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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

EQUALITY STATE POLICY CENTER,	)	
	)	
Plaintiff,	)	
v.	)	Case No.: 25-cv-000117-SWS
	)	
CHUCK GRAY, in his official capacity as Wyoming Secretary of State, *et al*.,	)	
	)	
Defendants.	)	

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiff asks this Court to enjoin a duly enacted law, House Bill 156 ("HB 156"), before it has taken effect, before any election has been conducted under its terms, and without presenting evidence that implementation of the law will block a single identified eligible voter from being able to register or vote. Relying exclusively on speculative harms arising in extraordinary, hypothetical circumstances, Plaintiff asserts that HB 156 will unconstitutionally disenfranchise unidentified persons who do not appear before this Court. Plaintiff's arguments and proffered evidence fall well short of what is required for an injunction.

When evaluating the constitutionality of an election regulation, courts do not presume that any burden on voting, no matter how slight or speculative, warrants invalidation of the law. Instead, courts weigh the severity of the demonstrated burden against the interests advanced by the state. Here, Plaintiff has not demonstrated that HB 156 will impose a severe burden on the right to vote. Accordingly, rational-basis review is proper. But even if the Court applies heavier scrutiny, HB 156 passes constitutional muster because Wyoming has a compelling interest in enforcing current federal and state laws that limit voting to U.S. citizens.

At bottom, the U.S. Constitution permits states to regulate elections, including verification that prospective voters meet the eligibility requirements to vote. HB 156 is a valid exercise of that state authority. Plaintiff's request to preliminarily enjoin HB 156—without evidence of actual harm, and well in advance of any election—is both premature and legally unfounded. Therefore, the motion should be denied.

FACTUAL BACKGROUND

On February 28, 2025, Wyoming's Governor signed SF 33 into law. Ex. 2 (Zimmerman Decl. ¶ 13.) One month later, on March 21, 2025, HB 156 became law. Ex. 1 (Naiman Decl. ¶ 16.) These two laws work in tandem to close a known vulnerability in Wyoming's election procedures.

(Naiman Decl. ¶ 18.) Namely, current law enables non-citizens to vote prior to election officials verifying eligibility even when the state of Wyoming possesses verifiable information that a person is a noncitizen, and therefore ineligible to vote. (*Id.*)

Under both United States and Wyoming law, non-citizens are not permitted to vote. (Naiman Decl. ¶ 19). Wyoming has been REAL ID compliant since 2011. (Zimmerman Decl. ¶ 3). This means that a person must present identification documents demonstrating the individual's citizenship status when he or she obtains a state driver's license or identification card. (Zimmerman Decl. ¶ 5). The Wyoming Department of Transportation ("WYDOT") shares this information with the Wyoming Secretary of State via Wyoming's Statewide Voter Registration System ("WyoReg"). (Naiman Decl. ¶ 12).

Because of Wyoming's unique voter registration law that permits same-day registration, a very large number of new voter registrations occur at the polls on election day in comparison to other days. Ex. 5 (Good Decl. ¶ 20–21); (Naiman Decl. ¶ 10). Furthermore, the vast majority of voters in this state register to vote using a Wyoming Driver License or Identification Card. Ex. 4 (Ervin Decl. ¶ 22), Ex. 6 (Freese Decl. ¶ 22); (Good Decl. ¶ 28.)

When an individual registers to vote before election day, election officials check every voter registration application against information in WyoReg before registering a person as an active voter. (Ervin Decl. ¶ 28.) But during in-person voting on election day, an individual must register at a polling location. (Ervin Decl. ¶ 27.) In only 5 of Wyoming's 23 counties do the election officials have real-time access to WyoReg when they process new voter registrations. (Naiman Decl. ¶ 13.) Election officials do not immediately process registration applications of same day voters until after the election, and some are not processed until up to 30 days after the election. (Ervin Decl. ¶ 27.) As a result, election officials cannot crosscheck these applications prior to

voting and there are a significant number of election-day registrations which are not provided the same safeguards of instant crosschecking of an individual's potential citizenship status. It is therefore possible that an ineligible voter can register and vote in violation of state or federal law. In this situation the person's cast ballot cannot be removed from the totals. (Ervin Decl. ¶ 27.)

Some non-citizens have "NR" marked on their license or identification card indicating that they are a non-permanent resident of the United States. (Zimmerman Decl. ¶ 9.) Until SF 33 goes into effect, a Wyoming Driver License or Identification Card will not indicate whether the holder is a permanent, non-citizen resident. (Zimmerman Decl. ¶ 14.) This means election officials cannot conclusively determine the citizenship status of individuals who register and vote at polling locations that do not have access to WyoReg. (Naiman Decl. ¶ 13.) As such, a non-citizen can use a valid Wyoming Driver License or Identification Card to register to vote and vote, even if a subsequent check of the identification document number in WyoReg would reveal that the person is not eligible to vote. (Naiman Decl. ¶ 14.)

Importantly, in drafting HB 156, the Wyoming legislature allowed voters to prove citizenship by drawing from a list of documents. (Naiman Decl. ¶ 20.) With some minor exceptions, that list closely aligns with the list of documents currently required to show identification for registering to vote and voting. (*Id.*) The voter identification requirements went into effect in 2021, and during the 2022 midterm election and the 2024 presidential election, the Wyoming Secretary of State ran an extensive advertising campaign to notify voters of the new identification requirements. (Naiman Decl. ¶¶ 24–25.) This advertising appears to work as the Clerk of Fremont County observes that no voter failed to show up to the poll to vote without proper identification. (Freese Decl. ¶ 37.)

