



April 12, 2024

Chuck Gray, Wyoming Secretary of State  
East, Herschler Bldg.  
122 W. 25<sup>th</sup> Street, Ste. 100  
Cheyenne, WY 82002

Re: ARR23-085 Secretary of State – Chapter 2 – Identification for Voter Registration

Secretary Gray,

Under Wyo. Stat. Ann. § 16-3-103(d), I am required to review all state agency amendments, repeals, modifications, or revisions of rules for approval prior to their filing with the registrar of rules under Wyo. Stat. Ann. § 16-3-104(a). As part of that review, Wyo. Stat. Ann. § 16-3-103(d) provides three grounds that must be satisfied before I can sign and approve a rule: (1) the rule “[i]s within the scope of the statutory authority delegated to the adopting agency,” (2) the rule “[a]ppears to be within the scope of the legislative purpose of the statutory authority,” and (3) the rule “[h]as been adopted in compliance with the procedural requirements of this [the Wyoming Administrative Procedures] act.”

On March 28, 2024, I received notice from the Management Council recommending that I order the Chapter 2 Identification for Voter Registration proposed rule be amended or rescinded to address the concerns raised in the Legislative Service Office’s February 21, 2024 rule review memo. Under Wyo. Stat. Ann. § 28-9-106, I must respond to the Management Council’s recommendation by April 12, 2024. Having reviewed the Chapter 2 proposed rule, I write to inform you of my determination that the proposed language in the attached rule packet is not within the scope of statutory authority delegated to the Secretary of State by law. Accordingly, I disapprove of this proposed rule and have informed the Management Council of my agreement with its recommendation.

First, I want to emphasize that Wyoming’s elections are safe and secure, as evidenced most recently by the widely accepted success of the 2022 election cycle. Moreover, remedies for suspected malfeasance or fraud, whether inadvertent or deliberate, already exist within the scope of existing statute and rule. The State’s election code (the Act) functions well, and the countless hours spent by volunteers, election judges, canvassing boards, county clerks, town clerks, your office, and numerous others have ensured for decades that Wyomingites can trust the state’s election results. While there may always be room to improve Wyoming’s election laws, this responsibility lies in the purview of the legislative branch. Wyoming’s Constitution provides for the opportunity to vote and the legislature has given primarily to the county clerks the responsibility and infrastructure to effectively run elections as well as the tools to prevent voter fraud and deliver accurate results.

Second, the Act currently provides a comprehensive framework for how “bona fide residents” can register to vote and how election officials can investigate or challenge their qualifications. Wyo. Stat. Ann. §§ 22-3-102 through -105, and -116. This already includes the requirement that registered voters be United States citizens. *Id.* More specifically, the Act specifically prescribes the information clerks may require in voter registration forms, also defining what constitutes a person’s “residence” for purposes of voter registration. Wyo. Stat. Ann. § 22-2-102(a)(xxx) and § 22-3-103. In order to ensure the integrity of voter registration data provided in these forms, county clerks have used the verification processes described in Wyo. Stat. Ann. §§ 22-3-104 through -106, and -116 for years to investigate voter data and, according to the statutorily mandated process for appeals and provisional ballots, challenge or deny registration.

Crucially, while the Act describes all of these requirements in detail, it does not grant rulemaking authority to the Secretary of State to add to the statutory framework already used by county clerks to investigate voters’ citizenship and Wyoming residency. The assertion that there is no mechanism for ensuring voters do not misrepresent their residency or citizenship is inaccurate. While the Act may not currently allow county clerks to require documentary proof of residency at registration outside of the oath under perjury signed by voters, there is a readily available process for investigating voter qualifications and challenging them after registration and before voting. Unless and until the legislature grants the Secretary of State more explicit authority allowing for rulemaking to add to those statutory requirements at the time of registration, I believe these rules are a breach of the separation of powers with the legislative branch, as indicated by the Management Council’s recommendation.

Regardless, I agree with the foundational principle that only United States citizens who are Wyoming residents should be voting in our elections. Just as we must ensure no eligible voter is wrongly disenfranchised, we must equally continue to ensure that no ineligible person can fraudulently misrepresent their residency or citizenship. Thankfully, currently available data indicates that Wyoming does not have a significant problem with either fraudulent voter registrations or our ability to investigate and verify voter qualifications. Even so, as noted by the County Clerks in their August 22, 2023 letter to the Joint Corporations, Elections & Political Subdivisions Interim Committee, as well as in their January 8, 2024 public comment submission, legislative direction would help with future preventative measures and provide clarity on the definition of the term “bona fide resident”. Legislative consideration would also provide sufficient time to study the topic and ensure no eligible voters are inadvertently disenfranchised by any future changes, especially this close to a national election. Taking all of this into consideration, I agree with the county clerks and strongly urge the legislature to address this topic through future legislation, after detailed and careful study.

I appreciate your point of view, as outlined in our April 10, 2024 meeting and your April 9, 2024 letter to me regarding your support of the rules and rebuttal of legal analysis provided by the Legislative Service Office. I also applaud your diligence in these matters. However, based on my analysis, I respectfully disagree with your conclusions. Furthermore, becoming effective as they presumably would between two distinct elections, one for municipalities and the other for primaries, might provide additional confusion for a primary already functioning differently under

new law. Voter confusion and inadvertent disenfranchisement would be contrary to the intent of the Wyoming Constitution. Until the legislature provides more explicit rulemaking authority for the Secretary of State, county clerks must follow the methods for investigating and challenging voters' citizenship and registration outlined in statute. While I support addressing the county clerks' concerns, assuming the worst when experience shows that our system continues to be effective at preventing voter fraud does not support upending a decades long practice. We can always improve, and that discussion properly lies with the legislature. Testing the bounds of statutory authority runs contrary to Article 2 Section 1 of our Wyoming Constitution.

In summary, under Wyo. Stat. Ann. § 16-3-103(d)(i), I disapprove of the language in the Chapter 2 Identification for Voter Registration proposed rule because I do not believe it is within the scope of statutory authority delegated to the Secretary of State by law. Enclosed is the regular rule packet I received for these rules, returned to you as required by statute.

Sincerely,



Mark Gordon  
Governor

MG:kw:kh