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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

EQUALITY STATE POLICY CENTER,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
CHUCK GRAY, in his official capacity as Wyoming Secretary of State; *et al.*,	)	Civil Action No. 25-cv-00117-SWS
	)	
	)	
Defendants.	)	

PLAINTIFF EQUALITY STATE POLICY CENTER'S REPLY IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The Secretary of State has repeatedly boasted that HB 156 is the strictest DPOC law yet. His response fails to acknowledge, explain, or reckon with any of these statements. Instead, he now argues the opposite—that HB 156 is not only *less* stringent than the law the Tenth Circuit found unconstitutional in *Fish v. Schwab*, 957 F.3d 1105 (10th Cir. 2020) ("*Fish II*"), but that HB 156, which he once described as the "centerpiece" of his "election integrity agenda," barely differs from existing requirements and will have virtually no practical effect. The reason for this sudden change is clear: *Fish II* is binding precedent. But Secretary Gray was right the first time: HB 156 has none of the exceptions that Kansas included to guard against the disenfranchisement of lawful citizens (which still were not enough to save it from invalidation). For that reason, and others described in Plaintiff's motion (much of which the Secretary simply ignores), there is no basis to find that HB 156 is likely to be less burdensome than the law the Tenth Circuit found unconstitutional in *Fish II*. Nor does the Secretary offer any other plausible defense of the law. All of the preliminary injunction factors weigh in Plaintiff's favor. The Court should grant the motion.

ARGUMENT

I. The Secretary mischaracterizes the *Anderson-Burdick* test.

No one disputes that *Anderson-Burdick* applies, but the Secretary misunderstands the test so fundamentally that he fails to make the case that HB 156 can survive anything more demanding than rational basis review. But that is the wrong test.

Anderson-Burdick requires "weigh[ing] 'the character and magnitude of 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,'" and "consider[ing] 'the extent to which *those interests* make it *necessary* to burden'" the right to vote. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)) (emphasis added). The more extensive the

burden on voting rights, the stricter the scrutiny applied. The Secretary seems to think that there are only two levels of scrutiny under *Anderson-Burdick*: strict scrutiny and something "similar or identical to rational basis scrutiny." Doc. 65 at 8. Thus, the Secretary spills much ink downplaying the burdens HB 156 imposes before arguing that "Wyoming need not demonstrate a compelling state interest" because (he says) the burden on voters is not sufficiently "severe." Doc. 65 at 9. He then applies this binary framework that he has created to argue that HB 156 can survive "rational basis" review, failing to make any argument that it can survive anything more searching.

But rational basis review is *never* appropriate when an election regulation burdens the right to vote—even if the burden is minimal. Thus, the Tenth Circuit held in *Fish II* that, "[h]owever slight th[e] burden [imposed on the right to vote] may appear . . . it must be justified by relevant and legitimate state interests '*sufficiently weighty to justify the limitation*.'" *Fish II*, 957 F.3d at 1124 (emphasis added) (quotations omitted). The only time that rational basis review applies is when a regulation does not burden the right to vote *at all*. *See id.* at 1125. The Secretary fundamentally misconstrues case law differentiating between laws that impose a slight burden on the right to vote and none at all. The Secretary may disagree about the extent of the burden, but it is plain that imposing new requirements on voters to register to vote imposes at least *some* burden on that right.

Accordingly, even laws that impose a slight burden on the right to vote must be balanced against the interests the state claims in the law, and when the state cannot "articulate how achieving [its] goals makes it at all necessary or desirable to" burden the right to vote, there is "nothing to weigh on the [state's] side" of the *Anderson-Burdick* balancing. *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 881 (3d. Cir. 1997). And where the state cannot show that the challenged law *actually advances* its asserted state interests, those interests cannot justify even the slightest burden on the right to vote. *See Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 219–22

(1986) (holding insufficient "legitimate interest[s]" in preventing party raiding and in avoiding voter confusion because those interests were not actually advanced by the challenged statute).[1] HB 156's DPOC requirements suffer precisely these deficiencies. *See* Doc. 16 at 16–19. Secretary Gray contends with none of this.