The Wyoming Secretary of State's office plans on conducting a voter outreach advertisement campaign during the 2026 election cycle that will help educate voters on the requirements to register to vote under HB 156. (Naiman Decl. ¶ 27). The Natrona County Clerk believes that while there might be some minor inconveniences in implementing HB 156, she expects that the law will be easily implemented after it takes effect. (Good Decl. ¶ 36.) The next statewide election is not until August 18, 2026, which gives the Wyoming Secretary of State and the County Clerks plenty of time to roll out the implementation of HB 156, and gives Wyoming citizens plenty of time to obtain the necessary documents so that they can register to vote. (Naiman Decl. ¶ 41.) While there might be some minor inconveniences, it is clear that election officials across the state go out of their way to assist eligible voters to register and vote. (Freese Decl. ¶¶ 32–35; Good Decl. ¶¶ 30–31; Ervin Decl. ¶¶ 38–39.) Both the Wyoming Department of Transportation and the Department of Vital Statistics make every effort to assist individuals experiencing problems obtaining identification documents, to the point of contacting private institutions (such as banks) to search for copies of a voter's identification. (Freese Decl. ¶ 34; Zimmerman Decl. ¶ 18–20, 27; Ex. 3 (Herrera Decl. ¶¶ 10–15, 19.))

ARGUMENT

A plaintiff seeking preliminary injunctive relief must demonstrate that (1) it is likely to succeed on the merits, (2) the denial of such relief would create irreparable harm, (3) the balance of equities favors a preliminary injunction, and (4) the preliminary injunction will be consistent with the public interest. *Derma Pen, LLC v. 4EverYoung Ltd.*, 773 F.3d 1117, 1119 (10th Cir. 2014).

Where a plaintiff fails to demonstrate even one of these elements, the plaintiff's request for preliminary relief must be denied. *See Oklahoma, ex rel., Okla. Tax Comm'n v. Int'l Registration Plan, Inc.*, 455 F.3d 1107, 1116 (10th Cir. 2006); *Am. Wild Horse Preservation Campaign v. Zinke*, No. 17-cv-170-F, 2017 WL 11450184, at *2 (D. Wyo. Oct. 13, 2017) ("A preliminary injunction

is never awarded as of right and if a plaintiff fails to meet its burden on any of these four requirements, its request must be denied." (citing *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008))); *Lane v. Buckley*, No. 15–CV–155–F, 2015 WL 12916335, at *2 (D. Wyo. Sept. 22, 2015) (same); *Am. Wild Horse Preservation Campaign v. Jewell*, No. 14–CV–0152, 2014 WL 11485260, at *3 (D. Wyo. Aug. 28, 2014) (same). Here, Plaintiff has failed to establish *any* of these necessary elements.

I. Plaintiff is unlikely to succeed on the merits, because HB 156 imposes a minimal burden on voters.

The U.S. Constitution grants states the power to regulate the "Times, Places and Manner" of elections. U.S. Const. art. I, § 4. Plaintiff does not contest this general power of states to set voter qualifications, to limit qualified voters to US citizens, to enforce a citizenship qualification, or, categorically, to require a voter to provide documents to meet eligibility qualifications. Indeed, the scope of state authority is broad, and states may properly regulate the voter registration process. *Kobach v. Election Assistance Comm'n*, 772 F.3d 1183, 1195 (10th Cir. 2014) ("The Clause's substantive scope is broad. 'Times, Places, and Manner[]' . . . are 'comprehensive words,' which 'embrace authority to provide a complete code for congressional elections,' including, as relevant here and as petitioners do not contest, regulations relating to 'registration.'" (quoting *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8–9 (2013) ("*ITCA*"). States may impose requirements that are "germane to one's ability to participate intelligently in the electoral process[,]" *see Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 668 (1966), and relevant here, both federal and state law clearly establish that citizenship is required to vote, *see, e.g.,* 18 U.S.C. § 611; W.S. 22-3-103(b). Importantly, "the power to establish voting requirements is of little value without the power to enforce those requirements," *ITCA*, 570 U.S. at 17, and to this end the U.S. Supreme Court has held that states may require identification to vote, despite the "inconvenience"

that such a documentary requirement may cause some voters. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008); *Cf. Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 669 (2021) ("Casting a vote . . . requires compliance with certain rules. But because voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is equally open and that furnishes an equal opportunity to cast a ballot must tolerate the usual burdens of voting." (internal quotation marks omitted)).

Here, Plaintiff has made a narrow, factual challenge. Specifically, it argues there may be (as yet unidentified) people in Wyoming whose individual circumstances may make it difficult for them to submit the documents required by HB 156. Plaintiff asserts that, under the U.S. Supreme Court's framework for resolving challenges to election laws set forth in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992), (the "*Anderson-Burdick* test" or "*Anderson-Burdick*"), it will likely be able to demonstrate that HB 156 is unconstitutional. Mot. 10–20. But Plaintiffs misunderstand how the U.S. Supreme Court and the Tenth Circuit have historically applied the *Anderson-Burdick* test, and they misapply the *Anderson-Burdick* test to the facts of this case. Under a proper application of *Anderson-Burdick*, Plaintiff's challenge collapses because Plaintiff has failed to demonstrate that HB 156 significantly burdens voting rights. This fact alone warrants denial. In addition, the law is amply supported by Wyoming's compelling interest in ensuring that only eligible citizens may participate in Wyoming elections.

A. Under the *Anderson-Burdick* test, Wyoming may implement reasonable, nondiscriminatory requirements for proper identification.

When evaluating a challenged election regulation, courts apply the *Anderson-Burdick* test. *Anderson-Burdick* requires a court to "weigh the asserted injury to the right to vote against the 'precise interests put forward by the State as justifications for the burden imposed by its rule.'"

Crawford, 553 U.S. at 190 (quoting *Burdick*, 504 U.S. at 434). But in conducting an *Anderson-Burdick* analysis, courts should remain attentive to its underlying principles.

