

# Wyoming Secretary of State

## Chuck Gray



April 9, 2024

**Via Hand Delivery and Email**

Honorable Mark Gordon, Governor  
Wyoming State Capitol  
200 West 24<sup>th</sup> Avenue  
Cheyenne, WY 82002

***Re: Administrative Rule Review – ARR23-085 – Ch. 2 – Identification for Voter Registration***

Dear Governor Gordon:

This letter pertains to the Report of Management Council Action on Agency Rules pursuant to W.S. 28-9-106(a) and the Management Council's 7-2 vote (Majority Floor Leader Chip Neiman and Senate Vice President Dave Kinsky objecting) to adopt the Legislative Service Office's administrative rule review analysis and recommendation concerning our office's adoption of amendments to Chapter 2 of the Secretary of State's Election Procedures pertaining to identification for voter registration to require proof of Wyoming residency when registering to vote and providing a uniform procedure for providing evidence of citizenship when registering to vote. These common-sense rules are extremely important because they ensure that illegal aliens and non-residents will be prevented from registering to vote in Wyoming.

After careful review of the LSO recommendation, I disagree with the analysis, as the proposed rules fall squarely within the scope of statutory authority delegated to our office, and are assuredly within the scope of the legislative purpose of the statutory authority as required by W.S. 16-3-103(d)(i) and (ii).<sup>1</sup>

As illustrated further below, these common-sense proposed rules simply provide a uniform mechanism by which to verify Wyoming's voter registration procedures as they relate to verification of identity for purposes of proving Wyoming residency and to prevent illegal immigrants from registering to vote in Wyoming, key mandates set forth in both the Wyoming Constitution and Wyoming Statute. The rules underwent a thorough drafting and public comment process, in which several modifications were made to ensure adequate implementation for the 2024 Election and to account for concerns raised by constituents during the public comment period. I urge you to resist one-sided analysis aimed at crippling common-sense election integrity measures, and evaluate the rules in light of the clear statutory mandates set forth in the Wyoming

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<sup>1</sup> The recommendation does not contest that the proposed rules have been adopted in compliance with the Wyoming Administrative Procedure Act, as required by W.S. 16-3-103(d)(iii).

Constitution and Wyoming Statute that are meant to ensure Wyomingites, and only Wyomingites, vote in Wyoming elections.

*A. The proposed rules are within the scope of the statutory authority delegated to the Secretary of State.*

First, I disagree with the recommendation's finding that the portions of the rules to require proof of Wyoming residency upon registration and to prohibit non-citizens from registering to vote are not within the scope of statutory authority granted to the Secretary of State, as required by W.S. 16-3-103(d)(i).

Contrary to the Legislative Service Office's recommendation, which ignores that registration to vote is a quintessential part of the voting process which has historically been part of the Secretary of State's rules, the rules fall squarely within the Secretary of State's authority, as Chief Election Officer for the State of Wyoming, to ensure uniform application of Wyoming's Election Code. W.S. 22-2-121 provides that the Secretary of State "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 indeed **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.

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, and the Legislative Service Office's analysis does not address this clarification, simply reciting the statute with no further discussion. As such, I do not believe LSO's analysis is persuasive.

One of the biggest flaws in the LSO analysis is that it ignores existing statute requiring election officials to verify an elector's qualifications, including that they are a Wyoming resident, upon registering to vote. In fact, 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.<sup>2</sup> 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 of a new registrant. And contrary to the LSO recommendation, the current lack of a process for verifying that a voter is a bona fide Wyoming resident at the time of registration may itself be problematic in light of W.S. 22-1-102(a)(xxvii), which this rulemaking resolves. There is nothing in the rules which short-circuits, or preempts, the provisions within W.S. 22-3-105 for review and appeal of voter qualifications. In short, this rulemaking does not conflict, but rather complements, existing statute concerning verification.

I believe there is not only ample legislative authority for the promulgation of these rules, but that they are in fact necessary to fulfill existing statutory requirements within the Wyoming Election Code.

***B. The proposed rules are within the scope of the legislative purpose and intent of the statutory authority.***

I also disagree with the recommendation’s finding that the proposed rules are not within the legislative purpose and intent of the statutory authority granted by the Wyoming Constitution and the Wyoming Election Code. In fact, to argue that rules preventing non-residents and illegal aliens from registering to vote in Wyoming elections is not within the “intent” of the Wyoming Legislature, as the Legislative Service Office did, is absurd.

Both the Wyoming Constitution and Wyoming Statute set forth that to be eligible to vote in Wyoming, one must be a resident of Wyoming. Article 6 of the Wyoming Constitution clearly enumerates that to be qualified to vote, an elector must be a resident of the State of Wyoming. Likewise, Wyoming Statute unambiguously requires that a person registering to vote to be a “bona fide resident” of Wyoming.

The same is true with respect to ensuring those who register are U.S. citizens. Article 6, Section 5 of the Wyoming Constitution states that “[n]o person shall be deemed a qualified elector of this state, unless such person be a citizen of the United State. Wyoming Statute also mandates that to be eligible to vote, one must be a citizen of the United States and a resident of the State of Wyoming. These rules are a reasonable means of fulfilling this intent.

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<sup>2</sup> County Clerks’ Association of Wyoming Memorandum, “Residency Requirements for Voting,” August 22, 2023, [https://woyoleg.gov/InterimCommittee/2023/07-202308242-02aCCAW\\_Residencerequirementsforvoting\\_2023-08-22.pdf](https://woyoleg.gov/InterimCommittee/2023/07-202308242-02aCCAW_Residencerequirementsforvoting_2023-08-22.pdf)

### ***C. Conclusion***

I cannot impart the importance of these rules to safeguarding the confidence and integrity of our elections. These common-sense rules are extremely important because they ensure that illegal aliens and non-residents will be prevented from registering to vote in Wyoming. These rules advance election integrity by ensuring that only Wyomingites will be voting in Wyoming elections. During our public comment period, we received hundreds of comments, which were overwhelmingly in support of the proposed rules. Following the public comment period, we addressed numerous comments through administrative review, consideration, and response, and amended portions of the rules to address specific concerns of county clerks, namely with respect to the date of implementation and to allow identification including a Wyoming address to constitute adequate proof of Wyoming residency. These rules are well-vetted, and mature. Before simply rubber-stamping LSO's one-sided analysis, I urge you to undertake your own thorough legal analysis, and sign these rules.

I look forward to meeting with you before you make this important decision for the protection of election integrity in our state.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Gray". The signature is written in a cursive style with a large, looping initial "C" and a long, sweeping tail on the "y".

Chuck Gray  
Wyoming Secretary of State