



Certification Page Regular and Emergency Rules

Revised August 2023

Emergency Rules (Complete Sections 1-3 and 5-6)

Regular Rules

1. General Information

a. Agency/Board Name* Wyoming Secretary of State's Office			
b. Agency/Board Address 122 W. 25th St., Herschler Building East, Suites 100 and 101		c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Joe Rubino		f. Agency Liaison Telephone Number 307-777-5365	
g. Agency Liaison Email Address Joe.Rubino1@wyo.gov		h. Adoption Date 02/21/2024	
i. Program Election Procedures			
Amended Program Name (if applicable):			

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular (non-emergency) rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these non-emergency or regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes. If the rules are new, please provide the Legislative Chapter Number and Year Enacted:	Chapter:	Year:
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3. Rule Type and Information

For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.

a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. Please use the "Additional Rule Information" form to identify additional rule chapters.

Chapter Number: 2	Chapter Name: Identification for Voter Registration	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date: 01/26/2024	Time: 1PM MST	City: Cheyenne, WY	Location: Capitol Extension Conference Center Auditorium; virtually via Zoom.
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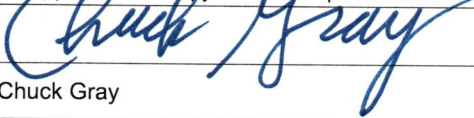
5. Checklist

a. For regular rules, the Statement of Principal Reasons is attached to this Certification and, in compliance with Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule

b. For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.

Signature of Authorized Individual	
Printed Name of Signatory	Chuck Gray
Signatory Title	Wyoming Secretary of State
Date of Signature	02/21/2024

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	



Wyoming Secretary of State

Chuck Gray
Secretary of State

Jesse Naiman
Deputy Secretary of State

Statement of Principal Reasons

Pursuant to W.S. 22-1-102(a)(xxxix)(A) and 22-2-121, the Secretary of State, as the chief election officer of the State of Wyoming, is promulgating rules to amend Chapter 2 of its election procedures to require acceptable identification for proof of identity and proof of residency when registering to vote in Wyoming.

Wyoming law requires that a person registering to vote in Wyoming be a “bona fide resident” of Wyoming. Wyoming law also charges the Secretary of State with specifying by rule adequate proof of identity of a voter. While Chapter 2 of the Wyoming Secretary of State’s rules governing election procedures currently provides a process for providing proof of identity for purposes of identification, there is no mechanism, absent a challenge, for a person registering to vote to provide proof of identity for purposes of proving he or she is a bona fide resident of Wyoming, as required by Wyoming law. As such, the proposed rules amend Chapter 2 to provide a uniform process whereby persons registering to vote may present proof of identification for purposes of proving identity and residency. Specifically, the proposed rules amend Chapter 2, Section 5 to provide further clarity and uniformity for proof of identification for purposes of a voter’s identity, and Chapter 2, Section 6 to provide further clarity and uniformity for proof of identification for purposes of proving a voter’s residency. Finally, the rules amend Chapter 2, Section 7, to provide uniformity and clarity concerning providing evidence of citizenship when registering to vote.

The proposed rules are being promulgated in response to calls from many of Wyoming’s 23 county clerks to add clarity to Wyoming’s voter registration procedures as they relate to verification of identity for purposes of proof of residency, and the proposed revisions were made after careful consideration and consultation with the Wyoming County Clerks Association and the Wyoming Department of Transportation, Driver Services.



Wyoming Secretary of State

Chuck Gray
Secretary of State

Jesse Naiman
Deputy Secretary of State

FROM: Jesse Naiman, Deputy Secretary of State

DATE: February 21, 2024

SUBJECT: Final Rules: Summary of Public Comments and Agency Responses – Ch. 2 Election Procedures

INTRODUCTION AND EXECUTIVE SUMMARY

The Secretary of State's Office published online notice of this intended rules packet, amendments to Chapter 2 of its Election Procedures, on December 7, 2023. The public comment period ran from December 7, 2023 to January 26, 2024. The Secretary of State's Office received approximately 485 written comments regarding the proposed rules package. These comments were from a diverse set of stakeholders, and to ensure clarity, multiple comments from the same individual were consolidated into one comment. Of the written comments received, approximately 280 were in favor of the proposed rules as written, approximately 180 were opposed to the rule as written, and the remainder of written comments received were neither in favor or opposed to the proposed rules. Additionally, the Secretary of State's Office held a public comment hearing on January 26, 2024 at 1:00 PM, in which it received approximately 70 verbal comments, the majority of which were in favor of the proposed rules as submitted.

Comments in support of the proposed rules were primarily centered around a general support of the proposed rules for a variety of reasons, including to prevent voter fraud, enhance security of Wyoming elections, fulfill constitutional and statutory requirements, and enhance confidence in Wyoming elections.

Comments in opposition to the proposed rules were primarily centered around the following themes: general opposition to the proposed rulemaking, allegations that concern that the proposed rules does not address a problem in Wyoming, that the rulemaking would "suppress the vote" and/or would be unduly burdensome against certain demographics (e.g. students, indigent, elderly), concerns that many Wyoming drivers' licenses do not contain a residence address, concerns that the rulemaking comes too close before an election, concerns that the proposed rules will result in increased lines and wait times on the day of the election, that the Secretary of State is circumventing the Wyoming Legislature, and concerns that the Secretary of State does not have legal authority to promulgate the proposed rules.