In *Anderson*, the Court recognized the state's inherent authority to enforce "reasonable, nondiscriminatory restrictions" on the right to vote. *Anderson*, 460 U.S. at 788. The Court held that, "'as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.'" *Id.* (quoting *Storer v. Brown,* 415 U.S. 724, 730 (1974)). "To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes," and "[e]ach provision of these schemes," including those that "govern[] the registration and qualifications of voters," "inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends." *Id.* Upon that basis, the Court determined that a state's "important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions," and "evenhanded restrictions that protect the integrity and reliability of the electoral process itself" do not constitute "invidious discrimination" in violation of the Fourteenth Amendment. *Id.* at 788, n.9.

Courts have routinely upheld such "reasonable, nondiscriminatory restrictions" on the right to vote. *See Utah Republican Party v. Cox*, 892 F.3d 1066 (10th Cir. 2018); *Mazo v. New Jersey Sec'y of State*, 54 F.4th 124 (3d Cir. 2022); *Nelson v. Warner*, 12 F.4th 376 (4th Cir. 2021); *Daunt v. Benson*, 999 F.3d 299 (6th Cir. 2021); *Arizona Democratic Party v. Hobbs*, 18 F.4th 1179 (mem.) (9th Cir. 2021); *Ohio Democratic Party v. Husted*, 834 F.3d 620 (6th Cir. 2016). But if a plaintiff can demonstrate that a law's burden on the right to vote is severe, a court will require the state to put forth a more compelling justification. *See Burdick*, 504 U.S. at 434. Plaintiffs normally face a difficult challenge to demonstrate that general, nondiscriminatory voting requirements place a

severe burden on the right to vote. For example, in *Burdick* itself, the Court "applied *Anderson*'s standard for reasonable, nondiscriminatory restrictions," *Crawford*, 553 U.S. at 190 (internal quotations marks omitted), and "upheld Hawaii's prohibition on write-in voting despite the fact that it prevented a significant number of 'voters from participating in Hawaii elections in a meaningful manner'" *Id.* (quoting 504 U.S. at 443 (Kennedy, J., dissenting)).

While the U.S. Supreme Court has not identified a "litmus test" that "neatly separate[s] valid from invalid restrictions," *Crawford*, 553 U.S. at 190, *Anderson* emphasizes that courts will not disturb a state's reasonable and nondiscriminatory restrictions on the right to vote—even if those restrictions place some burden on the right to vote—when considered in light of that state's important interest in "protect[ing] the integrity and reliability of the electoral process itself." *See* 460 U.S. at 788. Only when those restrictions impose a *severe* burden must a state articulate a compelling justification. *See Crawford*, 553 U.S. at 190 (citing *Norman v. Reed*, 502 U.S. 279, 288–89 (1992)).

Accordingly, when a plaintiff cannot demonstrate a severe burden, the Tenth Circuit applies a "less searching examination," similar or identical to rational-basis scrutiny. "While a rational basis standard applies to state regulations that do not burden the fundamental right to vote, strict scrutiny applies when a state restriction imposes 'severe' burdens.'" *Fish v. Schwab*, 957 F.3d 1105, 1124–25 (10th Cir. 2020) (quoting *Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580, 592 (6th Cir. 2012) (per curiam)); *accord VoteAmerica v. Schwab*, 576 F. Supp. 3d 862, 888 (D. Kan. 2021) ("*Anderson-Burdick* falls back to a 'less-searching examination closer to rational basis' when the challenged law is 'minimally burdensome' on the exercise of constitutional rights.'" (quoting *Ohio Democratic Party v. Husted*, 834 F.3d at 627)); *VoteAmerica v. Schwab*, 671 F. Supp. 3d 1230, 1250 (D. Kan. 2023) (same); *ACLU of N.M. v. Santillanes*, 506 F. Supp. 2d 598, 626–30

(D.N.M. 2007) (discussing the application of the rational-basis test versus strict scrutiny in the context of a case involving the *Anderson-Burdick* test), *rev'd on other grounds*, 546 F.3d 1313 (10th Cir. 2008).

B. Wyoming need not demonstrate a compelling state interest, because Plaintiff has failed to demonstrate that HB 156 will severely burden the right to vote.

Plaintiff argues that HB 156 "will severely burden Wyomingites' right to vote." Mot. 12. But Plaintiff has failed to submit evidence of a *single* individual who will be unable to register to vote. Instead, Plaintiff relies on a string of speculative arguments and unreasonable inferences. First, Plaintiff analogizes HB 156 to a Kansas law that the Tenth Circuit found unconstitutional in *Fish v. Schwab*, 957 F.3d 1105 (10th Cir. 2020). *Id.* at 10–11. Against that backdrop, Plaintiff then advances a slew of hypothetical scenarios premised on speculative arguments about HB 156's effect on select classes of Wyoming voters. *Id.* at 12–15.

The facts in *Fish* were much, much different. There, Kansas' requirement for documentary proof of citizenship ("DPOC") required an applicant to submit "satisfactory evidence of United States citizenship" to the registering official or the Kansas Secretary of State's office. *Fish*, 957 F.3d at 1112. Critically important, the Kansas statute tightly defined "satisfactory evidence" of citizenship to include only those documents that would prove citizenship beyond any doubt, *see* Kan. Stat. § 25–2309(l) (2020). But HB 156, as Plaintiff has acknowledged, *see* Mot. 19–20, permits voters to register using a broader range of documents. W.S. 22-1-102(lvi).

