



## MEMORANDUM

Date: August 22, 2023

Subject: Residency Requirements for Voting

To: Joint Corporations, Elections & Political Subdivisions Interim Committee

From: County Clerks' Association of Wyoming (CCAW)

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### Summary:

The County Clerks' Association of Wyoming (CCAW) has expressed concerns about the lack of clarity concerning the definition of "bona fide resident" and the means of confirming the eligibility of applicants. The question of a durational residency requirement is a matter of policy and as such CCAW has **no policy position** on the question of durational residency. However, durational residency can be administered and is currently being administered in four states who have National Voter Registration ("NVRA", "Motor-Voter Act") exemptions.

Often, Wyoming's County Clerks get the brunt of accusations when citizens believe some individuals are misrepresenting themselves as Wyoming residents. For instance, the presence of vehicles with out-of-state license plates at polling places has caused some to call into question the process by which county clerks validate a person's residence – specifically on election day. In reality, the definition of "bona fide resident" of Wyoming is vague and difficult to definitively prove given current requirements. CCAW's concern is that certain individuals believe the clerk and election staff are responsible for requiring proof of residence at the time of registration; however, this assumption is not supported by the Election Code. Being the target of these concerns and accusations has heightened our sensitivity to the vague definition of "bona fide resident," which is present in Wyoming, and many other states', Election Codes.

This memorandum is broken into two sections:

1. Lack of Clarity (pages 2 - 5): The first portion of this memorandum is dedicated to the overarching ambiguity regarding the lack of clarity for what it means to be a "bona fide resident." That lack of clarity will need to be addressed through statute. **Achieving clarity must be done with utmost care to ensure no citizen is disenfranchised from their right to vote and that implementation of residency requirements are clearly defined and simple to understand and implement.**



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2. Durational Residency (page 5 - 13 ): Again, CCAW does not have a policy position on the question of durational residency, but the second portion of this memorandum will provide the Joint Corporations, Elections & Political Subdivisions Interim Committee (“The Committee”) and the Secretary of State’s Office with information about what other states require as proof that a potential voter has fulfilled their durational residency requirement. We believe that the documentation required to prove residency can, and should, continue to be established through administrative rules.

We believe that these are two distinct matters to be considered but admit that without addressing the broader issue of residency, a durational standard will have the same enforcement effect as the current residency standard. We must also caution that an arduous registration process may cause legitimate residents of the state to not participate in the election process. We believe the number of voters who would choose to not register would be greater than the number of applicants exposed as not living where they claim to reside.

The purpose of this memorandum is to not sway the Committee’s decision one way or the other, but to instead provide context and a point of view from those who are guiding citizens through the voter registration process on a daily basis.

### Lack of Clarity:

W.S. §22-1-102(a)(xxvi) defines “qualified elector” as “...every citizen of the United States who is a **bona fide resident** of Wyoming...” but the Election Code fails to define what makes a resident “bona fide.”

The idea of residency is further complicated by the definition of “Residence” requiring the intent of the applicant to be considered when determining whether they are a bona fide resident. For instance, W.S. §22-1-102(a)(xxx)(A), says a residence is “...the place where a person has current habitation and to which, whenever he is absent, **he has the intent of returning...**”. W.S. §22-1-102(a)(xxx)(C) continues by saying “A person shall not lose his residence by leaving his home to go to another state, another district of this state, or to another country for temporary purposes, **with the intent of returning**, if he has not registered in the other state, district or country.” W.S. §22-1-102(a)(xxx)(D) says, “A person shall not gain residence in a county if he enters it without the **intent of making it his current actual residence.**” W.S. §22-1-102(a)(xxx)(E) says, “If a person removes to another state **with the intent of making it his residence...**”.



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The establishment of residence for the purposes of becoming a qualified elector is difficult given the “open ended” ability for an applicant’s intent to qualify them as a bona fide resident. **A further complication of this issue of residency are those individuals residing in properties that span state, county, or municipal lines.** The requirement from them to prove which side of that line they reside on does not currently exist in law.