II. Plaintiff is likely to succeed in its challenge to HB 156.

The Tenth Circuit held in *Fish II* that Kansas's similar (albeit less strict) DPOC law imposed a "significant" burden on the right to vote. 957 F.3d at 1127–28. Plaintiff has submitted concrete evidence that Wyoming's law will burden voters as much or more than the Kansas law. *See* Doc. 16 at 3–9, 12–16. Against that backdrop, and having entirely misconstrued the standard, the Secretary offers no legally meaningful defense of the law. Thus, under binding precedent, and on this record, the Court should find Plaintiff is likely to succeed.

A. Wyoming's DPOC requirement will significantly burden the right to vote.

Contrary to his prior public statements, Secretary Gray now argues that Kansas's DPOC law was stricter than HB 156 because the latter "permits voters to register using a broader range of documents." Doc. 65 at 9. But a simple comparison of the two laws proves otherwise. For example, Kansas allowed voters to use expired passports; any "documents or methods of proof of" U.S. citizenship issued by the federal government pursuant to the immigration and nationality act of 1952; a final adoption decree; an official military record showing a U.S. place of birth; or "an extract from" a U.S. hospital record of birth indicating a U.S. birthplace. Kan. Stat. Ann. § 25-2309(l)(3), (5), (11), (12), (13). Kansas also included both a catch-all provision permitting citizens

[1] *See also Soltysik v. Padilla*, 910 F.3d 438, 447 (9th Cir. 2018) (holding even an "important government interest" insufficient because the court "struggle[d] to understand how [the challenged statutes] . . . advance[d] that goal"); *Lerman v. Bd. of Elections in N.Y.C.*, 232 F.3d 135, 149 (2d Cir. 2000) ("[T]he fact that the defendants['] asserted interests are 'important in the abstract' does not necessarily mean that its chosen means of regulation 'will in fact advance those interests.'" (quoting *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994))).

to submit "any evidence" they believed would demonstrate their citizenship, *id*. § 25-2309(m), and an affidavit option for registrants who had changed their names, *id*. § 25-2309(q). HB 156 has none of this. In fact, the *only* documents it includes that Kansas did not are "a military draft record or a selective service registration acknowledgment card," Wyo. Stat. Ann. §§ 22-1-102(a)(lvi)(G). But according to Secretary Gray, "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." Doc. 65 at 15–16.[2]

And despite the Secretary's past (and repeated) public insistence that HB 156 is essential to fight voter fraud, he now contends that the new law will have virtually no effect. Prior to HB 156, he explains, Wyoming voters already had to present an ID to register to vote. Doc. 65 at 11–12. As the Secretary now tells it, "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*. at 12. But this is not true. The ID requirement in place prior to HB 156 allows multiple forms of ID that the DPOC law does not, including ID cards issued by *any* State or Federal agency (like a Veteran ID card or employment ID); student IDs; ID cards issued to military dependents; a voter registration card from another State or County; or "*any other form of identification* issued by an official agency of the" U.S. or a State. Doc. 65 at 11 (citing Wyo. Stat. Ann. § 22-3-103(v) (2024); Wyo. Stat. Ann. § 22-1-102(a)(xxxix)(A) (2024)).

[2] In addition, Kansas made it easier to comply than HB 156 does. *Compare e.g.*, Kan. Stat. Ann. § 25-2309(l)(4) (allowing applicants to submit number of naturalization certificate), *with* Wyo. Stat. Ann. §§ 22-1-102(a)(lvi)(B) (allowing only the certificate itself); Kan. Stat. Ann. § 25-2309(l)(6) (allowing applicants to submit bureau of Indian affairs card number, tribal treaty card number or tribal enrollment number), *with* Wyo. Stat. Ann. §§ 22-1-102(a)(lvi)(F) (allowing only "[a] valid tribal identification card issued by the governing body of the Eastern Shoshone Tribe or the Northern Arapaho Tribe of the Wind River Indian Reservation or any other federally recognized Indian tribe"). Kansas was also more flexible about the format in which DPOC could be submitted, allowing photocopies in lieu of physical IDs. *See* Kan. Stat. Ann. § 25-2309.