But even if the Kansas statute at issue in *Fish* were analogous to HB 156, *Fish's* conclusion still does not apply, because under *Anderson-Burdick's* "highly fact specific inquiry[,]" *Libertarian Party v. Herrera*, 506 F.3d 1303, 1308 (10th Cir. 2007), HB 156 simply does not impose a severe burden on the right to vote. In *Fish*, the Tenth Circuit reviewed the evidence and concluded that "the burden imposed on the right to vote by the DPOC requirement was significant and require[d]

heightened scrutiny," "[b]ased primarily on the district court's finding that 31,089 applicants were prevented from registering to vote because of the DPOC requirement." *Fish*, 957 F.3d at 1127–28. Specifically, the lower court found:

(1) 14,770 applications were suspended for failure to provide DPOC;

(2) 16,319 applications were canceled for failure to provide DPOC;

(3) These applications represented approximately 12% of the total voter registration applications submitted since the implementation of the law;

(4) The total number of applicants subjected to suspended or canceled applications would have increased, but for the court's injunction; and

(5) Despite the eventual injunction, many of the would-be voters suffered disenfranchisement because Kansas' law prohibited them from registering in time for the 2014 election.

Id. at 1128.

As the Tenth Circuit held in *Fish*, "[t]hese factual findings," based on evidence submitted by the Plaintiff, "create[d] a fundamental distinction between [*Fish*] and *Crawford*." *Id.* The Tenth Circuit emphasized the factual differences between *Fish* and *Crawford,* in which the court "found that the challengers had not introduced evidence of a single, individual Indiana resident who would be unable to vote as a result of the law." *Id*. (cleaned up). Again, the U.S Supreme Court looked to the factual record and "conclude[d] that the burden [on the right to vote] was slight," and, therefore, it upheld Indiana's requirement of documentary proof of identification to vote. *Fish*, 957 F.3d at 1128 (cleaned up) .

In contrast to *Fish*, but similar to *Crawford*, Plaintiffs have submitted no evidence that would allow this Court to conclude that HB 156 will severely burden the right to vote.

1. HB 156's imposes requirements that substantially align with those currently required of Wyoming voters.

Prior to the adoption of HB 156, Wyoming law required a prospective voter to produce "acceptable identification," as defined by the Wyoming Secretary of State, during the registration process. *See* W.S. 22-3-103(v) (2024); W.S. 22-1-102(a)(xxxix)(A) (2024). The Wyoming Secretary of State currently defines "acceptable identification" to include: (1) a Wyoming driver's license; (2) a United States passport; (3) a driver's license or identification card issued by any State or Outlying Possession of the United States; (4) an identification card issued by the Federal Government, any State or Local Government, or an Agency thereof; (5) a tribal ID of any Federally Recognized Tribe; (6) a photo identification card issued by the University of Wyoming, a Wyoming community college, or a Wyoming public school; (7) a United States military card; and (8) an identification card issued to a dependent of a member of the United States Armed Forces. *See Registering to Vote in Wyoming: Acceptable Identification for Registering to Vote*, Wyoming Secretary of State (last accessed June 20, 2025), https://sos.wyo.gov/elections/state/registeringtovote.aspx. An applicant may also satisfy this requirement by submitting any two of the following: (1) a certification of United States citizenship; (2) a certificate of naturalization; (3) a United States military draft record; (4) a voter's registration card from another State or County; (5) a United States social security card; (6) a certification of birth abroad issued by the Department of State; (7) an original or certified copy of a birth certificate bearing an official seal; and (8) any other form of identification issued by an official agency of the United States or a State. *Id.*

The equivalent requirement in HB 156 is "Proof of United States Citizenship," and HB 156 permits a voter to establish U.S. citizenship through ten distinct forms of identification: (1) a valid

Wyoming driver's license as defined by W.S. 31-7-102(a)(xxv) (provided that the license does not indicate that the person is non-citizen); (2) a valid Wyoming identification card issued under W.S. 31-8-101 (again provided that the identification card does not indicate that the person is non-citizen); (3) a valid tribal identification card, subject to certain limitations; (4) a valid driver's license or identification card issued by any other state that is consistent with the Real ID Act as defined by W.S. 31-7-102(a)(lii) (again provided that the document does not indicate that the person is a non-citizen); (5) a valid United States passport; (6) a certificate of United States citizenship; (7) a certificate of naturalization; (8) a United States military draft record or selective service registration acknowledgment card; (9) a consular report of birth abroad issued by the Unites States department of state; and (10) an original or certified copy of a birth certificate in the United States bearing an official seal. W.S. 22-1-102(a)(lvi).

The long list of "acceptable identification" largely overlaps with the list of acceptable documents provided in HB 156. Indeed, the only substantial distinction between current law and HB 156 is the requirement that a driver's license is only acceptable as DPOC if it does not contain any indication that the person is a non-citizen. *Id.* But even this distinction is largely addressed by the existing licensing system. Wyoming driver's licenses sometimes already indicate that a license holder is a non-citizen. (Freese Decl. ¶ 24.) HB 156 will first apply in a statewide election cycle starting with the 2026 primary election, *see* Pl.'s Ex. 5. The cumulative effect of this change will be to ensure that any individual who is a non-citizen and receives a license in 2026 will be unable to register to vote, which is, of course, wholly consistent with existing federal and Wyoming law. *See* 18 U.S.C. § 611; W.S. 22-3-103(b). Accordingly, these changes to Wyoming law will impose no new burden on eligible voters. (*See* Zimmerman Decl. ¶ 14.)

Therefore, a hypothetical person without any of the documents required to register under HB 156 would not likely be able to register or vote under current law. The number of people who would have the necessary documents required to vote under current law but not under HB 156 is difficult to imagine. And in fact, it is vanishingly small. One Wyoming county official expects HB 156 to be a minor inconvenience to, at most, a few out of approximately 40,000 voters. (Good Decl. ¶¶ 35–36.) And another clerk, whose county includes the Wind River Indian Reservation, has rarely encountered voters who have difficulties providing proper identification or documents. (Freese Decl. ¶ 37.)