In accordance with the Wyoming Administrative Procedure Act, the Wyoming Secretary of State has considered all written and verbal submissions respecting the proposed rules, and has determined the final rules packet shall be amended such that registrants will be required to prove proof that they are a resident of Wyoming by providing identification which lists a Wyoming address, rather than the registrant’s current residence address matching the address listed on the registrant’s Voter Registration Application Form. The final rules packet is also amended such that the requirements for proof of Wyoming residency shall not be effective until June 1, 2024, in accordance with W.S. 16-3-104(b)(i). Finally, the final rules packet is also amended to clarify that proof of residency encompasses providing proof of identification at the time of registration.

The following sections delve deeper into each of these themes, providing a comprehensive understanding of the concerns and viewpoints of the various stakeholders, and a detailed discussion and response to each category of comment. *See Ron Peterson Firearms, LLC v. Jones*, 760 F.3d 1147, 1163 (10th Cir. 2014) (holding that agencies are not required to respond to every single comment); *Action on Smoking and Health v. C.A.B.*, 699 F.2d 1209, 1216 (D.C. Cir. 1983) (same).

DISCUSSION AND SUMMARY OF COMMENTS

A. COMMENT CATEGORY # 1: GENERAL SUPPORT OF PROPOSED RULES

1. Summary of Comments

A majority of comments expressed a general support of the proposed rules, as written, citing the need for a proactive measure to prevent voter fraud, enhance security of Wyoming elections, fulfill constitutional and statutory requirements, and enhance confidence in Wyoming elections.

2. Exemplary Comments

- “I support the rule change. It is important all voters properly represent themselves as not only real, living, eligible voters but also a resident of the state and all applicable districts.” Written comment, Bill Eckrich, Laramie County, Wyoming, December 8, 2023
- “I think this change of procedure is a great idea and long overdue. It will truly strengthen our elections by verifying that those that vote have the right to do so. I strongly support this procedure.” Written comment, David M Tate, Rock Springs, WY, received December 9, 2023
- “I am very much in favor of the Secretary’s proposed rule changes for proof of identity. There remain many ways to be allowed to register properly under these rules. Wyomingites highly value the importance of our individual votes. To have just one of our votes cancelled out by an illegitimate vote is one too many. Please protect our votes. Thank you.” Written comment, Elena K. Campbell, Sheridan, WY, received January 4, 2024.
- “To verify a person’s residency address is important since voter districts, precincts and ballots are dependent on address. Good election rules must delineate how to verify a person’s voter registration matches their identification or other form of proof that the person, indeed, lives where they say they live... As an election judge, in Albany County, I

often saw registrations that did not match the driver’s license. How do we know that people actually live where they say they live? It’s not foolproof but at least asking for a utility bill, paystub, rental lease, etc. that would verify residence helps ensure that person lives in the county, at a particular address and receives the correct ballot.” Written Comment, Diana Seabeck, received January 8, 2024.

- “Showing up at the polls, without ID and proof of residency, in my view, promotes fraud, spreads doubt about the integrity of elections, and subverts the views of the citizens. And elected officials are elected to represent citizens, not the inhabitants of an area.” Written comment, Kari Drost, Newcastle, WY, received Jan 25, 2024

3. Agency Response

The Wyoming Secretary of State agrees with many of the points raised in support of the proposed rules. For more information about the reasons for promulgating the proposed rules, see the Secretary of State’s Statement of Principal Reasons.

B. COMMENT CATEGORY # 2: GENERAL OPPOSITION TO THE RULES

1. Summary of Comments

Some comments expressed generalized opposition to the proposed rules. Allegations were made that the proposed rules are “unnecessary” and/or a “bad idea” without any more commentary.

2. Exemplary Comments

- “This rule change is unnecessary and onerous. Wyoming has had very little problem with the voting system & rules it currently uses.” Written comment, Gail Mehle, Rock Springs, WY, received December 7, 2023.

3. Agency Response

As set forth in the Statement of Principal Reasons, the proposed rules provide a uniform process whereby persons registering to vote may present proof of identification for purposes of proving identity and residency, in order to add clarity to Wyoming’s voter registration procedures as they relate to verification of identity for purposes of proof of residency.

As the comments in general opposition to the proposed rules provide no substantive argument, these comments are overruled in this response. *See Ron Peterson Firearms*, 760 F.3d at 1163; *Action on Smoking and Health*, 699 F.2d at 1216. It is commonly understood by regulators and rulemaking bodies that there will be individuals who oppose any rulemaking for purely ideological reasons. To the extent a comment expresses a substantive argument in addition to general opposition to the proposed rules, such argument is classified and addressed in the appropriate category.

C. COMMENT CATEGORY # 3: THE PROPOSED RULES PRESENT A “SOLUTION IN SEARCH OF A PROBLEM,” AND/OR THERE IS NO REASON TO PROMULGATE THE PROPOSED RULES

1. Summary of Comments

Select comments argued the proposed rules are a “solution in search of a problem,” and that there is no reason to promulgate the rules. Many comments in this general category argued that there are few, if any, cases of voter fraud, and as such the rules are therefore “unnecessary.”

2. Exemplary Comments

- “There has not been any proof whatsoever that Wyoming doesn’t have secure elections. Efforts to increase the burden on voters are not justified in any way. Approximately 2,000,000 votes in Wyoming elections 2010-2023 have resulted in three voter fraud convictions. This appears to be a pretty blatant effort towards voter disenfranchisement. A solution in search of a problem!” Written comment, Jocarol Ropp, received December 7, 2023.
- “Even the conservative Heritage Society agrees that that (sic) has been no voter fraud in Wyoming..” Written Comment, Ernest “Ernie Reinhold, Crook County, WY, received January 6, 2024.
- “[L]et’s stick to the facts no voter fraud EVER in Wyoming.....past state officials have had no issued with election security....” – Written comment, JM Jiacoletti, received Jan. 25, 2024.
- *See, Generally*, written and verbal comments, Marissa Carpio, Equality State Policy Center.