These differences are evident on the face of the Secretary's brief, where he lists the acceptable documents for the current law and the DPOC requirement in full. Doc. 65 at 11–12.

Secretary Gray's discussion of why the Tenth Circuit concluded in *Fish II* that the circumstances there differed from those in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), leaves out significant details that support Plaintiff's position that this case is more *Fish* than *Crawford*. The Tenth Circuit emphasized that, "in finding Indiana's statute constitutional" the Supreme Court relied on the fact that the Indiana law allowed voters who lacked acceptable voter ID to vote provisionally and have their ballots counted if they executed an affidavit. *Fish II*, 957 F.3d at 1128 (discussing *Crawford*, 553 U.S. at 199). Here, in contrast, HB 156 "offer[s] no similar safety valve." *Id*. at 1129. In fact, HB 156 is even worse than Kansas's law in this regard. *See, e.g.*, *id*. (describing safeguards in Kansas law that are not in HB 156). The Secretary also ignores the findings the Tenth Circuit made in *Fish II* as to *the State's* failure to establish the necessity for the DPOC law—i.e., that there was "essentially no evidence that the integrity of Kansas's electoral process had been threatened" by noncitizen voting, where, "at most, 67 noncitizens registered or attempted to register over the last 19 years." *Id*. at 1134. Here, too, Wyoming fares much worse than Kansas: in the legislative process, proponents of HB 156 were only able to identify *one* incident of a noncitizen voting in Wyoming, and it would not have been prevented by HB 156.

Ultimately, Secretary Gray's argument suggests that courts can never enjoin a DPOC law until it goes into effect. *See* Doc. 65 at 9–10. That is not the law. Courts can and do enjoin voting regulations before they go into effect when they risk imposing unconstitutional burdens. *See, e.g.*, *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019) (declining to stay preliminary injunction of a law that "subject[ed]" certain voters "to the risk of

disenfranchisement"); *Obama for America v. Husted*, 697 F.3d 423, 428–36 (6th Cir. 2012) (affirming injunction of law that would have prevented nonmilitary voters from casting in-person early ballots during the three days before the election). Plaintiff has shown how HB 156 is likely to burden a wide array of Wyoming citizens once it goes into effect.[3] It has also demonstrated that every DPOC law before HB 156 has impeded the voting rights of *citizens*. Doc. 16 at 3–5, 12; *cf. Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008) (noting "this is not a case" where the defendant is engaged in activity "with completely unknown effects"). It is ludicrous to suggest that this Court must ignore the strong likelihood that Wyoming's citizens will be burdened and disenfranchised by the DPOC law and cannot act until the harm has been done.

Secretary Gray's contention that the Court should ignore that HB 156 will impose higher burdens on certain groups of voters similarly defies the law. Under *Anderson-Burdick*, burdens that fall disproportionately on particular groups of voters merit higher scrutiny. *Anderson*, 460 U.S. at 793*; accord League of Women Voters of Fla., Inc., v. Detzner*, 314 F. Supp. 3d 1205, 1216–17 (N.D. Fla. 2018) ("Disparate impact matters under *Anderson-Burdick*."). And courts regularly credit similar evidence in granting injunctions. *See, e.g.*, *California v. Trump*, No. 25-cv-10810-DJC, 2025 WL 1667949, at *18–19 (D. Mass. June 13, 2025) (crediting evidence of Executive Order's DPOC requirement's anticipated burdens on elderly, unhoused, Black and poorer Americans, among others).[4]

[3] Among the extensive evidence submitted by Plaintiff were three separate declarants attesting that they serve individuals who lack the identifying documents HB 156 requires. *See* Doc. 56-1; Doc. 16-14 ¶¶ 4, 7; Doc. 16-15 ¶ 5. Plaintiff also submitted a declaration by Dr. Kenneth Mayer, a highly credentialed expert in election administration whose testimony has been relied on by numerous courts on similar questions, as to HB 156's likely impact. *See* Doc. 16-7; *see also id.* ¶ 5 (citing cases where state and federal courts have relied on Dr. Mayer's testimony).