By contrast, the Plaintiff has not proven that HB 156 disenfranchises any voters (much less anything close to the 31,000 voters in Kansas whose disenfranchisement underpinned the *Fish* decision) to establish that HB 156 creates a severe burden on the right to vote. Plaintiff's premise that the new requirements of HB 156 severely burden the right to vote because they may lead to mass disenfranchisement, *see* Mot. 12–16, is wholly unfounded.

2. Plaintiff does not substantiate its allegation that HB 156's DPOC requirement will result in disenfranchisement.

Plaintiff hypothesizes that Wyoming's practice of maintaining its voter list through routine maintenance will "[i]nevitably" result in many Wyoming voters needing to re-register at the polls. Mot. 13. Plaintiff then builds upon this premise by asserting, without substantiation, that "[w]hen they attempt to do so, many will learn about the DPOC requirements for the first time."[1] *Id.* at 13–14. "As a result of all of these factors," and their associated consequences, Plaintiff speculates that "for some number of eligible Wyomingites, it will not be possible to obtain an acceptable form of

[1] Plaintiff cites Pl.'s Ex. 6 ¶¶ 14, 27 and Pl.'s Ex. 20 ¶ 12 in support of this proposition. But none of these excerpts demonstrate that Wyoming voters will lack knowledge of the law as it relates to registration requirements on election day.

DPOC in time to be able to vote." *Id.* at 14. Additionally, Plaintiff further speculates about the effect that HB 156 *may* have on those specific members of certain classes of voters Plaintiff has identified who Plaintiff suggests are less likely to possess DPOC, including women who have changed their names, *id.* at 15, young voters who are homeless or aging out of the juvenile justice or child welfare systems, *id.* at 9, Hispanic citizens who only speak Spanish or who work jobs with unpredictable shifts, Compl. ¶¶ 179–80, impoverished individuals who have had their licenses suspended because of unpaid fines, Mot. 15, transgender citizens who have changed their names, *id.* at 16, and citizens with certain disabilities like epilepsy whose licenses have been suspended. *Id.*

Plaintiffs liberally assert these broad, sweeping claims, without bothering to submit supporting evidence. For example, they have not identified even one woman, one Hispanic citizen, one impoverished individual, one transgender citizen, or one person with epilepsy who cannot vote because Wyoming wishes to enforce the citizenship requirement embodied in both federal and state law. Nor can the Plaintiff offer any method to reliably measure the likelihood or extent, if any, of such hypothetical difficulties in Wyoming.

Plaintiff contends that HB 156 is unconstitutional in its *entirety*, despite Plaintiff's reliance on hypothetical voters experiencing a particular set of extreme circumstances (who are not before this Court). This is effectively a facial challenge, in which a plaintiff challenges the general application of the law, rather than its application to a specific plaintiff. In facial challenges, courts strike down a law if the "challenged statute violates the Constitution in all, or virtually all, of its applications." *See United States v. Carel*, 668 F.3d 1211, 1217 (10th Cir. 2011) (internal quotations marks and citation omitted). Given the breadth of relief Plaintiff seeks, the Court's application of the *Anderson-Burdick* test in this case should reflect the standards governing facial challenges.

To compensate for the absence of evidence that an identified voter will be disenfranchised, Plaintiff relies on the opinion of a retired professor, Dr. Kenneth Mayer. Pl.'s Ex. 6. Dr. Mayer's statements are, at best, highly conjectural, and merely serve to illustrate Plaintiff's lack of evidence. Nowhere in his thirty-seven-page affidavit does Dr. Mayer point to a *single individual* who may face disenfranchisement when Wyoming implements HB 156. He instead relies upon broad statements about Wyoming's list maintenance program, *id.* at ¶ 14, the time he speculates that it takes to obtain DPOC, *id.* at ¶ 23–24, and a methodologically-unsound estimate of Wyoming residents who he believes do not possess qualifying DPOC. *Id.* at ¶ 16.

These statements cannot carry Plaintiff's burden of demonstrating the disenfranchisement Plaintiff claims and, moreover, they are illogical or inaccurate.

(1) Dr. Mayer claims that "HB 156 will confuse voters." Pl.'s Ex. 6 ¶ 12. Dr. Mayer provides no support for this claim other than to claim that "voters are often confused by [DPOC] requirements." *Id.* But the list of acceptable forms of DPOC is explicitly clear, W.S. 22-1-102(a)(lvi), and a clerk with over 30 years of experience as an elected county clerk has made it clear that Wyoming voters quickly understood and met new identification requirements that went into effect in 2022. (Freese Decl. ¶ 37.) Dr. Mayer provides nothing that suggests Wyoming voters will be unable to look up the list and discern what documentation they must provide or acquire to register. And his point has no credibility, considering that Wyoming registrants must already submit certain documents, which themselves substantially overlap with the new requirements in HB 156.

(2) Dr. Mayer claims that "HB 156 will have a disproportionate effect on women." Pl.'s Ex. 6 ¶ 13. In support of this contention, Dr. Mayer cites the fact that two forms of DPOC are only available to men—a draft record and a Selective Service registration card. This is silly. Draft

records are a thing of the past (at least 50 years old), and there is no evidence that men *ever* use Selective Service registration cards as voter registration documents. And of course, the professor assumes, without evidence, that there are women who cannot obtain any form of DPOC but would easily register if they just had a Selective Service card.