3. Agency Response

The objections based on the alleged lack of voter fraud in Wyoming have been considered, but are overruled for several reasons.

As a threshold matter, there is no question about the legitimacy and importance of Wyoming’s interest in ensuring that only eligible voters are able to register to vote. Courts have recognized that states have a legitimate, and even compelling, interest in protecting the integrity of the electoral process by ensuring only eligible voters are entitled to vote. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196-97 (2008) (“[T]here is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters”). The proposed rules further these purposes by creating uniform methods of proving that individuals are eligible to vote when they register. Likewise, ensuring that only those who are qualified to vote are registered likewise safeguards the integrity of the electoral process. Moreover, the interest in orderly and uniform administration of ensuring that only eligible voters are able to register to vote provides a sufficient justification for carefully identifying all voters participating in the election process. On this point, it should be noted that preventing ineligible voters from registering through appropriate safeguards ensures votes of eligible registrants are not themselves disenfranchised. While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear. While this interest is often associated with preventing voter fraud, public confidence in the integrity of the electoral process has

independent significance, because it encourages citizen participation in the electoral process. After all, the electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters.

The comments alleging there are no cases of voter fraud, or very few cases of prosecuted voter fraud, in Wyoming, are rebutted by several key points. First, the comments alleging “no voter fraud” in Wyoming are simply without merit. In 2023 alone, the Secretary of State’s Office forwarded for further investigation and prosecution a non-U.S. citizen who fraudulently obtained a Wyoming driver’s license and voted in Campbell County during the 2020 general election. Second, the argument contains a certain circularity which does not account for the lack of any present method by which to verify Wyoming residence at the time of registration. Without providing a process requiring proof of residency at the time of registration, it is very difficult to prove the extent to which fraud may or may not be occurring. The current registration process simply provides for an attestation of residency, but does not provide for a uniform process that would verify that residence at the time of registration. That means that the current registration process makes it very difficult to in fact prove the level of fraud occurring with respect to non-residents registering to vote. Wyoming still has an interest in being proactive in taking preventative measures to prevent fraud in the future. Just as a homeowner need not wait for their house to be burglarized before locking their front door, the state can take measures to deter and prevent future fraud. *In re Advisory Op.*, 479 Mich. at 26-27, 740 N.W.2d at 458-59 (“[T]he state is not required to provide any proof, much less ‘significant proof,’ of in-person voter fraud before it may permissibly take steps to prevent it”). Thus, the safeguards added by providing uniform requirements for proof upon registration that a registrant is a resident of the State of Wyoming prevents non-residents from registering to vote in the first instance.

D. COMMENT CATEGORY # 4: ALLEGATIONS THAT THE PROPOSED RULES CREATE AN UNDUE BURDEN ON CERTAIN DEMOGRAPHICS AND OTHERWISE SUPPRESS THE VOTE IN WYOMING

1. Summary of Comments

Some comments argued the proposed rules create an undue burden on certain populations and demographics, including students, homeless, and the elderly. These comments argued against adoption of the rules out of a sense of fairness, and a desire to ensure increased voter participation by the referenced demographics.

2. Exemplary Comments

- “We do not believe that proof of residency is needed for voting in the state of Wyoming. This would cause extra hindrance for older residents, for people that are new to the state, or for those that are homeless.” Written comment, Jackie and Tom Bilan, received December 8, 2023.
- “Since there is no evidence that anyone from outside of Wyoming is voting in Wyoming elections, these rules only impose an undue burden on voters.” Written comment, Elizabeth Victor, received January 8, 2024.

- *See generally*, written comment, Sam Shumway, AARP Wyoming, received January 19, 2024.
- *See generally*, verbal comment, Tom Lacock, AARP Wyoming, received January 26, 2024.
- “[T]he additional identification stipulations suggested in these rule changes seem disproportionate to the issues they aim to address. By complicating the voter registration process, we risk disenfranchising certain groups within our community, such as the elderly, students, residents of rural areas, and those facing economic challenges.” Written comment, Jordan Evans, received January 26, 2024.

3. Agency Response

The proposed rules are rules of general applicability, and do not discriminate in any way against certain demographics. On the contrary, the proposed rules were carefully crafted, in consultation with Wyoming’s county clerks, to provide for a robust list of documents that can be provided for proof of residency in the event a registrant’s address is not listed on their driver’s license credential. These include, but are not limited to, a utility bill, bank statement, government check or pay stub, paycheck or pay stub, mortgage statement, housing verification form provided by the University of Wyoming, a Wyoming Community College, or a Wyoming public school, any other government document showing their name or address, residential lease, contract or intake document from a residential care facility, such as a nursing home, assisted living facility, adult family home, or community-based residential facility, property tax bill or receipt, Wyoming hunting or fishing license, Wyoming vehicle registration, or communication on letterhead from a public or private social service agency verifying the applicant is homeless and attesting to the applicant’s residence for registration purposes.