**Under current Wyoming law, there is no requirement that those applying to be registered voters (“applicant”) provide proof of residence.** W.S. §22-3-103(a)(ii) only requires that an applicant provide their “...current residence address or if living temporarily in another state or nation, his last residence address in Wyoming.” The Election Code does stipulate that election judges have authority to challenge a voter’s qualifications to register and vote (W.S. §22-15-101, 104). In the event of a challenge, election judges are allowed to request documentation showing the individual’s name and address. The documentation that can be requested is enumerated in Secretary of State Administrative Rules on Election Purposes, Chapter 2. It is important to remind at this point that not every applicant is required, at the time of registering, to provide any of the documentation enumerated above unless they are challenged by an election judge. Persons whose eligibility to register and vote cannot be established at the time of a challenge may be given a provisional ballot that allows them to satisfy eligibility requirements prior to close of business the day after the election.

The Election Code is not the only location where the matter of residency is considered. Within Title 23 (Game & Fish) the question of residency is considered, and admittedly is further clarified. For instance, W.S. §23-1-102(a)(xv) defines domicile, and §23-1-107 further defines what constitutes residency for the purpose of obtaining game and fish licenses. The intent of a potential licensee becomes less prominent by using clearly defined lengths of time at which point a potential licensee becomes a nonresident (W.S. §23-4-107(d)). The question of what documents are sufficient when determining whether a potential licensee is a resident of the state is clearly defined in W.S. §23-1-107(h). Those documents include:

- i. “A Wyoming driver’s license, identification card issued under title 31 of the Wyoming statutes, or a copy thereof;
- ii. A copy of the applicant’s school records or military form DD214, which indicates Wyoming as the applicant’s domicile and home of record;
- iii. A proof of residence statement on a form provided by the department that has been completed and signed by the applicant...
- iv. A minor dependent may use as proof of residency the documentary evidence of his parent or legal guardian.



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Wyoming statutes governing driver's license and identification card ("credentials") requirements also define resident (W.S. §31-1-101(a)(xxi)). It is important to note that W.S. §31-1-101(a)(xxi)(E) says a person qualifies as a resident of the state "...immediately upon the date of registering to vote in Wyoming." **Our offices encounter a significant number of people, who move to Wyoming from other states, register to vote for the sole purpose of obtaining Wyoming credentials, and who have no intent of casting a vote.** This means that people are utilizing voter registration cards from our offices to prove they are residents of the state – **even though there is no requirement to provide actual proof of residence to register to vote** (unless that applicant is challenged by an election judge as cited on page 2 of this memorandum).

The most difficult question to answer is how an applicant sufficiently proves the address they provide is the place where they have *actual* current habitation. For instance, does providing a utility bill provide sufficient *proof of actual habitation*? Or does it provide proof that the applicant pays utilities? Keep in mind those who own businesses, or own multiple properties, but do not actually reside at those locations. More importantly, **how does a homeless individual, those with no fixed residence, people in long-term care facilities, and individuals bound to a home not in their name prove their residence address?**

### Lack of Clarity – CCAW Request:

Should the Committee or Secretary of State's Office choose to provide further clarity of what a "bona fide resident of Wyoming" is, CCAW respectfully requests that the following be considered:

1. When would an applicant provide proof of residency?
  - a. CCAW's position is that proof of residency should be required **at the time of registration**. The registration process is the point at which an applicant's qualifications to become a qualified elector are vetted.
  - b. Keep in mind, additional time, attention and election staff will be required to address the increased workload associated with providing proof of residency while registering. Requiring proof of residency will result in longer wait times for applicants to register on election day. It would also increase the number of provisional ballots that will be issued to those who do not provide the required documentation.
2. How do indigent individuals, those with no fixed residence, people in long-term care facilities, and individuals bound to a home not in their name prove their residence address?



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- a. This includes: homeless individuals, persons with no 'fixed' residence such as RVers, college students, incarcerated persons, those living with adult children; children who have not yet moved away from the home; individuals on a mission trip; among many others.
3. To what degree should residency be scrutinized? Is the goal that the applicant *prove* they are a **Wyoming resident** or a **resident at the address they claim as their residence address**?
  - a. If the latter, what documentation would sufficiently prove the current residence address provided by the applicant is the place where a person has actual current habitation?
  - b. In either case, CCAW's preference would be a Wyoming driver's license and Wyoming ID card be sufficient proof of residency. However, WYDOT is required to list the **mailing address** on the face of driver's licenses and ID cards and not the **residence address**.
  - c. Current and valid Wyoming tribal ID could be accepted provided it contained a current residence address.
  - d. Many jurisdictions within this state do not have residential mail delivery and as such the people within those jurisdictions do not have their **residence address** displayed on their Wyoming driver's license or ID card.