(3) Dr. Mayer broadly suggests that difficulties in obtaining a birth certificate or passport will lead to disenfranchisement. *Id.* at ¶¶ 15–24, 26. But these particular forms of DPOC are not required—they only account for two of the ten acceptable forms of DPOC under HB 156—and voters already use them as forms of identification to register to vote. Dr. Mayer also overemphasizes the significance of the obstacles he has identified. Wyoming Vital Statistics Services claims that there are multiple workarounds for individuals who do not have the proper identification documents to obtain a birth certificate. (Herrera Decl. ¶¶ 18–19.) Alternatively, an attorney may request a birth certificate on behalf of his or her client, using the attorney's own identification. (*Id.* at ¶ 19(e).) The process of obtaining a birth certificate is easy and convenient. People seeking to obtain a birth certificate from the Office of Vital Statistics can often walk out with a certified copy that day. (*Id.* at ¶ 26.) When someone applies for a birth certificate by mail or online, it can be mailed to them in as little as three to five days. (*Id.* at ¶ 27.) Procedurally, acceptance of Dr. Mayer's expert opinion would be highly prejudicial. Defendants do not have adequate time to obtain a rebuttal expert, and they do not have an opportunity to cross-examine Dr. Mayer on his qualifications or his conclusions. The Court has also denied a hearing on the grounds that the Plaintiff's Motion can be decided as a matter of law. If the court is inclined to consider Plaintiff's expert report as evidence, Defendant Gray renews his request for a hearing to test this proffered expert's qualifications and opinion and offer the testimony of a defense expert and rebuttal fact witnesses.

* * * *

In addition to the absence of evidence necessary to support factual findings that eligible voters may be prevented from voting, Plaintiff has failed to show that HB 156 imposes a severe burden requiring a more compelling justification under heightened scrutiny. *See Crawford*, 553 U.S. at 190; *Fish*, 957 F.3d at 1127–28. The character and magnitude of the burden on voters "create[d] a fundamental distinction between [*Fish*] and *Crawford*." *Fish*, 957 F.3d at 1128. Plaintiff's evidence here is a far cry from the concrete evidence in *Fish* that Kansas law disenfranchised approximately 31,000 voters. Rather, Plaintiff's sweeping, unsubstantiated claims leave this Court "with the unenviable task of attempting to estimate the magnitude of the burden on voting rights." *See id.* Plaintiff's offer of evidence is highly analogous to the failure of the plaintiffs in *Crawford* to introduce evidence of a single, individual state resident who would be unable to vote as a result of the law, which led the Court in *Crawford* to find there was only a slight burden and deny the Plaintiff's claims. *Id.*

C. Wyoming's compelling interests easily satisfy rational basis review.

Wyoming's state interests easily satisfy the "less searching examination" or rational basis standard that Courts apply when a challenged law imposes only a slight burden on the right to vote.

A rational basis exists where a government action is "'rationally related to a legitimate government purpose or end.'" *Chiles v. Salazar*, 116 F.4th 1178, 1215 (10th Cir. 2024) (quoting *Teigen v. Renfrow*, 511 F.3d 1072, 1083 (10th Cir. 2007)). Under rational basis review, state action "is accorded a strong presumption of validity." *United States v. Titley*, 770 F.3d 1357, 1359 (10th Cir. 2014). (internal quotation marks and citation omitted). And a court "must deny the challenge 'if there is any reasonably conceivable state of facts that could provide a rational basis for the [challenged action].'" *Id.* (quoting *Heller v. Doe*, 509 U.S. 312, 319 (1993)).

Wyoming's basis for HB 156 is much stronger than just a "legitimate government purpose." "'A State indisputably has a *compelling* interest in preserving the integrity of its election process.'" *Brnovich*, 594 U.S. at 685 (quoting *Purcell v. Gonazalez*, 549 U.S. 1, 4 (2006) (per curiam) (emphasis added)). To advance that interest, the State of Wyoming passed HB 156, which contains DPOC requirements that are, at minimum, rationally related to that interest, as most forms of acceptable identification will only be in the possession of U.S. Citizens. *See* W.S. 22-1-102(a)(lvi) (including, *inter alia*, a valid United States passport, a certificate of United States citizenship, a certificate of naturalization, a consular report of birth abroad issued by the United States department of state, and an original or certified copy of a birth certificate in the United States bearing an official seal). The Plaintiff highlights certain forms of acceptable proof that may be in the possession of noncitizens, Mot. 19–20, but that point is irrelevant to this Court's analysis. "Under rational basis review . . . there is no need for mathematical precision in the fit between justification and means, and the law need not be in every respect logically consistent with its aims to be constitutional." *Scarlett v. Air Methods Corp.*, 922 F.3d 1053, 1070 (10th Cir. 2019); *KT. & G Corp. v. Att'y General of State of Okla.*, 535 F.3d 1114, 1142 (10th Cir. 2008). It is merely sufficient that a law bears some form of rational relationship to its stated objectives. *See Chiles*, 116 F.4th at 1215. HB 156 clearly meets this minimal threshold.

And to the extent Plaintiff argues that a present lack of noncitizen voting in Wyoming precludes Wyoming from advancing its interest through HB 156's enforcement mechanisms, Plaintiff is unequivocally wrong. "[I]t should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich*, 594 U.S. at 686. Requiring a state to wait to improve the security of its elections until it can demonstrate serious, ongoing voter fraud would "necessitate that a State's political system

sustain some level of damage before the legislature could take corrective action," thereby interfering with the U.S. Supreme Court's view that state legislatures "should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively[.]" *See Munro v. Socialist Workers Party*, 479 U.S. 189, 195 (1986). Therefore, Wyoming need not be required to marshal evidence of active voter fraud to justify its imposition of HB 156.

While Wyoming's compelling interests can satisfy even a heightened standard, this Court should apply a lower level of scrutiny to HB 156. Under any standard, HB 156 is constitutional.