Many of these forms of identification are available at little to no cost, and are generally applicable. Many of these options were crafted, in consultation with Wyoming’s county clerks, with many of the selected populations in mind. For example, the options of providing a housing verification form provided by the University of Wyoming, a Wyoming Community College, or a Wyoming public school, in addition to the option of a residential lease, were incorporated into the proposed rules specifically to allow options for students to provide proof that they are residents of Wyoming. Likewise, allowing prospective registrants to provide a contract or intake document from a residential care facility, such as a nursing home, assisted living facility, adult family home, or community-based residential facility were included in order to allow options for elderly, in addition to the other options available under the proposed rules. Allowing a communication on letterhead from a public or private social service agency verifying the applicant is homeless and attesting to the applicant’s residence for registration purposes were incorporated to provide homeless and indigent populations options, in addition to other options available under the proposed rules, for registration.

Furthermore, in addition to otherwise qualified individuals being able to register to vote at any time, Wyoming has a 28 day early voting period, which gives prospective voters ample time to register and vote, which alleviates any concern that these rules place on undue burden on prospective voters.

E. COMMENT CATEGORY # 5: CONCERNS THAT THE PROPOSED RULES WILL ADVERSELY AFFECT REGISTRANTS WHOSE WYOMING DRIVER’S LICENSE DOES NOT CONTAIN THEIR PRINCIPAL RESIDENCE ADDRESS.

1. Summary of Comments

Some comments argued the proposed rules do not account for instances in which registrants’ preferred identification, a Wyoming Driver’s License, contains a P.O. Box, rather than the registrant’s residential address, and absent another piece of identification showing current residence address, people with a P.O. Box listed on their credential would be denied the ability to register to vote.

2. Exemplary Comments

- “Citizens living in a residential care facility and people without a fixed residence – such as students or the homeless or anyone using a PO Box on their license – may be unable to show proof of residency.” Written comment, Katherine Morgan, received January 25, 2024.
- *See generally*, written comment of Luther Propst, Chairman, Teton County Board of Commissioners, received January 25, 2024.
- *See generally*, written and verbal comments of Teton County Clerk Maureen Murphy, received January 26, 2024.

3. Agency Response

The proposed rules were crafted with the understanding that Wyoming credentials are issued in accordance with W.S. 31-7-115(a)(iii)(C), which requires that Wyoming driver’s license credentials contain the “principal residence address” of the licensee. However, in communication and consultation with the Wyoming Department of Transportation, credentialing is not in compliance with this statutory requirement, and will not be until the Wyoming Department of Transportation implements changes to its Revenue Information System (RIS) in the coming years. During the interim, some credentials include only a mailing address, which, for some registrants, is a P.O. Box. However, the rules contemplate that, in the alternative to using a Wyoming driver’s license as proof of residence address, a registrant has a number of options to prove their residence address, including, but not limited to, a utility bill, bank statement, government check or pay stub, paycheck or pay stub, mortgage statement, housing verification form provided by the University of Wyoming, a Wyoming Community College, or a Wyoming public school, any other government document showing their name or address, residential lease, contract or intake document from a residential care facility, such as a nursing home, assisted living facility, adult family home, or community-based residential facility, property tax bill or receipt, Wyoming hunting or fishing license, Wyoming vehicle registration, or communication on letterhead from a public or private social service agency verifying the applicant is homeless and attesting to the applicant’s residence for registration purposes.

Although the vast majority of registrants will be unaffected by WYDOT’s current technical limitation, the final rules packet has been amended as follows: rather than requiring registrants to

provide proof of their residence address matching their voter registration, registrants will be required to prove proof that they are a resident of Wyoming by providing identification which lists a Wyoming address, rather than the registrant’s current residence address matching the address listed on the registrant’s Voter Registration Application Form. Thus, the concerns about Wyoming Driver’s licenses, or other documents, containing only P.O. Boxes, are addressed by allowing those registrants to provide identification with a Wyoming P.O. Box satisfying Wyoming residency.

F. COMMENT CATEGORY # 6: ALLEGATIONS THAT THE PROPOSED RULES HAVE CIRCUMVENTED THE LEGISLATIVE PROCESS AND/OR THE SECRETARY OF STATE DOES NOT HAVE STATUTORY AUTHORITY TO PROMULGATE THE PROPOSED RULES.

1. Summary of Comments

Some comments alleged that the proposed rules circumvent the Wyoming Legislature by conflating the proposed rules with House Bill 38, “Voter qualifications-durational residency requirement,” which has been taken up and sponsored by the Joint Corporations, Elections, and Political Subdivisions Committee for the 2024 Legislative Session. Many of these comments made substantive arguments for or against durational residency requirements having nothing to do with the proposed rules. Other comments allege that the Secretary of State does not have the statutory authority to promulgate the proposed rules.

2. Exemplary Comments

- “I believe to be able to vote in the state of Wyoming, a person should show their driver’s license. Proof of their 1-year residency. (Not 30 day) They can get one of these within their first year of residency.” Written comment, Kelle Conroy, received January 3, 2024.
- “This rules change circumvent (sic) the WY Legislature – the appropriate entity to determine WY election qualifications. Wyoming election code is decided by the Legislature not by the WY SOS. It is up to the secretary of state to administer elections within the framework of those laws, according to the WY state constitution. Wyoming voters do not need more barriers to voting...” Written comment, Jacquie Hediger, received January 8, 2024.
- *See generally*, verbal comment, Senator Cale Case, received January 26, 2024.

3. Agency Response

While these comments are well taken, they are without merit. The proposed rules do not circumvent the Wyoming Legislature, and are within the statutory authority of the Secretary of State for a number of different reasons.