### Durational Residency:

Of paramount importance is retention of Wyoming's exemption to the National Voter Registration Act ("NVRA"), which is more commonly referred to as "Motor-Voter". Six states are exempt from NVRA (Idaho, Minnesota, New Hampshire, North Dakota (*no voter registration*), Wisconsin, and Wyoming. Of the five other NVRA-exempt states (excluding North Dakota because they have no voter registration requirement), Idaho, Minnesota and Wisconsin have a registration process that includes durational residency. In those states, the **state-issued driver's license or I.D. card is sufficient as proof of residence** and no additional documentation required. If the applicant does not have one of the state credentials, additional documentation is required.

- Idaho: An applicant must have been a resident of the state for 30 days prior to the election. The potential voter is required to provide proof of residence at the time of registration. Idaho offers online, in-person and by-mail voter registration.
  - Effective July 1, 2023, new voter registration applicants will be required to provide proof of residence. A valid Idaho state driver's license or ID is sufficient proof of residence. However, if the address on that photo ID does not match the address reported by the applicant, then that applicant is required to present supplemental documentation.



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- Required supplemental documentation is provided in Idaho statute §34-411 and includes: Current proof of insurance; deed of trust, mortgage, lease or rental agreement; property tax assessment, bill, or receipt; utility bill, excluding a cellular telephone bill; bank or credit card statement; paystub, paycheck, or government-issued check; intake document from a residential care or assisted living facility; enrollment papers issued for the current school year by a high school, or an accredited institution of higher education located within the state of Idaho; or communication on letterhead from a public or private social service agency registered with the secretary of state verifying the applicant is homeless and attesting to the applicant's residence for registration purposes.
- Idaho registration oath: UNDER PENALTY OF LAW: By signing this card, I certify that I am a citizen of the United States and that I shall have been a resident of Idaho and the county for 30 days before the next election at which I can vote; that I am at least 18 years of age on election day; and I declare under oath or affirmation that the information supplied herein is true.
- 34-402. QUALIFICATIONS OF ELECTORS. Every male or female citizen of the United States, eighteen (18) years old, who has resided in this state and in the county for thirty (30) days where he or she offers to vote prior to the day of election, if registered within the time period provided by law, is a qualified elector.
- 34-107. "RESIDENCE" DEFINED. (1) "Residence," for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.
  - (2) If a person claims an exemption under section [63-602G](#), Idaho Code, then the homestead for which the exemption is claimed shall be the person's residence for voting purposes. If no such exemption is claimed, then in determining the principal or primary place of abode of a person, the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, and motor vehicle registration.



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(3) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

(4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(5) If a qualified elector moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state.

- **Minnesota**: An applicant must have been a resident of the state for 30 days prior to the election. Minnesota has online registration and will have automatic voter registration as early as 2024. The potential voter is required to provide proof of residence at the time of registration. Minnesota offers online, in-person and by-mail voter registration. If registering by mail, voter registrations are due 21 days before election day.
  - A valid Minnesota driver's license, ID or Tribal ID (with name, address, photo and signature) is sufficient proof of residence. However, if the address on that photo ID does not match the address reported by the applicant, then that applicant is required to present supplemental documentation (<https://www.sos.state.mn.us/elections-voting/register-to-vote/>).
  - Supplemental documentation includes: A bill, account or start-of-service statement due or dated within 30 days of the election (bills include phone, TV, internet, solid waste, sewer, electric, gas or water, banking or credit card, rent or mortgage). Also allowed as supplemental documentation to establish residence includes: current student fee statement; residential lease or rent agreement valid through Election Day; or a college or university housing list.
  - Minnesota has a "catch-all" oath that is utilized to ensure homeless, transient or other potential voters who cannot provide sufficient proof of residence are still able to vote. From the Minnesota Secretary of State's Office: *"A registered voter from your precinct can go with you to the polling place to sign an oath confirming your address. This is known as 'vouching.' A registered voter can vouch for up to eight voters. You cannot vouch for others if someone vouched for you."*