II. The Plaintiff has not shown that it will suffer irreparable harm absent an injunction.

A party seeking a preliminary injunction "must make a clear and unequivocal showing it will likely suffer irreparable harm absent preliminary relief." *Colorado v. EPA*, 989 F.3d 874, 886 (10th Cir. 2021). "Demonstrating irreparable harm is not an easy burden to fulfill." *First W. Capital Mgmt. Co. v. Malamed*, 874 F.3d 1136, 1141 (10th Cir. 2017) (internal quotation marks and citation omitted). "[T]he party seeking injunctive relief must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm." *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (emphasis in original; cleaned up). "Irreparable harm, as the name suggests, is harm that cannot be undone, such as by an award of compensatory damages or otherwise." *Salt Lake Tribune Publ'g Co. v. AT & T Corp.*, 320 F.3d 1081, 1105 (10th Cir. 2003). "To constitute irreparable harm, an injury must be certain, great, actual and not theoretical." *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005) (internal quotation marks and citation omitted). "'Merely serious or substantial harm is not irreparable harm." *Id.* (cleaned up).

Plaintiff alleges three bases for finding irreparable harm absent an injunction. First, Plaintiff alleges that it uses constituent dues to "advance [its constituents'] shared mission of

working toward fair elections and transparent government" by "helping qualified Wyomingites register to vote and successfully participate in Wyoming elections" and that HB 156 will "impact [its] ability to carry out [that] mission." Mot. 21–22. Explicitly, Plaintiff asserts that HB 156 will require it to "divert significant resources to prioritize and adapt its voter outreach activities specifically to address the significant burdens imposed by the new DPOC law." *Id.* at 21. Second, Plaintiff argues that HB 156 "threatens [its] constituents with irreparable harm by burdening—and in some cases entirely denying—their fundamental right to vote." *Id.* at 22–23. Third, Plaintiff claims that "[t]he DPOC requirement will also likely have a chilling effect" on members' decisions to exercise their right to vote. None of these allegations demonstrates harm sufficient to warrant entering a preliminary injunction.

Plaintiff's argument that HB 156 will burden its mission by forcing it to divert resources is meritless. Such alleged diversion falls well below the "serious" or "substantial" harm necessary to justify injunctive relief. Plaintiff asserts that HB 156 will require it to "redevelop its existing voter education materials and intensify its efforts to educate voters through tabling in the community, offering education sessions, and fielding questions from its member organizations and people in the community." *Id.* at 21. Additionally, Plaintiff relies on its claim that it will have to reallocate its staff toward certain matters and, consequently, be unable to engage in certain programs that encourage political engagement. *Id.* 21–22. Plaintiff is a voter education and registration organization. *See* Compl. ¶ 19. When informing Wyoming voters about what will be required of them under changing election laws is among the fundamental purposes of an organization, *see id.* at ¶ 18–19, that organization may not claim harm—let alone irreparable harm—when a change in the law necessitates action in furtherance of that purpose. *See Citizens Project v. City of Colo. Springs*, No. 1:22-cv-01365-SKC-MDB, 2024 WL 3345229, at *4–5 (D. Colo. July 9, 2024).

Further, under Plaintiff's theory, the mere passage of a new law would always result in this so-called educational harm to any organization that educates on matters regulated by that law, it would always support the issuance of an injunction. Therefore, Plaintiff's claim of irreparable organizational harm is unfounded and absurd.

Plaintiff's second allegation that HB 156 will irreparably injure its constituents' right to vote, absent a stay, is similarly insufficient. As Plaintiff acknowledges, there is no imminent election. *See* Pl.'s Ex. 5. Indeed, the earliest statewide election to which HB 156 will apply is the 2026 primary election, approximately one year from now. *Id.* Thus, Plaintiff's constituents who do not possess DPOC have over one year to acquire the necessary documentation. Even assuming, for purposes of argument, that Plaintiff can demonstrate actual members who face a burden, Plaintiff cannot demonstrate the type of urgency or imminent harm necessary to satisfy the extraordinary relief of a preliminary injunction against a state law.

Fortunately for any individuals who must show citizenship eligibility, the documents that an eligible Wyoming voter may use to register under HB 156 largely align with those presently required. (*See* Naiman Decl. ¶ 20) (comparing HB 156's "Proof of United States Citizenship" with Wyoming's current "acceptable identification.") Accordingly, if an individual was previously able to register and vote, it is likely that they will still be able to do so using the same documentation. And for those individuals who do not possess the documentation to acquire DPOC, at least one form of acceptable proof of United States citizenship, a birth certificate, can be easily acquired through a Wyoming attorney without the registrant needing to provide *any* identification. (Herrera Decl. ¶ 19(e).) Further, ample evidence exists that county clerks consistently make every effort to assist voters in obtaining documents, (Freese Decl. ¶ 32; Good Decl. ¶ 33), including homeless voters, (Freese Decl. ¶ 34), voters who forget identification on election day, (Good Decl. ¶ 30;

Ervin Decl. ¶ 39), voters who lose documents in house fires, (Freese Decl. ¶ 33), voters erroneously flagged as ineligible in the statewide voter registration database, (Ervin Decl. ¶¶ 32–33), and voters confined to nursing homes, (Freese Decl. ¶ 34; Good Decl. ¶ 31). Consequently, Plaintiff has failed to demonstrate that its constituents will be irreparably harmed in the absence of an injunction.

Plaintiff's final claim of irreparable harm is also unconvincing. Plaintiff suggests that HB 156's DPOC requirements will "likely have a chilling effect" on its members' willingness to exercise their right to vote. This "chilling effect" fails for three reasons. First, Plaintiff's members are not voters, but rather associations of voters, and Plaintiff cannot identify a single voter who has been "chilled." Second, Plaintiff's claim is at best speculative—it is hypothetical harm, rather than "certain" or "actual" harm necessary to support injunctive relief. *See Schrier*, 427 F.3d 1267 (rejecting "theoretical" harms). Third, Plaintiff cites no authority in support of the notion that a mere "chilling effect" is irreparable harm that can warrant preliminary relief. Plaintiff has not demonstrated how such an effect is the type of harm "that cannot be undone." *See Salt Lake Tribune Publ'g Co*, 320 F.3d at 1105. Therefore, this argument fails as well.