First, the proposed rules do not “circumvent” the legislative process or in any way contradict legislation forwarded by the Joint Corporations, Elections, and Political Subdivisions Committee of the Wyoming Legislature. By way of background, House Bill 38, “Voter qualifications-durational residency requirement,” was taken up by the Joint Corporations Committee during the 2023 interim following Secretary Gray’s testimony asking the committee to draft a durational residency requirement to vote in Wyoming state law in May 2023. The bill

forwarded by the committee provides that a registrant must be a “bona fide resident of Wyoming for not less than thirty (30) days before the date of the election at which he offers to vote.” While House Bill 38 addresses a durational component to existing law requiring Wyoming residency to vote, it does not address providing adequate proof of a voter’s identification for purposes of ensuring that they are, in fact, a bona fide resident of Wyoming. During the interim, this was pointed out numerous times. For example, in a memorandum from the County Clerks Association of Wyoming to the Joint Corporations Committee, dated August 22, 2023, the clerks distinguished between a durational residency requirement, as contemplated by the interim topic which would become House Bill 38, and providing proof that a potential voter has fulfilled their durational residency requirement, stating that “the documentation required to prove residency can, and should, continue to be established through administrative rules.” The proposed rules are entirely different than the durational residency requirement in that they promote a uniform policy of providing proof that a registrant is, indeed, a “bona fide resident” of Wyoming when they register to vote, in accordance with W.S. 22-2-121, regardless of any durational requirements in statute. In this way, the proposed rules do not contradict, or circumvent, the legislative process at all. Simply put, the proposed rules concern providing adequate proof that a registrant is a Wyoming resident upon registration, regardless of any durational attestation.

The proposed rules also fall within the Secretary of State’s authority set forth in Wyoming Statute. As Chief Election Officer for the State of Wyoming, the Secretary of State is charged with ensuring uniform application of Wyoming’s Election Code. Specifically, W.S. 22-2-121 provides that the Secretary of State, as the Chief Election Officer of the State of Wyoming, “shall prepare written directives and instructions relating to and based on the election laws,” and “shall promulgate such rules as are necessary to maintain uniform voting and vote counting procedures and orderly voting.” A necessary, and essential, element to maintaining uniform voting in accordance with Wyoming’s election laws is through the enforcement of Wyoming statute that sets forth the qualifications for registration to vote and voter eligibility. Wyoming’s Election Code currently requires that, in order to register to vote, an elector must be a “bona fide resident” of the State of Wyoming. And while the statute delineates a definition of “residence” for purposes of the Election Code, there is no mechanism in statute of ensuring individuals who register to vote are indeed bona fide residents of Wyoming when they register to vote, as required by Wyoming law. Thus, the proposed rules fall squarely within the Secretary of State’s authority to guarantee the uniform application of Wyoming’s laws as they relate to voting by ensuring that only Wyoming residents are voting in Wyoming elections.

Wyoming statute also requires verification of voter registration information required on voter registration forms, including that of a prospective voter’s current residence address. W.S. 22-3-103(a)(ii) specifies that a registrant shall be required to provide his “current residence address or if living in another state or nation, his last residence address in Wyoming.” W.S. 22-1-102(a)(xxvii) defines “registration” as “the entry and **verification** of the name and voter information of a qualified elector on the official registry list, as provided in W.S. 22-3-104(f) and 22-3-108” (emphasis added). Likewise, W.S. 22-3-104(f)(ii)(A) and (B) specify that a person shall be registered, and registration is effective, upon verification. As the County Clerk’s memo dated August 22, 2023 to the Joint Corporations Committee discusses, the current registration process lacks a verification process for providing residency at the time the voter’s attestation is completed. Thus, the proposed rules simply provide a reasonable means whereby a required prerequisite to

voter registration is verified through acceptable identification for proof of residency. Further, this rule provides for uniform and orderly voting by creating a uniform and orderly process to meet the verification requirements discussed for registration in W.S. 22-1-102(a)(xxvii). Contrary to the allegations made in these comments, the current **lack** of a process for verifying that the voter is a bona fide Wyoming resident may itself be problematic in light of W.S. 22-1-102(a)(xxvii), which this rulemaking resolves.

Furthermore, state statute imbues the Secretary of State with rulemaking authority to ensure that those who register to vote are who they say they are for purposes of registering to vote. W.S. 22-1-102(a)(xxxix)(A) provides that, for purposes of voter registration, the Secretary of State may specify, by rule, adequate proof of the identity of a voter. Merriam-Webster defines “identity” as “the distinguishing character or personality of an individual.” *Identity*, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/identity>. Key among other distinguishing characteristics of a person’s identity is that of their residence, especially for the purposes of voting. After all, this is what helps distinguish multiple “John Does” who may share the same name, but not the same residence address, from one another. The final rules have been amended to clarify this point.

This rulemaking authority has been acknowledged by the County Clerks Association of Wyoming, as evidenced in their above-referenced memorandum dated August 22, 2023, as well as by members of the Legislature during floor debate. *See* testimony of Representative Barry Crago, February 2, 2023 recording of PM legislative deliberations at 3:19:04, <https://www.youtube.com/live/-iXEPmfgH5s?feature=shared&t=11947> (“[w]hen you go to register, there are different requirements. In that part of the statute, the good elected official downstairs gets to set rules in what is required to be shown that particular day.” As such, the arguments that the proposed rules are outside of the Secretary of State’s rulemaking authority are overruled.