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- Interestingly, applicants are only required to provide proof if they are not currently registered within the precinct. If an applicant is registered to vote in the same precinct, but has moved within the precinct, they do **not** need to provide proof of their new residence.
- 201.014 ELIGIBILITY TO VOTE. Except as provided in subdivision 2, an individual who meets the following requirements at the time of an election is eligible to vote. The individual must:
  - be 18 years of age or older;
  - be a citizen of the United States; and
  - maintain residence in Minnesota for 20 days immediately preceding the election.
- 200.031 DETERMINATION OF RESIDENCE. Residence shall be determined in accordance with the following principles, so far as they may be applicable to the facts of the case:
  - (1) The residence of an individual is in the precinct where the individual's home is located, from which the individual has no present intention of moving, and to which, whenever the individual is absent, the individual intends to return.
  - (2) An individual does not lose residence if the individual leaves home to live temporarily in another state or precinct.
  - (3) An individual does not acquire a residence in any precinct of this state if the individual is living there only temporarily, without the intention of making that precinct home.
  - (4) If an individual goes into another state or precinct with the intention of making it home or files an affidavit of residence there for election purposes, the individual loses residence in the former precinct.
  - (5) If an individual moves to another state with the intention of living there for an indefinite period, the individual loses residence in this state, notwithstanding any intention to return at some indefinite future time.
  - (6) Except as otherwise provided in this section, an individual's residence is located in the precinct where the individual's family lives, unless the individual's family is living in that precinct only temporarily.
  - (7) If an individual's family lives in one precinct and the individual lives or does business in another, the individual's residence is located in the precinct where the individual's family lives, unless the individual establishes a home in the other precinct and intends to remain there, with or without the individual's family.





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- (8) The residence of a single individual is in the precinct where the individual lives and usually sleeps.
  - (9) The mere intention to acquire a new residence, is not sufficient to acquire a new residence, unless the individual moves to that location; moving to a new location is not sufficient to acquire a new residence unless the individual intends to remain there.
  - (10) The residence of an individual who is working temporarily in any precinct of this state is in the precinct where the individual's permanent home is located.
  - (11) The residence of an individual who is living permanently in a soldiers' home or nursing home is in the precinct where the home is located.
  - (12) If an individual's home lies in more than one precinct or political subdivision, the residence of the individual is in the precinct in which a majority of the room in which the individual usually sleeps is located.
  - (13) If an individual's home is destroyed or rendered uninhabitable by fire or natural disaster, the individual does not lose residence in the precinct where the home is located if the individual intends to return to the home when it is reconstructed or made habitable.
- **Wisconsin:** An applicant must have been a resident of the state for 28 days prior to the election. Voters who have moved within Wisconsin less than 28 days prior to the election must vote from their previous address. Voters who have moved to Wisconsin from another state less than 28 days before an election are only eligible to vote in Presidential elections. Wisconsin no longer allows a “corroborating witness” to provide Proof of Residence. Wisconsin offers online, in-person and by-mail voter registration.
    - A valid Wisconsin driver’s license or ID is sufficient proof of residence. However, if the address on that photo ID does not match the address reported by the applicant, then that applicant is required to present supplemental documentation, unless the applicant is a “military elector” or UOCAVA.
    - Supplemental documentation is outlined in Wisconsin statute §6.34 and includes (<https://elections.wi.gov/Register#230548828-870893236>):
      - Identification card or license issued by a Wisconsin governmental body or unit;
      - Any identification card issued by an employer in the normal course of business and bearing a photo of the card holder, but not including a business card;
      - A real estate tax bill or receipt for the current year or the year preceding the date of the election or residential lease that is effective on date of registration;



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- A gas, electric, or telephone service statement (utility bill) for the period commencing no earlier than 90 days before the date of registration
  - A university, college, or technical college identification card (must include photo) ONLY if the voter provides a fee receipt dated within the last 9 months or the institution provides a certified housing list to the municipal clerk
  - An intake document from a residential care facility such as a nursing home or assisted living facility
  - A bank, or credit union statement, regardless of the type of account or any credit card statement.
- o **6.10 Elector residence.** Residence as a qualification for voting shall be governed by the following standards:
- (1) The residence of a person is the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return.
  - (2) When a married person's family resides at one place and that person's business is conducted at another place, the former place establishes the residence. If the family place is temporary or for transient purposes, it is not the residence.
  - (3) When an elector moves his or her residence from one ward or municipality to another ward or municipality within the state at least 28 days before the election, the elector may vote in and be considered a resident of the new ward or municipality where residing upon registering at the proper polling place or other registration location in the new ward or municipality under s. 6.55 (2) or 6.86 (3) (a) 2. If the elector moves his or her residence later than 28 days before an election, the elector shall vote in the elector's former ward or municipality if otherwise qualified to vote there.
  - (4) The residence of an unmarried person sleeping in one ward and boarding in another is the place where the person sleeps. The residence of an unmarried person in a transient vocation, a teacher or a student who boards at different places for part of the week, month, or year, if one of the places is the residence of the person's parents, is the place of the parents' residence unless through registration or similar act the person elects to establish a residence elsewhere. If the person has no parents and if the person has not registered elsewhere, the person's residence shall be at the place that the person considered his or her residence in preference to any other for at least 28 consecutive days before an election. If this place is within the municipality, the person is entitled to all the privileges and subject to all the duties



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of other citizens having their residence there, including voting.

