County School Dist.*, 2011 WY 91, ¶ 53, 256 P.3d 487, 503 (Wyo. 2011). Instead, it contains a variety of equality provisions, which together provide protection against discrimination, mandating that "all persons similarly situated shall be treated alike, both in the privileges conferred and in the liabilities imposed." *See Hardison v. State*, 2022 WY 45, ¶ 14, 507 P.3d 36, 42 (citations omitted).

Plaintiffs must first "demonstrate that the classification at issue treats similarly persons unequally." *Hageman*, ¶ 54, 256 P.3d at 503. *See also Hicks,* ¶ 138 at 27. To determine if persons are similarly situated, the Court first determines the purpose of the government action. *Bird v. Wyo. Bd. of Parole*, 2016 WY 100, ¶ 9, 382 P.3d 56, 62 (Wyo. 2016). Rarely are two classes similarly situated for purposes of all government action. *Id*.

If the classification does treat similarly situated people unequally, the Court applies "two different levels of scrutiny depending on the nature of the classification." *Hageman*, ¶ 54, 256 P.3d at 503. When a fundamental right is infringed or there is a suspect class, the Court applies strict scrutiny. *Id*. When a fundamental right is not infringed or differential treatment is not based on membership in a suspect class, the Court considers whether the classification is rationally related to a legitimate state objective. *Id*.

With respect to the "sore loser" statutes, Plaintiffs claim the challenged statutes classify those that have run in a primary and lost, on the one hand, and those that have not run in a primary on the other. With respect to the closed primary statutes, Plaintiffs claim the statutes classify people based on their party affiliation.

As a threshold matter, these groups are not similarly situated. One group has utilized an opportunity to seek nomination, while the other group has not. Those candidates who did not seek office in a party primary were not and cannot be, by definition, an unsuccessful primary candidate. The same is true for Plaintiffs' challenge to the closed primary statutes. Any difference in treatment occurs between people dissimilarly situated, i.e., those who are registered as members of a political party and those who are not. Plaintiffs bear the burden of demonstrating the classification at issue treats similarly situated persons unequally. *Hageman*, 2011 WY 91 at ¶ 54, 256 P.3d at

503). Because Plaintiffs are unable to establish the classification treats similarly situated person unequally, there is no equal protection violation and their claim will be dismissed on this basis alone. *See, e.g., Hicks* 2025 WY 113, ¶ 138 (citations omitted).

Yet even if they were similarly situated, Plaintiffs claims would still fail. The classifications do not disqualify Plaintiffs' from running for office or holding office if elected, nor do the classifications infringe upon their right to vote. The classifications distinguish between primary losers versus primary non-participants, and political party members versus non-members. As established above, the challenged statutes are permissible regulations that do not unconstitutionally infringe upon the fundamental rights to vote or seek office. Nor do these classifications involve a suspect class such as race or national origin. Such classifications would be subject to rational basis review. *See Hageman*, ¶ 54, 256 P.3d at 503. Under this standard, the statutes must be upheld if they are rationally related to a legitimate government interest. *Id.*

Even if Plaintiffs' proposed classification resulted in unequal treatment between similarly situated individuals, the "sore loser" statutes survive rational basis review. One group has already availed itself of one path to the ballot—the party primary—and was unsuccessful. The other group has not. As shown by the Secretary, the Legislature's decision to preclude the first group from pursuing a second path to the ballot for the same office is a rational means to achieve several legitimate state interests, including promoting political stability, preventing intra-party feuds from disrupting the general election, and avoiding voter confusion. The classification is not arbitrary and bears a direct and reasonable relationship to these legitimate legislative goals.

Similarly, the closed primary system survives rational basis review. These statutes distinguish between electors who are registered members of a political party and those

who are not. It is rational for the Legislature to enact laws that limit participation in that selection process to the members of that association. These laws are rationally related to the State's legitimate interests in protecting the associational rights of political parties, *see Conrad,* ¶26, 529 P.3d at493, preventing party raiding, *see Rosario v. Rockefeller*, 410 U.S. 752, 760-62 (1973), and preserving the integrity of the nomination process. *See Balsam v. Sec'y of N.J.*, 607 F. App'x 177, 182 (3d Cir. 2015).

Plaintiffs have failed to demonstrate the classification at issue treats similarly situated persons unequally. And even if Plaintiffs' proposed classification resulted in unequal treatment between similarly situated individuals, the classifications created by the challenged statutes are rationally related to legitimate state interests. In either event, the challenged statutes do not violate the equal protection guarantees of the Wyoming Constitution.

CONCLUSION AND ORDER

The Wyoming Constitution guarantees its citizens political rights and privileges while simultaneously empowering the Legislature to create a structured, orderly, and fair electoral system. The statutes challenged in this case represent a valid exercise of that legislative authority. They regulate the complex process of candidate nomination and primary voting to protect the integrity of the system as a whole. In doing so, they do not abridge the core constitutional rights of any citizen to vote for the candidate of their choice or to seek and hold public office. The Plaintiffs have failed to carry their heavy burden to demonstrate otherwise.

Therefore, for the reasons set forth above:

1. IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

2. IT IS FURTHER ORDERED that Plaintiffs' Motion for Summary Judgment is DENIED.

DATED this 7th day of November, 2025.

s/ Nathaniel S. Hibben
Nathaniel S. Hibben
DISTRICT COURT JUDGE
FIRST JUDICIAL DISTRICT