G. COMMENT CATEGORY # 7: CONCERNS THAT THE PROPOSED RULES WILL CREATE AN ADMINISTRATIVE BURDEN TOO CLOSE TO AN ELECTION.

1. Summary of Comments

Some comments alleged that the proposed rules will pose an undue administrative burden and cited concerns that the proposed rules are coming too close to an election. As a corollary to that point, some have pointed out that there may be insufficient time for voters to be informed about the new changes before the 2024 elections.

2. Exemplary Comments

- *See, e.g.*, written comment, Debra Lee, Laramie County Clerk, received January 19, 2024.
- *See generally*, written and verbal comments of Malcolm Ervin, County Clerks Association of Wyoming, received January 8, 2024 and January 26, 2024.

3. Agency Response

The proposed rules were part of a collaborative process with many of Wyoming's 23 County Clerks, which began following their testimony during the Joint Corporations, Elections, and Political Subdivisions meeting in August. Since that time, the rules were carefully, but expediently, crafted, to ensure implementation prior to the 2024 primary election. In order to ensure proper education and implementation, the proposed rules will not go into effect until June 1, 2024. Thus, the final rules packet has been amended to add an additional section which specifies that the requirements for proof of residency do not go into effect until June 1, 2024. *See* W.S. 16-3-104(b)(i). These changes will ensure time for adequate education and implementation prior to the 2024 primary election, without affecting May municipal elections.

CONCLUSION

In accordance with the Wyoming Administrative Procedure Act, the Wyoming Secretary of State has given full consideration of all written and verbal submissions respecting the proposed rules.

With the exception of the amendments to clarify that identification upon registration is to be used for purposes of proving Wyoming residency, as well as amendments to make the proposed rules effective after May municipal elections, comments in opposition to the proposed rules packet have been carefully considered and overruled.

Chapter 2

Identification for Voter Registration

Section 1. Authority. These rules are authorized by W.S. 22-1-102(a)(xxxix)(A) and 22-2-121(b) and (d).

Section 2. Voter Registration Application and Oath Form.

(a) The County Clerks shall use the statewide voter registration application form prescribed by the Secretary of State made accessible electronically on the Secretary of State's Office website.

(b) An absent uniformed service or an overseas citizen voter may register by mail or email annually using the Federal Postcard Application in accordance with federal and state law and as prescribed in Chapter 3, Uniformed and Overseas Citizens' Absentee Voting.

Section 3. Verification of Voter Information. The County Clerk shall verify the voter information using the statewide voter registration system.

(a) For persons registering to vote at the polls, they shall be considered registered. If after the election, the voter's information cannot be verified in the statewide voter registration system, their registration shall be pended and investigated by the County Clerk.

(b) If the individual is registering on any day other than election day, they shall be registered if the required information is found to be valid.

Section 4. Documents for Voter Registration. The required documentation for registering to vote in accordance with W.S. 22-3-103 are:

(a) Voter Registration Application Form as prescribed by the Secretary of State; and

(b) Acceptable Identification for proof of identity, which shall include, effective June 1, 2024, proof of Wyoming residency in accordance with Sections 5 and 6 of this chapter.

Section 5. Definition of "Acceptable Identification" for Proof of Identity for Purposes of Voter Registration.

(a) Any one of the following forms of acceptable identification shall accompany the Voter Registration Application Form and shall meet the registration requirements of federal and state law without providing any other form of identification, provided that, effective June 1, 2024, the identification lists a Wyoming address. For purposes of providing proof of Wyoming residency under this Chapter, a Wyoming address includes a Post Office box located in the State of Wyoming, provided the individual registering is still required to list their Wyoming residential address as required on the voter registration application form. Effective June 1, 2024, if the

provided documentation does not list a Wyoming address, the voter shall also supply documentation from Sections 5(b), 5(c), or 6 of this chapter to establish proof of Wyoming residency:

- (i) A current, valid Wyoming driver's license;
- (ii) A current, valid Wyoming digital driver's license as defined in W.S. 31-7-102(a)(xlix); or
- (iii) A tribal identification card issued by the governing body of the Eastern Shoshone tribe of Wyoming, the Northern Arapaho tribe of Wyoming or other federally recognized Indian tribe that contains the applicant's Wyoming driver's license number and/or the last four (4) digits of the applicant's social security number (SSN).

(b) If the applicant does not have the forms of identification, as listed in Section 5(a) of this chapter present at the time of registration, they shall provide on the Voter Registration Application Form their Wyoming driver's license number and any one of the documents listed below. If the applicant does not have a valid Wyoming driver's license, the applicant shall provide on the Voter Registration Application Form the last four numbers of their SSN and any one of the documents listed below. If the applicant does not have a valid Wyoming driver's license or a SSN, the voter shall check the box on the Voter Registration Application Form indicating the same, and provide any one of the following forms of identification. Effective June 1, 2024, if any of these documents lists a Wyoming address, said documentation shall also constitute proof of Wyoming residency:

- (i) Valid United States Passport;
- (ii) Driver's license or Identification Card issued by the Federal Government, any State, or Outlying Possession of the United States;
- (iii) Photo identification card issued by the University of Wyoming, a Wyoming Community College, or a Wyoming public school;
- (iv) United States military card;
- (v) Identification card issued to a dependent of a member of the United States Armed Forces; or
- (vi) A tribal identification card issued by the governing body of the Eastern Shoshone tribe of Wyoming, the Northern Arapaho tribe of Wyoming or other federally recognized Indian tribe.