- (5) A person shall not lose residence when the person leaves home and goes into another state or county, town, village or ward of this state for temporary purposes with an intent to return.
- (6) As prescribed by article III of the constitution, no person loses residence in this state while absent from this state on business for the United States or this state; and no member of the armed forces of the United States gains a residence in this state because of being stationed within this state.
- (7) A guest at a national or a state soldiers' home in this state, a guest at a home for the aged supported by benevolence, or a patient of any county home or other charitable institution, resides in the municipality where the home is located and within the ward where the guest or patient sleeps, unless before becoming a guest or patient at the home the guest or patient elects to maintain his or her prior residence as his or her voting residence.
  - a) The residence of a person who is detained, or committed and institutionalized, under s. 51.20, 971.14, or 971.17 or ch. 980 shall be determined by applying the standards under sub. (1) to whichever of the following dates is applicable to the circumstances of the person:
    1. For a person detained or committed under s. 51.20, the date that the person was detained under s. 51.20 (2) or, if the person was not detained under s. 51.20 (2), the date that the person was committed under s. 51.20 (13).
    2. For a person committed under s. 971.14 or 971.17, the date of the offense or alleged offense that resulted in the person's commitment.
    3. For a person detained or committed under ch. 980, the date that the person committed the sexually violent offense that resulted in the sentence, placement, or commitment that was in effect when the state filed a petition under s. 980.02 against the person.
  - b) That the person's habitation was fixed at the place established under par. (a) before he or she was detained or committed shall be considered prima facie evidence that the person intends to return to that place. The prima facie evidence of intent to return to the place determined under par. (a) may be rebutted by presenting information that indicates that the person is not likely to return to that



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place if the person's detention or commitment is terminated.

- (8) No person gains a residence in any ward or election district of this state while there for temporary purposes only.
- (9) No person loses the right to vote at the person's place of residence while receiving public assistance or unemployment insurance even if the legal settlement for assistance is elsewhere.
- (10) If a person moves to another state with an intent to make a permanent residence there, or, if while there the person exercises the right to vote as a citizen of that state by voting, the person loses Wisconsin residence.
- (11) Neither an intent to acquire a new residence without removal, nor a removal without intent, shall affect residence.
- (12) Student status shall not be a consideration in determining residence for the purpose of establishing voter eligibility.
- (13) A military elector under s. 6.22 (1) (b) who is the spouse or dependent of another military elector may elect to take as his or her residence either the individual's most recent residence in this state or the residence of the individual's spouse or the individual providing his or her support.

### **Voter Safety Net – Presidential Election:**

52 U.S. Code §10502(e) prohibits the imposition of a durational residency requirement for citizens as a precondition to vote for the president and vice president of the United States. As such, if a durational residency requirement were established, voters who would otherwise qualify to vote could be permitted to vote cast a ballot that contains only candidates for president and vice president. This would require the creation of a ballot that only has the presidential contest printed upon it. These ballots would be provided to those who have not fulfilled the durational requirement but would otherwise meet the qualifications to become a qualified elector. This additional cost is wholly borne by the county.

It should be noted that W.S. §22-1-102(a)(xxx)(E) provides that if a qualified elector moves to another state but is, "...unable to qualify under the laws of his new state of residence to vote at the primary or general election, he **shall be deemed to have retained his residence in Wyoming for purposes of voting by absentee ballot...**". Therefore, an individual would still be permitted to vote in Wyoming if they moved to



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another state but failed to qualify as an elector in that state (for instance, if their new residence was in a state where a durational residence requirement was in place and they failed to meet the durational standard). There are other states who have similar “safety nets” like Wyoming.

### **Conclusion:**

Ultimately, we must stress that changes to the Election Code have significant impact on more than 446,000 citizens (US Census Bureau, Population Division, 2021 Population 18 and over), election judges, and county clerks throughout the state. Such changes require careful and thoughtful consideration, planning, preparation, and significant civic and voter education.