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