(c) If the applicant does not have the forms of identification, as listed in Section 5(a) or 5(b) of this chapter present at the time of registration, they shall provide on the Voter

Registration Application Form their Wyoming driver's license number and any two of the documents listed below. If the applicant does not have a valid Wyoming driver's license, the applicant shall provide on the Voter Registration Application Form the last four numbers of their SSN and any two of the documents listed below. If the applicant does not have a valid Wyoming driver's license or a SSN, the voter shall check the box on the Voter Registration Application Form indicating the same, and provide any two of the following forms of identification. Effective June 1, 2024, if any of these documents lists a Wyoming address, said documentation shall also constitute proof of Wyoming residency:

- (i) Certificate of United States Citizenship;
- (ii) Certificate of Naturalization;
- (iii) United States Military Draft Record or Selective Service Card or Record;
- (iv) Voter Registration Card from another State or County;
- (v) United States Social Security Card;
- (vi) Certificate of Birth Abroad issued by the Department of State;
- (vii) Original or certified copy of birth certificate bearing an official seal;
- (viii) Any other form of identification issued by an official agency of the United States or a State;
- (ix) Void Wyoming driver's license or identification card issued by the State of Wyoming; or
- (x) Temporary driver's license or identification card issued by the State of Wyoming.

Section 6. Definition of "Acceptable Identification" for Proof of Wyoming Residency for Purposes of Voter Registration.

(a) In the event of a challenge, the following documents showing the individual's name and address are acceptable proof of identification and residency. Effective June 1, 2024, if a registrant's identification in Section 5 does not contain a Wyoming address, then the following documents showing the individual's name and a Wyoming address are acceptable identification for proof of Wyoming residency:

- (i) The following items must be current and be dated within ninety (90) days from the date of registration:

- (A) Utility bill;
- (B) Bank statement;
- (C) Government check or pay stub;
- (D) Paycheck or pay stub;
- (E) Mortgage statement;
- (F) Housing verification form provided by the University of Wyoming, a Wyoming Community College, or a Wyoming public school; or
- (G) Any other government document showing their name and address.

(ii) The following items must be dated within one year from the date of registration:

- (A) Residential lease;
- (B) Contract or intake document from a residential care facility, such as a nursing home, assisted living facility, adult family home, or community-based residential facility;
- (C) Property tax bill or receipt;
- (D) Wyoming hunting or fishing license;
- (E) Wyoming vehicle registration; or
- (F) Communication on letterhead from a public or private social service agency verifying the applicant is homeless and attesting to the applicant's residence for registration purposes.

Section 7. Prohibition of Using Documents Indicating Voter is not a United States Citizen. No person shall be allowed to register to vote if their presented identification contains any indication that they are not a citizen of the United States. This includes any identification that contains the phrase "NR," "Non-Resident," "Driver's Privilege," "Limited Term," or any other term or symbol indicating that the prospective voter is not a citizen of the United States. In the event that a person presents identification indicating they are not a citizen of the United States, they may register to vote if they present proof of citizenship. Any one of the following documents shall constitute evidence of the individual's citizenship, if necessary:

- (a) United States Passport;

- (b) Certificate of United States Citizenship;
- (c) Certificate of Naturalization;
- (d) Certificate of Birth Abroad issued by the Department of State; or
- (e) Original or certified copy of birth certificate bearing an official seal.

Chapter 2 Identification for Voter Registration

Section 1. Authority. These rules are authorized by W.S. 22-1-102(a)(xxxix)(A) and 22-2-121(b) and (d).

Section 2. Voter Registration Application and Oath Form.

(a) The County Clerks shall use the statewide voter registration application form prescribed by the Secretary of State made accessible electronically on the Secretary of State's Office website.

(b) An absent uniformed service or an overseas citizen voter may register by mail or email annually using the Federal Postcard Application in accordance with federal and state law and as prescribed in Chapter 3, Uniformed and Overseas Citizens' Absentee Voting.

Section 3. Verification of Voter Information. The County Clerk shall verify the voter information using the statewide voter registration system.

(a) For persons registering to vote at the polls, they shall be considered registered. If after the election, the voter's information cannot be verified in the statewide voter registration system, their registration shall be pended and investigated by the County Clerk.

(b) If the individual is registering on any day other than election day, they shall be registered if the required information is found to be valid.

Section 4. Documents for Voter Registration. The required documentation for registering to vote in accordance with W.S. 22-3-103 are:

(a) Voter Registration Application Form as prescribed by the Secretary of State; and

(b) Acceptable Identification for proof of identity, which shall include, effective June 1, 2024, proof of Wyoming residency in accordance with Sections 5 and 6 of this chapter.

Section 5. Definition of "Acceptable Identification" for Proof of Identity for Purposes of Voter Registration.

(a) Any one of the following forms of acceptable identification shall accompany the Voter Registration Application Form and shall meet the registration requirements of federal and state law without providing any other form of identification, provided that, effective June 1, 2024, the identification lists a Wyoming address. For purposes of providing proof of Wyoming residency under this Chapter, a Wyoming address includes a Post Office box located in the State of Wyoming, provided the individual registering is still required to list their Wyoming residential address as required on the voter registration application form. Effective June 1, 2024, if the

provided documentation does not list a Wyoming address, the voter shall also supply documentation from Sections 5(b), 5(c), or 6 of this chapter to establish proof of Wyoming residency:

- (i) A current, valid Wyoming driver's license;
- (ii) A current, valid Wyoming digital driver's license as defined in W.S. 31-7-102(a)(xlix); or
- (iii) A tribal identification card issued by the governing body of the Eastern Shoshone tribe of Wyoming, the Northern Arapaho tribe of Wyoming or other federally recognized Indian tribe that contains the applicant's Wyoming driver's license number and/or the last four (4) digits of the applicant's social security number (SSN).