[4] Secretary Gray is also incorrect that no voters facing a disproportionate impact are before the court. For example, Plaintiff highlights the experience of domestic abuse survivors, thousands of

Finally, the limited evidence that the Secretary does offer supports Plaintiff in showing that HB 156 will significantly burden the right to vote. The county clerk declarations confirm mass purges of the voter rolls after recent elections and explain that purged voters must entirely re-register, meaning that many Wyoming voters will have to comply with the DPOC requirement multiple times. *See* Doc. 65-4 ¶¶ 18–19, Doc. 65-5 ¶¶ 15–16, Doc. 65-6 ¶¶ 14–16. They also confirm that many voters will likely learn about the new DPOC requirements for the first time when they attempt to vote at the polls. *See* Doc. 65-6 ¶ 37 (clerk attesting that after Wyoming passed a voter ID requirement, it took *four* elections before voters were finally "starting to understand the new law that they must show Identification to vote").

B. Secretary Gray fails to justify the DPOC requirement.

Secretary Gray does not dispute that there is "essentially no evidence that the integrity of [Wyoming's] electoral process ha[s] been threatened" by noncitizen voting. *Fish II*, 957 F.3d at 1134. Nor does he proffer any evidence to demonstrate that noncitizen voting is an actual problem in Wyoming. He claims he need not do so under his "rational basis" construction. *But see id.* at 1132 ("[T]he Secretary points to no concrete evidence that" the State's abstract interests in protecting against voter fraud "'make it necessary to burden the plaintiff's rights' in this case" (quoting *Burdick*, 504 U.S. at 434)).

Instead, Defendant Gray offers a brand new justification for the DPOC law—that the law is necessary "to close a known vulnerability in Wyoming's election procedures," Doc. 65 at 1. For several reasons, this new explanation falls short. First, if this "vulnerability" was indeed the

whom live in Wyoming. *See generally* Doc. 16-14. These survivors *are* before the court as constituents of the Wyoming Coalition Against Domestic Violence and Sexual Assault, one of Plaintiff's member organizations. *Id.* ¶ 4. And Plaintiff can adjudicate that harm on their behalf. *See, e.g.*, *LULAC v. Executive Office of the President*, No. CV-25-0946, 2025 WL 1187730, at *32 (D.D.C. Apr. 24, 2025).

animating concern behind HB 156, it is curious that none of the law's supporters mentioned it during the legislative proceedings. *Cf. Miller-El v. Dretke*, 545 U.S. 231, 246 (2005) (refusing to credit the State's new explanation for its actions, which "reek[ed] of afterthought"). Further, although the Secretary claims that a person could theoretically cast a ballot even though the State has evidence that the person is ineligible that is—at the time of registration—inaccessible, the Secretary offers no evidence that this scenario has ever come to pass. Had it in fact happened, it would be easy to discover once the clerk is again able to check their registration against the system. But even if this were a real concern, the answer would not be to burden voters with a DPOC requirement in order to register to vote—it would be to address issues with the administrative system. Moreover, this new explanation concedes that the State *already has* the capability to verify many voters' citizenship, Doc. 65 at 2; Doc. 65-4 ¶ 32; Doc. 65-5 ¶¶ 24, 35, providing further reason to conclude that the law is unnecessary.

Secretary Gray also concedes that several of the documents listed in Wyoming's law as acceptable DPOC do not actually prove citizenship. *See* Doc. 65 at 18. By his telling, this does not matter because "[u]nder 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." *Id.* (quoting *Scarlett v. Air Methods Corp.*, 922 F.3d 1053, 1070 (10th Cir. 2019)). But as Plaintiff has explained, rational basis is not the standard here—even if the Court were to determine that the DPOC law's burden is minimal. And this failure in tailoring definitively proves that HB 156 does not actually advance the State's interest in prohibiting noncitizens from voting.