Because Plaintiff has not demonstrated how it, or its constituents, will suffer imminent and irreparable harm should HB 156 go into effect, Plaintiff has not carried its burden to demonstrate the need for preliminary relief.

III. The Balance of Hardships Weighs Against Granting an Injunction.

A party seeking preliminary relief must show that its "threatened injury outweighs the injury the opposing party will suffer under the injunction." *Awad v. Ziriax*, 670 F.3d 1111, 1125 (10th Cir. 2012) (quoting *Beltronics USA, Inc. v. Midwest Inventory Distribution, L.L.C.*, 562 F.3d 1067, 1070 (10th Cir. 2009)). When weighing whether a plaintiff has met its burden, a court must

pay "particular regard to the public consequences of deploying an injunction." *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1260, 1267 (D. Wyo. 2023).

Plaintiff asserts that "the balance of hardships tips sharply in Plaintiff's favor." This is plainly wrong. As discussed above, Plaintiff's claims of imminent, certain, and irreparable harm are weak and speculative. At most, Plaintiff's complaints amount to little more than the routine inconveniences of compliance that attend any registration requirements, including providing documents that are largely already required to register under current law.

By contrast, the Wyoming Secretary of State and the twenty-three county elections officers named as defendants—as well as the citizens of Wyoming whose representatives enacted the new law—will suffer significant harm should this Court enjoin HB 156.

Defendants are responsible for overseeing Wyoming elections and administering voter registration under W.S. 22-2-103, 22-3-103. To avoid confusion, Defendants must have ample time and certainty to ensure that the information proliferated to the public is accurate and that each eligible Wyoming voter who wishes to register knows and understands the requirements for doing so. (*See* Naiman Decl. ¶¶ 37–39.) In preparation for HB 156's implementation, the Secretary of State's office has already disseminated comprehensive informational memoranda to county election officials. (*Id.* at ¶ 38.) These materials outline changes to the Wyoming Voter Registration Application Form and specify HB 156's DPOC requirements. The new Wyoming Voter Registration Form instructs voters on acceptable DPOC and registration procedures. (*Id.*) Moreover, technical modifications have been made to the software used by election officials to complete voter registration. (*Id.*) County election officials have already begun training based on this form and the new software. (*Id*. at ¶ 39.) Therefore, enjoining HB 156 at this time would

substantially interfere with this process, thereby decreasing the probability that registering to vote will be an unproblematic process for those eligible Wyoming voters who wish to register.

And beyond education, election officials need time to help those few voters who may need assistance in obtaining necessary documentation. County clerks expend great effort to help voters, and as a practical matter, beginning implementation now provides more time for election officials to educate and assist voters before the 2026 primary elections. By contrast, an injunction will delay implementation, providing *less* time to educate and prepare for the 2026 primary and general elections. The Wyoming legislature carefully designed HB 156 to go into effect well in advance of the 2026 primary election, thus giving election officials and voters ample time to implement the law with minimal problems and minimal inconvenience. A preliminary injunction would merely delay implementation, making it *more* difficult and *more* burdensome to implement the law on a shorter timeframe before the 2026 elections.

Because Plaintiff has not substantiated the harm it alleges, and because enjoining HB 156 would significantly interfere with the administration of the registration process, Plaintiff has failed to demonstrate that the balance of hardships tips in its favor.

IV. Enjoining HB 156 will adversely affect the public interest by creating confusion and delaying implementation.

A party seeking a preliminary injunction must demonstrate "that the injunction, if issued, will not adversely affect the public interest." *Colorado v. Griswold*, 99 F.4th 1234, 1240 (10th Cir. 2024). (cleaned up).

Plaintiff is correct that it is "'in the public interest to prevent the violation of a party's constitutional rights.'" Mot. 29 (quoting *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1254 (10th Cir. 2024)). But Plaintiff has not shown that HB 156 will violate its constitutional rights or those of its members. *See supra* at pp. 13–17 (discussing lack of burden on right to vote). An injunction at this

stage would, therefore, do nothing but contribute to public confusion insofar as registration requirements are concerned. As discussed above, it would compress the time available to educate and assist voters leading up to the 2026 primary and general elections, and the U.S. Supreme Court has made clear that "orderly elections" lie in the public interest. *Benisek v. Lamone*, 585 U.S. 155, 160 (2018). Enjoining HB 156 would cut squarely against the advancement of that interest. Importantly, HB 156 is an anti-fraud measure designed to protect Wyoming elections and foster confidence in the democratic processes that underpin our republic. An injunction would directly undermine those critical state interests. *Cf. Am. Ass'n of People with Disabilities v. Herrera*, 580 F. Supp. 2d 1195, 1247 (D.N.M. 2008) (preliminary injunction to prohibit enforcement of a law that regulated voter registration agents would be "adverse to the public interest" because of the adverse effect the injunction would have on the public interest in "ensuring the integrity of the electoral process"). Plaintiff does not address these pragmatic statewide concerns embodied in HB 156, and it has provided no evidence to refute concerns that a statewide injunction of HB 156 will adversely affect the public interest.

Because Plaintiff has failed to demonstrate even one of the four required elements for this Court to grant preliminary injunctive relief, let alone all of them, a preliminary injunction is improper.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Preliminary Injunction should be denied.

DATED this 27th day of June, 2025.

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CERTIFICATE OF COMPLIANCE

This brief complies with Wyoming Local Civil Rule 7.1(b)(2)(B) because it contains 25 pages, not including the cover page, table of contents, table of authorities, signature block, certificate of service, and this certificate.

DATED this 27th day of June, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June 2025, a true and correct copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** was served by CM/ECF e-service to all counsel of record. Those parties who have not yet appeared will be served via email.

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