(b) If the applicant does not have the forms of identification, as listed in Section 5(a) of this chapter present at the time of registration, they shall provide on the Voter Registration Application Form their Wyoming driver's license number and any one of the documents listed below. If the applicant does not have a valid Wyoming driver's license, the applicant shall provide on the Voter Registration Application Form the last four numbers of their SSN and any one of the documents listed below. If the applicant does not have a valid Wyoming driver's license or a SSN, the voter shall check the box on the Voter Registration Application Form indicating the same, and provide any one of the following forms of identification. Effective June 1, 2024, if any of these documents lists a Wyoming address, said documentation shall also constitute proof of Wyoming residency:

- (i) Valid United States Passport;
- (ii) Driver's license or Identification Card issued by the Federal Government, any State, or Outlying Possession of the United States;
- ~~(iii) Identification card issued by the Federal Government, any State or Local Government, or an Agency thereof;~~
- ~~iv~~(iii) Photo identification card issued by the University of Wyoming, a Wyoming Community College, or a Wyoming public school;
- ~~v~~(iv) United States military card;
- ~~vi~~(v) Identification card issued to a dependent of a member of the United States Armed Forces; or
- ~~vii~~(vi) A tribal identification card issued by the governing body of the Eastern Shoshone tribe of Wyoming, the Northern Arapaho tribe of Wyoming or other federally recognized Indian tribe; ~~or~~

~~(viii) — Any two or more of the following documents:~~

(c) If the applicant does not have the forms of identification, as listed in Section 5(a) or 5(b) of this chapter present at the time of registration, they shall provide on the Voter Registration Application Form their Wyoming driver's license number and any two of the documents listed below. If the applicant does not have a valid Wyoming driver's license, the applicant shall provide on the Voter Registration Application Form the last four numbers of their SSN and any two of the documents listed below. If the applicant does not have a valid Wyoming driver's license or a SSN, the voter shall check the box on the Voter Registration Application Form indicating the same, and provide any two of the following forms of identification. Effective June 1, 2024, if any of these documents lists a Wyoming address, said documentation shall also constitute proof of Wyoming residency:

~~(A)(i)~~ Certificate of United States Citizenship;

~~(B)(ii)~~ Certificate of Naturalization;

~~(C)(iii)~~ United States Military Draft Record or Selective Service Card or Record;

~~(D)(iv)~~ Voter Registration Card from another State or County;

~~(E)(v)~~ United States Social Security Card;

~~(F)(vi)~~ Certificate of Birth Abroad issued by the Department of State;

~~(G)(vii)~~ Original or certified copy of birth certificate bearing an official seal; ~~or~~

~~(H)(viii)~~ Any other form of identification issued by an official agency of the United States or a State;

(ix) Void Wyoming driver's license or identification card issued by the State of Wyoming; or

(x) Temporary driver's license or identification card issued by the State of Wyoming.

Section 6. Wyoming Residency Documentation. Definition of "Acceptable Identification" for Proof of Wyoming Residency for Purposes of Voter Registration.

(a) In the event of a challenge, the following documents showing the individual's name and address are acceptable proof of identification and residency; Effective June 1, 2024, if a registrant's identification in Section 5 does not contain a Wyoming address, then the following

documents showing the individual's name and a Wyoming address are acceptable identification for proof of Wyoming residency:

(i) The following items must be current and be dated within ~~forty five (45)~~ ninety (90) days from the date of registration:

(A) Utility bill;

(B) Bank statement;

(C) Government check or pay ~~advice~~stub;

(D) Paycheck or pay ~~advice~~stub;

(E) Mortgage statement;

(F) Housing verification form provided by the University of Wyoming, a Wyoming Community College, or a Wyoming public school; or

(G) Any other government document showing their name and address.

(ii) The following items must be dated within one year from the date of registration:

(A) Residential lease;

(B) ~~Residential care facility contract or intake document~~Contract or intake document from a residential care facility, such as a nursing home, assisted living facility, adult family home, or community-based residential facility; or

(C) Property tax bill or receipt;

(D) Wyoming hunting or fishing license;

(E) Wyoming vehicle registration; or

(F) Communication on letterhead from a public or private social service agency verifying the applicant is homeless and attesting to the applicant's residence for registration purposes.

Section 7. ~~United States Citizenship Documentation~~ Prohibition of Using Documents Indicating Voter is not a United States Citizen. No person shall be allowed to register to vote if their presented identification contains any indication that they are not a citizen of the United States. This includes any identification that contains the phrase "NR," "Non-Resident,"

“Driver’s Privilege,” “Limited Term,” or any other term or symbol indicating that the prospective voter is not a citizen of the United States. In the event that a person presents identification indicating they are not a citizen of the United States, they may register to vote if they present proof of citizenship. Any one of the following documents shall constitute evidence of the individual’s citizenship, if necessary:

- (a) United States Passport;
- (b) Certificate of United States Citizenship;
- (c) Certificate of Naturalization;
- ~~(d) United States Military Draft Record or Selective Service Registration Acknowledgement card;~~
- ~~(e)~~(d) Certificate of Birth Abroad issued by the Department of State; or
- ~~(f)~~(e) Original or certified copy of birth certificate bearing an official seal.