III. Plaintiff will suffer irreparable harm absent an injunction.

Secretary Gray argues that, as a matter of law, Plaintiff cannot claim irreparable harm based on diversion of resources. This is wrong. Courts can and do find irreparable harm on this basis,

including in *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013), which Plaintiff cited in its motion but the Secretary ignores in his response. A federal district court in the District of Columbia came to a similar conclusion a few months ago when it enjoined President Trump's attempt to impose DPOC by executive order. *See LULAC v. Executive Office of the President*, No. CV-25-0946, 2025 WL 1187730, at *41 (D.D.C. Apr. 24, 2025) (finding nonpartisan civic organizations had shown a strong likelihood that the implementation of the EO's DPOC requirements "would cause them irreparable harm by interfering with" their mission); *see also Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018) ("Without an injunction . . . Plaintiffs' organizational missions, including registration and mobilization efforts, will continue to be frustrated and organization resources will be diverted . . . . Such mobilization opportunities cannot be remedied once lost."). And Plaintiff has explained in detail why implementation of HB 156 will cause irreparable harm to its ability to advance its mission, including that the time and resources it spends to address the law cannot be recovered if it is found to be unconstitutional. *See* Doc. 16 at 21–22.[5]

The Secretary's argument that, because there is no imminent election, there is no irreparable injury to Plaintiff's constituents is also contrary to binding precedent. The Tenth Circuit in *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016) ("*Fish I*"), found that denial of voter registration itself was an irreparable harm, *id.* at 752–53; *see also California v. Trump*, 2025 WL 1667949, at *19 (finding "[v]oter registration is . . . a year-round process, and the implementation of voter registration requirements . . . and voter-education campaigns demands significant lead time"). This conclusion is further supported by the declaration from Plaintiff's Executive Director, which

[5] The Secretary's claim that the Court should not issue an injunction because the clerks need to start educating voters now, Doc. 65 at 23–24, only confirms Plaintiff's assertions on this front (though the Secretary has the harm calculus exactly backward, as explained below).

explains that the present time is a critical period for its voter education and registration efforts. Doc. 16-21 ¶¶ 20–21. And the Secretary's own evidence shows that voters are currently attempting to register on a regular basis. *See* Doc. 65-5 ¶ 20. Qualified citizens who are turned away now for lacking DPOC may be discouraged from attempting to register again, a concern that the Tenth Circuit pointed to in concluding that the district court's injunction of the Kansas law was necessary to avoid irreparable harm. *See Fish I*, 840 F.3d at 752–53. Here, voters have already reached out to Plaintiff concerned about attempting to register under the new law. Doc. 16-21 ¶ 14.

IV. The balance of harms and public interest favor injunctive relief.

Secretary Gray's response on the final two factors of the preliminary injunction standard—the balance of harms and whether an injunction serves the public interest—largely repackage his arguments on the merits and Plaintiff's asserted injuries. *See* Doc. 65 at 22–25. As such, they turn on the Secretary's claim that the DPOC law is constitutional. Indeed, the Secretary does not disagree that "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1254 (10th Cir. 2024).

The Secretary's other arguments on these factors are meritless. He contends that an injunction would "undermine" the State's interest in enforcing HB 156 as "an anti-fraud measure," Doc. 65 at 25, but has adduced no evidence of any fraud that the law would actually prevent. As for his argument that an injunction would not advance the public interest because it will delay clerks' efforts to implement HB 156 and educate voters about the new requirements, risking voter confusion, *Id.* at 23–25, this ignores that if HB 156 is implemented, *it will be harder for voters to register*. It is HB 156 that threatens voting rights, not an injunction issued to protect them.

CONCLUSION

The Court should grant Plaintiff's motion for preliminary injunction.

Dated: June 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 30th of June, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States District Court for the District of Wyoming by using the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system. All other parties will be served by email.

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